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CONFIDENTIAL

M E M O R A N D U M

To: National Secretariat, ANC, Lusaka, Zambia
Attn: Cde Sindiso

c.c. The President, ANC, Lusaka, Zambia

c.c. Secretary-General, ANC, Lusaka, Zambia

c.c. Treasurer-General, ANC, Lusaka, Zambia

From: MENDI MSIMANG, Chief Rep., ANC (U.K. and Ireland)

Date: 24 February 1989

Re: Draft Introduction by Brian Wrobel to the Report to the British Parliamentary Human Rights Group including the three responses by the ANC, the South African regime and Inkatha

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1. I enclose herewith copy of memorandum dated 22 February 1989 and addressed to me by Brian Wrobel, together with a copy of the documentation mentioned hereinbefore.

2. Please note that the ANC, as well as the other parties to the report, is expected to comment, if it so desires, only on the draft introduction by Mr Brian Wrobel. These comments may now be submitted by Monday morning of 6 March 1989, I have arranged.

3. I shall contact you by telephone from Harare for any brief you may wish to give me on this matter.

MENDI MSIMANG

Enc.

REF: MM.223/bb

Memorandum

To: Mendi Msimang
From: Brian Wrobel
Date: 22 February 1989

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1) I attach a copy of my draft introduction of the report to the Parliamentary Human Rights Group, as well as the responses of the other parties. I would ask that they be treated in confidence. All parties will receive this memorandum. All know that the responses are already in the production stage.

2) I should be very pleased with the opportunity to be able to discuss with you any matters arising from the enclosed. My introduction will be going onto its final disc on the Wednesday 1st or Thursday 2nd March. This may need to fall back by a day or two, but I would hope not. If you or any of your colleagues have time for a conversation prior to those dates, I would be very grateful. In any event, perhaps I could trouble you to be in touch shortly after you have been able to glance at the attached, and to give me an indication of whether you think you may have any comments. This is not of course a formal request for comments in writing. It is intended a courtesy which would yield benefit to my ideas.

3) I am moving to London from early Tuesday 28 February. My number will be 01-380 0719. Until then, 0635-521748 remains current.

4) You will see that the responses bear differing dates, and one mentions place. To avoid inferences being drawn, I think it might be better if approaches were harmonised. May we speak on this too? The Report itself will be dated for submission to the Parliamentary Group.

Brian 22/2

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for ANC.

SOUTH AFRICA 1989: HUMAN RIGHTS IN CONTEXT

A Report to the
all-Party British Parliamentary Human Rights Group

by

Brian Wrobel

Barrister, Associate Legal Adviser to the Group.

With Statements and Responses

by

The South African Government,

The African National Congress,

and

Inkatha.

c Brian Wrobel 1989.

PHRG logo ?
ISBN ?
Prelims?

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INTRODUCTION

[INCOMPLETE, PRELIMINARY AND UNEDITED DRAFT]

Between the worlds of black and white South Africans lies a gulf of understanding. Its social effects are profound; its conditioning of perceptions continuous. It limits aspirations; it taints people's lives. Inevitably, it deprives people of so much which is good in their country. This applies to all South Africans, of whatever colour. And this Report concerns all these issues; for they are what the *need* for 'human rights' is all about.

Before he died at the end of 1988, the Legal Adviser to the Parliamentary Human Rights Group, Paul Sieghart, wrote a paper for the Commonwealth Secretariat which included the following themes:

> What we now call "human rights" have been profound human aspirations, in all known cultures, throughout recorded history. Their antecedents are found in all the world's great religions, as well as in more local cultures and systems of belief.
>
> The claim is that *everyone* ought to have these rights and freedoms equally; that they are fundamental to all human existence; that they do not derive from the gift or arbitrary whim of governments, however powerful; and that governments can neither deny them nor abridge them validly, nor treat them as forfeit. In short, they are inherent. We all have them simply by being human, and they are inalienable.
>
> Where such claims are not *legal* claims, they are *moral* claims. Where a population, or part of it, is denied *legal* rights, the claim is that they *ought* to have such rights and freedoms, for they are being wrongly denied them. Such a denial causes suffering. It induces polarity. It results in conflict.
>
> Where moral claims are converted into legal form, and where *everybody* in a society is finally secured legal rights, there have to be safeguards against attempts by future governments to deny or abridge them.
>
> This is most commonly done by two mechanisms. By entrenching the rights themselves in the Constitution, sometimes in the form of a Bill of Rights. The Constitution is the paramount law from which the government itself derives its powers, and which it cannot therefore unilaterally amend or abrogate. The other mechanism is a system of independent courts, where wronged individuals can seek redress against the

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government if it again violates their fundamental rights or freedoms.

The headings of the Report relate to this framework, distilling the policies and strategies for change into a short sequence of paragraphs; and doing the same for views on the violence and security issues, the relevance of independent judicial power, and notions of political restraint and legal guarantees. And so, within the context of South Africa, this Report touches on all of Paul Sieghart's themes; for they are what the *achievement* of 'human rights' is all about.

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White South Africans participate in elections for the country's government; and to them the Government is democratically elected. Accordingly, official actions are seen as legitimate; law is seen as being fairly applied; state officials are seen as credibly empowered to fulfil governmental functions. Many whites seethe need for change, but expect blacks to be ready to accept the government's bona fides and motives. To many blacks, however, these arguments make no sense whatsoever. They have no political rights at the national level, and so the actions of government can be seen so often as illegitimate, as methods of control, as "forbidding rather than permitting, discriminating rather than protective, suppressing rather than assisting..." Accordingly, they believe that the existing order can neither fully recognise nor bring resolution to the country's problems.

Nonetheless, there are an increasing number of South Africans who now recognise that, given the political will, a Bill of Rights could limit in due course governmental power in certain respects, and might thereby enhance in the future the prospects for confidence-building. As such, the issue has become a central strand of strategic political thinking in the minds of blacks and whites, supporters and opponents of government, who see that it could offer one day a way forward.

I have been able to speak to many of these people. Much of the work for this Report was done during three visits to Southern Africa in 1987 and 1988. Meetings were held in Pretoria, Johannesburg, Soweto, Cape Town, Durban, Port Elizabeth, Ulundi, and Lusaka, as well as in London. Talks were held with the South African Government, the ANC, Inkatha, and, among others, with representatives of AZAPO and other Black Consciousness groups, with the UDF, the Conservative Party, with members of political parties in all three Houses of Parliament and with extra-parliamentary movements, and with representatives of business and the

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trade unions, with political activists, academics, and with lawyers.

