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February 22, 1991

SOUTH AFRICA IN TRANSITION

UPDATE V:
THE FEBRUARY 1, 1991
ADDRESS BY
STATE PRESIDENT F.W. DE KLERK

On February 1, 1991, South African State President F.W. de Klerk opened Parliament in Cape Town. He announced several major reforms that, if implemented, will remove key statutory underpinnings for *apartheid*. The Southern Africa Project of the Lawyers' Committee for Civil Rights under Law commends President de Klerk for these initiating these reforms, namely:

- the repeal of the Black Land Act, No. 27 of 1913, the Development Trust and Land Act, No. 18 of 1936, the Group Areas Act, No. 36 of 1966, and the Black Communities Development Act, No. 4 of 1984.
- the repeal of the Population Registration Act, No. 30 of 1950.

President de Klerk credited these initiatives with dismantling the "cornerstones" of *apartheid*. However, profound changes in the South African society have not yet occurred and will not be a consequence of President de Klerk's recently announced reforms. For example, security legislation authorizing indefinite detention without trial remains in place. Individuals can still be tried and convicted for offenses which in other countries would be considered a legitimate exercise of freedom of speech. Blacks remain disenfranchised; and many are still relegated to the

so-called independent Bantustans. Finally, the vast majority have been left so desperately poor, primarily as a result of the legislation President de Klerk now wishes repealed, that they have no financial means to purchase the property that may in the future be available to them.

This is the fifth in the Southern Africa Project's *Update* series,¹ which began at the time of President de Klerk's opening of Parliament last year. It is our aim to provide concerned audiences with information about and analysis of each of the major steps taken during the unprecedented transition currently under way in South Africa.

I. The Repeal of Discriminatory Housing and Property Ownership Statutes

President de Klerk announced the tabling of legislation to repeal the Land Acts of 1913 and 1936, the Group Areas Act and Community Development Act of 1966. The government will also table a White Paper that will describe the government's approach to future land questions. President de Klerk's speech articulated certain principles that will undoubtedly guide that policy:

Everybody has a natural need for access to land and its utilisation as living space and source of livelihood. Therefore, much more is necessary than the mere repeal of discriminatory legislation. At the same time, provision will have to be made for the protection of rights and of making landownership accessible.

On the one hand, there is a need for the protection of private property rights and security of title and tenure with due consideration for common and indigenous law. On the other, land ownership and financing for it have to be accessible to all in a non-discriminatory manner.

1. Available from the Southern Africa Project of the Lawyers' Committee for Civil Rights under Law. The previous *Updates* dealt with: the February 2, 1990 address by State President F.W. de Klerk; the partial lifting of the State of Emergency; the *Pretoria Minute* and Working Group Report of August 6, 1990; and the *Guidelines* for Amnesty and Indemnity for political offenders.

In order to fully understand these measures, one must look back to the legacy wrought by the legislation now being repealed. The two Land Acts of 1913 and 1936 set aside "scheduled"² and "released"³ areas in "reserves" amounting to only about 13 per cent of the total surface area of the country. No African⁴ was permitted to purchase or rent land outside the "reserves." Those African farmers and sharecroppers outside the "reserves" found themselves being evicted *en masse* or relegated to labor tenant status on white-owned farms. Many communities which had purchased their land prior to 1913 were designated "black spots," and forcibly removed. The Land Acts had the effect of providing white farmers with a cheap labor pool. The Acts also assisted white-owned industry: the "reserves" supported some dependents, thereby subsidizing the labor pool. At the same time the "reserves" were far too small to support the African population as a whole and forced many into migrant labor.

Under the Group Areas Act, No. 36 of 1966, certain zones were proclaimed Group Areas where only members of a particular racial group may live or own property.⁵ Group Area designation forced large numbers of Indians and so-called Coloureds out of downtown districts into outlying townships, with inadequate compensation for the property investments lost. African

2. The Black Land Act, No. 27 of 1913, states in part: "...[L]and outside the scheduled Black areas shall be subject to the following provisions... [A] Black shall not enter into any agreement or transaction for the purchase, hire or other acquisition from a person other than a Black, of any such land or of any right thereto, interest therein, or servitude thereover..." Sec. 1(1)(a).

3. Development Trust & Land Act, No. 18 of 1936, states in part: "The areas defined in the First Schedule to this Act... [are] declared a released area." Sec. 2(1). This Act further provides that the State President may by proclamation in the *Government Gazette*, declare land in a released area to be a scheduled Black area, and land in a scheduled Black area "to be excised therefrom." Sec. 3(1).

