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Church of the Province of Southern Africa
Department of Justice and Reconciliation
Memo to the Archbishop from Sheena

RESTRICTIONS ON FOREIGN FUNDING

It is essential that the Bishops most urgently consider this matter and take legal advice immediately..

The Promotion of Orderly Internal Politics Bill has been introduced in Parliament by the Minister of Justice. It has been referred to a Select Committee which has invited submissions to be made to it before 21st April 1988.

It is possible that the Bill will become law during the 1988 parliamentary session although some observers think it may be delayed until 1989. No one outside the government can know for sure. It may well be passed this year because the threats to cut off foreign funding have been uttered over a considerable period of time and one detects a sense of urgency on the government side.

The Bill can be divided into four parts. One part deals with promoting hostility and the banning of any flag, banner, badge, slogan etc. This does not concern us here.

Another part amends the Affected Organisations Act of 1974 to make it possible for a person to be declared affected as well as an organisation. It also seems to me to tighten up the technicalities that led to a favourable judgement in a recent case when an organisation challenged the declaration of its being affected. The Bishops can await their legal advice on this. It is not of immediate concern.

The other two parts are of vital importance.

The Bill firstly introduces entirely new legislation regarding foreign money and secondly amends the Fund Raising Act of 1978 to close all the loopholes.

I do not intend to deal here with all the extended powers of the Director of Fund Raising or with the technicalities of the wording but only with the meaning of the Bill in a lay person's terms as it could affect the church.

The newspapers have focussed too much attention on those aspects of the Bill which will allow the Minister of Justice to declare an organisation restricted and to confiscate all the foreign money in its possession. This is important but response to the church being declared either Restricted or Affected would be decided at the time. It seems unlikely to happen because the Bill gives the government total control over all funding without any dramatic action against a particular organisation.

Once it becomes law it will affect our day to day work and administration very seriously indeed.

1. In terms of the 1978 Fund Raising Act the churches were exempted and were able to continue collecting and receiving money for their work. There could have been arguments about what was or was not "religious" work but the State has not chosen to challenge the church on this and we have continued to raise money both inside and outside South Africa without restraint.

1.2. The amendment removes that exemption in relation to money collected outside the Republic or received from sources outside the Republic.

1.3. The CPSA may go on collecting money within the republic as we have done in the past but we will not be able to receive any money whatsoever from outside the Republic unless the CPSA is granted registration as a fund raising organisation in terms of the Fund Raising Act. This would apply to money donated to us by our partners within the anglican communion as well as to other donors. The Bill removes the words "the public" from the definition of "collect" in the Act thus closing the doors to donations even from those with whom we have an ongoing or familial relationship who cannot remotely be regarded as "the public" in relation to us.

(The Black Sash's legal advice is that our Advice Office Trust should seek such registration immediately, before the new legislation is promulgated. The amendments give the Minister the power to make regulations about the grounds on which the Director of Fund Raising may refuse an application for registration.)

1.4. The penalties for disobeying the main prohibition in the Act are raised from a fine of R1500 or imprisonment for 3 years to R20 000 or 10 years or both.

1.5. It should be noted that registration as a Fund Raising Organisation gives the State great powers of supervision over the organisation which may only use the money collected in terms of the authority granted ~~to itself~~ for purposes specified in that authority. Full reports, returns and financial statements must be furnished to the Director as prescribed.

(This is the reason why the Black Sash did not seek registration in 1978 but chose rather to exploit the loopholes in the Act.)

If this Bill becomes law the CPSA will no longer be able to receive any money whatsoever from outside the Republic unless it is registered as a Fund Raising Organisation, but worse is to follow.

2.1. Even if the CPSA is given the authority to collect foreign money the new part of the legislation reads:

"Prohibition of receipt of foreign money for political purposes"

"-----no organisation or person may directly or indirectly receive from outside the Republic, or directly or indirectly bring in or cause to be brought into the Republic, any money which is intended to be used, or in the discretion of that organisation or person may be used, to further, propagate, pursue or oppose any political aim or object."

2.2. The church does not propagate or pursue political aims or objects. It propagates and pursues the biblical imperatives of justice and peace but, in doing so in South Africa, it does and must oppose all the political aims and objects of the apartheid government.

