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HUMAN RIGHTS COMMISSION 19 JUNE 1991

PR ESS STATEMENT 91/17

HHC STATEMENT

POLITICAL PRISONER RELEASE

RESPONSE TO STATEMENT BY THE MINISTRY OF JUSTICE AND

COHRE 0 AL CE ,DA E 18d . 1991.

In yesterday's statement by the Ministry of Justice and Correctional Services on the release of political prisoners. reference is made to an analysis of a list of political prisoners supplied to them by the HRC. We feel it necessary to take issue with them on a number of points:

' The list referred to is dated 2 April and is two-and-a-half months out of date. so will obviously contain names of prisoners who have now been released.

" The HRC has since published updated lists containing additional names received from various sources. including the Department of Correctional Services itself.

WERKGROEP KATRIS

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Committees: Mr. Gooti Buelendel. OLM Coleman. Mr. Chu's Otamnel.

Mr. Diml nmm um .rmca Mnuudnlhmi n: mum MIL F1 SnmnnM:n Mlmmclvwfl

' Our latest count announced 11 June is 972

prisoners. of whom 284 were

agreed by 008 during our audit meetings as falling within their age categories related and death row prisoners. so

that these are

at security. securely-retained. Unres-

we are at a complete loss to understand how they can now say the clearly not political prisoners are also in the American context or the context of the Pretoria Minute. We stand by our count of 972.

' We repeat that the 133 prisoners in the homelands cannot be evaded as the responsibility of the South African Government. but this is a remark which we address to the Department of Justice rather than the DCS.

' As to the names untraced on 008 records we again point out that during the audit exercise to date we were able to assist in tracing at least 100 prisoners in their records who initially were not found. We are convinced that more can be found by continuing the process. which we are anxious to do.

" We repeat that the element of torture in a particular act does not necessitate that act from being political. in terms of the Pretoria Minute.

' Finally we still await a response from the Minister of Justice to our constructive proposal for removing the stigma by shutting away from the bureaucratic participation procedure and towards the administrative procedure of extending and broadening the categories whereby hundreds can be released at the stroke of a pen.

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3 ' . ' 'v. ' A Td 030- 319.714

_RESPONSE TO THE UNITED STATES REACTION REGARDING THE RELEASE 02'
gPOLITICAL PRISONERS i

g .
The Government is confident_ that the criteria laid down
by t5 .3 Unites States Government can be met. A;l the ANC
related prisoners who could lhave: claimed .political
sEaEus: in the sense 9f being Sgld for political beliefsv
dr b ing' detained withou& -trial who have . ither'
individually. or through theig- organi zations committea
themselves toA peacefui solutighs. and development have
i _ alreaay been releasea. As'a matter of fagt'thg stat
?:esident has been most reasndable in releasing also

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pie gelling outside the Uniked State's definition of
political prisoners.
What now remains are those priso ers who haVe Abeen
.convicted by a cdurt of' laW' of se:ioug common law
.05522225 such.;\$ murder, robbery And aggravated-assgjl5
I L-d who cannot be summa-ily released without consider mg
I carefully, on an individual basis, the effects of 'such
i . release upon the security of.the community.
a . Some organizations such as the Human Rights Commission
i claim politicdl status as of :ight aor

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even these-
people. his is disPutca. Thus for instance the Human
Richts Commission; hag -pr0vidc the bopartmknt ofu
, Correctional 'Services with a list- of 1 292 names. of

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people whothhay hava.claimod to be poli ical prisoners.
An analySis 65 thgaa,name& r&veal.tha following:
26 nhmes On thg list are duplications .'
343 hamas canh t be traced in the official racordd 'o:
tho Department of Cp:&&&ticnal S&rvicea, 133 Of
which' obv: usly are persons w.: have been t:ied in
courts of neighbouring states.
572 names are those c; priona;s whd hgve-alreaay bean
rel-aaed - some as-fn: back :3 198'.
The remaining 351 lamas on the list which ccrrespond
with cfficial records re 5t;ll bging 423"L
. 4- to th6 graVity of
. ' .' the offences Hinvolved s'ch as m" dar by .neckLace,
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I &ulpable hcmidida, robbagy sic. These afa clearly not
pclitical prisopers either in the American context or
the context of the Pretcria Minuta.
ISSUED BY Tm: MINISTRY or JUSTICE mm or comcmcnm- smvzcxs
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WERKGROEP KAlRos
- Khanme NbUWer
'iCAPE TOWN - - ' 9 am 19
3512 HG Utrecht
Tel. 030-319714 f

FROM: HUMAN RIGHTS COMMISSION Telephone 011-403 4450/1

P O Box 32723. Braamfontein Fax : 011-389 1422

2017 Johannesburg

DATE: 19 June 1991 No 01 Pages

(Inc cover sheet)

TO FAX NO:

ATTENTION:

FROM: SAFOORA SADEKI NELIA ALLENBEFIG

HUMAN RIGHTS COMMISSION

Instructions message:

URGENT 11!

