



Prime Minister

Foreign and Commonwealth Office

London SW1A 2AH

This recommends that, with the lifting of the detention orders against the three, we should:

- (a) first press them very hard to leave
- (b) if that fails by mid-morning tomorrow, have them evicted.

10 December 1984

It will certainly cause a row. But we are on strong grounds. And if we miss the chance, there may not be another. Agree?

Dear Charles,

Durban

Thank you for your letter of 10 December. You will since have seen Pretoria telno 650 reporting that the South African authorities have lifted the detention orders against several people held under Section 28 of the ISA, including the three in our Consulate in Durban. We know that charges are likely to be brought against two of the three, though this has not yet been announced publicly.

In the Foreign Secretary's absence we have consulted Mr Rifkind who believes the situation has now changed fundamentally. He is concerned that if we do not seize the opportunity now to bring the Durban problem to a close we could be in a much worse position without any possibility of resolution.

In the light of the lifting of the detention orders the three men are now being told by our Embassy staff that we expect them to leave the Consulate forthwith. But the advice which the three are receiving from their lawyer, Yacoob, is that they should remain where they are until the question of whether charges are to be brought against any of them is resolved. Mr Rifkind thinks it is important that we should now require the three to leave the Consulate. It is true that the Prime Minister's letter of 13 September to Mr Kinnock said "from the moment we were first informed of the presence of this group in the Consulate, instructions were issued that they should not be required to leave the premises against their will" (Mr Rifkind subsequently qualified this by the addition of the words "in present circumstances"). But now that the three no longer face detention without trial on leaving the Consulate, Mr Rifkind sees no possible justification, even on humanitarian grounds, for permitting them to stay. He believes that this would be widely understood here. Our position is easier since the South Africans appeared to have delayed deliberately the announcement of the charges against two of the three. It is rumoured that these charges may be of high treason, though we have no confirmation of this. Clearly such serious charges (which in extreme cases carry the death penalty) will affect the public perception of the situation. But even if it were known that charges were likely to be brought (and the three have already concluded that they will be), there is a clear

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distinction between detention without trial and charges which provide the accused with the opportunity to put their case fully, and which offer the possibility of acquittal. The South African judiciary is reasonably independent and there is no reason to doubt that a trial would not be fair. The very fact that detention orders against some of the six were quashed by an Appeal Court is evidence of this.

Mr Rifkind therefore considers that, if the three refuse to leave the Consulate voluntarily, we would be justified in asking the South African authorities to remove them. If we do not take decisive action now, the three seem likely to remain on our premises indefinitely. There is no possibility that the South African authorities could be persuaded to drop charges, once they had been brought. Your letter recorded the Prime Minister's question "Have we the right to prevent arrest for specific offences, or to retain people under these circumstances". The short answer to both questions is no. We would have no reasonable defence against the accusation that we were obstructing the enforcement of South African law. The refusal on our part to compel the three to leave now that the detention orders have been lifted would inevitably lead to a more serious confrontation with the South African Government. There could be other damaging repercussions with no offsetting compensations elsewhere because of our refusal to evict the three.

In the light of the above Mr Rifkind is recommending to the Foreign Secretary that if our efforts to persuade the three to leave the Consulate voluntarily do not succeed by 1 pm Durban time (11 am in London tomorrow), we should arrange to have them removed from our premises. We would try to avoid calling on the South African authorities but this may in the event be unavoidable. The purpose of this timetable would be to complete action before Prime Minister's Question Time. Mr Rifkind would plan to make a statement in the House immediately afterwards.

We are consulting the Foreign Secretary urgently and in parallel with this letter. But you may wish to consult the Prime Minister since we will have to take a decision by early tomorrow morning.

Yours ever,

Le Appleyard

(L V Appleyard)
Private Secretary

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