

1m0/p15p154/1

AFRICAN NATIONAL CONGRESS
NATIONAL EXECUTIVE COMMITTEE'S RESPONSE TO THE
MOTSUENYANE COMMISSION'S REPORT

I. INTRODUCTION

The National Executive Committee of the African National Congress welcomes the release on Monday, 23rd August 1993 of the Motsuenyane Commission Report on the treatment of detainees in some of the ANC camps.

We congratulate the members of the Commission - Dr S M Motsuenyane, the Hon. Margaret Burnham and Advocate D M Zamchiya - for the thorough way in which the evidence was gathered and the proceedings conducted, and for highlighting principles they endorsed in their findings.

It is a significant moment in opening a national discourse on the human rights violations of the past. The ANC therefore has taken a courageous first step in this direction. Recognising that abuses did occur, representing a breakdown in the difficult chains of command and communication that can occur under siege conditions, we express our profound sense of regret, collective moral responsibility and apology to all who suffered as a consequence.

Violations of human rights must always be condemned, no matter by whom, against whom. It is especially painful for us that the heroism of our combatants in exile should be tarnished by such unacceptable and tragic episodes as are revealed in the report. Our movement has always held that the standard by which we judge ourselves has never been the same as the apartheid regime's. We therefore appreciate the fact that the Commission has judged us by the highest standards, according to internationally accepted norms.

We accordingly endorse the four central implications of the investigation as outlined in the Report:

- * We accept its affirmations of standards of accountability for human rights promotion in the future;
- * We support the underlying principles of investigation, acknowledgement and reparations for abuses of the past;
- * We accept its findings that periodically abuses did occur within the ANC camps, but acknowledge that it was not established that there was any systematic policy of abuse. Quite to the contrary, as the Commission illustrates, the ANC made a consistent effort to establish mechanisms of accountability and oversight, as evidenced by the very appointment of the investigative Commission itself;
- * We accept the commitment to fostering a human rights culture and a spirit of reconciliation for the future that a public inquiry seeks to achieve.

One of the key ingredients to forging a human rights culture that entrenches norms of universally accepted standards of human rights is accountability. The accountability of leaders to these standards is the bridge between the legitimacy of a new rule of law and producing a climate of accountability.

The ANC made the critical first and historic step to establishing this culture of accountability when we subjected ourselves to external and objective scrutiny of our practices of the past. As the Commission has stated:

"It would be wrong to ignore the historic significance of the investigation the ANC,

through this Commission has undertaken, a first in the annals of human rights enforcement. By its commitment to this inquiry, the ANC seeks to breathe life into the lofty principles proclaimed in the Freedom Charter - to render fundamental human rights the Golden Rule, to be applied in good times and bad, peace and war."

II. THE ROLE OF SECURITY

Reading the Motsuenyane Report has been painful for all of us, and for none more than members of the ANC security. We wish to put on record the outstanding work our security personnel did in protecting our leadership and organisation under extremely difficult conditions. They were defending, not an evil system, but a movement dedicated to democracy. Pretoria made no bones about their all-out war against us. They tried to destroy us with bombs, bullets and poison. They infiltrated large numbers of persons into our ranks with a mission to sow confusion and attack our leaders.

The fact that despite losing many outstanding comrades to assassination, we managed to preserve our core leadership, is in no small measure due to the vigilance and effectiveness of our security. It is to their credit that, far from covering up or attempting to frustrate the work of the Motsuenyane Commission, the Security Department co-operated fully with it. The sad story unveiled in the pages of the Commission's Report represents just a fraction of their role in difficult years.

We are confident that the Department will in future adhere strictly to the principles of justice, humanity and accountability set out in our policy document **Ready to Govern** of May 1992, principles which must regulate the philosophy of a future security system in a democratic South Africa.

III. STEPS TAKEN BY THE ANC

In addition to establishing that abuses occurred, the Report shows that the ANC took a series of concrete steps to prevent repetition. These were as follows:

1. The appointment of the Stuart Commission in 1984 when the first allegations of abuses were raised regarding the mutiny in the camps.
2. The Code of Conduct agreed upon at the Kabwe Conference within a year after the Stuart Commission's recommendations "showed that the leadership of the ANC was gravely concerned with the need to correct the identified wrongs once these had been properly investigated and thrown up".
3. The system of justice represented by the structures in the Code of Conduct "was unique among liberation movements in Southern Africa".
4. Some aspects of the system took long to produce benefits "because of the war context and the limited human and material resources available".
5. "The system represented a large step forward in respect of human rights protection within the ANC" because the insistence on proper legal procedures including the appropriate burden of proof meant that arbitrary arrests should have been reduced in the knowledge that improperly prepared cases would be thrown out of the trial. Further, many people were actually acquitted and released. The Vosloorus Six case, 1987, in connection with which seven detainees were released by the Tribunal in Quadro in 1988, is an example. All

this had the effect of increasing the credibility of the system.

