

# Negotiating the Release of Political Prisoners in South Africa

by

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## Introduction

This case study will provide an overview as to the manner in which the release of political prisoners was linked to broader political concessions during the negotiation process in South Africa. It will also consider problems encountered in determining fixed cut-off dates for the granting of indemnity (and then amnesty) and the limited mechanisms put in place to deal with the reintegration of prisoners into society.

## Obtaining Concessions through Prisoner Releases

The release of political prisoners was highly politicised in South Africa. In early 1989 the ANC reiterated that amongst its prerequisites for negotiation with the South African government was the unconditional release of political prisoners. This followed the government's announcement in the mid-1980s that it would consider releasing political prisoners who were prepared to renounce violence. The government's offer of conditional release was broadly rejected and by 1987 only 25 political prisoners had accepted it. Similar attempts during the same period to release Nelson Mandela on the basis that he accept a "cooling off" period outside the country and away from his home in Soweto were also rejected.

In October 1989, shortly after F W de Klerk had replaced P W Botha as President, seven long-serving political prisoners were released unconditionally from prison.<sup>1</sup> This signaled that the government was prepared to go some way to meeting the ANC's demands. Within months the government announced on 2 February 1990 that it was unbanning a number of banned liberation movements and would release prisoners serving sentences because they were members of banned organisations.<sup>2</sup> In the following two months fifty prisoners, jailed on the grounds of their membership of a banned organisation, were released from Robben Island. The announcement regarding the release of a limited category of prisoners immediately prompted 343 Robben Island prisoners to go on a hunger strike, opposed to releases which they believed did not comply with the provisions of the Harare Declaration on Human Rights.<sup>3</sup> The prisoners demanded the immediate and unconditional release of all political prisoners.

Yet, in spite of the importance attached to releases, the number of political prisoners held in South Africa remained politically contested throughout the negotiation process and was never formally agreed between the ANC and NP during the course of negotiations. This

was due in part to the government's classification of "political" offences as criminal offences, the offences in respect of which political prisoners in South Africa had been convicted ranging from treason to terrorism, membership of a banned organisation to murder. (Sentences ranged from death to a short term of imprisonment.) The fact that no separate register of political prisoners or offences was allegedly kept by the state at this time<sup>4</sup> caused there to exist wide variations in the views of the ANC and NP regarding the number of prisoners remaining in prison. This was evidenced in 1991 when the ANC claimed that there remained 5000 political prisoners incarcerated in South Africa while the government maintained at the same time that only 200 political prisoners remained in prison.

By May 1990, with the bulk of political prisoners remaining behind bars in that their offences were not limited merely to membership of a banned organisation, the ANC was not willing to enter into full-scale negotiations with the government. What the ANC sought was provision to be made for the immediate return of exiles and the wide-scale release of prisoners. The ANC also demanded the immediate release of all detainees, who had not been charged or convicted of any offence, and the repealing of apartheid security legislation in terms of which these detainees were held in prison.<sup>5</sup>

Yet, given the fact that no register of political prisoners existed, it was clear that reaching agreement as to who constituted a political prisoner was to be a crucial precursor to any further negotiations between the parties.<sup>6</sup>

### **Defining Political Prisoners**

Following the release of approximately one hundred political prisoners on the grounds of their membership of a banned organisation, the ANC rejected a proposal by the government that the release of the remaining political prisoners would need to be negotiated. The ANC suggested that the government was attempting to use prisoners as hostages. Frustration grew within the ANC as to the power wielded by the government around the return of exiles and the release of prisoners. Many exiles returned to the country unsure as to whether they would be faced with arrest and prosecution. At the same time a number of prisoners remained in prison without knowledge as to whether they would be granted indemnity or not. Trust between the NP government and the ANC and its allies was tenuous at best. With the release of all political prisoners not yet finalised, the ANC was not prepared to let its trump card go - the suspension of the armed struggle.<sup>7</sup>

Negotiations ensued in May 1990 in an attempt to reach a common definition of a political prisoner. The ANC reiterated its demand that common law crimes should be viewed against the backdrop of the violent crimes committed by the state and that all those imprisoned for "acts of war" committed during the South African liberation struggle should be regarded as political prisoners. This would include prisoners convicted of common law and statutory offences such as treason and terrorism.