4. Since the various laws affected each race differently, the following analysis necessarily uses South African government racial nomenclature.

5. The Group Areas Act, No. 36 of 1966 empowers the State President to "declare that as from a date specified in the proclamation, the area defined by the proclamation shall be an area for occupation [and/or ownership] by members of the group so specified..." Sec. 23 (1)(a & b).

townships were governed by separate legislation, including the Black Communities Development Act, No. 4 of 1984 which is another of the statutes now being repealed.

The cumulative effect of this legislation has been vast. The Surplus People Project, an independent South African advocacy group, estimated that 3.5 million people were forcibly moved between 1960 and 1983; Stellenbosch University researchers concluded that 4 million individuals had been removed between 1951 and 1986.⁶ Attempting to force 85 per cent of the population onto 13 per cent of the land has inevitably created massive overcrowding. Taking the country as a whole (including the so-called "independent" homelands), population density on white-owned farms is 6 per square kilometer versus a similar figure of 57 on the "reserves." In the "homeland" of KwaNdebele, the population density is 193 per square kilometer; in QwaQwa, it is 298.⁷

Then there is the intolerable human stress. Large areas of the "homelands" have turned into dustbowls because of the population densities (although they rarely encompassed decent farmland to begin with). South Africa has one of the highest urbanization rates in the world, as people stream into the cities to escape the poverty of black rural areas. According to one study, approximately seven million people live in "self-erected" housing, i.e. shacks.⁸ In 1982, in the black township of Soweto, there was an estimated shortage of 35,000 houses, with the figure estimated to grow by 4,000 per year. Over the previous seven years, only 1,100 houses per year had been built. Current estimates are that there are an average of 17 to 20 people living in every four-room house in Soweto.⁹

6. E. Unterhalter, *Forced Removal: The Division, Segregation and Control of the People of South Africa* 3 (International Defence and Aid Fund, 1987).

7. F. Wilson & M. Ramphele, *Uprooting Poverty: The South African Challenge* 36-37 (1989).

8. *New York Times*, Aug. 14, 1990.

9. F. Wilson and M. Ramphele, *supra* note 7 at 125.

Those who remain in the "homelands" may take jobs in the cities, but must endure taxing daily commutes. Some of those commuting into Pretoria from KwaNdebele must catch a bus at 2:30 a.m. in order to reach work by 7 a.m. They arrive home at 10:30 p.m. and must start the process all over in a few short hours.

In spite of the massive housing needs, the vast majority of the black population is economically incapable of moving into white-owned areas even when legal restrictions are lifted. Last year, the price of an average three-bedroom house in a white Johannesburg suburb was R250,000 (about \$100,000).¹⁰ However, it is estimated that nearly two-thirds of the African population live below subsistence level, while the figure for those living in dire poverty in the "homelands" is over 80 per cent.¹¹ Meanwhile, South Africa has one of the highest inequality ratios in the world, resulting from the fact that approximately 20 per cent of the population reportedly own 75 per cent of the wealth.¹² In 1987, annual per capita income was measured at R 1,246 for Africans and R 14,880 for whites.¹³ Considering these figures, it is hard to imagine a sudden breakdown of *de facto* segregation.

In some of those areas where blacks might afford to live, the Group Areas Act had already fallen into disuse. There have been a few previously white areas with housing affordable to a small sector of the black community. In those areas, enforcement of the Group Areas Act has suffered significant erosion over several years. As whites have moved to the suburbs, some landlords rented to blacks and created informally integrated areas, such as Hillbrow in Johannesburg. As a consequence, repeal of the Act will have little discernable impact there.

10. *Weekly Mail*, April 27, 1990.

11. F. Wilson and M. Ramphele, *supra* note 7, at 17.

12. *Id.* This figure was measured in 1970.

13. South African Institute of Race Relations, *Race Relations Survey, 1988/89* at 423 (1989). The figures for so-called Coloureds was, R 3,000; and for Asians, R 4,560. *Id.*

The income earned by rural Africans is much lower than that of urban Africans. In 1983, per capita urban African disposable income was estimated at R 1,366, while for rural Africans it was R 388. F. Wilson & M. Ramphele, *supra* note 7 at 19.

Thus, little that is new will come of simply repealing these laws. It remains to be seen what the government White Paper will say, although it is unlikely that urgently needed land reform can be expected.