UPDATE No.19

ON H R TRIKE

STATISTICS AS AT 16 JUNE 1991

prisoners :

Ecolgrona (Foputhatswana) :

started 1 hr - 5 days 23

started 17th . 3 days 44

started 18m - 1 day) 1

UBOTOTAL 66

Awaltin -Trlalis

Elepkloofz

(started 24th May . 27 days) 1

TOTAL, gig

Note: These statistics are correct at the time of publication to the best of our knowledge.

TO JOIN THE 68 ON THE 24 JUNE 1991.

WERKGRQEP MMOS

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13512 HG. Utrecht

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COMMENT ON STATISTICS

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It was reported that Elias Shongwe has suspended his hunger strike. However, George Mbanlane is still on hunger strike and enters his 27th day.

CONDITIONS OF HUNGER STRIKERS

Roolgrond (Bophuthatswana)

It was reported that some privileges, as listed below, were taken away from the hunger strikers

1. The prisoners are no longer allowed to move freely within the prison premises. They are

kept inside their cells all day, some in isolation cells.

2. Visitation rights have been removed.

3. There is no hot water available in the cells.

The hunger strikers were not visited by any medical doctor on the 18 June 1991.

Hunger strikers in the "C Section" have complained that Dr Menyapelo, the district surgeon,

had told them when visiting on the 17th June that he could not treat them because they were

on hunger strike.

OTHER

Attached is a letter sent by the Bophuthatswana prisoners to President De Klerk. This has been typed for your convenience.

Bop Political Prisoners

Private 8a X 2028

MMAEAT O

8681

16 June 1991

The State President

Private 8a X193

CAPE TOWN

8000

Your Excellency,

We are the political prisoners at the above mentioned address and we are all here (or fighting

apartheid. Our charges vary from high treason through public violence and Internal Security

Acts. We would like to draw your attention to our plight, and our plight is being in prison even

after the Pretoria Summit agreement. The Pretoria angle is a forerunner at peace and recon-

-

cillation.

The Minister of Justice. Mr Koble Coelsee says that those who are not released were found guilty and sentenced of crimes such as rape and murder. In our case. It is very clear we do not fall in that category. our crimes are clearly political in nature as mentioned above. Most of us were involved in the 10 Feb 1988 abortive coup, we were arrested by the SADF as the Mangope Government had been toppled.

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We-are one hundred and sixty five (1 66) in all

We thank you in anticipation.

We are the Bop Political Prisoners Comm

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Johannesburg
South Africa
MMUEGQSUGDN Phone: 1025031315922

11 JUNE 1991

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g Braamtonteln 2017

HHC SPECIAL BRIEFING 38-1

POLITICAL PRISONER RELEASE

Introduction

11 13 now almost a year-end-e-hall since State President De Klerk raised the hopes of 800

At-

tica that it might be a matter of only a few months hereto the repetitive obstacles to ne-

gotia-

tions would be removed. amongst them the release of all political prisoners. Those hopes

were further consolidated by the accords of Groote Schuur and Pretoria. which amongst other

re-

matters. reached agreement on the principles of detaining political offences and on a time

table

for releasing political prisoners. But now, thirteen months after Groote Schuur. ten months

after Pretoria. and six weeks after the expiry of the release deadline. the hopes have gone

sour. The unresolved issue of the release of political prisoners still stands as an unfavourable

premise of the Government. Further than that. the issue stands as one of the major factors

In

the ANC's decision to suspend talks. and as such it represents a major impediment in the

way

of progress towards a negotiated settlement in South Africa.

The purpose of this briefing is to look at the progress to date with the release of political

prisoners. to examine the reasons why the process has bogged down. and to make recommendations for the final resolution of the issue.

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Kromme Nieuwegracht 10

3512 HG Utrecht

Tel. 030-319.714

Committee: Meneer Budmder. DLMx Coleman. Mr. Chris Dlamini.

Mums Lanna. Mredoyoe Mamtheemtolim MIL FLSmangellsoMkhutsrme.

Release of Political Prisoners to-date

Official figures for the release of political prisoners and with which the HRC is in broad agree-

ment, are as follows

1

For the 14 months period 21/2/90 - 31/8/91 310

For the month of April 1991 623

For the month of May 1991 80

TOTAL 1013

Thus during the initial 14 month period the average rate of release was 5 a week. This rate

shot up to 145 a week during the critical month of April and has slumped back to 18 a week

during May. The remarkable activity during April as the deadline loomed is an indication

of the

arbitrary nature of the small's pace of the release process during the preceding months.

and of

the effect at present on sweeping aside the bureaucratic blockage. The blockage showed

strong signs of returning during May.