The parties concurred that while offences such as treason against the state (where no common law crime such as murder or assault was involved) would be regarded as purely political crimes, under certain circumstances a crime such as murder could also be regarded as a political crime. The factors to be used in determining whether a crime was a political

one or not included:<sup>8</sup>

- whether the motive was political or private
- the context in which an offence was committed especially if part of a political uprising or disturbance
- the nature of the political objective
- the legal and actual nature of the offence (rape could never be regarded as a political offence)
- the object of the offence (committed against the state or private property)
- the relationship between the offence and the political objective being pursued
- whether the offence was committed in the execution of an order or with the approval of the organisation concerned

Following agreement on the determination of a political offence, the Indemnity Act came into operation in May 1990.<sup>9</sup> This act conferred the power to grant indemnity and temporary immunity from prosecution on the President.<sup>10</sup>

#### **The Phased Release of Political Prisoners**

With agreement having been reached as to the definition of political offences, the government began releasing prisoners (in terms of the provisions of the Indemnity Act of 1990) who had been convicted of an offence which constituted an act with a political objective. Releases were phased according to the severity of the crime (with those convicted of the most serious offences being released last).

The ANC did however meet with resistance within its own ranks when it came to the issue of indemnity. Many political prisoners refused to apply for indemnity arguing that this implied they had accepted guilt in their opposition to an unjust system. A further difficulty arose when prisoners were provided with a copy of the indemnity application. One of the questions in the application asked prisoners if they subscribed to "peaceful solutions and development" if the organisation of which they were a member did not.<sup>11</sup> A number of prisoners refused to answer this question and senior ANC leaders went to Robben Island to defuse tensions in this regard.<sup>12</sup>

But the return of exiles was slow and in August 1990, the ANC and NP agreed that while there would be no general indemnity given to prisoners or exiles, applications for indemnity could be dealt with in "categories of person". The parties acknowledged that some applications would have to be considered on an individual basis. This was particularly important for the ANC which wanted to see the wide-scale return of exiles and believed that the process would only be further delayed if the government was to continue considering all applications individually. Soon after this agreement exiles granted indemnity started to return to the country in larger numbers.

Prisoner releases by the government were almost always used to score points in the media and with the international community during this period. In June 1990 De Klerk went to Europe on a state visit. Immediately prior to his departure, 48 political prisoners were released in what the government described "as a gesture of sincerity". This was referred to by De Klerk as an illustration of the government's good faith during his European visit.<sup>13</sup>

This move was also timed with the intention of pressurising the ANC into making the political concessions sought by the NP and became indicative of the manner in which prisoner releases were linked to concessions sought during this period by the main negotiating parties. The NP needed to save face within its own constituency and did not want to be seen to be capitulating to the ANC's demands that releases be unconditional, without securing key concessions from the ANC. It soon became imperative that the ANC clarify its position on the armed struggle if negotiations were to proceed.

The ANC on the other hand refused to renounce the armed struggle without having secured the unconditional release of all political prisoners and certainty that the apartheid system was being permanently dismantled. It did however become necessary for the ANC to grant the NP some concession. By August 1990 (following the signing of the Pretoria Minute), with a definition of a political prisoner having been agreed and a timetable for releases secured, the ANC announced that it was prepared to suspend (but not renounce) the armed struggle.<sup>14</sup>

