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### POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA

Letter dated 2 July 1990 from the Permanent Representative  
of Mozambique to the United Nations addressed to the  
Secretary-General

I have the honour to request you to have circulated as an official document of the forty-fourth session of the General Assembly, under agenda item 28, the report of the Monitoring Group of the Ad Hoc Committee on Southern Africa of the Organization of Africa Unity (OAU) (see annex).

(Signed) - Pedro Commissario AFONSO  
Permanent Representative of  
Mozambique to the United Nations  
Chairman of the African Group

ANNEX

REPORT OF THE MONITORING GROUP OF THE OAU AD-HOC COMMITTEE  
ON SOUTHERN AFRICA, LUSAKA, ZAMBIA

8th June 1990.

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INTRODUCTION

1.0.0 In fulfilment of the mandate given to it by the Lusaka Summit of the Ad-Hoc Committee of the Organisation of African Unity on Southern Africa of 19th March 1990 to monitor implementation of the "Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) and the "United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa" (U.N.D) the Monitoring Group met in Lusaka, Zambia, every Friday beginning on 20th April 1990 up to, and including the 8th of June 1990. The exceptions were when the group met on 19th May in Cairo, Egypt on the eve of the Ministerial Meeting of the Ad Hoc Committee of the Organisation of African Unity on Southern Africa held in that country and also on the 26th and 27th May in Gaborone, Botswana during which time it held hearings to receive oral testimonies from representatives of concerned anti-apartheid and/or monitoring organisations and individuals invited directly from South Africa.

1.1.0 The Monitoring Group worked closely with the National Liberation Movements of South Africa. On 27th April 1990, the Monitoring Group received oral testimony from Dean Tsheuana Farisani, Deputy Dean of the Lutheran Church of South Africa. On 4th May 1990 in Lusaka, Zambia, it heard oral testimonies from Ms Feroza Adam, Ms Makhosi Khoza and Ms Nomaindia Mfeketho respectively representing the Federation of Transvaal Women, the Natal Monitoring Group and the

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Federation of South African Women. In Gaborone, Botswana, during its hearings between 26th and 27th May, it received oral testimonies from:

1. Joyce Mabudafazi - Human Rights Commission
2. Raymond Mahadi - Detainees Support Committee
3. Neil Coleman - Congress of South African Trade Unions
4. Linda Zama - UDF/COSATU
5. John Aitchison - Natal Monitoring Group
6. Reverend Ben Usimbi - Council of Churches
7. Mahlubi Mbandazayo - Pan Africanist Congress of Azania
8. Carter Seleke - Azania National Youth Union
9. Mike Matsobane - National Congress of Trade Unions
10. Hazel Leburu - Association of Women's Organisations
11. Thamie Plaatjie - Pan Africanist Students' Association

1.2.0 In addition to oral testimony, the Monitoring Group also made extensive use of documentary evidence as well as evidence culled from the South African and other mass-media. The result of the Monitoring Group's consultations and investigations are the following findings:

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### FINDINGS

#### I PRINCIPLES

2.0.0 Both declarations identify a common set of principles fundamental to democracy in South Africa and upon which agreement by all parties to the South African conflict shall constitute the foundation for an internationally acceptable solution which shall enable South Africa to take its rightful place as an equal partner among the African and World community of nations.

2.1.0 The overwhelming majority of the people of Southern Africa subscribe to these principles in their entirety.

2.2.0 The Apartheid regime has yet to positively, and comprehensively respond to these principles as the speech of Mr. F.W. de Klerk of 2nd February 1990 and the 12 point speech on Minority Rights made by Acting President Mr. G. Viljoen on 11 May 1990 ran contrary to these principles. There are at least three interrelated issues which have a direct bearing on principles and about which the Apartheid regime has made itself clear: their rejection of majority rule through universal adult suffrage on the basis of one person one vote, under a common voters roll of all South Africans; their insistence on "Group Rights" and on "Power Sharing".

2.3.0 In the opening of his speech of 2nd February 1990 to the white parliament, Mr. F.W. de Klerk said: "The general election on September 6th 1989 placed our country irrevocably on the road of drastic change. Underlying this is the growing realisation by an increasing number of South Africans that only a negotiated understanding among the representative leaders of the entire population is able to ensure lasting peace." He then went on to add that "On its part, the Government will accord the process of negotiation the highest priority." However positive this professed commitment to change and to negotiation may be construed to sound, it is not matched by an adequate clarity of the regime's position on the principles contained in both declarations. Where there is clarity on their positions, they are invariably at variance with the principles contained in the Declarations. In several places Mr. F.W. de Klerk's speech even suggests that those principles, which the international community holds to be axiomatic, should be the subject of debate in his parliament, and that in the broader context, they should be negotiated by all parties to the South African conflict.

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2.4.0 Further on, Mr. F.W. de Klerk, in his speech says; "A changed dispensation implies far more than political and constitutional issues. It cannot be pursued successfully in isolation from problems in other spheres of life which demand practical solutions. Poverty, unemployment, housing shortages, inadequate education and training, illiteracy, health needs and other problems still stand in the way of progress and prosperity and an improved way of life." In detailing the ills of Apartheid that need to be redressed, he sounds positive on detail, yet again this is no substitute for the regime's commitment to the principles.

2.5.0 Further on, Mr. F.W. de Klerk says: "the agenda is open and the overall aims to which we are aspiring should be acceptable to all reasonable South Africans." The presumption that the aims of the Apartheid regime should be acceptable to all reasonable South Africans implies that the regime is the one that sets the standards for what is or is not reasonable - not least on the issue of principles.