6. The Commission was told of only one case in which the Tribunal recommended capital punishment. The Tribunal, in principle, did not favour the death penalty which it did not consider effective as a deterrent; and even in this case, the penalty was not confirmed because the NEC, and OR Tambo himself, were against this form of punishment.
7. When in 1987 new allegations of abuses occurred, the then President of the ANC, O R Tambo visited Quadro camp for an investigation and the leadership of the Security Department was replaced. At that time, the ANC re-addressed itself on the issue of breaches in conduct and made a commitment to eradicating any incidences of abuses. A new office, the Provisional Directorate of Intelligence and Security was created to shift responsibility away from the Security Department in the tense years of 1986 - 1987.
8. A specific Commission was set up in 1989 to investigate allegations regarding the particular case of Thami Zulu.
9. The new office in turn made recommendations concerning the changes to improve oversight and accountability structures, which led eventually to the establishment of the Skweyiya Commission, the precursor to the current Motsuenyane Commission.

The Motsuenyane Commission has not found that there has ever been a **pattern** of systematic abuses of rights or a **policy** of violations. On the contrary, the Report documents that the ANC has made serious efforts to establish a rigorous chain of command and authority to preclude abuses; mechanisms have been established for oversight and enforcement. Finally, the ANC has made real efforts to facilitate investigations into our practices from the Motsuenyane Commission to those of the International Commission of Justice, Amnesty International and others.

IV. THE NEED FOR A TRUTH COMMISSION

The violations referred to in the Report can in no way be equated to the activities of the apartheid state, which were gross, systematic and a product of a policy which transgressed not only South African law but virtually the whole range of fundamental rights protected in international law. It must always be remembered that the international community has condemned the practices of apartheid as a crime against humanity, akin to slavery, extending far beyond any notion of single acts taken against individuals. Apartheid's violations were based on a denial of national rights where torture, ill-treatment and violence were instruments of state policy.

In recent years, when there have been investigations into the abuse of rights that have happened in other national liberation struggles, like Chile or El Salvador, violations committed by the liberation forces have comprised only a minute proportion of the number of total transgressions by illegitimate and authoritarian regimes. There is no reason to believe that the situation in South Africa is any different.

Only a broad national Truth Commission will establish whether this is in fact true. We further maintain that in no way can the lapses in authority and control that did occur in the ANC camps be compared to the systematic pattern of human degradation and suffering that apartheid consciously created. There was never a deliberate and preconceived policy of abuse in the ANC. In fact, conscious efforts were made to ensure protection even under the difficult circumstances of responding to South African government infiltration into our ranks, assassination of our leaders, and the daily torture, harassment and dislocation of our supporters.

The ANC has consistently called for a full investigation of the abuses that have occurred under the apartheid system. The Government has never accepted collective or individual responsibility for the abuses of its regime. When called upon to agree to acknowledge the crimes of the past, its response was to pass the Further Indemnity Act which exonerated itself and the various components of the state for any responsibility for the egregious violations of the range of human rights that was apartheid. In this way, it sought to expunge from the record systematic murder, torture, dirty tricks of every vile sort and the most gross violations of the sovereignty of the neighbouring states.

Our position, then and now, is that the regime does not have the moral authority nor the right to condone unilateral wrong-doing by its agents, officers or superiors. Any policy on reparations and amnesty must be made as part of negotiations and democratic consultation. Otherwise, any possibility of establishing the essential goal of accountability will be destroyed.

While the ANC is taking the first historic step towards opening up to public scrutiny the abuses of the past with the goal of creating a culture of human rights for a post-apartheid South Africa, the Government has failed to fulfil even the most rudimentary premisses upon which its own fundamentally flawed Indemnity Act is based:

- * It has failed to investigate thoroughly allegations of abuses, it has chosen to isolate only a select few;
- * It has not made available information on security force activity or collusion into activities that have resulted in torture, disappearances, detentions without trial etc.;
- * In fact, there is substantial evidence to suggest that the government has consciously destroyed materials necessary for a full disclosure of the past;
- * No effort at reparations has been made by the government to date.

Abuses continue to date. Since February 1990, over 200 deaths have occurred in detention. Hit squads, assassinations and security force collusion into covert operations and para-military activity continue to wreck havoc in our communities.

While the ANC seeks to establish a framework of accountability, the Government, through its Indemnity Act has established a norm of immunity for all actions of violations by members of the police and security forces. The Government, simultaneously, has refused to come to a negotiated agreement on a policy of acknowledgement and reparations.

We therefore call on the Government to agree, following discussions with the ANC and other political and non-governmental organisations, to set up, without delay, a Commission of Enquiry or Truth Commission into all violations of human rights since 1948.

V. ENSURING THAT JUSTICE IS DONE

The NEC has devoted particular attention to what steps should be taken at this stage to ensure that justice and human rights will best be served in the light of the Commission's recommendations. Our decision is motivated by the following considerations:

1. We have a duty as a movement at all times to defend and advance the spirit of freedom, justice and respect for human rights contained in the Freedom Charter.