Releases over the following year proceeded relatively slowly given the bureaucracy inherent in the indemnity process. By 23 March 1991, 4805 people had been granted indemnity. Borderline applications were being processed by indemnity committees. However despite the large numbers granted indemnity, only 270 prisoners had been released by March 1991 from prison, with a further 760 applications being "at an advanced stage".<sup>15</sup> Tensions in the country were rising due in part to the delay in getting formal political negotiations off the ground. In April 1991, the government announced a six month remission of sentence for all sentenced prisoners. This remission included criminal prisoners except those who had received sentences of more than five years and those whose offences could be defined as political. The following month, the government announced that a further six month remission of sentence was to be granted to a wide range of prisoners and a remission of one third of their sentences was also granted to first-time offenders, including murderers. These remissions of sentences were not negotiated with the ANC by the government. As a result, they were criticised by many as an attempt by the government to anonymously release political prisoners whose status was disputed. The effect of these remissions was to make the task of determining the number of political prisoners released by the government in the early 1990s virtually impossible.

By 30 April 1991, 933 political prisoners had been released. It had initially been envisaged that the last date on which indemnity would be granted would be 30 April 1991 but this date was extended by the President in order to allow additional releases to take place. By May 1991 all but a few prisoners had been released from Robben Island. In keeping with the government's policy of releasing political prisoners in phases according to the severity of the offences in respect of which they had been sentenced, some of the last prisoners who were released from the Island were those who had been sentenced to death and who had been on death row for some years prior to their being transferred to Robben Island. Those remaining were transferred to Pollsmoor Prison on the Cape mainland while their (contested) applications for indemnity were considered in further detail.

By mid-July 1991 the ANC claimed that there remained over 800 political prisoners in prison. The ANC continued to re-examine hundreds of cases to determine whether prisoners could be classified as political. The ANC did state however that it did not want

negotiations to be delayed by cases such as those involving public violence for which indemnity would not be granted because the offence did not have a political objective. The ANC stated that by December 1991 almost all the clearly identifiable political cases had been resolved.

### **The Final Phases and Difficult Releases**

Immediately prior to the first meeting of the Convention for a Democratic South Africa (CODESA) in December 1991,<sup>16</sup> the last of the prisoners who had been imprisoned on Robben Island were released from Pollsmoor Prison. The status of these prisoners had been in dispute in that the government was unwilling to grant indemnity for what it considered were not politically motivated crimes. These included cases of murder under circumstances, which appeared to have been criminally rather than politically motivated, and in one instance, sexual assault. However, the continued incarceration of these prisoners increasingly became an albatross around the NP's neck. The ANC was also coming under increasing pressure to ensure that the remaining political prisoners were released in order for negotiations to proceed. Once again the release of these remaining prisoners, whose status remained contested, was an example of how prison releases at key stages allowed negotiations to continue.

By November 1991 with the release of these prisoners, the parties agreed to commence negotiations on a larger political settlement for the country. CODESA aimed to begin the process of negotiation as to a new political dispensation for the country but failed to make any progress.<sup>17</sup> In May 1992, CODESA 2 was convened but again little progress was made in negotiations.

Those political prisoners who remained incarcerated were the most controversial of cases, which included Robert McBride and Barend Strydom, both of whom were held at Pretoria Central Prison. The ANC appeared willing to accept that negotiations could begin without McBride's release having been secured. In a later Record of Understanding between the NP and the ANC the issue of McBride's release, together with the passing of further legislative provisions for the granting of indemnity and a renewed attempt to enter into negotiations were agreed. The Further Indemnity Act came into effect in November 1992.<sup>18</sup> This Act allowed for indemnity to be granted for acts with a "political object" in which criminal convictions resulted. It also allowed for the government to grant indemnity in the most controversial cases. The Act provided for the granting of indemnity for any act defined an "act with a political object" as "any act or omission which has been advised, directed, commanded, ordered or performed -

- with a view to the achievement of a political object; or
- for the promotion or combating of an object or interest of any organization, institution or body of a political nature; or
- with the bona fide belief that such object or interest will be served; or
- with the approval or on instruction or in accordance with the policy of such organization, institution or body, or in reaction thereto.