Inside South Africa, meetings were held with the Ministers of Constitutional Development and Planning, Law and Order, Justice, and Information, and with officials from the State Security Secretariat. I was not able to see Mr Nelson Mandela. In Lusaka, meetings were held with members of the National Executive Committee of the ANC and with members of the ANC's Department of Legal and Constitutional Affairs. In Ulundi and Durban, there was discussion with Inkatha, including with its Secretary-General.

The text reproduced in Part One was dated 6 October 1988. In it, my views at that date were set out and sent to a cross-section of South Africans within the country and in exile. In Part Two, written comments from the South African Government, the ANC and Inkatha are printed.

Neither South Africa's problems nor their solution should be seen in three-cornered terms. Thus, the inclusion within this Report of three written responses should not be taken as necessarily suggesting an equality of status between any of the views expressed, nor between any of their proponents. These three parties have between them no collective monopoly of the views which are relevant to the country's problems. For good reason, the views of each of them are known at Westminster to be important. That is why they were chosen. Other views are equally important to this project. I hope that future reports to the Parliamentary Group will provide detail of a wider cross-section of opinion.

One or two subsequent changes have been made to the October document, but they do not affect the substance of the views presented at that time. In their responses, the Government, the ANC and Inkatha have indicated where they believe I was mistaken. In certain cases they are quite right. To avoid undercutting their written positions, however, I have left the substance of my text uncorrected, inserting changes or clarification into the notes. Reference marks inserted in the text will make it apparent where there is disagreement or comment, and by whom.

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In its statement, the South African Government argues that the report lacks historical perspective about the origins of apartheid, as well as about the beneficial effect which evolutionary change has on people's lives. In its response, the ANC repeats its commitment to the perspective of a united, democratic and non-racial South Africa" and says that "in the period since the Commonwealth EPG Report was

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published, the South African regime has not changed in any direction". The EPG's position in this regard was that:

> "In the Government's thinking ... the concept of group rights - the very basis of the apartheid system - was sacrosanct; the 'homelands' created in furtherance of that concept would not disappear, but be reinforced with the emergence of an 'independent' KwaNdebele; the principle of one man one vote in a unitary state was beyond the realm of possibility; the Population Registration Act would continue; and the present Tricameral Constitution which institutionalises racism must be the vehicle for future constitutional reform."

The Government have indicated their view on my statement in October 1988 that white control over the significant instruments of Government remains intact, and on my commentthat without evidence of a change in the Government's intention, genuine negotiation appears impossible. Their view is that such comments are "severe, highly questionable and unsubstantiated". So the question is: What does the Government intend?

In its statement, the Government acknowledges, among other points, that there are inequities in the present political dispensation. It indicates its view that Mr Nelson Mandela and other ANC leaders fall within the category of "genuine leaders". It states that it has no "argument with [the] suggestion that security action cannot ensure lasting peace". It says that "it is doubtful if a Bill of Rights would be of any value in the absence of a guarantee of an independent judiciary which could uphold it". It explains that "for political change to be meaningful and lasting, it must be undergirded by social and economic reform on a significant scale in developing communities". And it asserts that "transfer of power, if it implies capitulation to coercion or physical violence, i.e. the use of non-democratic methods and the violation of human rights, is unacceptable."

The Government speaks also of the absence of involvement in the project of, among others, the "Governments of the independent states of Transkei, Bophuthatswana, Ciskei and Venda". My understanding of "South Africa" includes the territories of these "states", as well of course of the non-independent homelands. Many South Africans remain on guard against descriptions of South Africa which exclude part of its territory, particularly where talk of South Africa as a country of minorities implies subtracting out for specific political status various categories of people, such as Xhosa, Tswana and Zulu, thereby to detract somehow from the massive and obvious black majority. In response however to the point which is made by the Government, I acknowledge that they are right that the cross-section of opinion which

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is reported on for this South Africa project is in no sense complete.

The Commonwealth Eminent Persons Group (EPG), found that the constitutional models employed by the Government in its reform programme were "in regard to objectives and modalities ... far short of reasonable black expectations and well-accepted democratic norms and principles". I adopt that formulation of principle. Solutions which do not reflect well-accepted democratic values will offer neither stability nor justice to the country. In its rejection of section 6 of the Report on 'Groups' and 'Rights', the Government states that "it is central to Government policy that the interests and rights of all the many and diverse minority groups should be allowed full expression and should be promoted in an orderly and responsible manner". It is not clear whether this precise formulation implies something other than policies derived from a premise of enforced segregation, or institutions founded on a segregated base.

For ~~at least~~ as long as it appears that an ethnic imperative remains the decisive and central feature of all policy, there will remain a legitimate fear among blacks that improvements might be used as a protective screen behind which an extended concept of "group rights" and the logic of the present tri-cameral constitution, i.e. the institutionalisation of racial differentiation, can be maintained. The Government in its Statement says that the Tricameral system should be seen as "part of an evolutionary constitutional process that is not the end but the foundation on which democratic rights can be refined and expanded upon in the due course of time". In its response, Inkatha states that "race should be removed as an organising principle of the constitution".

Focus on evolutionary change can be controversial. Nevertheless, the effect of decades of discriminatory legal practices has produced such tangible inequalities in so many areas of life that remedial legislation will not of itself rectify the balance. Thus, whatever the future political dispensation may be, South Africans are looking at decades of incremental change. Oliver Tambo spoke recently of bringing down the "structures of racism" both as a whole and 'brick by brick'.

Three further points made by the South African Government are inter-related. First, they say that the phenomenon of 'black on black violence' indicates that there is legitimate reason to question the commitment to political tolerance of black political groupings. Such fear is legitimate, as is the counterpart fear by black people of the commitment to political tolerance by whites. Secondly, they argue that the conflict crosses the 'colour line', with people of the same colour being mutually antagonistic, and with people of

different colours being allied. This is true, but separate from the central issue: Black people remain deprived of political rights at the national level - because they are black. Thirdly, the Government argues that there has been a de-racialisation of certain issues for which credit is not given. In particular, they cite the laws designed to ensure 'orderly urbanisation'. This is true as well, "but everyone understands that the tidal movement of black population has its origins in the absolute poverty that exists in rural black areas".

