DSD23(11) BELL, DEWAR & HALL

END CONSCRIPTION CAMPAIGN'S 1987 PROGRAMME -

LEGAL OPINION

It is now no longer merely a statement which is likely to incite persons to resist the system of military conscription that constitutes a breach of the emergency regulations. It is now subversive to make any statement "by which the system of compulsory military service is discredited or undermined."

There is no doubt that there is legal space for a call that is critical of the system of compulsory military service. Mere criticism does not amount to the act of discrediting or undermining.

Undoubtedly, far less can be said about the system of military conscription than before the 11th December 1986. A vigorous call to end the system of military conscription might well constitute a discrediting or undermining of such system, depending on the context of the call.

There is no doubt that there is room for creative programmes that are lawful. Furthermore, there is a small chance that the Natal Supreme Court will knock out this new prohibited subversive statement in the forthcoming UDF application. But what of the two campaigns that have been discussed :-

(a) Campaign for a change in CO legislation

This campaign can take place quite lawfully, as long as there is no direct undermining or discrediting of the system of military conscription. The fact that the campaign might contain implicit or even direct criticism of the system of compulsory military conscription, does not make it illegitimate.

(b) Anti-militarisation/costs of the war/wars no solution campaign

Again, this campaign can be promoted as long as it does not entail a discrediting or undermining. It is far more likely that a spin-off of this campaign will get closer to the edge of this offence than the CO campaign.

The problem with this campaign is that it will be a call of the ECC, and the linkage of the two might constitute a prima facie breach. On the other hand, it can well be argued that ECC has come to take on a far broader meaning than a focus on conscription, and charges could well be successfully fended off.

With the upcoming UDF attack on the regulations in the Natal Supreme Court, it would not be appropriate for the ECC to launch its own attack until the outcome of the case. There are a number of points of attack upon the validity of the new category of subversive statement. Aside from vagueness and over-breadth, it could well be argued that the Public Safety Act does not entitle the State President to go as far as banning organisations or campaigns. Moreover, it could be argued that in order for the delineation of a subversive statement to be valid, it must at least be a statement which tends to incite members of the public to do something. With this new prohibition, for the first time, it is the mere utterance of the words themselves that is defined as subversive.

DATED at JOHANNESBURG on this the 6th day of FEBRUARY 1987.