The Act established a National Council on Indemnity with which the State President was required to consult before releasing any prisoner sentenced to life imprisonment or other

long-term imprisonment for an offence which occurred before 12h00 on 8 October 1990. This period was agreed by the parties as a cut-off date in that it covered all possible ANC action against the government. The parties agreed however that this period was capable of extension by the President in the Government Gazette. It was subsequent to the passing of this Further Indemnity Act that high profile prisoners such as Barend Strydom and Robert McBride in early 1993.<sup>19</sup>

Following these releases, a general perception existed amongst political players that all political prisoners over which parties (including right-wing parties) were prepared to dig in their heels had been released. It was in March 1993 when it was announced that the Multi-Party Negotiating Process (MPNP) would begin the task of negotiating a transitional or interim constitution for South Africa.

With most indemnities having been granted, the MPNP did not focus on the continued incarceration of political prisoners. Instead it focused on the larger issues of the transition to democracy in South Africa. It was agreed at this negotiating forum (by all political parties and organisations) that a Truth Commission should be established after elections and that this truth body be empowered to grant amnesty to prisoners and other individuals.

The MPNP also debated in its subcommittee on security, the surrender of weapons by the armed wings of the liberation movements. This issue at no stage deadlocked negotiations and it was agreed that dates would be established on which weapons would be handed over after democratic elections had taken place.<sup>20</sup> Subsequently however very few weapons were handed in to the military by members of the armed wings of liberation movements and despite an agreement to the contrary, the ANC donated its weapons held in foreign countries to the country in which the weapons were held. In recent times rumours have persisted that caches of weapons previously in the possession of underground operatives, have now been used in criminal activities in the country.

## **Shifting Cut-Off Dates**

### **Indemnity Cut-Off Date - 8 October 1990**

At the end of April 1991 the government announced that it was moving away from a strict date by which all political prisoners who had been granted indemnity would be released. Instead it was agreed that a cut-off date would be agreed and that indemnity would now be considered in all cases in which the offences had been committed with a political motive before midday on 8 October 1990. This move, agreed during negotiations between the ANC and NP, protected ANC political prisoners in that given that the ANC had embarked on a process of negotiation with the government, no offences sanctioned or ordered by the ANC took place after this date. This cut-off date, as will be discussed later with regards to the issue of amnesty, did not protect armed operatives of other political organisations which continued to engage in violent attacks until 1994.

The effect of this move to a cut-off date was to ensure that, provided the offence occurred before the cut-off date, in cases in which no application for indemnity had been made timeously, or where the application was contentious indemnity could still be granted. In particular it also covered awaiting trial or recently sentenced prisoners who were granted

indemnity during the latter part of 1991 and 1992 for offences which occurred before 8 October 1990.

### **Amnesty Cut-Off Dates**

The interim constitution of 1993<sup>21</sup> provided that in order to advance reconciliation and reconstruction "amnesty shall be granted in respect of acts, omissions, offences associated with political objectives and committed in the course of the conflicts of the past". It stated that Parliament "shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed."

In 1995 the [Promotion of National Unity and Reconciliation Act](#) (Act no. 34 of 1995) was passed, establishing the Truth and Reconciliation Commission. The 1990 Indemnity Act of 1990 and the 1992 Further Indemnity Act were repealed by section 48 of the 1995 Act. The new Act provided that amnesty could be granted for gross human rights violations<sup>22</sup> which were committed between 1 March 1960 and 8 October 1990 to those persons "who make full disclosure of all the relevant facts relating to acts associated with a political objective".<sup>23</sup>

Following numerous meetings between President Mandela and a range of right wing organisations as well as with political parties such as the Pan- Africanist Congress (PAC), Mandela agreed to extend the cut-off date provided for amnesty in the interim constitution to offences occurring before 6 December 1993. This followed requests from these organisations, some of whose members remained incarcerated for offences committed with a political motive before 6 December 1993, that protection should be given to their members. The interim constitution was subsequently amended so as to allow this cut-off date to be altered to 6 December 1993. Mandela's decision to amend the constitution was founded on his belief that every attempt possible should be made to build reconciliation in the country and that this was best done by ensuring the process was inclusive in its attempt to learn the truth.