2. The most important factor in looking at past abuses is that the truth comes out and violations of human rights are acknowledged. This has been accomplished by the Skweyiya and the Motsuenyane Commissions. In the case of the latter, proceedings were in public; the press reported widely, and the hearings were attended by representatives of Amnesty International, Lawyers for Human Rights and other organisations.
3. When one considers the thousands of torturers, assassins and brutal guards of the apartheid regime who are going scot-free and even receiving generous pensions, one's sense of justice is not served by punishing a few persons from one side only. Respect for human rights requires equal treatment for all in similar circumstances.
4. Any response on our part must be based on principles of equity and fairness to all.
5. The question of reparations must also be viewed in an across-the-broad manner. Thousands and thousands of persons were killed and maimed in the course of the struggle against apartheid. A huge number of victims are today destitute, without anyone accepting responsibility for them. To single out one group of victims for compensation would not strengthen the feeling in the community that justice was being done. We do not feel that the families of those thousands who were massacred would regard it as just that compensation should go to some and not to others.

VI. NEC RESPONSE TO THE COMMISSION'S RECOMMENDATIONS

The Commission has emphasised that it worked on the basis that its mandate was not to carry out "... a general audit report of the overall performance of the ANC while it was in exile" but to advise simply in relation to its terms of reference.

A general audit, in our view, would have established the tradition of accountability in the movement, the great care that the ANC took at considerable expense in time, energy and resources, while it was leading the struggle against apartheid and under harsh and burdensome conditions, to look after the welfare of its members and those for whom it was responsible.

The ANC accepts the basic principle of accountability as identified in the Report and responds in the following way to the recommendations of the Commission:

1. The African National Congress, through its National Executive Committee, accepts collective responsibility for the proven violations of human rights in a community of its camps and centres. It expresses its profound regret and apology for each and every such transgression.

At various times, the ANC ran eleven camps in Angola, as well as several camps in other Front Line States. The Commission refers to abuses in the main at one detention centre, namely Quadro in Angola.

2. The Code of Conduct for ANC members was adopted in 1985 and is now superseded by the 1992 Constitution of the ANC with its disciplinary rules and procedures and supplemented by on-going evaluation procedures. The National Executive Committee will soon be adopting a totally new Code of Conduct for its members and officials which will, for the first time in South Africa, provide guarantees of openness and machinery for enforcement. We will expect each member and every official to know and abide

by these documents.

3. It is the view of the ANC that the acceptance by the ANC of collective responsibility for acts performed by its agents and personnel is a historic departure from the usual refusal of governmental and political organisations to make any such admission.

Press reporting on the Commission's findings has focused extensively on the names of two members of the our Committee, Jacob Zuma and Joe Modise. We must point out that neither person was implicated by the Report in any way concerning the gross violations that the Report has referred to, nor was there anything in the Report to indicate in any way that they were linked directly or indirectly with any form of torture or ill-treatment.

4. We regard the Skweyiya and Motsuenyane Commission Reports as a first step in a process of national disclosure of all violations of human rights from all sides. We accordingly call for an establishment of a Commission of Truth, similar to bodies established in a number of countries in recent years to deal with the past. The purpose of such a Commission will be to investigate all the violations of human rights - killings, disappearances, torture as ill-treatment - from all quarters. This will not be a Nuremberg Tribunal. Its role will be to identify all abuses of human rights and their perpetrators, to propose a future code of conduct for all public servants, to ensure appropriate compensation to the victims and to work out the best basis for reconciliation. In addition, it will provide the moral basis for justice and for preventing any repetition of abuses in the future.

5. We feel that the same approach should be adopted for compensating victims of abuse. In line with the ANC's demand for a Truth Commission to be established, the issue of compensation must also be settled across the board, as part of a policy dealing with all breaches of human rights. Such a co-ordinated and national approach can only be carried out by a legitimate government with its resources, following the identification of the truth. Partial punishment or partial reparations is unfair to perpetrators and victims alike.

6. There is a category of ANC persons who are unaccounted for, who have either died or disappeared on missions inside the country. However only the Government has the information to explain their whereabouts. In relation to other missing persons, the ANC, two years ago, established a Missing Persons Committee which is continuing its work. It has reported to families of the missing and is continuing its counselling and welfare activities with the families. There are a few instances which we are still investigating.

7. Our doors will be open to any former members who wish to re-integrate themselves in the movement, in accordance with our normal membership provisions.

8. The Commission, in the interest of the " ... principles of accountability and transparency" to which it says the ANC is committed, recommends that the ANC should make this report public. This we have done.

We are grateful to the Commission for assisting us in the process of disclosure, a sure basis for an open post-apartheid society. We therefore reiterate our full and unconditional commitment to the norms of a democratic society, based on respect for human rights.

29th August 1993.