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Agenda item 28POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICALetter dated 7 August 1990 from the Permanent Representative of  
Niger 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 attached document of the African Group of States, entitled "Remarks of the African Group of States to the United Nations on the report of the United Nations Secretary-General regarding the progress made in the implementation of the Declaration on Apartheid and its Destructive Consequences in Southern Africa" (see annex).

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Annex

REMARKS OF THE AFRICAN GROUP TO THE UNITED NATIONS ON THE REPORT  
OF THE SECRETARY-GENERAL OF THE UNITED NATIONS REGARDING THE  
PROGRESS MADE IN THE IMPLEMENTATION OF THE DECLARATION ON  
APARTHEID AND ITS DESTRUCTIVE CONSEQUENCES IN SOUTHERN AFRICA

- 1.0. The African Group of States to the United Nations met on 2 August 1990 and adopted the following document, as reflecting the Group's observations in relation to the report of the United Nations Secretary-General regarding the progress made in the implementation of the United Nations General Assembly Declaration on Apartheid and its Destructive Consequences in Southern Africa (A/44/960 and Add.1 and 2).
- 2.0. Pursuant to paragraph 10 of the United Nations Declaration on Apartheid and its Destructive Consequences in Southern Africa, the Secretary-General was requested to prepare a report and submit it to the General Assembly by 1 July 1990 on the progress made in the implementation of the said Declaration. It is with this in mind that the African Group proceeded to examine the Secretary-General's report.
- 2.1. The Secretary-General's report was also examined in conjunction with the report of the Monitoring Group of the Organization of African Unity (OAU) Ad Hoc Committee on Southern Africa (A/44/963) which, on 19 March 1990, was mandated to monitor the implementation of the Harare Declaration of the OAU and the United Nations Consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa.
- 3.0. The Secretary-General's report contains a plethora of detail on the situation in South Africa. The numerous interviews that the Secretary-General's Mission to South Africa had with various groups and individuals provide helpful information regarding the situation in South Africa.
- 4.0. A close examination of the Secretary-General's report, however, reveals a number of issues that are a matter of grave concern.
- 4.1. For instance, the characterization of the travel of the Secretary-General's team to South Africa as evidence of significant change in the political climate is clearly at variance with the criteria established in the Declaration.
- 4.2. The Secretary-General's report would appear to place undue premium on views of the South African régime, to the detriment of the views of the liberation movements which are invariably referred to as "allegations", "claims" or "charges".
- 4.3. The approach of the report in presenting the different points is, in our view, not helpful. Very often the régime's viewpoint is presented as a coherent whole. The prominence given to the corroborative views of nondescript organizations seem to have lent an undue credence to the views of the racist régime, thereby distorting the political realities in South Africa.

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4.4. The report does not seem to address the particularly important question of what needs to be done in order to ensure the régime's compliance with the Declaration. In referring to what it calls the "bold and courageous" policy of the de Klerk and the "equally encouraging and statesmanlike" "vision and forbearance" of the opposition as having contributed to the process, the report totally ignores the roles of the liberation movements and the international community in bringing pressure to bear on the régime.

4.5. The extensive quotation in the report of the South African régime's allegation that ANC is "dragging its feet" on the issue of creating a climate conducive to negotiations, does lend itself to the erroneous impression that ANC shares a joint responsibility with the racist régime in that regard, whereas paragraph 6 of the Declaration places this responsibility squarely on the South African régime.

4.6. The report hardly comments on progress made with regard to the Programme of Action to which all member States are committed. Consequently, the report is pointedly silent on the effects sanctions have had on the régime. The report denies the General Assembly a valuable opportunity to assess States members' compliance with the requirements of the Declaration, in particular, the maintenance of sanctions against the régime.

#### CREATING A CLIMATE CONDUCIVE TO NEGOTIATIONS

5.0. Paragraph 6 (a) of the Declaration calls on the South African régime to, "release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them".

By its own admission as reflected in paragraphs 41 and 42 of the report, the régime has not complied with this condition.

Paragraph 41 stipulates that:

"The team was informed by the Minister for Foreign Affairs that, in an announcement made by the State President on 2 February 1990, all persons serving sentences by virtue merely of their membership in previously banned organizations, or for having committed an act which was an offence merely because of the prohibition of the organizations concerned, would be identified and released forthwith. Moreover, the conditions which had been imposed in terms of the security emergency regulations on 374 persons upon their release, were being rescinded with immediate effect, and the regulations which provided for such conditions were likewise being abolished." (A/44/960, p. 16)

Paragraph 42 stipulates that:

"The Minister for Foreign Affairs also made the following points:

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"(a) The Government and the ANC had agreed, as reflected in the Groot Schuur Minute of 4 May 1990 (see A/45/268), to establish a joint working group to make recommendations on the definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa.

"(b) The Working Group, including representatives of both the Government and the ANC, submitted its report to the Government and the ANC on 21 May 1990. The State President announced in his speech before Parliament on 7 June 1990 that the Government was ready to implement it. The ANC had indicated that it would provide an answer on 10 July 1990. By agreement the contents of the joint report would remain confidential till both sides had agreed.

"(c) The State President also announced on 7 June that, as a gesture, he was releasing 48 prisoners in terms of powers vested in him by the constitution and the Prisons Act. A total of 104 prisoners have been released since 1 February 1990.