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The Government is concerned by a lack of detail in the Report on "socio-economic upliftment programmes". Economic development cannot be relied on as the sole and enduring cure to the problems of even the most harmonious of societies; and without real change in South Africa's political dispensation, economic change will provide an insufficient basis for stability. It works the other way round as well. It is misleading to judge economic advancement only in relation to urban areas. Economic expansion seems likely to create new centres of power, and will foster interests which do not square with those of the government. This can have an effect on the process of political change. It will be a slow process, which understandably many black people will be slow to trust, particularly if the changes continue to have no ineradicable link to the issue of black political rights at the national level. The issue of channeling of funds from affluent areas to poorer ones is raised in the Government's statement in relation to local government.

Rights and the Legal System

"Rights" will only constitute a sufficient guarantee for the future if they encompass the notion of political participation as well. This will not surprise black people. It is precisely how many of them see the issue today. In his evidence in the prosecution known as the Delmas Trial, one of the defendants, Mr M.G.P. Lekota of the United Democratic Front (UDF), who was convicted of treason in this case towards the end of 1988, made the following point in the witness box:

> "[T]he struggle has to do with the fact that African people must first and foremost gain access to the rights which must be enshrined in the constitution of the country, that they may participate in the government of the country."

In its statement, the South African Government has expressed its doubt that the ANC would be prepared to accept a declaration on Human Rights enforceable by a court of law. Also, it expresses concern over the negation of group rights, and the absence of guarantees of an independent

judiciary. The ANC, however, indicates in its Response a preference for an enforceable bill of rights. Also, the ANC says that group privileges will have to be ended. I reiterate my concern that no reference is made by the ANC to an independent judiciary, though I note from the communique dated 4 February 1989 of a meeting between South African lawyers and members of the ANC's Department of Legal and Constitutional Affairs that "the high point of the conference was the consensus reached on the need for a new constitutional order, a justiceable bill of rights and an independent judiciary". This is encouraging.

If a true Bill of Rights were to come in South Africa, it would need an independent judiciary which understood the real nature of the problems brought before it for adjudication. One of South Africa's problems is that the culture of resistance may become so firmly embedded that any successor government, under any constitutional dispensation, may feel a need to use existing powers for the maintenance of order. If so, the judges will feel as exposed as they are today.

So as to be able to judge actions fairly, the process of judgment in any legal system should be able to reflect, where appropriate, standpoints different to those of the prevailing political authority. In a society which is racially divided in law, where there are no black judges, the general problem becomes of a supreme political significance. Thus, within South Africa there is considerable sensitivity on this issue:

> "As part of the vendetta waged from abroad against South Africa, attacks on the South African judiciary have become a major component of the propaganda and disinformation campaign against this country. The South African judiciary has a long history of independence in the highest traditions of western justice, yet the poltical-motivated [sic] attacks from abroad persist."

South African judges are formally independent in the sense which is meant in this quotation. However, this point is used often to obscure the fact that despite this, and despite a shared jurisprudential tradition, Western and South African justice do not share the same central practical problem at all. In any legal system, the concern will be voiced that in politically sensitive prosecutions, there is a need, where appropriate, to recognise the *bona fides* behind actions alleged to amount to a criminal challenge to 'established order'. Where confidence in this regard is absent, it may be alleged by observers that the cause is symptomatic of a lack of understanding of the motivation and reactions of people coming from a different sector of their country's life. In any legal system, the complaint is heard that the judges may not be well-versed

enough with all parts of community life. It may be alleged that powers of judgement are affected. The allegation can be right, but it may also be overdone, particularly in cases where the assessment of fact is straightforward.

In South Africa, the assessment of fact is not straightforward. I have found the assessment of motive less so. In general, I have seen that white people do not find it easy at all to assess with confidence the nature of black challenges to the established order. No-one has any idea how long it will take for blacks to become proper partners in the 'established order'; many are uncertain whether their government plans it in truth at all. In such circumstances, it is trite to speak of a racial divide tinging judicial perceptions. The question is more specific: Are the judges in a better position than anyone else to make accurate assessments of the motive behind 'threats to established order'. In certain criminal proceedings that is an important part of their function. They should be in a better position than anyone else, for they hear evidence in calm and ordered judicial proceedings. Are they able therefore in their role within a divided society to put aside the unconscious, and conscious, group loyalties and preconceptions which everybody has, so as to stop them becoming a very heavy weight indeed on one side of the scales of justice?

With this question in mind, I read the transcript of the judgment in the Delmas case, a prosecution for treason whose major political significance lay in the allegation that the UDF acted as a front inside South Africa for the ANC. The ANC is a banned organisation. The UDF is now restricted. At the time that the events took place, however, the UDF was operating quite normally. I have found it difficult to imagine how the following passages from the judgment might sound when repeated by a spectator after court back home in a black township:

* "Real and imagined grievances are often stridently voiced and ad nauseam."

* "Discussion from public platforms or in propaganda leaflets by a political party or organisation of issues that concern the community is not per se treasonable. The fact that the ideas are non-conformist or even weird and that the language is not that of a ladies' tea party does not alter the position... [T]he state has to prove that the UDF was 'harnessing the national sense of grievance' for mass revolt as the ANC had instructed."

* "The lowly educated black workers at which the propaganda and agitation would be aimed would have no interest in Namibia, Swapo, conscription, imperialism, South African defence force, the international isolation of South Africa; and only limited interest in Ciskei,

Bantustans, exiles, detention and political prisoners. Of course these were all matters which concerned the intellectuals - but this small group was in the UDF camp already."

* "Where the support was sought of the White, Indian amd (possibly) the coloured sections of the population the speeches did not suggest violence, but where blacks were addressed the mask of peace was removed and the language used was, when not revolutionary, often open to such interpretation by those who were so inclined. By speeches, poems and songs a revolutionary climate was nurtured."

* "Grievances are blown up out of proportion."

In the space available, I cannot put the above quotations into context. I believe that it would not affect my point if I did.

The South African Government says in its statement that the courts are used successfully by opponents of government to protect their rights and challenge government actions. Within the limits of the law, that is true and very important. But it is a different issue. Pronouncing on the lawfulness of government actions can be very difficult indeed. Understanding and assessing why black people in South Africa do and say certain things is really rather different. Some judges do it better than others. It cannot be easy for any. It can be a question of life and death.