This cut-off date for amnesty was however to be amended again. Following further discussions with right-wing organisations on the incarceration of their members for offences which had taken place before the 1994 elections (such as during the coup attempt in Boputhatswana), Mandela agreed to extend this cut-off date once again to 11 May 1994, being the day after his inauguration as President.<sup>24</sup> Once again this extension of the cut-off date was an attempt to win right wing support for the path of reconciliation.

### **Contentious Releases and Reconciliation**

It is examples of releases in cases such as those of Robert McBride and Barend Strydom which illustrate some of the compromises which have been made in order to facilitate a negotiated political settlement in South Africa. Both McBride and Strydom were found guilty of offences which evoked anger and outrage in the country. Their releases too were viewed amongst different sectors of society as nothing more than an attempt at reaching a larger political settlement.

*Case 1: Robert McBride (ANC)*

On 14 June 1986, a car bomb exploded outside two bars on Durban's beachfront which were often frequented by military personnel. Three civilians were killed in the explosion and 69 were injured. The ANC took responsibility for the blast which followed the declaration of a nationwide State of Emergency on 12 June 1986 and was two days before the ten-year commemoration of the 1976 June 16th uprising, in which hundreds of schoolchildren were killed by the police for protesting against the compulsory use of Afrikaans in schools.

Robert McBride, an operative of the ANC's armed wing Umkhonto we Sizwe, was convicted of the attack and sentenced to death and 82 years imprisonment. In sentencing McBride, the court accepted that the motives of all those involved in this operation were political, not personal. McBride spent four years on death row before he was granted indemnity and released in 1992 along with the Barend Strydom. McBride was perhaps the most high-profile example of an imprisoned ANC operative whose actions had led to the deaths of white civilians. What remained in question throughout this period was whether the ANC had instructed McBride to undertake the actions which he did. The ANC was relatively silent at the time on the issue which added to confusion around McBride's case. This in part may have been due to the outrage expressed at the bombing and the innocent people killed in the blast.

The press increasingly linked the cases of McBride and Strydom, suggesting that the one would only be released with the other as part of a set off. The ANC criticised the government's "transparent attempt to create the impression in the minds of the public that the actions of these men were indistinguishable in moral terms".<sup>25</sup> McBride was ultimately granted indemnity in early 1993 and released on the grounds that he was found to have engaged in a political act. His release, whilst accepted, was not approved of by many (particularly white) South Africans. As with Barend Strydom's release, it deeply polarised sections of South African society.

*Case 2: Barend Strydom (Right wing)*

On 15 November 1988, twenty-three year-old Barend Hendrik Strydom dressed in camouflage-style army fatigue, walked to Strijdom Square in Pretoria shooting any black person who got in his way. Eight people were killed by Strydom and a further sixteen were wounded - many of them seriously. A week before the shootings, Strydom visited the Voortrekker Monument to pray. He later said he had "asked the Lord to show his will and to see I was not hindered in carrying out the deeds ..." That night, he drove to a nearby squatter camp where he shot dead a black woman and wounded another. This was a practice run he maintained, to see if he was mentally and physically capable of shooting people. After the shooting, he camped on a farm, praying and meditating for two days. He did this, he said, to see if God was happy with his plan or not. "I got no sign to indicate I must not carry on".