Political Prisoners Still Remaining

Verloren Government authorities have made statements from time to time about the numbers of

political prisoners still being held. statements which are patently false. misleading, or

misleading.

For example. Justice Minister Coetsee said on the 1 November 1990 that there were then 250

to 300 who were clearly political prisoners and that the figure could rise to 600 with a

"wide liberal

interpretation' (Business Day. 2/11/90). Since his statement. the authorities have.

by itself

own count. already released a further 850 political prisoners.

Then again. State President De Klerk was reported as having stated in London on 23 April

1991 that the number still to be released was "well below 2001 (Sowetan 24/4/91). Since t

hat

date. oftlclally ann eunced releases have totalled 4881

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These glaring contradictions have recently been compounded by Wntster Coetsee's statement 0129 May 1991 to the effect that the only prisoners left were those who had committed serious

crimes of murder. (ape. robbery and serious bodily harm (Citizen. 305391). The choice of words in this part of the statement. and also in other parts referring to applicants for indemnity

who were convicted for then, housebreaking, rape, bestiality, etc., is extremely unfortunate in

that it has the effect of throwing up a smokescreen by which legitimate political prisoners are

depicted as end criminalised.. Equally confusing and more fundamental is the fact that the

statement of violence does get disquieting a particular action from being political, 8 (act which was

clearly acknowledged and agreed to, by both parties to the Pretoria Minute. Paragraph 6.5.2.(c) of the Political Offences Working Group Report accepted in the Pretoria Minute. reads

as follows :e

"In certain circumstances a 'common' crime (ie. as distinct from a 'purely' political offence).

even a serious one such as murder, may be regarded as a political offence".

It goes on to list determining factors, including motive, context, political objective, legal and technical.

Legal nature, target and whether under instruction.

Yet Minister Coetsee and NS associates seem not to heed these agreed principles. while in

numerous examples of political prisoners telling clearly within these agreed criteria continue to

be held. Nor is this consistent, since there are already numerous cases of prisoners having been released where the convictions were for offences involving violence. In his own Information

document issued on the 2 May 1991. Mr Coetsee refers to at least 16 people who committed murder during unrest as having been released in terms of the Pretoria agreement (Statement

3f5!91). Furthermore there are numerous examples of the release of prisoners convicted of violent offences where their co-accused are still being held. In summary, the authorities appear

to be acting in a confused, inconsistent and ad hoc manner which has somehow lost connection.

lecl with the letter and the spirit of the Pretoria Minute.

Urging of Current Political Prisoners

1 The Human Rights Commission presently has on record 972 identified prisoners (categorized by us as political prisoners in terms of the Pretoria Minute, who were still being incarcerated as at

the 3 June 1991. These lists are available for inspection by anyone who is interested.

The HBO together with the Lawyers for Human Rights and Political Prisoner Release Programme has (or some time been engaged in an auditing exercise with the Department of Correctional

Services (008) to: the purpose of agreeing candidates for release in terms of the

Pretoria Minute. To this end, lists have been exchanged and a process of verification and

investigation allowed.

Of the above 972 prisoners, the Audit Committee has so far agreed the following numbers as

falling under the Department of Correctional Services own categories :.

Security Prisoners 24

Security-Related Prisoners 80

Unrest-Related Prisoners 61

Death Row Prisoners 19

TOTAL "Audited" Prisoners 184

The names of all the above "audited" prisoners are available on separate lists,

The Batanco of 688 prisoners identified by HRC breaks down as follows. in terms of the audit

"ORDINARY CRIMINALS" 58

(Provisionally rejected by 008 as

candidates, pending availability of

(Luther information)

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UNNAMED PRISONERS 79

(Mostly those who were minors at time of arrest, and could not be named; still being Investigated)

UNTRACED PRISONERS 20

(Names on HBO List not yet traced in 008 records: still being Investigated)

.FIVECENT ADDITIONS TO HRC LIST ' 208

(Not yet audited)

HOMELAND PRISONERS ms

The test mentioned category deserves specific attention. Most of these prisoners were con-

vinced of treason in the attempted coup in Bophuthatswana a couple of years ago. The South

African Government disclaimed responsibility for the incitement or release. However, the

so-called Independent state of Bophuthatswana, a 'country' composed of seven discrete pieces of land scattered over 3 different provinces of South Africa. Is clearly the main

factor of apartheid government which cannot evade ultimate responsibility. Furthermore it

the South African Government pleads that it cannot interfere in the affairs of an 'Independent

state'. It should be recalled that it was precisely their interference which caused the coup at-

tempt to fail, and which led to the arrest and conviction of these prisoners.

