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ANC STATEMENT ON THE UNILATERAL RESTRUCTURING OF THE  
ADMINISTRATION OF JUSTICE BY THE SOUTH AFRICAN GOVERNMENT

The Government has embarked on a major scheme of restructuring the administration of justice by recently introducing new measures which will seriously affect the central pillars of the court system in our country. The method used is to establish 'advisory' or executive bodies which will forestall major changes which our people desire and which are vital for the proper administration of justice.'

This is being done through the Magistrate's Bill of 1993, which is now at the committee stage in the Tricameral Parliament. In addition it appears that legislation has already been drafted for a Judicial Commission which will change the present system for the appointment of judges and will dramatically affect the debate concerning how all judges (including the possible Constitutional Court) will be appointed.

Magistrates at present are civil servants. Effectively, they are appointed by the Minister for Justice, may be suspended or dismissed by the Minister and other provisions relating to the civil service apply to magistrates.

The new Bill sets up a Commission on Magistrates made up of lawyers. A judge, an official of the Department of Justice, 6 magistrates, one representative of attorneys and one of 'advocates' and the director of the magistrates training college' will make up, this important body.

The primary object of the Commission is to advise the Minister of Justice. In reality, the Commission will act as a filter to ensure that new criteria are not easily developed by a new democratic

State. In particular, Section 4 of the Bill gives it power to ensure that the appointment, promotion, transfer or discharge of or disciplinary steps' against magistrates take place without favour or prejudice' and that laws etc, are applied uniformly and correctly'.

There has been intense debate in democratic structures about the future of the magistracy. This Bill is an attempt at

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unilateral restructuring by putting certain reforms beyond the reach of a democratic parliament and government. This is not to imply that magistrates should continue to be treated as civil servants or that the present situation should not be changed. But radical alteration in the status and authority of magistrates requires large-scale public debate and discussion. There has been no consultation with extra-parliamentary forces over this Bill. On the contrary, only the judges, magistrates and the establishment were consulted. This is disgraceful because the Minister must have known that this initiative would be controversial.

The composition of the proposed Commission is totally unacceptable. Nearly every workshop, seminar or conference organised by democratic forces has insisted that judges (leave alone magistrates) should not be appointed, supervised or assessed by a closed system of lawyers only. It creates a cast iron guarantee for the creations of apartheid.

If this Bill is passed, the government will use this as a paradigm for a Judicial Commission for the appointment, a promotion and disciplining of higher judges, including the Constitutional Court. If this were to happen this session, the negotiations for a Constitutional Court would be pre-empted by unilateral legislative change.

It is vital that the judicial and legal system enjoys a high degree of legitimacy. Unilateral actions by the Tricameral legislature will ensure that for the vast majority of our people, the area which affects us most, the magistracy, will remain tainted. There are unsuitable magistrates whose continued employment will not be countenanced by our people. Magistrates with a poor human rights record and insensitivity to our people will have to have their positions reviewed.

We also need to work out openly the criteria for the appointment of magistrates so that this important area begins to reflect the composition of our society. The Commission, meeting behind closed doors, and effectively comprising of white lawyers however distinguished cannot be sensitive to the national needs. The introduction of this Bill simply confirms this.

The ANC view is that the present Bill should be withdrawn and the proposed Judicial Commission idea be rejected. The present Bill cannot be amended because it is deeply flawed in principle. Issued

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