

A comment on the F.W. De Klerk address to Parliament on 2/2/90.

Pretoria President, F.W. De Klerk, at the ceremony to mark the opening of parliament in South Africa on the second of February 1990, announced the unbanning of the ANC and the SACP, amongst other organisations. He further declared that the unconditional lifting of the ban on these organisations places everybody in a position to pursue politics freely (see pages 9 and 13 of the address). Of particular importance is the fact that, according to the Government Gazette of the 3rd. February, the lifting of the ban on the ANC includes Umkhonto Wesizwe.

The unbanning of the ANC and the SACP is a victory for the struggling masses of our people who have campaigned incessantly for the decriminalisation of political activity; it will surely go quite a long way towards creating a climate conducive to a negotiated settlement in South Africa. Through struggle, we and the masses of our people have won more political space for ourselves.

De Klerk was, of course, responding to a *fait accompli*; the ANC and the SACP flags were being flaunted openly by our people as though these two organisations were not illegal, long before the events of last Friday. Like most of the reforms Pretoria has had to effect in the past, this major reform was just a matter of formally legalising what had already taken place. The regime is trapped in a crisis characterised by an increasingly assertive black majority which is defying *en masse* all the laws of apartheid, and an increasingly uncertain white minority regime which has lost the will to enforce a system which is unworkable and which has won the regime tremendous opprobrium internationally. In a sense this reform was not totally unexpected.

Political Activity.

It is to be noted, however, that while De Klerk claims that by means of this reform he has put all organisations on an equal footing, the fact of the matter is that he has not decriminalised political activity at all; he has merely unbanned erstwhile banned organisations and lifted restrictions on those restricted under the State of Emergency.

The laws and emergency regulations under which they were banned and restricted are still intact. Under Section 4(1) Of the Internal Security Act of 1982, for instance, all these organisations can technically still be banned again, if the Minister of Law and Order is "satisfied" that they engage in activities which endanger the security of the apartheid state, or the maintenance of law and order, or that they propagate the principles or promote the aims of communism.

On page 11 of the address De Klerk confirms this and says that the unbanning of these organisations "should not be interpreted as a deviation from the Government's principles, among other things, against their economic policy and aspects of their constitutional policy."

Communism under the laws of the regime is still a crime which can be committed by anyone who either advocates an "object" of communism directly or who does so indirectly by performing an act which is likely to further such an "object." This is an explicitly ideological offence criminalising the pursuit or support of a defined set of political beliefs.

If one recalls that these organisations were banned, not for violence as the regime seems to suggest (see pages 10 to 11 where De Klerk gives his reasons for unbanning them), but for their policies and perspectives of the future of our country, which they have not abandoned, it is clear that they will continue living under the shadow of the Sword of Damocles, despite the lifting of the ban on them.

In a nutshell, the ruling Nationalist Party still arrogates to itself the right to ban organisations (and individuals), not so much for what they do as for what the Minister of Law and Order says they do. At the same time there is no law that threatens to criminalise membership and objectives of the Nationalist Party itself.

Under laws such as the Gatherings and Demonstrations Act, No. 52 of 1973, Demonstrations In or Near Court Buildings Prohibition Act, No. 71 of 1982 and the Internal Security Act, No. 74 of 1982, government officials have extensive, and in certain instances, absolute control over meetings, gatherings, processions and other forms of assembly. These legislative measures are used by the ruling Nationalist Party, itself a party to the conflict, to deny our people the freedom of assembly and give it the right to act as arbiter in its own cause. Instead of scrapping these and other such laws, the apartheid regime now requires protestors to acquire official permission for protest, quite apart from the provocation this entails, the permission is to be sought from unsympathetic and ill-informed magistrates who are advised naturally by securocrats. If the protests and marches are held without such permission they are illegal and the security organs of the state are unleashed on those involved. The ANC and the SACP will be affected by these laws if they should remain in the statute book.

Political Prisoners.

While De Klerk has undertaken to release political prisoners, it is clear that he has his own idea of what political prisoners are; he certainly does not

regard as political prisoners, those who, in the context of struggle against apartheid, committed certain "crimes".

His jails are teeming with soldiers of Umkhonto Wesizwe who will not benefit from this "reform". Those who will be released, strictu sensu, are those whose only offence was mere membership of these organisations, and such people are few and far between. In short, very few political prisoners will be released.

What is further baffling in this regard is the possibility for almost the entire leadership and cadre of the ANC and SACP to be persecuted, prosecuted and jailed for their past conduct. De Klerk says: "The lifting of the prohibition on the said organisations does not signify in the least the approval or condonation of terrorism or crimes of violence committed under their banner....." (see page 11 of the address).

Clearly it is only those members of these organisations who have never had anything to do with the activities of Umkhonto We Sizwe, mostly students and pupils at the Solomon Mahlangu Freedom College in Morogoro, who will survive this threat.

The safe return of all exiles is not gauranteed by the lifting of the ban on our organisations either. The long-standing amnesty that the apartheid regime may use is inappropriate as it covers individuals only and not organisational formations. The ANC would be ill-advised to accept this amnesty as under it the regime reserves the right to screen returnees and may subject most of us to gross humiliation and insult in the process.

Media Restrictions.

While De Klerk says that "The media emergency regulationsare abolished in their entirety", he in the same breath says that "The security emergency regulations will be amended to still make provision for effective control over visual material pertaining to scenes of unrest." (see page 10). In short, South Africa is not about to enjoy freedom of the press.