2.6.0 Anticipating and trying to temper the optimism that may arise in the wake of the measures announced earlier on in his speech, Mr. F.W. de Klerk warns: "equally it should not be interpreted as a deviation from the government's principles, among other things, against their (the regime's adversaries) economic policy and aspects of their constitutional policy. This will be dealt with in negotiation."

2.7.0 Paragraph 16.1 in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D.) or No.3a, United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), states that "South Africa shall become a united, democratic and non-racial state. The regime's insistence on Group Rights with its implicit division of South Africans along racial and ethnic lines, directly opposes this principle.

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2.8.0 Paragraph 16.2 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) or No. 3b United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), states that: "All its people shall enjoy common and equal citizenship and nationality, regardless of race, colour, sex or creed." This principle is again opposed by the regime's insistence on "Group Rights."

2.9.0 Paragraph 16.3 in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) or No.3c United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), states that: "All people shall have the right to participate in the government and administration of the country on the basis of a universal suffrage, exercised through one person one vote, under a common voters roll." The Apartheid regime rejects this principle by insisting on "Group Rights" and refers to it as "simplistic" and "unsophisticated."

3.0.0 The principles in Paragraph 16. 1-3 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa (H.D) and the corresponding paragraphs in the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa (UND), are fundamental and form the formal basis for all the other principles enumerated therein. On the part of the Apartheid regime, the rejection of majority rule, insistence on "Group Rights" and "Power Sharing", taken collectively constitute its fundamental outlook within which its statement of approach is formally located. In all its official pronouncements it invariably links the rejection of majority rule and other principles mentioned in the Declarations to "Group Rights" and "Power Sharing" or both. For this reason, the latter are examined in details below:

Group Rights and Power Sharing

4.0.0 The recurrent themes in pronouncements made by the Apartheid regime either through formal documents such as the Five Year Plan of Action of the Afrikaaner Nationalist Party, or through speeches and statements to the mass media by Mr. F.W. de Klerk and the 12 point speech on Minority Rights given by Acting President Mr. G. Viljoen on 11 May 1990 are:

- (a) their rejection of majority rule and
- (b) their insistence on the need to protect "Group Rights" through "Power Sharing".

4.1.0 The Monitoring Group is of the view that the Apartheid regime's rejection of majority rule and their insistence on "Group Rights" and "Power Sharing" constitute an attempt to reserve white minority domination by retaining its essentials while adapting its appearances to the changed circumstances characterised by the inexorable escalation of the struggle of the South African people for a united, democratic and non-racial South Africa.

4.2.0 What informs the Apartheid regime's insistence on "Group Rights" and "Power Sharing" is a set of two interrelated objectives:-

4.3.0 Through "Group Rights", the Apartheid regime seeks to give overriding political significance to the overwhelmingly rejected ethnic and racial divisions which Apartheid has always sought to impose, maintain and exaggerate between the South African people. The perpetuation and elevation of these divisions, will have the effect of undermining the sense of common nationality shared by the overwhelming majority of South Africans and in this manner undermine the natural basis of both the possibility and the necessity of creating a system of democratically determined and sustained majority rule which transcends race, colour, creed and gender.

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4.4.0 To the universally accepted demand of the South African people for majority rule through universal adult suffrage based on one person one vote, on a common voters' roll, the Apartheid regime counterposes and insists upon "Power Sharing" which consists of dividing the South African people into racial and ethnic political units sharing political power on the basis of absolute equality between such units, contrary to, and in defiance of concrete demographic realities. Central to this dispensation is the stipulation that decision making on matters that affect all "groups" shall be based on consensus.

4.5.0 Considering that the white minority presided over the creation and maintenance of the Apartheid status quo and that it has shown itself patently unwilling to voluntarily relinquish it, "Power Sharing" is designed to arm the white minority with a veto power to thwart and frustrate the demand of the South African people for an end to Apartheid and for the creation of a united, democratic and non-racial South Africa.

4.6.0 By deliberately ignoring the fact that the overwhelming majority of the people of South Africa - including an ever growing number of whites - prefer, for political purposes, to define themselves as being primarily South Africans and only secondarily affiliated to a given race or ethnicity, "Group Rights" and "Power Sharing" can never by definition, serve as a basis for a just and lasting solution to the South African conflict.

#### Pretoria's Stated or Implied Position on Other Principles

5.0.0 In his address of 2nd February 1990 to the white parliament, Mr. F.W. de Klerk committed his government, to the realisation of, inter alia, the following aims ..... " a new democratic constitution; universal franchise; no domination; equality before an independent judiciary; the protection of minority as well as of individual rights; freedom of religion; a sound economy based on proven economic principles and private enterprise;

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dynamic programmes directed at better education, health services, housing and social conditions for all." Though some of it sounds positive, the above cited passage is merely a statement of intentions which makes no commitment to the principles contained in the Declarations.

5.1.0 Considering that Apartheid itself was originally presented by its authors as being in the best interest of all South Africans, and taken in conjunction with the rejection of majority rule and insistence on "Group Rights", the cited passage is far less than a reliable guarantee that the Apartheid regime is committed to the dismantling of Apartheid and the creation of a united, democratic and non-racial South Africa. (Paragraph 16.1 in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa ).