Whites, among all others, are beginning to feel, quite justifiably, that they should be entitled in a post-apartheid South Africa to the protection of an independent judiciary. People are entitled to this, and the formal tradition is already in place, but they will need more than that. They will need the protection of a judiciary which understands the vulnerability of a minority. Many blacks who have stood trial for serious offences would have liked the same for themselves, and they are part of the majority. And some of them are dead.

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In October 1988, I expressed concern about the Government's security policy and about the ANC's policy on violence, for I believe that they 'feed on each other'. It seems to me that the violence policy of the ANC is likely to bolster within government the security/military point of view. Some argue that the nexus between security policy, the prevailing state of sectarian life, and the symptoms we have seen of coercive white minority rule, has led them to believe that violence is the only way to record achievable gains. I am convinced that this is a wrong assessment. Moreover, I see

the security and violence policies as being, both of them, among others, dangerously counter-productive.

In relation to government security policy, recent indications of releases from detention are to be welcomed. In relation to ANC violence, I note that in its response to my report the ANC indicates that "contact between the ANC and the white community is increasing all the time, despite the continuation of the armed struggle". Undoubtedly, such contact increases the potential for trust. It is a truism to say that the potential would increase further in circumstances in which South Africans felt safe enough not to need to support the security policies of the government. Those circumstances do not exist at present. However, the passage in the lawyers' communique of 4 February 1989 which speaks of the "simultaneous cessation of all violence by the state and all other parties.." as being essential for a negotiated end to apartheid is significant.

South Africa has no monopoly of some of these difficult issues. South Africa is, however, the only society which has legislated the symptoms of division so deeply into its social fabric. Doing away with them will not come easily. But it will come.

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This report could never have been written without the readiness of so many South Africans from all walks of life to take me into their confidence and discuss their country's problems, as well as its strengths. To them, I am indebted. Theirs is a remarkable and lovely land.

My personal debt goes much wider, however. Family and so many friends at home and overseas have combined recently in the oddest of ways to push me down an exceptionally difficult path. At times, I fear that I have done less than justice to their encouragement; but it is now so clear to me that without them all, I can accomplish very little indeed. My mother, Marian Wrobel, and my eldest sister, Rachel Karen, are prominent among the people who have done more for me in this period than I have yet understood. Also, I am very grateful to George Soros for supporting an East-West legal project which enabled me to integrate all my human rights work into a coherent programme.

This project is dedicated to the memory of Max Wrobel, my step-father, who died in 1980, and whose reassurance some years ago got me off on the right track. His funds have made a lot of my work possible, including this Report.

MARKED UP MASTER.

Final 17-2-89

STATEMENT BY THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (RSA) APROPOS THE REPORT BY MR B J R K WROBEL TO THE BRITISH ALL-PARTY PARLIAMENTARY HUMAN RIGHTS GROUP.

THE COMMITMENT OF THE RSA GOVERNMENT

The Government of the RSA is committed to broadening fundamental Human Rights for all citizens of the RSA. It interprets Human Rights in the context of a society founded on the values and aspirations of Western, Christian civilisation.

The basic premises of the Constitution of the RSA include the following: to uphold Christian values and civilised norms; to recognise and protect freedom of worship; to uphold the independence of the judiciary and the equality of all before the law; to respect and protect the human dignity, life, liberty and property of all; to promote private enterprise and effective competition.

The RSA being a diverse, multi-cultural society, the values and aspirations of those of non-Christian faiths are respected and protected. However, the Government of the RSA is unequivocally opposed to Communism, Marxism and other doctrines that deny fundamental Human Rights to the citizenry.

In so far as political rights are concerned, the Government of the RSA acknowledges that there are inequities in the present political dispensation in the RSA as it has evolved through the historical and traditional processes. However, the present Government of the RSA is committed to create a fair and equitable political dispensation for all citizens of the RSA, based on powersharing by and between all. The Government is furthermore committed to the maintenance of a multiparty democracy.

It is the contention of the Government that, given the historical and traditional processes in the RSA, it would be unrealistic and even counter-productive to expect such a goal to be achieved overnight. Even in the two great democracies of the Western civilised world, those of the United Kingdom and the United States of America, constitutions have evolved over generations and even centuries.

The situation in the RSA is enormously complicated by its historical development and the African environment in which RSA society is rooted. From Ghana in the west to Uganda in the east, from Lesotho in the south to Egypt in the north, Africa and it's history is riddled with the ugly pockmarks of political collapse and human degradation following upon the introduction of British (and other Western) constitutional models.

There is no evidence to suggest that the RSA will be spared the same chaos and confusion, leading in the ultimate analysis to the destruction of Human Rights and to human degradation, that the principle of one man, one vote in a unitary state has brought to so much of Africa.

It is accordingly the contention of the Government of the RSA that in the quest for a fair and equitable dispensation based on powersharing participants in the process need to consider the realities of the Africa situation, exercise reasonableness in their approach to those with different values and aspirations and act in a responsible manner in order to ensure lasting Human Rights benefit for all South Africans.

Groups such as the African National Congress (ANC) and Inkatha have the freedom to espouse views and present policies without having to put to the practical test the consequences of their views and policies - and, in the event that their policies are put into practice, they will only have to answer for the consequences of their actions after it is too late for those most directly concerned (the citizens) to take measures to reverse or undo their policies and the effects of their actions unless proper democratic structures are established.

In specific terms, the reality of Africa is that once democracy, as understood in Britain and other Western societies, is destroyed there is little chance of a return from authoritarian rule and little hope that the human degradation that has resulted from political upheaval will be reversed to any meaningful extent.

It is against this background that the Government of the RSA, mindful of the immediate consequence that its policies and actions will have on all communities in the RSA, must act with realism, reasonableness and responsibility.

It is regrettable that the Wrobel report does not give its definition of Human Rights nor attempt to give a frame of reference for its approach to the subject. [See Introduction] This causes the report to wander across the complex and multi-faceted scene of South African life and history and choose subjects for discussion, seemingly at random. This in itself adds to a warped view of the totality of the South African situation, which is impossible to correct in this single statement.