Strydom claimed he was committed to the Herstigte Nasionale Party, the Conservative Party and the Afrikaner Weerstandsbeweging (AWB) - all right wing Afrikaner nationalist organisations, some with neo-nazi affiliations. Strydom was sentenced to death and remained on death row until his death sentence was commuted to life imprisonment by the

then President, F W de Klerk. He was released in early 1993 following far right wing groups claiming him to be a political prisoner. Strydom applied for indemnity in terms of the Further Indemnity Act of 1992 and was one of the few prisoners conditionally released on parole. His parole conditions barred him from carrying a weapon, restricted him from attending political meetings, to demonstrate or to grant interviews to journalists.<sup>26</sup> Strydom's release was generally accepted throughout the country as part of the compromises necessary if a political settlement was to be achieved.

Although the cases of McBride and Strydom became highly symbolic for opposite sides of the political spectrum, today their cases have been largely forgotten and their lives continue. McBride, following his release, became an ANC Member of Parliament for a short while and is currently employed in the Department of Foreign Affairs. Strydom, before his recent court challenge has not been heard of but is known to be living in the Gauteng province.

### **The Reintegration of Prisoners into Society**

Support to political prisoners while they remained in prison came from a range of non-governmental organisations and churches. These organisations made provision for legal assistance, for study bursaries and for financial assistance to families of political prisoners. Following the first releases of prisoners, it was these organisations which transformed their services to support newly released prisoners. These structures, in conjunction with political organisations, provided for the debriefing of prisoners over a five day period. Prisoners were also provided with a post-release medical examination and offered psychological counseling, clothing and limited financial aid.

The government provided no assistance to prisoners released from 1990 until 1993. Similarly, no assistance has been granted by the state to any prisoners granted amnesty by the Truth and Reconciliation Commission. Although one of the central demands of families and aid organisations from 1990 until 1993 was that the prison authorities give advance notice as to the date and time on which prisoners would be released, this did not happen. This lack of notice caused extreme hardship in certain cases to both families (who would travel to be nearby the prison only to find the release amounted to a mere rumour) and to the prisoners themselves. For those prisoners predisposed to stress, the circumstances around their release were particularly difficult.

Non-governmental organisations subsequently assisted in the establishment of self-help organisations for prisoners, some of which still exist today. In general terms however, very little psychological or family counseling was provided to prisoners and the long-term effects hereof are still being felt to this day. In recent times there have been allegations of former political prisoners and combatants being involved in criminal activities in the country, including heists on cash in transit vehicles and banks, within the country. With limited assistance in reintegrating into society, it has been suggested that former prisoners have become increasingly alienated and that criminal activities become an easy source of income.

The United Nations High Commission on Refugees (UNHCR) provided financial and other assistance to exiles returning to South Africa but not to political prisoners being released.

## Conclusion

There are those in South Africa who argue that there should be "no amnesty, no amnesia, just justice". The family of Steve Biko who died while in police custody in September 1977 include those who oppose the amnesty process. Similarly the family of Griffiths Mxenge, a human rights lawyer who with his wife was killed by agents of the state, oppose the granting of amnesty to the murderers. Amnesty does disrupt the normal course of "justice" in that the conventional criminal justice system is prevented from taking its course and perpetrators are allowed to walk free. It does create a situation which can easily be filled with potentially explosive emotions, and with detrimental effects for both victims and society at large.<sup>27</sup> But the granting of amnesty does also allow other processes to come into effect. It allows a society, as deeply divided as in South Africa, together to find a path towards a better future. And it is this sentiment which was expressed by Kader Asmal when he said in parliament:

I therefore say to those who wear legalistic blinkers, who argue that immunity would be an affront to justice, that they simply do not understand the nature of the negotiated revolution that we've lived through ... we must deliberately sacrifice the formal trappings of justice, the courts and the trials, for an even higher good: Truth. We sacrifice justice, because the pains of justice might traumatise our country or effect the transition. We sacrifice justice for truth so as to consolidate democracy, to close the chapter of the past and to avoid confrontation.<sup>28</sup>

## Notes:

<sup>1</sup> The release of Ahmed Kathrada, Jafta Masemola, Raymond Mhlaba, Wilton Mkhwayi, Andrew Mlangeni, Elias Motsoaledi and Walter Sisulu followed F W de Klerk's inauguration as State President.