5.2.0 With regard to the principle: "All shall enjoy universally recognised human rights, freedom and civil liberties, protected under an entrenched Bill of Rights". (16.5 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa). Mr Gerrit Viljoen, in his 11th May 1990 speech said: "It is already envisaged that the planned Bill of Human Rights, besides protecting individual rights and freedoms, may also protect group values like language, culture, religion, by upholding the right of the individual concerned to exercise those values and rights in a group context." The emphasis the Apartheid regime lays on "Group Rights" in this context, represents a radical and insidious departure from the proven assumption that informs a Bill of Rights as universally understood and accepted, namely, that the protection of individual rights and freedoms suffices for the protection of rights of any group based on voluntary association. Based on the precedent of Apartheid itself, there is reason to believe that the departure is deliberate. By seeming to place individual and group rights on the same footing, the possibility is raised of institutionalising the

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right to the formation and protection of exclusivist groupings and, therefore, to racism itself. This is contrary to Paragraph 16.5 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and 3e of the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa.

5.3.0. With respect to the principle that: "South Africa shall have a new legal system which shall guarantee equality before the law." (16.6 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 3f of United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa). Mr. Gerrit Viljoen's twelve point Minority Rights speech of 11 May 1990, though silent on the type of legal system envisaged by the Apartheid regime, nevertheless contradicts Principle 16.6 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and 3f of the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa. Equality of groups before the law, as implied by the notion of 'Group Rights' in the service of the preservation of white exclusivity and/or domination is incompatible with equality of individuals before the law.

5.4.0 With respect to the principle: "South Africa shall have an independent and non-racial judiciary." (16.7 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 3g of United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa). In his speech of 11 May 1990, Mr. Viljoen said, "that an independent judiciary will exercise judicial authority in cases between one person and another and between citizens and the state". However, he locates these remarks within the framework of the thrust of his speech which is the Apartheid regime's perceived need to protect group rights. The Apartheid regime gives priority to the protection of group rights over the necessity of an independent judiciary. This is contrary to Paragraph 16.7 of the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and 3g of the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa because it colours justice with a racial, and/or ethnic considerations.

5.5.0 With respect to the principle: "There shall be created an economic order which shall promote and advance the well-being of all South Africans." (16.8, Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 3h in United Nations Consensus Declaration on Apartheid and its Destructive

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Consequences in Southern Africa), Mr. F.W. de Klerk, in his BEC interview, lays emphasis on the need to protect property rights.

Considering that more than 80% of the wealth and 87% of the land mass of South Africa is concentrated in the white minority's hands, this means the racial imbalance in favour of whites in the economic distribution of South Africa's wealth will continue. Mr. Viljoen, in the 12 point Minority Rights speech seeks to entrench this fundamental injustice by saying "That property rights (including the land) shall be honoured and there shall be no arbitrary dispossession, or dispossession without reasonable compensation."

5.6.0 With respect to the principle that: "A democratic South Africa shall respect the rights, sovereignty and territorial integrity of all countries and pursue a policy of peace, friendship and mutually beneficial co-operation with all peoples." (16.9 Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa or 31 United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa), Mr. F.W. de Klerk, in his February 2nd, 1990 speech said inter alia "The season of violence is over. The time for reconstruction and reconciliation has come." However, Apartheid violence still continues in the region as reflected in the activities of the surrogate groups of UNITA and MNR in Angola and Mozambique respectively and in South Africa itself.

5.7.0 From the foregoing, the apartheid regime still refuses to affirm the sets of fundamental principles of democracy contained in the Declarations. It continues instead, to insist that these principles are subject to negotiation.

5.8.0 At the level of rhetoric, the regime has been at great pains to attempt to dispel suspicions that its emphasis on "Group Rights" is but a disguised strategy for face-lifting apartheid and preserving white domination.

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5.9.0 Its most recent pronouncements, notably Mr. F.W. de Klerk's speech of the 17th April to the white parliamentary debate on the budget and the responses he gave to questions on the 19th April in the same session as well as the regime's Minister of Constitutional Affairs, Gerrit Viljoen's speech on 11 May 1990, show the regime's stubborn refusal to accept majority rule through universal adult suffrage on the basis of one person one vote, on a common voters' roll of all South Africans.

## II CLIMATE FOR NEGOTIATION

6.0.0 In order to create the necessary climate for negotiation, both Declarations require the regime, to, at the least:

- (i) Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them;
- (ii) Lift all bans and restrictions on all proscribed and restricted organisations and persons;
- (iii) Remove all troops from townships;
- (iv) End the State of Emergency and repeal all legislation, such as, and including the Internal Security Act, designed to circumscribe political activity, and
- (v) Cease all political trials and political executions.

### (i) Release Political Prisoners and Detainees

7.0.0 Mr. F.W. de Klerk, by announcing that "people serving sentences merely because they were members of one of the (previously banned) organisations or because they committed another offence which was merely an offence because the prohibition of one of the organisations was in force will be identified and released. Prisoners who have been sentenced for other offences such as murder, terrorism or arson are not to be affected by this" has deliberately limited the definition of political prisoner.

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Consequently, the overwhelming majority of people serving sentences for offences which occurred in the course of the struggle against Apartheid were excluded from the very narrow definition of political prisoner used by de Klerk in his 2nd February speech. His initiative is limited to those political prisoners convicted of affiliation with or furthering the aims of a banned organisation. As such, the regime has so far only released approximately 72 political prisoners, including Nelson Mandela. (See Annex 1 attached).