As Mr Wrobel pointed out in his own report, the complexities of South Africa "can be paralysing intellectually, for outsiders as well as nationals". The over simplification of the issue of Human Rights in South Africa by only referring to the views of the South African Government, Inkatha and the ANC does his readers a disservice. No reason is given for this specific choice. An important opportunity is being missed by not putting these three views in context against the background of the diversity of language, cultural, religious, ethnic and racial groups present in South Africa. No effort is even made to compare the views of other important representative groups in South Africa such as the United Democratic Front, the Azanian Peoples Organisation, the Confederation of South African Trade Unions, the South African Council of Churches, the Zionist Christian Church, the Conservative Party, the Governments of the independent states of Transkei, Bophuthatswana, Ciskei and Venda and many others. The South African Government, unlike Inkatha and the ANC, has to formulate and implement policy with due consideration to all the abovementioned groupings.

The response of the Government to the Wrobel report is outlined below using, for the convenience of the reader, the headings used by Mr Wrobel. In the process inaccuracies and distortions

in the Wrobel report will be drawn to the attention of the reader but it is obviously impractical within the scope of this Statement to comment on each inaccuracy, distortion and misrepresentation to be found in the report.

1. "APARTHEID"

The historical roots and philosophical basis for the original policy of Apartheid as well as the development of that policy over the years, which is essential for a proper understanding of the current situation, is conveniently ignored by the Wrobel report. This lack of historical perspective regularly surfaces in the evaluation and treatment of recent and current developments, throughout the report.

Apartheid in the sense that it is invariably perceived abroad as a policy of discrimination against Blacks is not the policy of the Government of the RSA. As indicated above, the policy of the Government is to achieve powersharing by all and a fair and equitable political dispensation for all.

This dispensation should be designed by the genuine leaders of all groups in South Africa - White, Black, Coloured and Asian - through the process of negotiation and consensus.

The objective is to broaden multiparty democracy through the creation of democratic structures. Towards this end, the 1983 Constitution provided for a tricameral Parliament in which Whites, Coloureds and Asians share decision-making in three Chambers.

The Wrobel report largely ignores this development. However, the tricameral Parliament should be seen as part of an evolutionary constitutional process that is not the end but the foundation on which democratic rights can be refined and expanded upon in the due course of time.

In respect of Black communities, where the democratic tradition (as understood in the Western context) is limited, constitutional development is still in an embryonic stage. Nevertheless, fully-fledged town and city councils operate at local authority level. Elected Black councils nominate representatives to Regional Services Councils (RSC's).

RSC's are multi-racial bodies grouping together town and city councils in a particular region to provide joint services such as water and electricity.

The Wrobel report fails to offer an assessment of the RSCs in the following important aspects:

(a) the practical effect of the RSCs is to channel funds (which are raised from previously untapped sources) from more affluent areas (in the main businesses) for infrastructural development in the poorer areas (chiefly Black residential areas).

(b) the experience-building of the RSCs as democratic bodies and as organs of government on which representatives of different communities pool their views and experience in order to obtain consensus on matters of mutual interest; thus the RSCs could well prove in time to be the models for democratic, multi-racial organs at higher levels of government.

Black communities also have representation on provincial government executives; and legislation has been published in order to afford Black representation in the Cabinet.

As to Black representation at the highest (central government) level, the Government has made several proposals for mechanisms

to explore this question, including the acceptance by Parliament of a negotiating council in which all population groups will be represented. This council's main objective would be to plan and prepare a new constitutional dispensation for the RSA.

2. THE POLICIES

As indicated above, the Government of the RSA views political change and constitutional reform as of necessity a gradual and evolutionary process, given the complexities of the African-rooted situation in the RSA.

This contrasts sharply with the philosophy of the ANC.

It is significant to this debate, however, that the Central Committee of Inkatha in November 1988 endorsed the standpoint of the Chief Minister of KwaZulu to the effect that, although his ideal (and that of Inkatha) is a one man, one vote system in a unitary state, he would be prepared, because of certain realities in the RSA situation, to suspend his ideal for one man, one vote in a unitary state and to consider a system of government based on a confederation or canton system in which there is the maximum devolution of power and in which consensus politics is enhanced.

In so far as the ANC is concerned, its protestations, as reflected in the Wrobel report (2.2, 2.5 etc.), for "equal rights" for all South Africans should be measured against other policy statements made by the ANC; and, in particular, the ANC's "hidden agenda".

In this regard, Tambo has declared, in reference to Black Leaders within South Afria, that "...a better life in our

country" depends not only on "the destruction of the white minority dictatorship" but also of "their stooges, the Buthelezis, the Mangopes, the Matanzimas, the Rajbansis..."

The probable consequences for the interests of the Western alliance in the event of ANC policies being implemented in the RSA therefore require sober analysis, more particularly given the strategic location of the RSA in Southern Africa and in the Southern Hemisphere.

Of greater overriding importance to the Government of the RSA and the readers of the Wrobel report, however, is the likely impact on the lives of the citizens of the RSA, and on their human rights, of ANC policies.

The ANC is a revolutionary movement which carries out acts of intimidation, terrorism and violence. Much of this is directed not against the government or against White South Africans but against Black South Africans.

In fact as recently as January 1989 the Pentagon in a document entitled "Terrorist Group Profiles", in defining terrorism as "premeditated, politically motivated violence perpetrated against non-combatant targets", identified the ANC as one of the top international terrorist groups. Although the US Department of State subsequently differed from the Department of Defence on their Pentagon report, it is of some interest that in an official US Department of State publication (Department of State Publication 9661 released August 1988 entitled "Patterns of Global Terrorism" August 1987) the ANC is listed with other terrorist organisations as an "organisation that engages in terrorism".

Black South Africans who have stood for public office in defiance of the "dictates" of the ANC have been intimidated,

terrorised and even murdered. Radio Freedom, Sechaba and other ANC organs have extolled the "merits" of the barbaric "necklace murders" in Black residential areas in South Africa. Winnie Mandela is on record as having endorsed necklacing, as an instrument of liberation. (Necklacing has already claimed the lives of more than eight hundred people - most of them Blacks).

Black on Black violence is dismissed in the Wrobel report (5.18) with the insinuation that Government agents may have been responsible. Such insensitive treatment of a matter of extreme concern to Black communities in South Africa is to be deplored. It conveniently side-steps the question which all reasonable men with a concern for the future of Black communities in the RSA would ask: if the leadership of the ANC is prepared now to brutalise the very people whose "authentic voice" it claims to be, will it tolerate legal political dissident voices if it is given responsibility for governing the RSA or will dissident voices be at the mercy of institutionalised violence on the part of the ANC? The current treatment of dissident voices within its own ranks by the ANC,(disappearances, torture, murders etc), causes serious concern about the future of human rights under ANC control.