II. Repeal of the Population Registration Act

President de Klerk's most surprising announcement was that he is seeking repeal of the Population Registration Act, No. 30 of 1950. The government has long claimed that it was integral to the current constitutional order (since it was the statutory basis for the race-based and discriminatory voter rolls from which blacks have been excluded)¹⁴ and would therefore have to remain in force pending adoption of a new constitution. In his speech, President de Klerk stated that the Population Registration Act's repeal would be tempered by, "the adoption of temporary transitional measures towards the acceptance of a new constitution."

Whatever the content of these "temporary transitional measures," the repeal of the Population Registration Act will have little immediate political affect. Minister of Constitutional Development Gerrit Viljoen said that the repeal will only mean that "new people born and new people coming into the country" will no longer be racially classified. However, the existing

14. The Population Registration Act, No. 30 of 1950, contains such language as:

Every person whose name is included in the register shall be classified by the Director-General as a white person, a coloured person or a Black, as the case may be, and every coloured person and every Black whose name is so included shall be classified by the Director-General according the ethnic or other group to which he belongs. Sec. 5(1).

[A] person shall be deemed not to be generally accepted as a white person, unless he is so accepted in the area in which or at any place where he: (i) is ordinarily resident; (ii) is employed or carries on business; (iii) mixes socially or takes part in other activities with other members of the public, and in his association with the members of his family and any other persons with whom he lives... Sec. 2(c).

population register will be maintained pending a new constitution, and blacks will remain disenfranchised.¹⁵

III. Other Announcements

President de Klerk addressed several other issues in his speech. He renewed the government's opposition to a constituent assembly and interim government, both of which are demanded by the ANC and PAC. President de Klerk stated that, "Effective government and administration in terms of existing constitutional legislation has to continue until a new constitution has been negotiated and been implemented." This is troubling since it would mean that the current white government would retain power over the security forces and political prosecutions throughout the transition process -- essentially holding a gun to the heads of opposition negotiators. President de Klerk did endorse the ANC's call for a multi-party conference, although it is not the ANC's intention that such a conference would take the place of a constituent assembly.

For several years, a major demand of black civic organizations has been that white towns and adjacent black townships should constitute one unified municipality, governed on a non-racial democratic basis with services financed from a unified tax base. Recently, that demand has been the focus of mass demonstrations in the townships. President de Klerk's speech made a limited concession to that campaign by supporting voluntary "joint actions and joint structures" at the level of local government. Legislation will be introduced to enable local communities (white towns and black townships) on a purely voluntary basis to establish single administrations for the provision of services, hold joint meetings with authority to bind all participants, and enter into agreements to unify the municipalities in whole or in part.

Many fear that the government is intent on dissipating meaningful reform by relegating it to the discretion of communities at the local level. Granting local structures authority to desegregate at their discretion is no substitute for national laws that mandate non-discriminatory

15. *Washington Post*, Feb. 2, 1991.

treatment. While some white communities may be willing to participate in "joint actions," others will balk.

In South Africa this was demonstrated in the months following the repeal of the Separate Amenities Act last year. For example, the right-wing dominated Transvaal town of Bethal filled its public swimming pool with sand rather than allow its integration. Hospitals were opened to all races in May 1990, but a recent survey done by Witwatersrand University researchers found that many public hospitals still have racially separate wards and facilities.¹⁶ Since the integration of whites-only public schools is subject to a high threshold vote by the parents, only a handful opened up to all races following government calls last year to integrate their facilities.¹⁷ Even when parents voted to open schools they set admissions criteria guaranteed to exclude thousands of black pupils. For example, some schools stipulated a maximum age limit within two years of the average for each grade -- ignoring the disruptions and inadequate resources that have forced older black students to repeat lower grades.

Another unexpected area of reform announced by President de Klerk relates to the judicial system. He suggested that an attempt will be made to make the staffing of the courts more properly reflect the make-up of the population as a whole; one way would be to invite increased lay participation in the lower courts. President de Klerk called for several initiatives, including an expanded use of assessors (including laypeople), justices of the peace, and mediation procedures.

President de Klerk called on "militants" in "the labour or other fields" to join him in a "social accord" on economic goals and actions that would seek maximum private sector development, privatization and deregulation. To those committed to addressing the massive deprivation wrought by apartheid, he advised that "to achieve even the goal of parity in social expenditure will [take]...the next decade and beyond" and that militant action to shorten that period will only lengthen it.

