



Prime Minister Foreign and Commonwealth Office

London SW1A 2AH

2 October 1984

I think it must be right to precipitate their departure once the Supreme Court has pronounced, even if only by gradual pressure.

Agree the proposed instructions?

as slightly amended *CD P2/x.*

Dear Charles,

Durban

The Natal Supreme Court may pronounce judgement later this week, possibly on 3 October, on the application by the six South African opposition leaders currently in the Consulate in Durban for invalidation of the detention orders against them. We have considered carefully how we should react if the decision is favourable to the six, or if (as seems more likely) it is unfavourable.

The Foreign Secretary believes that a favourable court judgement, which removes the threat of detention orders over the six, would represent an important opportunity to bring the Durban problem to a close. The six have already told us informally that they would probably want to leave in this circumstance anyway. But we should in any case make clear to them that we could not justify their continued presence in the Consulate any longer and that we therefore hoped that they would leave at once. We would of course face an awkward situation should the six decline to go, perhaps because the South African Government had announced its intention to appeal against the court's decision. In those circumstances the Foreign Secretary's inclination is that we would be justified in using all reasonable means to persuade them to leave.

A number of options are open to us in the event of an unfavourable court decision. First, we could decide simply to permit the six to stay, taking no further action ourselves beyond moral persuasion to bring the problem to an end. But we would be in an increasingly weak position legally, and our commitment to the six would be open-ended. This would also lead to a further deterioration in our bilateral relations which are already severely strained. The Foreign Secretary therefore thinks that this option must be rejected. The two remaining options we have identified are, secondly, a combination of increasing pressure on the six and a phased run-down of our Consulate leading ultimately to its temporary closure; and, thirdly, a decision to permit the six to stay until they had exhausted the legal process by appealing to the

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South African Supreme Court. Once the outcome of that appeal was known, they would have to leave.

The Foreign Secretary considers that the second option presents less difficulty than the third. In the case of the third option, the further appeal could take months, during which time our legal position would become much more difficult and our relations with South Africa would further deteriorate. Moreover, at the end of the process we might still have to hand the six over to the South African authorities, which would conflict with our earlier commitment not to require them to leave against their will. Nonetheless, this option is generous to the six in terms of time and an easy concept to explain to public opinion.

The second option has the advantage that the time scale for closing the Consulate remains in our hands and can be controlled as we see fit, depending largely on public reaction to the various steps which will precede final closure. Each of these steps would be designed to increase the pressure on the six to go and we can expect to have arguments with them which would no doubt lead to wider criticism. On the other hand, each step holds out the possibility that the six may decide to leave of their own accord. The criticism at any one time is likely to be of limited duration. Above all, this procedure avoids an open-ended commitment to the six, and offers a certain conclusion to the problem.

The Foreign Secretary therefore favours the second option. He recognises that neither option in the event of an unfavourable court decision is easy, and each will incur some public criticism. But he believes that by careful handling of the public dimension, and persistent persuasion of the six, we can still minimise the damage. We cannot of course allow for the South African Government's actions, which have proved unpredictable. They are now in a calmer mood, but we still cannot expect them to help us find a solution.

There is a further timing point to which the Foreign Secretary attaches importance. The publicity which might occur if the six are asked to leave, whether the verdict is favourable or unfavourable, would be greatly increased if this happened during the Labour Party Conference this week. The Foreign Secretary thinks there would be advantage in deferring implementation if we can until 5 or 6 October.

I attach a draft telegram to Pretoria reflecting the considerations set out above. The Foreign Secretary will be looking at it in parallel in Luxembourg. If the Prime Minister and Foreign Secretary approve the instructions we would propose to despatch the telegram first thing tomorrow with an amendment,

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if the Prime Minister agrees, to take account of the timing point in the preceding paragraph.

*Yours ever,*

*Len Appleyard*

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Private Secretary

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