7.1.0 According to oral evidence received by the Monitoring Group, and as estimated by monitoring groups in South Africa, there are more than 3000 political prisoners in Apartheid jails. Amongst these, there are currently approximately 350 prisoners serving sentences for convictions under the South African security legislation dealing with unrest related offences such as public violence, arson and malicious damage to property. (See Annex 2 attached).

7.2.0 In order to criminalise anti-apartheid political activity, opponents of the Apartheid system were charged with common law crimes, rather than political offences. Accordingly, there are many political activists serving sentences for such offences as public violence, arson, murder and terrorism.

8.0.0 Since the adoption of the Declarations, the Apartheid regime has neither given indication of intent to halt the practice of detention without trial nor has it made a categorical commitment to release political detainees. What the regime has done is to indicate that the period of detention in terms of security emergency regulations will be limited to a renewable six months and that detainees will acquire the right to legal representation and a medical practitioner of their own choosing. As such, the practice of detention without trial continues.

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8.1.0           There are over 300 detainees without trial presently held under the State of Emergency including children as young as 12 years old. Thirty-two adults are held under Section 29 of the Internal Security Act, which provides for indefinite detention for the purposes of interrogation, with no access to the family or lawyer. In February 1990, the Minister for Law and Order, Mr. Adriaan Vlok stated that only criminals were being detained. However, the detention of members of the executive bodies and ordinary members of organisations continues. For example, Mr. Edwin Phasha, a Chemical Workers Industrial Union member working in the mines in Secunda was detained under emergency regulations on 22 March 1990. He was released 3 - 4 weeks later without any charges having been laid against him. (See Annex 3 attached).

8.2.0           Ex-detainees are natural targets for re-detention. Recently, 4 executive members of the Tembisa Youth Congress were detained. After their release they gave a press interview at which they were quoted as having said they intended implementing "peoples courts." A short time after their release, they were re-detained under the State of Emergency. One of them was a young woman, Deborah Marakalla. This was her third detention. The last detention was for a duration of one and a half years. She is the mother of an asthmatic child, Lerato, aged 5 years, and is herself diabetic.

8.3.0           When women are detained, they invariably end up in solitary confinement. As a result, they are subjected to sexual harassment. Detention of pregnant women is particularly serious because they are denied access to natal care. Further, women are anxious about the welfare of their families, wondering whether their children are adequately taken care of while their husbands are at work or in detention, and all the myriad of worries a woman would have separated from her family.

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8.4.0 According to January 1989 estimates, there were almost 1,000 detainees who embarked on a hunger strike in an effort of gaining their release. Invariably, all of them have demanded to be charged or get unconditional release. Though the hunger strike is frequently a necessary form of struggle, it has had adverse and sometimes irreversible effects on the health of detainees.

(ii) Lifting of Bans and Restrictions

9.0.0 While organisations and individuals have been unbanned, and although Mr. F.W. de Klerk indicated in his February 2nd speech that conditions imposed in terms of security emergency regulations on 374 people on their release are being rescinded, and that the regulations which provide for such conditions are being abolished, the regime retains the power to impose new banning and restriction orders on organisations and individuals because the Internal Security Act and other repressive legislation remain intact. As such despite the partial amendment of the State of Emergency Regulations in March 1990, there is a question mark over what political action such as boycotts, campaigns and creation of alternative structures will be permitted. For example, the United Democratic Front and the National Union of South African Students are prohibited in terms of proclamations issued under the Affected Organisations Act from receiving any foreign funding.

9.1.0 The blanket ban on all political gatherings without permission continues. Powers under the State of Emergency and Internal Security Act to break up such gatherings continue to be exercised on an almost daily basis, frequently involving a high level of force. Freedom of assembly continues to be severely restricted, constituting a major source of conflict at the present time. On April 1, 1990 the annual blanket ban on all outdoor political gatherings without permission, was renewed for the fifteenth consecutive year under the Internal Security Act. Late in

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1989, permission for peaceful political activities such as protest marches and rallies began to be granted in certain instances. However, attitudes have hardened. Permission for gatherings is frequently refused and in some areas the security forces have returned to their former use of extreme force in breaking up peaceful political gatherings and demonstrations, resulting at times in heavy loss of lives. Estimates indicate that 139 people have been killed and 1429 injured directly or indirectly by Police action since Mr. de Klerk's address of 2nd February. Such heavy handed and irresponsible action prevents peaceful political activity by the communities and particularly the youth.

9.2.0 While a number of names have been removed from the Consolidated List, the list still continues in existence. The persons whose names still appear on the list are restricted in terms of Section 18 of the Internal Security Act, from becoming members, office bearers or officers of any organisation considered for prohibition under the Internal Security Act (ISA). They are also restricted from taking part in the activities of these organisations. This may severely affect the recruitment drive of national liberation organisations presently re-organising in South Africa, its leadership appointments as well as hamper free political intercourse.

9.3.0 Furthermore, although the ban on organisations has been lifted, these organisations are still liable to prosecution for offences under the ISA, such as, terrorism and related offences, promotion of communism, (defined as violence, sabotage and harbouring), promoting and favouring the aims of certain organisations which were prohibited (statutes enabling the government to ban organisations are still in place); incitement, offering or accepting assistance for organised resistance against the laws of the Republic and fomenting racial hostility. Therefore, in so far as these provisions remain in the Statute Book, members of National Liberation Movements, who for instance, call for economic sanctions are still liable

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to prosecution for sedition or sabotage.