This question becomes particularly relevant in view of the fact that the ANC favours those countries which allow very little, if any, political dissent.

On numerous occasions ANC leaders have aligned the ANC with "progressive" governments and "anti-imperialist" movements worldwide.

Thus, Oliver Tambo, ANC President, said in Havana in 1979 that "....from their own experience the imperialist powers

have learned that a victory in any part of the world becomes not only a triumph for all peoples fighting to remove the shackles of imperialist domination, but also a material factor in the creation of fresh possibilities for fresh successes against imperialist hegemony everywhere".

A year later, in Sofia, Tambo declared that "the historic victory of the Vietnamese people against the occupation forces of the United States and their puppets has a significance which goes beyond the fact that today Vietnam is free and united, because it had also "confirmed that the international balance of power had shifted irrevocably in favour of the forces of national indepenence and social progress, whatever reverses these forces might suffer here and there."

Francis Meli, editor of Sechaba, the ANC's monthly publication, told the Youth League of the East German Communist Party that "when you give solidarity to us, you are not helping some needy, poor blacks in the jungles of Africa, you are promoting your own struggle in your country,..... because the liberation of South Africa will mean the weakening of international imperialism".

On issues ranging from El Salvador and Nicaragua to the invasion of Czechoslovakia in 1968 and of Afghanistan in 1979, the ANC has been as consistently loyal to Moscow's policy line as any Warsaw Pact regime. The ANC has slavishly supported Moscow in respect of the demilitarisation of the Indian Ocean, the question of Korea and the Sino-Soviet dispute. The ANC has even praised the Stalinist policies of the 1930's.

It is common cause that the hierarchy of the ANC includes strong representation from the South African Communist Party

(SACP) and that there is a firm alliance between the two bodies. The crucial point, however is not whether the SACP "controls" the ANC but that the ANC itself has become a Marxist-Leninist organisation.

The ANC bases its policy for South Africa on the Freedom Charter of 1955 which, in the view of many including the SACP, will advance South Africa "along non-capitalist lines to a communist and socialist future."

In many of its publications it however, openly advocates Lenin's two-phase approach as a strategy for the "revolution" in South Africa: first phase, liberation under the banner of the Freedom Charter and a "national democratic revolution" with the emphasis on the masses; second phase, the estalishment of a "people's democracy" with a dictatorship of the proletariat.

The scenario for South Africa, should the ANC achieve its objectives of gaining power, points towards the establishment of a one-party Communist state.

The Wrobel report frequently refers to the ANC's use of concepts such as "democracy", "equality", "freedom" etc. These concepts have certain values and meanings in countries such as the United Kingdom. ANC statements are treated at face value without giving the reader the necessary background as to perceptions and realities prevailing in non-Western countries.

In concluding, reference to the Wrobel report's section 2, and specifically 2.5 the Government of the RSA emphasises that, as far as it is concerned, no genuine political leader, whether Black or of any other race, is excluded from the negotiations on the new South Africa now being constructed.

Indeed, the South African Government would welcome the participation in the negotiation process of all genuine leaders. Mr Nelson Mandela and other leaders of the ANC are certainly included.

However, it would be as unreasonable to expect the State President of the RSA to negotiate with those committed to the violent and revolutionary overthrow of the South African State, as it would be to expect that from any other responsible leader.

This exception apart, it needs to be noted that, like other members of his Government, the State President of the RSA has throughout his period as head of government held discussions with a wide spectrum of Black leaders including as severe a critic of his policies as Archbishop Desmond Tutu.

This commitment to negotiations on a peaceful future for South Africa applies equally to Mr Mandela as to others should Mr Mandela eschew violence as a political weapon.

[para 2.7]

The assertions in the Wrobel report's summary [that "white control... remains intact" and that "... genuine negotiation would appear impossible" are severe but highly questionable and unsubstantiated.

3. THE SPECIFICS OF CHANGE

It is the contention of the Government of the RSA that political change and constitutional reform has been both extensive and substantial. It has been conducted along three main avenues: the removal from the Statute Book of legislation that contains discrimination on the basis of race, ethnic

connection or origin; the progressive opening of recreational, business and other facilities to people of all races; removing all racial restrictions on trade unionism and bringing it in line with Western practices; and the steady expansion of political and governmental structures so as to involve representatives of all the various minority groups in political decision-making at all levels of government.

A detailed list of reforms would be too lengthy for inclusion in this Statement. The Wrobel report reflects some of the reforms in 3.2.

The report, however, errs in certain aspects.

To mention but a few, the impression created in 3.9 that citizens of the TBVC states do not have free entry to South Africa does not correspond with the factual position. In regard to 3.6, inter-city trains are no longer segregated and many beaches have been opened to all population groups, especially in cities such as Durban, Cape Town and Port Elizabeth. No reference is made to the opening of central business districts in towns and cities, nor to the concept of free settlement (residential) areas. Rather does the Wrobel report seek to project negative perceptions of the situation in the RSA such as in 3.6 where the Group Areas Act is depicted as "a deterrent to inter-racial marriages".
The Wrobel report misrepresents the whole issue of forced removals.
Nor does the report highlight the fact that the question of separate amenities, such as beaches and libraries, is the domain of local authorities, not the central government. The recent decision of local authorities controlled by the Conservative Party to restrict admission to certain public amenities is in conflict with the policy of the central government. The government has already stated that it would not be prepared

to accept this step backwards.

As in other respects, the Wrobel report is severe in its criticism of current efforts by the Government of the RSA to ensure orderly urbanisation rather than controlled admission to urban areas (as in the past). By ignoring the acute problems created by excessive and rapid urbanisation on the part of developing communities in South Africa, as witnessed in developing communities elsewhere in Africa and the rest of the world, the Wrobel report presents a view on a critical modern phenomenon that is both facile and unprofitable for any serious debate. All the measures he criticizes and eventually judges as possibly undoing "the gains in this regard of recent years" are not racial or ethnic in their words or intention. They apply to all South Africans alike. The measures are also not unique to South Africa but could be found in many other countries faced with similar rapid urbanisation problems.

The above three paragraphs reflect just some of the inaccuracies in the Wrobel report. A few further examples follow.