The church is quite clear that there is not and can never be any separation between its "religious work" and its ministry to all people. The State, on the other hand, demands such a separation and it is impossible to know which of the CPSA's programmes would be regarded as opposing or promoting a political aim or object.

2.3. So, even, if the CPSA does receive fund raising authority the State may choose to prosecute us if we use the foreign money which we have raised quite legally for purposes which the State regards as political.

2.4. The Bill provides that if in any such prosecution it is proved that the money has been received from outside the Republic and if it is proved that the organisation or person concerned "engages or participates in the furthering, propagating, pursuing or opposing of any political aim or object, it shall be presumed, until the contrary is proved, that the money is intended to be used.....or may be used to further, promote, pursue or oppose a political aim or object."

An example. Had this legislation been in place when the Archbishop received the Nobel Peace Prize:

(a) the Archbishop is a person who received the money part of the prize from foreign sources;

(b) The Archbishop is undoubtedly a person who opposes a political aim or object and perhaps may even pursue a political aim or object, e.g. calling for sanctions.

If he were to have been prosecuted for infringing the new Act the State would have had no difficulty in proving the above two statements. The Archbishop would then have had to prove that the foreign money he had received had not been used for political purposes. The onus of proof is placed by the new Bill on the accused.

2.5. The penalty for contravening this prohibition can be a fine of R20 000 or a fine of twice the amount of money involved or 10 years imprisonment, or both.

This is singularly clever. We might be prepared to go gloriously to prison but if we were fined twice the amount of money without the option of imprisonment we would not be able to pay it without taking it from other grants which is morally impossible. The State could therefore attach our assets. Depending on the amount of money involved we could be left without essential equipment and money in savings accounts, never mind the new word processors and fax machine. If we had been so foolish as to receive large amounts of money for other organisations we might well find ourselves left with nothing at all. Bishops court might then belong to the State and we would be unable to pay any stipends anywhere in the Province.

3. This proposed legislation requires a serious and urgent response. We need to do the following (I think):

3.1. Ask the Chancellor to arrange detailed legal advice.

3.2. Discuss seriously whether we should seek registration as a fund raising organisation.

3.3. Completely separate our foreign money from our local money immediately in bank accounts and financial statements.

3.4. Explore with our partners overseas about their grants being made to fund our normal administrative work - stipends, pension fund, Synods etc. so that our locally collected money could be use for programmes.

3.5. Keep in close touch with our ecumenical partners here and elsewhere as to their responses.

3.6. Maintain very close contact with the SACC which is very much more threatened than we are because it has undertaken some of the most sensitive "political" ministries in relation to the ongoing crisis and conflict on behalf of its member churches.

3.7. Start thinking about how we as the CPSA will respond if the SACC is declared a restricted organisation or if it is refused registration as a fund raising organisation. We have a tremendous responsibility which goes well beyond our own domestic financial management.

3.8. Consult with secular organisations and our lawyers about future strategies regarding funding. We must not raise any hopes at all that the churches will be able to act as some kind of umbrella for other organisations.

3.9. Seek to build up whatever pressure we can to prevent this Bill becoming law. There is considerable pressure which can be exerted by our partners in other countries and by their governments.

This legislation will open the way for money to be diverted into programmes which are approved by our government - evangelical conservative movements which preach the false prosperity gospel, "reform" orientated groups which seek to promote the creation of a co-opted 50% society where the poor become poorer and more excluded while the rich become richer and more powerful. (This is already happening;) well meaning programmes of charity which are unwittingly used for the political purposes of the State.

We need to remember that South Africa needs foreign currency. If the government intends to stop foreign funding coming in for the work of "disapproved" organisations then perhaps there needs to be a Rand for Rand retaliation with money being withheld from "approved" programmes which the government needs and wants - in the commercial and industrial field as well as in the charitable and welfare fields.

If the S.A. government wants to stop foreign funding coming in for opposition groups than perhaps it should be allowed to have what it wants with a complete embargo on all foreign money entering South Africa for any purpose whatsoever.

3.10. Above all we must not let any of this prevent us from doing what we must do. Jesus sent out his disciples with instructions not to carry any gold, silver or copper money.

"You have received without paying, so give without being paid."

Sheena Duncan.
Sheena Duncan

21st March 1988.

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