16. *Times*, Dec. 21, 1990 (U.K.).

17. 33 schools in the Transvaal complied; 107 in the Cape; 64 in Natal; and 1 in the Orange Free State. *Weekly Mail*, Jan. 18, 1991.

Finally, President de Klerk reaffirmed his commitment to the protection of group rights which he now refers to as "community rights for those who desire them." It is believed that behind this new phraseology lurks the same discredited approach to guarantee a private right to engage in discriminatory activities and a white veto power over certain aspects of majority-rule.

IV. Conclusions

As yet, the good intentions expressed in President de Klerk's speech remain unfulfilled promises. The government has yet to fully meet either the requirements stipulated in the United States sanctions legislation¹⁸ or the preconditions for negotiation set by the African National Congress (ANC) in the "Harare Declaration"¹⁹ and approved by both the Organization of African Unity and the United Nations General Assembly.²⁰ Taken together, those requirements are: lift all restrictions on organizations and individuals; end the state of emergency; release all political prisoners and detainees unconditionally and without restrictions; repeal all security and discriminatory legislation; and cease all political trials and political executions. Only the first two requirements have been met so far.

President de Klerk did not even address the remaining issues. Last August, after a second round of talks with the ANC, the government announced that it would release all political prisoners by April 30, 1991.²¹ The deadline is now merely three months away, but only some two

18. The Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086 (1986).

19. Declaration of the Organization of African Unity (OAU) *Ad-hoc* Committee on Southern Africa on the Question of South Africa, adopted at Harare on 21 August 1989.

20. Declaration on *Apartheid* and its Destructive Consequences in Southern Africa, adopted by the General Assembly at its sixteenth special session, resolution S-16/1 of 14 December 1989.

21. The *Pretoria Minute* (August 6, 1990). Government Notice No. R. 2625 printed in 305 *Government Gazette* No. 12834 (Pretoria, Nov. 7, 1990). For analysis of the *Guidelines* and additional documents, see Southern Africa Project, *Updated IV: Guidelines for Amnesty and*

hundred and fifty have been released at the time of this writing, leaving an estimated 2,750 political prisoners incarcerated.²²

Despite promises last year by the government that it would "continue reviewing security legislation and its application... with the view to introducing amending legislation,"²³ the Internal Security Act, No. 74 of 1982, is still in effect. The Act empowers the South African Police to detain individuals without charge or trial.²⁴ The Act also enables the prohibition of public gatherings.²⁵

The so-called "independent" homelands continue to enforce their own security legislation. For example, 52 people are currently in detention under the Transkei Public Security Act.²⁶ Bophuthatswana detained well over five hundred people under its own State of Emergency regulations last year.²⁷

In reaction to the President's speech, the United States State Department commented that his announcements were "dramatic and far-reaching," but noted that all political prisoners had yet to be released.

Indemnity for Political Offenders (Dec. 11, 1990).

22. This is the estimate of the Human Rights Commission; the government claims that there are only 600 political prisoners and that it is therefore on target for meeting the April 30th deadline. *Washington Post*, Feb. 2, 1991.

23. *Pretoria Minute*, para. 7 (August 6, 1990). See Southern Africa Project, *Update III: The Pretoria Minute and Working Group Report of August 6, 1990* (Aug. 14, 1990).

24. As of January 23, 1991, the Human Rights Commission, an independent South African monitoring group, counted a total of 73 Internal Security Act detainees currently being held. Human Rights Commission, *Human Rights Briefing 2/91* (Jan. 23, 1991).

25. Section 46 empowers magistrates to prohibit or restrict any gathering that, in the magistrate's opinion, may endanger the public peace. Sections 48 & 49 allow the use of force, even lethal weapons, to disperse prohibited or "riotous" gatherings. The Internal Security Act, No. 74 of 1982.

26. Human Rights Commission, *Human Rights Briefing 2/91* (Jan. 23, 1991).

27. Human Rights Commission, *Human Rights Briefing 34/90* (Oct. 9, 1990).

Clearly, the continued incarceration of political prisoners is of primary concern despite President de Klerk's announced reforms. So too is the continued existence of the Internal Security Act which permits indefinite detention without charge or trial and the banning of public gatherings. Finally, the repeal of the Group Areas Act, the Land Acts, and the Population Registration Act, although laudable, will do little to redress the enduring legacy of *apartheid*.

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