It is noteworthy that De Klerk says nothing about the more than one hundred laws that have restricted freedom of the press, like other civil rights, to the point of extinction. The South African press will still have to walk in the labyrinthine minefield of security crimes, despite this reform.

The power to ban newspapers is retained and may be exercised against newspapers the recently unbanned organisations may set up. Under Section 15 of the Internal Security Act, 74 of 1982 the Minister of Law and Order may require such organisations to deposit up to R40 000 with the Minister of Home Affairs as a gaurantee of good behaviour, should they

wish to establish their own newspapers. Unless the Minister of Law and Order directs otherwise, such deposit will be forfeited to the state if the newspapers are subsequently banned.

A newspaper may be banned, for instance, under Section 5(b) of the Internal Security Act, 74 of 1982, if it professes to be a publication for propagating the principles or promoting the spread of communism. This obviously means that the now unbanned SACP will not be able to print and publish The African Communist and Umsebenzi inside South Africa.

It still remains illegal to print or publish a newspaper in South Africa unless such newspaper or publication has been registered under the Newspapers and Imprints Registration Act, 63 of 1971.

This indeed is a real "catch-22" situation where you cannot print or publish without registration, where such registration may be conditional upon payment of a deposit of up to R40 000 as stated above and where, even after you have complied with all these requirements, you still run the risk of having your newspaper or publication banned, and of forfeiting your deposit, if what you print or publish is illegal under these laws.

Restriction of Individuals

While de Klerk says that the restrictions imposed on certain individuals under the emergency regulations are being lifted and the regulations under which such restrictions were imposed are being abolished, the apartheid state still retains the right to ban and restrict individuals under the Internal Security Act, No. 74 of 1982, under which many leaders of the now unbanned organisations are still listed or banned and can therefore not be quoted. (This listing has been lifted in respect of a number of individuals under a Government Gazette issued subsequent to the unbanning of the organisations. However, the law allowing for listing has not been abolished and can still be used if the regime deems it necessary.)

De Klerk further says that the period of detention under the Security Emergency Regulations will be limited to six months (see page 10). He is, however, silent on the issue of indefinite detention under Sections 28 and 29 of the Internal Security Act, 74 of 1982.

Section 28, an essential part of permanent apartheid security laws which may be used even in times of peace without any need for the declaration of the State of Emergency, allows the Minister of Law and Order to issue a notice for the detention of any individual for such a period as he may specify therein. There is no outer limit to the period the Minister may fix for the detention of an individual and there is no legal protection against any renewals of such detention at the pleasure of the Minister.

Section 29 allows commissioned police officers of or above the rank of lieutenant-colonel to order the detention and interrogation of people suspected of having committed or of intending to commit security crimes or of withholding from the police any information relating to the commission or intended commission of such crimes. Those detained under this section are held indefinitely.

While it may easily be argued that these matters should be addressed by the legislature (from which the over 27 million majority is constitutionally excluded), there is no indication in De Klerk's address to parliament that that will be done during this session of the Tri-cameral parliament.

The State of Emergency has not been lifted, and even though he may still lift it as he says he wishes to, he will still be armed with the whole range of laws that can be used for the same purpose.

As illustrated above, the security legislation of the Pretoria regime has imposed a permanent emergency on our country, under which individuals may be banned or detained by official decree or prosecuted for contravening vague security crimes, and under which there is provision for extensive censorship, arbitrary control of meetings and gatherings and the proscription of organisations. As a result the only true emergency piece of legislation in the apartheid statute book, the Public Safety Act, 3 of 1953, has seldom been used since it was enacted.

One such other Act is the Defence Act, 44 of 1957, which confers extensive powers which may be used and exercised without a declaration of emergency. Under this Act, for instance, the South African Defence Force (SADF) or any portion or member thereof may be mobilised to combat internal disorders, and members of the SADF used for this purpose have all the powers, duties and immunities enjoyed by or imposed upon, the South African Police (SAP) under the Police Act. These include the power to impose rigorous censorship.

Under the Public Safety Amendment Act, 67 of 1986, the Minister of Law and Order is authorised to declare areas to be unrest areas and to apply in these areas such regulations as he may deem necessary for a period of three months which is subject to renewal with the consent of the State President. This helps the the regime to obviate declaration of the emergency which has far reaching consequences for Pretoria.

Conclusion:

This short comment on the F. W De Klerk address show that the De Klerk regime of apartheid still has quite a long way to go before a climate

conducive to negotiations can be said to exist. *The significance of his address lies more in what it does not say than in what it says.*

While we have won more political space to operate within the borders of our country, the apartheid state's apparatus of repression is still intact and Pretoria threatens to use it effectively to maintain its version of law and order. The troops have not been withdrawn from the townships where they wreak havoc and intimidate people on the pretext of quelling the fires of the revolution.

The reality of the apartheid state stares us in the face. The Bantustans, the separate local government structures, the Population Registration Act, the Group Areas Act, own schools, and many other obnoxious and nefarious aspects and consequences of the system, are still living with us. There is no indication in the address that we are about to see movement on these issues either.

Clearly this is not the time for us to "walk through the open door" and take our place at the negotiating table set by Pretoria. Instead we may find ourselves walking into a trap reminiscent of the "democratization process" of the seventies in Latin America (Argentina, Brazil, Chile) where the military dictatorships ostensibly yielded to the democratic demands of the majority and yet outstanding leaders and cadres were immersed in a world of massive repression ruled by assassination squads and vigilantes.

We are left with no alternative but to intensify our all-round offensive, in the circumstances. At the same time a decision has to be made about how we are going to use the space we have won through struggle.

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