

CIVIL SOCIETY ORGANISATIONS TO LAUNCH URGENT LEGAL PROCEEDINGS AGAINST THE PRESIDENT

President refuses to permit victim participation in political pardons recommendations

17 March 2009

A coalition of victim and civil society organisations has given President Motlanthe notice that it will bring urgent court proceedings this week to stop the issuing of political pardons under the special pardons process established by former President Mbeki. On Friday afternoon, 13 March 2009, President Motlanthe advised the coalition that he will not afford victims, or other interested persons, an opportunity to make representations in the political pardons process.

The special pardons process for political crimes may result in more than 100 pardons for apartheid-era perpetrators. At the beginning of 2008, President Mbeki created a Reference Group comprising political party representatives to make recommendations to him in regard to which convicted offenders should be pardoned. The coalition of civil society organisations include the Khulumani Support Group, the Centre for the Study of Violence and Reconciliation, the International Centre for Transitional Justice, the Institute for Justice and Reconciliation, the Human Rights Media Centre, the Freedom of Expression Institute and the South African History Archives.

Since February 2008 the coalition has engaged in extensive efforts to persuade the pardons reference group to involve victims in the recommendations process. When the Reference Group refused to permit the participation of victims the coalition and its lawyers then approached the Minister of Justice and the President.

On 13 March 2009 the President's office confirmed that President Motlanthe will consider pardon applications exclusively on the basis of representations made by perpetrators and political parties. The President effectively decided to exclude and prevent the views of victims from being heard in the recommendations process. Moreover, it appears that the President has condoned the secret process for political adopted by the Reference Group.

The coalition is disappointed that President Motlanthe appears to take the view that since the Constitution provides him with the power to grant pardons, it does not matter what process is adopted for purposes of processing and recommending pardons; even if such a process is manifestly unfair and constitutionally unsound.

The coalition asserts that such an approach is inconsistent with the spirit and purpose of South Africa's new constitutional order. It specifically flies in the face of the requirement laid down by the author of the Special Dispensation on Political Pardons, former President Mbeki, who stated in a joint sitting of Parliament on 21 November 2007, that the process would comply with the "principles, criteria, and spirit" of the Truth and Reconciliation Commission.

The coalition has been left with no choice but to bring an urgent application to court to interdict the President from issuing political pardons. The coalition's attorneys, the Legal Resources Centre in Cape Town, has written to the President requesting him not to issue any political pardons pending the final determination of the rights of victims by a court.

The main issues

Former President Mbeki established a “special dispensation” for the granting of pardons to persons who have been convicted of offences allegedly committed in pursuit of political objectives. President Mbeki created the special pardon process to complete “the unfinished business of the TRC”. It accordingly continued the work of the TRC’s erstwhile Amnesty Committee but did not adhere to the basic principles and norms established by that process. As an example, the Reference Group specifically rejected “full disclosure” by perpetrators as a necessary requirement for a pardon recommendation.

The initial role in this process was performed by the Reference Group, which is a group consisting solely of members of political parties. No independent experts or representatives of victim groups were represented on this body. Political parties were required to endorse each pardon application. The representatives of the same political parties then decided whether to recommend a pardon or not.

The Reference Group has received and considered applications for pardons, and has made recommendations to the President. It has operated under blanket secrecy. It has refused to disclose the contents and motivations of the pardon applications, and it has refused to disclose what applications it has recommended. The group has refused to give the victims of or other persons affected by the offences in question an opportunity to make representations as to whether a pardon should be granted, and if so, on what terms.

It appears that a decision by the President will very shortly make decisions on which offenders will be granted pardons. The President has not disclosed and will not disclose what applications he is considering. He has refused to give the victims of or other persons affected by the offences in question, an opportunity to make representations as to whether a pardon should be granted, and if so, on what terms.

It is not possible for any victim or person affected by the offences in question to make application for relief, none of them knows who has made application and is being considered for a pardon.

The coalition submits that special dispensation on political pardons amounted to an impermissible rerun of the TRC’s amnesty regime; unlawfully excluded the participation of victims and other interested members of the public; violated the rule of law; infringed the rights of victims to dignity, equal treatment, freedom of expression and other fundamental rights protected by the Constitution.

The members of the coalition who are the applicants in the legal action seek a declaration that the President is not entitled to grant pardons under such circumstances, and an interdict preventing the President from doing so. They initially seek an interim interdict pending the final determination of the application.

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