<sup>2</sup> It was initially believed that the government intended releasing 77 political prisoners, including Mandela, in terms of this announcement.

<sup>3</sup> This Declaration followed a colloquium held in Harare between 19 and 22 April 1989 on the domestic application of international human rights norms.

<sup>4</sup> To this day the Department of Correctional Services claims not to have a separate list of political prisoners or even statistics as to the number of prisoners who received indemnity or amnesty.

<sup>5</sup> By August 1990 it was agreed by the ANC and NP that apartheid security legislation should be repealed and that any detainees not released in the months after February 1990 should be released.

<sup>6</sup> All negotiations at this stage of the process took place between the ANC and the NP. Whilst consultations took place on an *ad hoc* basis with other political parties, it was these two larger parties which determined the course of the negotiation process and jointly negotiated issues of indemnity until the end of 1991. To a large extent this was due to the

fact that the majority of political prisoners in prison were ANC members, as were the bulk of exiles returning.

<sup>7</sup> Although no armed actions by ANC operatives took place during this period.

<sup>8</sup> The *NORGAARD* principles which had been applied in Namibia in defining political prisoners were relied upon by the working group.

<sup>9</sup> Act No. 35 of 1990

<sup>10</sup> The Indemnity Act permitted the State President to grant indemnity or temporary immunity from prosecution if he was of the opinion that it is "necessary for the promotion of peaceful constitutional solutions in South Africa or the unimpeded and efficient administration of justice". Such grant could be either unconditional or on the conditions the President deemed fit. Its effect was to prohibit civil or criminal from being instituted against a person and to prohibit the detention of such person. The Act gave itself a limited time span (one year) which was capable of extension by the State President. The preamble to the Act suggested that "world events and domestic realities have created opportunities for reconciliation and a joint search for common goals and peaceful solutions in South Africa" which motivated the passing of this statute.

<sup>11</sup> Section E(18) of the Application for Indemnity asked: "If you are not a member of an organisation or political party that has committed itself and its members to peaceful solutions and development, do you subscribe to these principles?" (Government Gazette Vol. 305 No. 12834 - December 1990). Of the prisoners who refused to answer this question were a number of ANC operatives who had been sentenced to death, lived on death row for a number of years and then had their death sentences commuted to life imprisonment in the mid-1980s.

<sup>12</sup> The ANC's negotiations on behalf of prisoners and its attempts at ensuring that prisoners applied for indemnity were not linked only to ANC prisoners. Pan Africanist Congress (PAC) and other prisoners on Robben Island also applied for indemnity during this time and were released.

<sup>13</sup> Beeld newspaper, 11 June 1990

<sup>14</sup> The ANC announced in the Pretoria Minute in August 1990 that "in the interest of moving as speedily as possible towards a negotiated peaceful political settlement" it was suspending all armed actions with immediate effect ... no further armed actions and related activities by the ANC and its military wing Umkhonto we Sizwe will take place".

<sup>15</sup> In March 1991 the first right-wing political prisoner, Piet Rudolph, was released.

<sup>16</sup> Nineteen parties representative of a disparate range of political and other interest groups were present at CODESA. Five working groups were established to discuss issues ranging from timetables for negotiation to the creation of a climate for free political participation.

<sup>17</sup> In part the reason for the failure of CODESA was the NP's apparent lack of mandate from white voters to take the country into political negotiations which would lead to a new dispensation for the country. Proceedings were postponed to allow the NP government to obtain a mandate from its constituency. On 17 March 1992 a whites-only referendum was held in the country with 65% of voters supporting the NP's path of political reform.