4. REVOLUTIONARY ACTION AND VIOLENCE

The Wrobel report is incorrect when it assumes 4.2 (3) that it is the Government's perception that the core of the problem lies with the "people who militate against it" and not in the "system".
As outlined in the fourth paragraph of this Statement, the Government of the RSA acknowledges that there are inequities and discriminatory practices in the present "system", to use Mr Wrobel's word. It is precisely because of this that the Government initiated the search for a new political dispensation in the RSA. It might be useful to stress the words "the Government initiated".

It should be emphasised that the factual position is that in respect of the philosophy of, and the campaign for, revolutionary action and violence, there are White, Black, Coloured and Asian participants in this option and there are White, Black, Coloured and Asian citizens who reject and oppose revolution and violence. The Government is committed to the latter opinion which rejects and opposes revolution and violence.

Put another way: the conflict in the RSA is not a Black/White confrontation. It is a confrontation between revolutionaries and moderates, whose membership in both cases spans colour lines. To the extent that the Wrobel report seeks to convey the contrary, it must be viewed as a distortion of the realities of the South African situation.

The Wrobel report in the section on revolutionary action and violence, discusses ANC perpetrated violence in terms of SAG claims and assertions and "how it fits into the SAG's perception of the threat which it faces". This is a misrepresentation. Discussion on this topic should be conducted in terms of the ANC's own claims and statements.

There are numerous such official statements on their commitment to violence, which seems to be conveniently ignored. Recent statements by Ronnie Kasrills (member of the ANC National Executive Council), that "we are committed to a strategy of revolutionary armed struggle to achieve our goal - the seizure of political power" and Oliver Tambo who said in January 1989 "the armed struggle is more vital than ever before..." graphically illustrate this point.

5. REFORM, SECURITY AND LAW AND ORDER

The onslaught against the system involves the broad spectrum of internal and external actions aimed at the overthrow of the South African State and not just "urban guerrillas and subversive warfare," as suggested in 5.1 of the Wrobel report.

In regard to the conclusions Mr Wrobel draws in 5.2, the record should be set straight in the following respects:

The "co-ordinated whole" is the National Management System (NMS). The major role and influence ascribed to the SADF in 5.3 is based on the use of words such as "doubtless", "presumably", "there appears to be reason", etc. On these is again based a "legitimate" consideration that the SADF may "change certain departmental priorities where it believes it necessary." This is blatant misrepresentation. The SADF acts in a supportive role to the SAP, as provided for in legislation and intelligence is therefore shared and actions jointly approved. The SADF cannot simply "change certain departmental priorities" but does contribute to the identification of priorities in concert with other departments; "Total", or rather National Strategy, is the product of interdepartmental planning within the framework of the NMS.

Similarly, in respect of 5.8 the Statement "...centralises control under the military and security establishments..." is false; the NMS has no executive powers and all government departments are involved.

Nor is it accurate to refer to "security muscle" in the context used in 5.9. The security forces are used to neutralise

illegal and unconstitutional alternative structures.

Serious allegations are recorded in the Wrobel report about a "prescription for unsupervised and unaccountable behaviour by security forces: (5.11); "violence by the state" (5.13); "maltreatment" and "torture" (5.13, 5.14, 5.16, 5.17); and "hitsquads...shooting dead persons designated in advance for killing: (5.18)

It is a matter of regret that the Wrobel report relies for much of these allegations - despite their serious nature - on anonymous sources, typically "a senior source, who will remain unnamed".

Suffice to say, in the face of such unsubstantiated and anonymously sourced allegations, that security forces in the RSA must answer for their actions. That is the law. Numerous examples can be cited of legal action having been taken against members of the security forces . In recent years a substantial number of the South African Police were convicted by courts of law of offences involving violence.

It should be noted that alleged assaults and other offences against detainees by members of the South African Police are regularly made by bodies such as the Detainees Parents' Support Committee. In most cases, however, allegations have been unfounded.
Where bona fide complaints are made they are tested in a court of law and these have led to a number of successful civil and criminal actions against the South African Police and the Minister for Law and Order.

In his conclusion on this section (5.22) Mr Wrobel suggests that security policy "has acted without any national consensus". Opinion polls, however, confirm that there is great support

amongst Black communities for specific security force actions such as those that have curbed intimidation.

The Government of the RSA has no argument with Mr Wrobel's suggestion that security action cannot ensure lasting peace in the RSA. It would have been useful, however, had Mr Wrobel emphasised here (see 4.8 of his report in this regard) that this principle applies equally to the revolutionary violence of the ANC and others who have been responsible for "a very substantial degree of pain and human misery", to quote Mr Wrobel's words.

6. "GROUPS" AND "RIGHTS"

The Government of the RSA readily acknowledges that its policies take into account group interests and rights in the RSA.

South Africa is a country of minorities. Although there are naturally common and overriding loyalties that should be nurtured and cultivated, to ignore the realities of the existence of diverse minorities would be to court the disastrous sort of situations that the disregard for group interest and rights have brought to countries such as Cyprus, Malaysia and India, not to mention a plethora of countries in Africa.

It is central to Government policy that the interests and rights of all the many and diverse minority groups in the RSA should be allowed full expression and should be promoted in an orderly and responsible manner.

It is suggested that the Government's policy is in full accordance with the International Covenant on Civil and Political Rights as quoted in the Wrobel report (6.7).

The Government of the RSA accordingly rejects this section of the Wrobel report in which a simplistic overview and rather harsh judgments are offered that are unrealistic and do not contribute to a responsible answer to the problems confronting the peoples of South Africa.

In so far as the Wrobel report on the ANC guidelines (6.19 et seq) is concerned, Mr Wrobel apparently accepts without further questioning that the ANC would be prepared to accept a declaration on Human Rights enforceable by a court of law. He does not, however, refer in any depth to the strong stance of the ANC in respect of "affirmative action" and the nationalisation of businesses. The question involuntarily also arises as to what the role of the courts of law would be in the event of an ANC regime in the RSA.

As Mr Wrobel himself points out (6.28), the ANC guidelines do not say specifically whether the judiciary will be independent.

For any serious observer of Human Rights in South Africa, the ANC's views and attitudes towards an independent judiciary should be important. The ANC's lack of clarity on this issue should therefore be of serious concern. The Wrobel report however prefers to pay little attention to this aspect. It is doubtful if a Bill of Rights, would be of any value in the absence of a quarantee of an independent judiciary which could uphold it.