Finally mention must be made that beyond the prisoners identified by HRC, there are certainly

those who qualify as political prisoners but whose names have not yet come to light for various

reasons, such as conviction in out-of-the-way country courts during the course of the unrest of

the Emergency years, without legal representation or notwithstanding possibilities. This group

could add several hundred to the total, and the factor will only become clearer with the passage

of time. However, a question mark has already been raised over any definitive number, through

an "amnesty" announced by Minister Coetsee on 25 April 1991 reducing the sentences for a wide range of "non-political" offences by six months. This amnesty, added to a similar reduction

of sentence in December 1990, resulted in the release of several thousand prisoners in

early May and amongst them will have been a significant but indeterminate number of prisoners sentenced for public violence, arson, malicious damage to property, etc., within the

political unrest context of the last 5 years.

The Release Process

The manner of release so far has been two-fold:

- Administratively, accounting for about 60% of all releases

- through application, accounting for about 40% of all releases

ADMINISTRATIVE RELEASE has come about through the creation of categories and through the granting of remission of sentence. The earliest category was created in State President De

Klerk's speech to Parliament on 2 February 1990, in which he announced that those serving

sentences merely for membership at a previously banned organisation, would be released.

These and other categories were confirmed in the Groote Schuur and Preterm Minutes and the

latest category to be announced by Minister Coetsee on 24 April 1991 provides for the administrative

release of those prisoners sentenced for a range of politically motivated offences not

resulting in death or injury. Including treason, Internal Security Act violations (eg. illegal gathering-

ings), possession of arms, etc. Remission of sentence, never below granted to political prisoners, has been allowed on the

best of one third of sentence plus a year.

Whammy KAIROS

Kremme

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E APPLICATION RELEASE Is a mechanism of release unilaterally created by the government in
g Government Gazettes of the 7th and 9th November 1990 (reproduced in pages 27 to 31 at A
Way Forward

HftC Special report SFMO). based on the agreement in the Pretoria Minute that convictions
It is abundantly clear that the present process of application is unworkable and undesirable.
It

Still falling outside of categories would have to be treated on a case by case basis. Since
the intro- will be in the interests at all, not least the government, if the present log
jam can be broken

: ducted on the application process In early November 1990. It has grown into a bureaucratic
The simple answer is of course the creation of more and wider categories for administrative
review

:E monster that threatens to swallow up its creators By the end of March 1991. the number
of release. These could include simple membership at previously banned liberation organ-
isations-

:1 applicants for release stood at 830. but as the mechanism became more widely known in
the towns. regardless of the act for which convicted. provided the organisation vouches for
or the

J prisons through the efforts of lawyers. lawyers groups. the International Commission on
the prisoners

Red Cross and the Department of Correctional Services itself. the applications began pouring
in They could include detaining the circumstances of unrest in which the 'offence' took place.
such

in end at the end of May stood at 566 II and are doubtless still existing. as during boycotts.
protest marches. political rallies. strikes. stayaways and similar events

On the one hand, it is probable that many such applications do not have any valid political
or political events. A little creative thinking could quickly release hundreds of political
prisoners

bests. but on the other hand there are a number of genuine political prisoners who refuse
to sign by the stroke of a pen and a Government Gazette or two.

submit themselves to the application process on grounds of rejecting the legitimacy at their
side Beyond that, there will (there must be a hard core of borderline cases. Such cases should
be

captors; for example. 74 of the 284 'audited' prisoners refused to previously have not been
b. addressed, not by a Department of Justice communicating secretly with a government-
; limited application. appointed consulting body. itself sworn to secrecy; but by an independent
arbitration body or a

The large number of applications is placing an impossible load on the machinery created
to body in which there is equal representation. and with powers of decision.

process them. Figures released by Minister Coetsee show that by the end of May 1991. close
to

on 1500 applications had been dealt with by authorising the release of 479 and by releasing
the

1 balance. A further 550 are before the government-created consulting bodies (Indemnity Com-
. The Human Rights Commission urges the Government to give serious consideration to these
: matters) for their recommendation About 3600 are in earlier stages of processing with
in the weeks without delay in the interests of all.

Department of Justice and many of these will in due course also fall on the desks of the
con-

: sulting bodies.

:1 It is impossible to estimate how long it will take to move this bureaucratic mountain.
but it is

hardly likely to be cleaved away in many months. in the meantime. the frustration of the
political-

cal prisoners mounts. and progress towards removal of obstacles to negotiations is thwarted.
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