(iii) Troops in Townships

10.0.0 According to oral evidence received by the Monitoring Group, South African Defence Force (SADF) troops remain in the township of Natal and the "Homelands" and persist in their repressive role. In the case of Natal, under the pretext of seeking to arrest internecine violence which it has actually fomented, the regime has in addition sent in the notorious Battalion 32 which had hitherto served in Namibia.

10.1.0 In the majority of cases the presence of South African Defence Force troops is to reinforce the police for the purpose of buttressing the imposition or perpetuation of Apartheid. This is particularly the case where communities are capable of maintaining law and order on their own. In such cases the presence of Apartheid troops only serves to foment and accentuate violence. There are cases also where communities are unable to ensure law and order because of lack of appropriate resources. In such cases, and provided deployment is affected through consultation with the community, troop presence may be helpful.

(iv) End the State of Emergency and Repeal all Repressive Legislation

11.0.0 The general increase in the incidence of violence throughout South Africa, has been the result of extensive police involvement and incitement. The pervasiveness of state repression contributes to the obviation of the creation of the necessary climate for negotiation. Furthermore, it is important to note that state repression has been made possible by the State of Emergency which is yet to be lifted and the various security legislation still in place.

11.1.0 The Internal Security Act was renewed in March 1990 and provides, inter alia, for declaring certain organisations unlawful;

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prohibition of certain publications; initiations of investigations into various organisations and publications with a view to considering their prohibition; the keeping of a Consolidated List of members of unlawful organisations, banning and restrictions of organisations and individuals and detentions.

12.0.0 The State of Emergency declared under the Public Safety Act, continues. Of the 4 sets of emergency regulations, two have been withdrawn, namely, the Media and Education Regulations. The third, Prison Regulations, remains unaltered.

12.1.0 The fourth, Security Emergency Regulations, has been amended to provide slight changes in the length of detentions and detention conditions. It still provides for the imposition of restrictions on the activities of organisations and empowers the Commissioner of Police to issue orders prohibiting certain activities. For example, despite, announced new detention conditions providing for access to legal representation and personal medical practitioner, the Sports Editor of the Sowetan, Horatio Motjuadi was detained and placed in solitary confinement for three months since February 1990. Denied access to legal representation and to his family, it was only the development of a heart problem which compelled prison authorities to take him to hospital.

12.2.0 Regulation 14A (a new inclusion) provides that, in judicial proceedings, when the question arises as to whether the Minister of Law and Order formed an opinion that steps were necessary for the safety of the public, the maintenance of public order, the termination of the State of Emergency, in acting under regulations 3(3) (extending a detention), regulation 7(1) restricting an organisation), regulation 8(1) (restricting a person) or regulation 9(1) (prohibiting particular activities or acts),

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it shall not be necessary for the Minister to give oral evidence. All that is required to prove that necessary opinion was formed is an affidavit made by the person who alleges that he was the Minister of Law and Order at that time when such steps were considered and taken and that he was of the opinion that such steps were necessary for the safety of the public, the maintenance of public order or the termination of the State of Emergency. This affidavit or purported affidavit made by the Minister or someone alleging that he is the Minister shall, "on its mere production at the said proceedings by any person, be accepted as conclusive proof of the facts stated therein". This regulation has the effect of freeing the Minister from proper explanations in court. It protects him from ever having to be cross-examined on how he applied his mind in exercising his vast powers under the regulations. It goes further than that: it implies that the affidavit or purported affidavit does not even have to be made by the Minister of Law and Order. It can be made by a person who simply alleges that he is the Minister of Law and Order and it cannot be questioned. This regulation appears to have been introduced to avoid problems experienced by the State in prosecutions instituted against ex-detainees who either escaped from detention or who, the State alleged, had contravened restriction orders.

12.3.0 An analysis of the Emergency Regulations reveals that they do not so much confer new powers on the police, as a new way of exercising them. The combined effect of framing the discretion of police officials in a subjective form, of limiting legal liability of the security forces, of curtailing the media and the courts, of empowering rank and file members with a discretion previously reserved for officers, serves to free the security forces from supervision and accountability.

12.4.0 Moreover, the security forces seldom, if ever, use emergency powers and appear to rely on their 'ordinary' police powers to search,

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seize and arrest. Where emergency powers have been used, it has been to exclude lawyers or journalists from 'unrest' situations or funerals. The State of Emergency is only used against the political activities of National Liberation Movements and democratic organisations and never against the vigilante and right wing groups.

12.5.0 It is the Public Safety Act (PSA) which enables the declaration of a State of Emergency (SOE), grants even wider and more unbridled powers and is capable of use on a mass scale. Since 1985 (except for a short period of 3 months in 1986) South Africa has been under a State of Emergency, which is due to expire at midnight on 8th June 1990.

13.0.0 The Apartheid regime has a multitude of other laws for the purpose of state repression. Some of these are:

- The Suppression of Communism Act which in effect equates opposition to the Apartheid state with the promotion of communism;
- The Suppression of Terrorism Act which in effect equates opposition to Apartheid with terrorism;
- The Defence Act provides for the prohibition of access to designated areas and authorises various other means of control to prevent 'internal disorder' simply by declaring an area to be operational. "Under this Act, for instance, the South African Defence Force (SADF) or any portion thereof may be mobilised to combat internal disorders, and members of the SADF used for this purpose have all the powers, duties and immunities enjoyed by or imposed upon, the South African Police under the Police Act ";

The Intimidation Act makes it a criminal offence to

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intimidate anyone by threats or violence. People organizing protest activities such as strikes and boycotts have been charged under this Act.