Aspects of the ANC's constitutional guidelines, such as the principle of central control over the economy, the negation of group rights, the concentration of governmental power, the absence of any guarantees in connection with an independent judiciary as well as a multi-party political system, place a question mark over the real intentions of the ANC as opposed to it protestations for "equal rights" for all.

It is not clear why the Wrobel report should quote elaborately from an Afrikaner Broederbond document and also relay the personal views of a member of the ANC (Mr Albie Sachs). Mr Sachs, writing in his personal capacity, cannot be accepted as speaking on behalf of the ANC; likewise, the Afrikaner Broederbond does not speak on behalf of the Government of the RSA. This technique to convey the image of agreement and similarities between the Government of the RSA and the ANC is deceiving.

We return to the question of the independence of the judiciary: the Government of the RSA regards this as a critical issue. Unlike the ANC (see above) the Government is unequivocally committed to an independent judiciary. The independence of the judiciary in South Africa has been acknowledged by eminent jurists from other countries, notably Great Britain.

As proof of its independence can be mentioned numerous court judgements in recent years against the police and the government, effectively restraining it from certain actions or overturning some of its decisions. It is also significant to note the number of instances where the courts which according to Mr Wrobel "have come to be regarded by many as 'instruments of oppressive social policies'" are being successfully used by opponents of the government to protect their rights and challenge government actions.

7. CHANGE, COMPROMISE AND TRANSFER OF POWER

The approach of the Government of the RSA to the concepts in the above heading is that the purpose of change should be to effect orderly and meaningful change; that the accent should be on consensus rather than on compromise in the sense of arbitration or on surrender; and that the need

is not for the transfer of power but for powersharing.

Abrupt political change, just for the sake of change, such as the immediate introduction of one man, one vote, will have little chance of being meaningful or lasting. The constitutional scrapyards of Africa bear tragic witness to this. For political change to be meaningful and lasting, it must be undergirded by social and economic reform on a significant scale in developing communities. The track record of the Government of the RSA in respect of the provision of education, training, medical and other services to South Africa's developing communities is one which comparable societies can look upon with envy. South Africa's track record of socio-economic upliftment is there for any who have the inclination or probity to study.

The Wrobel report prefers to pay little attention to this most important process which is currently laying the foundation for meaningful and lasting change.

It is neither the intention nor the policy of the Government of the RSA to be prescriptive. It believes that a political dispensation for the new South Africa should be devised and directed through a process of negotiation and consensus between all South Africans.

"Transfer of power", if it implies capitulation to coercion or physical violence, i.e. the use of non-democratic methods and the violation of Human Rights, is unacceptable to the Government of the RSA.

The Government stands for powersharing by all the minority groups on the basis of a fair and equitable dispensation for all without domination by one group over others. This

dispensation, as previously stated, should be the outcome of negotiation and consensus.

In its commitment to the above policy and course of action, the watchwords for the Government of the RSA are realism, reasonableness and responsibility.

17 February 1989

INKATHA RESPONSE TO THE REPORT BY MR BRIAN WROBEL TO THE ALL-PARTY BRITISH PARLIAMENTARY HUMAN RIGHTS GROUP

2.3 To capture the full dimension of Inkatha's policy, the following oft-stated positions should be added to Mr Wrobel's report.

a) Inkatha has a preference for protection of individual rights but will accept group protection of linguistic, cultural and religious rights.

b) Inkatha wants a multi-party type democracy.

c) Inkatha favours a one-man, one-vote system in a unitary state but also sees merit in federal concepts in that this is what it might take to facilitate those groups who at present block progress because of their insecurity about being totally subjugated in a future power-sharing dispensation. The precondition is that the units (states) in the federation should be geographically (and not ethnically) designated.

4.7 We must take strong exception to the implications made in this point.

a) To offer a perspective - even if Inkatha was involved in the areas in which the fighting referred to, it would represent less than 1% of its membership.

b) Whereas UDF members have been involved in fighting in seven different metropolitan areas in South Africa with members of six different Black organisations including AZAPO (in Sobantu, Pietermaritzburg and the Eastern Cape), Inkatha has never been involved in fighting with AZAPO members as is implied.

When going through comprehensive records of violence in South Africa, we are however only able to find one instance in 1986 when it was alleged that two Inkatha members in Sobantu (an area where the UDF and AZAPO had protracted battles) were killed by AZAPO members. While the nature of these killings were never revealed as an apparent isolated incident of violence between the two groups in question, it can by no stretch of the imagination suggest a generalised notion of fighting.

c) Further doubt is implied by use of a UDF reponse as to Inkatha's ability to control yet it was the UDF president, Mr Archie Gumede, when referring to the same violence who said (this is well-documented) that

his big problem was his inability to control the UDF elements in the fighting. Mr Gumede also showed an understanding how this made it difficult for Inkatha members to become inactive.

d) Also ignored are the numerous media references to the role of:

   i) the ANC's avowed policy of township disruption.

   ii) the empirically based research done by both Inkatha and UDF-based academics which agreed that political agendas were incidental to other fundamental contributions to the fighting. These findings are readily available. Reference to this research has been repeatedly made by Inkatha leaders in the wider context of the violence.

e) The extract from the speech made by Dr Buthelezi in Portugal must be seen together with Inkatha's position that "(to the South African problem) ... violence is an option but will always be the last option."

6.15 The view expressed here is not necessarily incorrect, but should be seen as a concession that Inkatha would allow in order to promote negotiation - rather than Inkatha's essential position on negotiation. Inkatha has no pre-conditions for negotiations beyond that:

a) All important constituencies should be invited (including the ANC and the South African Government).

b) Race should be removed as an organising principle of the constitution.

c) All participants to such negotiations should agree that all citizens should enjoy equal rights.

6.23 It is correct to say that Inkatha sees the value of a Bill of Rights being formulated to cover any necessary protection in a future dispensation. Mr Wrobel however, refers to the KwaZulu/Natal Indaba Bill of Rights which is not necessarily Inkatha's policy. Inkatha was simply one of 30 odd groups who agreed to accept these proposals as the basis of a regional structure should the Central Government have allowed this.

A serious omission of the Human Rights document is non-disclosure of Inkatha's calls for all-party negotiations for almost the past 13 years, while the South African Government and the ANC have only started making public references to

any degree of negotiation over the past year. It will also be seen how much further both the South African Government and the ANC have to shift before offering the degree of accommodation that Inkatha offers in order to facilitate such negotiations.