"(d) No restrictions have been imposed on any of the released prisoners - with three exceptions where minor conditions were imposed. (One, a foreigner, was deported and requires approval to return; two are required to notify the police if they should leave their district of residence permanently.)

"(e) Further development in the release of prisoners will have to await ANC agreement on the Working Group's report.

"(f) The situation concerning detainees is as follows (as of 14 June 1990):

- (i) The last 12 prisoners held under the terms of Emergency Regulations were unconditionally released on 8 June 1990 when the state of emergency was lifted. In Natal, where the state of emergency is still in force, 2 persons are still being held;
- (ii) In terms of the Internal Security Act:
  - a. Section 29 (1): 45 persons are detained for questioning;
  - b. Section 31: 2 persons are in preventive detention (for their own safety or to prevent witnesses absconding)." (A/44/960, pp. 16-17)

5.1. Paragraph 6 (b) of the Declaration calls on the régime to lift all bans and restrictions on all proscribed and restricted organizations and persons. In paragraphs 9 to 13 of the report of the OAU Monitoring Group (A/44/963), indisputable evidence is adduced to show that, whereas the régime has technically lifted bans and restrictions on organizations and persons, those restrictions are

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still in place through the enforcement of the myriad of security legislations including the Internal Security Act.

5.2. Paragraph 6 (c) of the Declaration calls on the régime to remove all troops from the townships. In paragraph 58 of the report, the régime confirms that this has not been complied with. On this question, the report of the OAU Monitoring Group, has this to say on page 17, paragraph 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 régime has in addition sent in the notorious Battalion 32 which had hitherto served in Namibia." (A/44/963, p. 17)

5.3. Paragraph 6 (d) of the Declaration called on the régime to, "end the state of emergency and repeal all legislation, such as the Internal Security Act, designed to circumscribe political activity". Whilst it is true that the state of emergency has been lifted everywhere in South Africa except Natal, its continued existence in Natal places the régime in default with regard to the requirements of the Declaration. Even where the state of emergency has been lifted, the Internal Security Act and other related pieces of legislation designed to circumscribe political activity remain firmly operational. The General Assembly, in calling for the lifting of the state of emergency simultaneously demanded the repeal of the Internal Security Act precisely because the lifting of the state of emergency without at the same time repealing the Internal Security Act and other related legislation would not have had the desired effect of creating a climate conducive to negotiations. On this question, the cited OAU report on page 20, paragraph 13.0.0 argues as follows:

"The Apartheid régime 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 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 authorizes 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 mobilized 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 intimidate anyone by threats or violence. People organizing protest activities such as strikes and boycotts have been charged under this Act."

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5.4. Paragraph 6 (e) of the Declaration called on the régime to "cease all political trials and political executions". On this question, the Secretary-General, on page 26, paragraph 85, of his report, quotes the Human Rights Commission of South Africa as follows:

"(a) Political trials and imprisonment continue unabated under the Internal Security Act as well as under a plethora of other repressive legislation and common law. About 400 political trials were recorded in 1989 and the rate in 1990 is even higher.

"(b) Political executions have been suspended since 2 February and legislation governing the death sentence is to be amended to some extent (Criminal Law Amendment Bill). Nevertheless, over 300 persons are on death row (70 as a result of political circumstances) with their fate uncertain." (A/44/960, p. 26)

The report of the OAU Monitoring Group (A/44/963), in paragraphs 17.0.0 and 17.1.0 states

"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 ... prisoners remain on death row. 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.

"The regime has yet to accede to Protocol 1 of the Geneva Convention relative to the treatment of prisoners of wars of August 12, 1949, which recognizes 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."

#### OBSERVATIONS

6.0. The foregoing provides irrefutable evidence that such changes as may have taken place in South Africa can in no way be construed as constituting profound and irreversible change. Indeed, nowhere in the Secretary-General's report is it stated that the terms of the Declaration have been met.

6.1. In terms of section C, paragraph 9 (d), of the Declaration, which deals with the programme of action, the international community committed itself, "inter alia, to ensure that [it] does not relax existing measures aimed at encouraging the South African régime to eradicate apartheid until there is clear evidence of profound and irreversible changes, bearing in mind the objectives of this Declaration". It is therefore a matter of great regret that some members of the international

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community, such as the United Kingdom of Great Britain and Northern Ireland have, in flagrant violation of the letter and spirit of the consensus Declaration, gone ahead and lifted sanctions.

6.2. We therefore reaffirm the conclusion reflected in the report of the OAU Monitoring Group which, inter alia, on page 29, paragraph 2.2.0 has this to say:

"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-à-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 jeopardizing efforts to create the necessary climate for negotiations." (A/44/963, p. 29)

6.3. We are of the view that, until the régime has fully complied with the requirements of the Declaration, there can be no climate to negotiations. It is now abundantly clear that such an objective can only be realized through the intensification of comprehensive sanctions against the régime.

7.0. Therefore, the African Group of States to the United Nations appeal to the United Nations Secretary-General and the international community, to intensify their efforts for full implementation of the United Nations General Assembly Declaration on Apartheid and its Destructive Consequences on Southern Africa.

8.0. Meanwhile the African Group of States to the United Nations will remain seized of the developments in South Africa and will undertake appropriate measures within the context of the United Nations Declaration on apartheid and its destructive consequences in South Africa, as adopted by the General Assembly at its sixteenth special session.

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