13.1.0 In addition, thousands of people have been charged with the common law crime of public violence and related criminal offences, such as arson, trespass and malicious damage to property.

Some Cases of Continuing Repressive State of Violence and their Adverse Effect on Attempts to Create the Climate Necessary for Negotiations

(a) Deaths in Police Custody

14.0.0 Since the beginning of 1990, 4 people held for political reasons, have died in police custody. One was 16 year old Nixon Phiri. He was amongst a large group of children and youth who were taken to the Welverdiend Police Station for purposes of interrogation. They were called into interrogation rooms, one at a time. When Nixon's turn came, they could hear him screaming, and eventually, there was silence. His interrogators came out of the room, closed the door and went into another room and continued interrogating the others. They allege that Nixon, never came out of the room and was not seen again. The post mortem findings revealed severe head injuries and bruising all over his body. There were three witnesses who were prepared to testify. Two of the three, have been shot down by police. The third boy, 16, is on the run fearing for his life.

14.1.0 Another death in detention, was that of Clayton Sithole, detained under Section 29 of the Internal Security Act. Mr. de Klerk hastily set up a commission of inquiry into the death which the judge found as "suicide".

14.2.0 The death of Michael Zunga, followed. Although organisations called for similar inquiries into the Phiri and Zunga deaths, there has been a total lack of response by Mr. de Klerk. In March, another detainee, Lucas Tlhotlhomisang, a civic member from Schweitzer-Reneke died. Similarly, there has been no enquiry into his death.

14.3.0 The police have responded to the mass actions of communities in an unpredictable way. Mass marches and gatherings have taken place with either no police in evidence or keeping a low profile. When this happens, there is never a problem. At other times, the police are there in force and act in a brutal manner.

14.4.0 In January, in Khutsong, at a gathering to protest the death in police custody of Nixon Phiri, police fired on the people without warning. A horrified Australian diplomat, Mr. Coledzinowski witnessed the deaths and wounding of the people and was so enraged that he publicly criticised the police.

14.5.0 There was an unprovoked attack on people at a peaceful Sebokeng march, 14 people were killed and hundreds wounded. President de Klerk has announced that an independent enquiry will be instituted.

14.6.0 On 19 April 1990 in Ramulotsi township, Orange Free State, four pupils between the ages of 13 - 16 were shot by the police and died on the spot while another was fatally wounded and died later in hospital. The police justified the killings by stating that they were attacked by the pupils with stones. The residents stated that the pupils were on a protest march and that there had been no violence.

14.7.0 Early this year, in Volkstrust, a 15 year old was shot dead when police opened fire on a group of pupils setting up street barricades.

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They had been protesting against the detention of 12 pupils from their school after a local businessman's house was stoned. The police gave the children five minutes to disperse.

14.8.0 In April, in Northern Cape, a seven year old boy was shot. A resident claimed the boy had been shot after police and members of the S.A.D.F., assisted by men from a right wing group, had moved into the township and ordered people attending a disco to disperse. He claimed that the police had then fired into the crowd and the boy was hit in the face. The police say that the boy had been killed during unrest. Police had opened fire on a group of people after they had thrown stones at them.

(b) Torture and assault

15.0.0 There are constant reports of assault and torture in custody. The small outlying areas are the worst hit as they are tucked away from public scrutiny.

15.1.0 Every adult white person in Apartheid South Africa can legally acquire up to twenty-seven weapons, while the oppressed majority are not permitted to keep even home-made weapons to protect themselves. In May 1990, the regime sent 1000 police and soldiers to raid an African township in Welkom for "weapons" whilst white vigilantes in Welkom have been shooting Africans at random. The regime, thus far, has made no attempt to curb the racist and murderous activities of the armed white vigilantes. On the other hand there is evidence of connivance between the regime and the white vigilantes.

(c) Missing Children

16.0.0 Many children and youth remain refugees in their own land, fleeing police or vigilantes, thus making it very difficult for parents

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to know what has happened, because they do not necessarily have means to communicate with them. There are reports of people missing from many areas where there has been unrest and a lot of police activity. Boys are the main target in house to house searches. For example, in Khutsong, boys were taken from their houses. They were interrogated. Some were released and some of whom fled the area and are hiding in other communities. The parents are desperate because they do not know what has happened to their children.

(v) Cessation of Political Trials and Political Executions

17.0.0 Although the regime has announced a moratorium on executions and the commutal of the death sentences imposed on twenty-three political prisoners to life imprisonment, sixty-four other political prisoners remain in deathrow. Their fate remains uncertain because the Apartheid regime retains the legal power to lift the moratorium and resume executions. There are also over 300 political trials still in progress. (See Annex 4 attached).

17.1.0 The regime has yet to accede to Protocol 1 of the Geneva Convention relative to the treatment of prisoners of war of August 12, 1949, which recognises wars of National Liberation as legitimate armed conflicts and rules that captured combatants belonging to the armed formations of National Liberation Movements should be treated as prisoners-of-war. Accordingly, captured combatants of Umkhonto We Sizwe, have been charged with criminal offences, including murder. Some have been sentenced to death and executed. Others convicted are serving sentences. None have ever been accorded prisoners-of-war status.