<sup>18</sup> Act No. 151 of 1992

<sup>19</sup> Both cases are detailed later in this document

<sup>20</sup> To some extent this was due to the view that the number of weapons in the country belonging to liberation movements were relatively minimal. It was also clear that some of the more major problems with illegal weapons existed in the war-torn areas of KwaZulu-Natal and disarming people in the area was to involve a more complex set of factors.

<sup>21</sup> Constitution of the Republic of South Africa Act No. 200 of 1993. It was this constitution which was in place from the 27 April 1994 (the date of the country's first democratic elections) to the date of enactment of the constitution drawn up by the elected Constitutional Assembly.

<sup>22</sup> The new Act provided that an act associated with a political objective was to be determined through consideration of the following criteria:

The motive of the person who committed the act, omission or offence;  
The context in which it took place, in particular whether it was part of a political uprising, disturbance or event or in reaction thereto;  
Its legal and factual nature, including its gravity;  
Its object, including whether it was primarily directed against a political opponent or State property or personnel or against private property and individuals;  
Whether it was committed in execution of an order, or on behalf of or with the approval of the organisation, institution, liberation movement or body of which the person who committed the act was a member, agent or supporter;  
The relationship between it and the political objective pursued, in particular the directness and proximity of the relationship and the proportionality of the Act, omission or offence to the objective pursued.

<sup>23</sup> An act which constituted a political offence or delict was defined as one "which is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date". Amnesty could only be granted to a person who was:

A member or supporter of a publicly known political organisation or liberation movement whose actions must have been waged in a bona fide manner in furtherance of a political struggle waged by such organisation or movement against the state or any former state or another publicly known political organisation or liberation movement or in furtherance of struggle;

An employee of the state (or any former state) or member of the security forces of the state in the course and scope of his/her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against members or supporters of such organisation or movement. It was required that such act must have been committed bona fide with the object of countering or otherwise resisting the said struggle;

Any person in the performance of a coup d'etat to take over the government of any former state, or in any attempt to do this; or

Any person who on reasonable grounds believed he/she was acting in the course and scope of his/her duties and within the scope of his/her express or implied authority in any of the instances cited at 1-3, or who associated him/herself with such actions, could also apply for amnesty.

<sup>24</sup> This required a constitutional amendment to the new constitution in 1997.

<sup>25</sup> ANC statement to the Truth and Reconciliation Commission (August 1996) at para 6.2.4

<sup>26</sup> In July 1998 Strydom applied to court to have his parole conditions eased on the grounds that they violate his constitutional right to equality.

<sup>27</sup> Wilhelm Verwoerd "Justice after Apartheid? Reflections on the South African Truth and Reconciliation Commission" (Paper delivered at the Fifth International Conference on Ethics and Development, "Globalization, self-determination and justice in development", Madras, India, 2-9 January 1997)

<sup>28</sup> Minister Kader Asmal, in Parliament reported in Hansard 1995 at pages 1382-3

## Annexure

### Chronology

October 1989	First unconditional release of seven long-serving political prisoners
2 February 1990	De Klerk announces unbanning of political parties and release of certain prisoners
11 February 1990	Nelson Mandela Released
14 February 1990	First Robben Island prisoners released
4 May 1990	Groote Schuur Minute signed between NP and ANC
14 May 1990	First releases from Robben Island
18 May 1990	Indemnity Act comes into operation
6 August 1990	Pretoria Minute signed between NP and ANC
8 October 1990	Cut off date for offences in respect of which indemnity could be

	granted
February 1991	D F Malan Accord signed between NP and ANC
December 1991	Releases of last previously Robben Island prisoners
December 1991	CODESA convened
17 March 1992	Whites-only referendum
May 1992	CODESA 2 convened
10 November 1992	Further Indemnity Act comes into operation
March 1993	Multi-Party Negotiating Process commences
6 December 1993	Cut-off date for amnesty provided in interim constitution
27 April 1994	South Africa's first democratic elections held
10 May 1994	Nelson Mandela inaugurated as President
11 May 1994	
1995	Truth and Reconciliation Act passed

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