(vi) End Informal Repression

18.0.0 Although the Harare Declaration of the OAU Ad-Hoc Committee

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on Southern Africa on the Question of South Africa and the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa require the Apartheid regime to fulfill, at the least, five conditions in order to create the necessary climate for negotiations, the Monitoring Group has found that there exists intense violence throughout South Africa, brought about by state-sponsored informal repression and that it also militates against the creation of the necessary climate for negotiation.

18.1.0 Informal repression in the South African context is not new, but received a tremendous boost with the establishment of the National Security Management System, with the National Security Council at its head. In Security matters, this council became more powerful than the cabinet itself. Its tentacles reached every level of society through Joint Management Centres by co-opting local councils, local industry and local business, etc. In this manner anti-apartheid activists and organisations are identified, monitored, harassed and neutralised in various ways. Of late, the role or the profile of the National Security Council has been subdued but its basic features remain intact. It remains a major intimidatory factor against free political activity.

18.2.0 Growing fascist violence of white right wing groups and the regime's inclination to condone this have led to the escalation of violence against the majority of the people in South Africa. For instance, the refusal of the state to repeal the Arms and Ammunitions Act which allows every white adult up to twenty-seven weapons has directly contributed to the escalation of violence in the country. As a result white fascist groups, such as the Afrikaner Weerstandsbeweging are heavily armed. A former security policeman and senior executive member of the right wing Afrikaner Weerstandsbeweging AWB, (Afrikaner Resistance Movement) Piet Rudolph, announced that the AWB and the

Boerstaat Party (BSP), had planned a loan scheme to provide arms to a further one million whites for the next five years. The fact that many fascist organisations in South Africa have taken up arms against the black majority has not met with any credible response from the regime.

18.3.0 Vigilante groups have their origins in the systems which have been built up around the unpopular Apartheid created structures. Their growth has been actively encouraged or tacitly condoned by the Security forces and local police. The so-called "black-on-black" violence must be viewed in this context. By this method, the regime seeks to divide the black majority. The violent situation in Natal must be seen in this context. (See Annexes 5 - 8 attached).

18.4.0 Hit squads, including the Civilian Cooperation Bureau (CCB), have now clearly emerged as an essential component of the regime's strategy of repression, and operate within the structures of the South African Police and of the South African Defence Force. These squads have perpetrated a full spectrum of atrocities in the defence of Apartheid. Evidence emerging from the Harms Commission of Inquiry suggests involvement at cabinet level. In the meantime, and in spite of the Commission of Inquiry, hit squads continue their activities. (See Annex 9 attached).

To mention a few:

On 7 April, Aldo Mogano (age 22) an Alexandra township activists was murdered by a South African hit squad.

On 23 April, Sam Chand, PAC member, his whole family of four and his security guard were murdered in Botswana by a South African hit squad.

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On 28th April, in Harare, Rev. Michael Lapsley, and ANC member lost one arm, one leg and an eye due to the explosion of a parcel bomb sent by a South African hit squad.

18.5.0 Escalating violent Apartheid state repression, both formal and informal - most notably in the Natal Province is accentuating many of the typical adverse and dehumanising consequences of Apartheid such as forcible population displacements, destabilisation of and/or denial of family life, disruption of education, juvenile delinquency, high rate of crime and chronic physical insecurity. (See Annexes 10 and 11 attached).

18.6.0 In summary, it must be said that all the powers of repression available to the Apartheid regime are still intact and continue to be exercised. The lifting of the State of Emergency alone will not signal the end of repression since all the awesome powers of the state are available through permanent legislation such as the Internal Security Act. At the same time all the fundamental pillars of apartheid and their repressive and destructive consequences remain intact. These include the Group Areas Act, Bantu Education Act, Bantu Authorities Act, Population Registration Act and the Land Act.

### III GUIDELINES TO NEGOTIATIONS

19.0.0 Though the Declarations provide clear guidelines for the commencement of the process of negotiation in good faith and in an atmosphere free of violence, the Apartheid regime continues to hold that these same guidelines are issues subject to substantive negotiations.

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IV PROGRAMME OF ACTION

20.0.0 The Programme of Action, common to both Declarations, stipulates that all existing pressures including sanctions against Apartheid South Africa should be maintained until the eradication of Apartheid is rendered irreversible. However, Mr. F.W. de Klerk, on the basis of strictly rhetorical promises of change unbacked by any action, has recently been officially received, most notably, in Western capitals. This sends the most regrettable signals to the regime and will jeopardise efforts to create the necessary climate for negotiations. For example, the United Kingdom has unilaterally lifted the voluntary restrictions on new investments in South Africa as originally adopted by the European Economic Community (EEC) and is campaigning for the EEC to lift its package of sanctions. Also Portugal is actively campaigning for the lifting of all pressures on the apartheid regime.

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CONCLUSION

21.0.0 In fulfilment of its mandate, the Monitoring Group of the Ad-Hoc Committee of the Organisation of African Unity on Southern Africa conducted extensive consultations with National Liberation Movements, anti-apartheid organisations, monitoring groups and individuals concerned to ascertain the implementation of the principles, preconditions, guidelines to negotiations and programme of action contained in the Harare Declaration of the OAU Ad-Hoc Committee on Southern Africa on the Question of South Africa and the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa which are designed to ensure the eradication of the Apartheid system.

21.1.0 The Declarations categorically state that it is essential that the necessary climate be created for negotiations to begin. The onus of creating the necessary climate through unconditionally

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meeting the five preconditions laid down in the Declarations lies with the Apartheid regime. Irrefutable evidence confirms that the Apartheid regime has not yet met the preconditions. Consequently, it cannot be said that a necessary climate for negotiations has been created by the Apartheid regime.

21.2.0 The international community, through the United Nations Consensus Declaration on Apartheid and Its Destructive Consequences in Southern Africa, has emphasised that "we shall continue to do everything in our power to increase support for the legitimate struggle of the South African people, including international pressure against the system of Apartheid UNTIL THAT SYSTEM IS ENDED....." Therefore, the international community is bound to sustain all forms of existing pressures against the Apartheid regime UNTIL THE APARTHEID SYSTEM HAS ENDED. The pressures against that regime include political isolation and comprehensive mandatory sanctions. As this report demonstrates, there has not been any fundamental or irreversible change in South Africa. The so-called changes which have led some members of the international community to believe that pressures should be relaxed vis a vis the Apartheid regime, fall far short of justifying that belief. Therefore, the recent sojourn of Mr. F.W. de Klerk and the attendant suggestions made to relax sanctions and other measures against the Apartheid regime are tantamount to prematurely rewarding Mr. de Klerk, and jeopardising efforts to create the necessary climate for negotiations.

21.3.0 It is a fact that internal resistance and complementary international isolation and sanctions were instrumental in compelling the regime to unban the organisations and declare its willingness to enter into dialogue with the representatives of the oppressed majority. To remove internal and international pressures at this time would amount to removing the vital leverages which could compel the regime to end Apartheid.

21.4.0 The Declarations have laid down basic principles which must guide the process of eradicating Apartheid. The Apartheid regime has not positively and comprehensively pronounced itself on these fundamental principles, but utterances and periodic statements by its spokespersons indicate that the regime rejects these fundamental democratic principles. The regime has ruled out the democratic principle of majority rule based on one person one vote, on a common voter's roll, claiming that this would lead to "an unsophisticated majority vote." Instead the regime preaches "government by consensus." This concept, therefore, is in essence a demand that the white minority be given a veto over all major decisions.

21.5.0 Mr. Gerrit Viljoen, the Minister of Constitutional Affairs, recently announced twelve "minority rights" which the regime wanted included in a new constitution. Some of these "minority rights" concern the rejection of majority rule, insistence on power sharing and insistence on "Group Rights." Agreeing to these "minority rights" would inevitably result in protecting and perpetuating the cornerstones of the Apartheid system, albeit in another guise.

21.6.0 The international community must insist that the Apartheid regime should unconditionally implement at the least, the preconditions laid down in the two Declarations in order to create a necessary climate for negotiations leading to the drawing up of a constitution for a united, democratic and non-racial South Africa.

21.7.0 The Monitoring Group took note of the meeting between the Apartheid regime and the African National Congress at Groote Schuur, South Africa from the 2nd to the 4th of May 1990, and convened at the initiative of the African National Congress for the purpose of clearing obstacles to negotiations.

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21.8.0 The Monitoring Group also noted that resulting from the meeting, the Apartheid regime reiterated its commitment to negotiations and undertook to review existing security legislation and committed itself to working towards resolving the existing climate of violence, lifting the State of Emergency, granting indemnity to political exiles and widening the definition of a political prisoner, bearing in mind experiences in Namibia and elsewhere. It also agreed to establish a joint working group with the ANC to make recommendations towards widening the definition of a political prisoner and facilitating the release of political prisoners, granting indemnity to political exiles and to report back to principals by 21st May, 1990.

21.9.0 On 7th June 1990, the Apartheid regime announced the lifting of the four (4) year old State of Emergency in the whole of South Africa except in the Province of Natal. Although the Monitoring Group took note of the fact that the State of Emergency has been lifted, it emphasizes the fact that the Public Safety Act which enables the Apartheid regime to impose the State of Emergency is still intact. The lifting of the State of Emergency as announced, therefore, cannot, on its own, be seen as a profound and irreversible measure towards creating a necessary climate for negotiation.

22.0.0 Furthermore, the lifting of the State of Emergency alone will not signal the end of repression since all the awesome powers of the state are available through permanent legislation such as the Internal Security Act. At the same time all the fundamental pillars of Apartheid and their repressive and destructive consequences remain intact. Therefore, nothing short of the fulfilment of all the conditions which are essential to the creation of the necessary climate for negotiations should be deemed sufficient in terms of the demands set out in both Declarations.

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23.0.0 As reflected in this report, the Apartheid regime has not yet taken any profound and irreversible steps, nor has it fulfilled the objectives to which it committed itself at the Groote Schuur Meeting, toward the creation of the necessary climate for negotiations. Until the Apartheid regime fulfills the commitments it made at the Groote Schuur Meeting, to paraphrase Dr Nelson Mandela, those commitments are of no more worth than the paper on which they are written.

24.0.0 As the African National Congress, particularly in its briefing to the Ministerial Meeting of the Ad-Hoc Committee given by its Deputy President, Dr. Nelson Rolihlahla Mandela, in Cairo, Egypt on 20 April 1990, has cautioned, even though its important initial contacts with Pretoria may have raised hopes as to the willingness of the regime to cooperate, it is all the more important for the international community to intensify actions to compel Pretoria to take concrete and positive measures to at least match the hopes raised.

25.0.0 Summing up the failure of the Apartheid regime to take profound and irreversible steps towards the eradication of Apartheid, Dr. Nelson Mandela, reminded the international community that: "I went to prison without a vote, I have come out of prison and I am still without a vote."

LUSAKA

ZAMBIA