

Gmb/009/0055/11

Plein Street
Johannesburg
P.O. Box 61884
Marshalltown 2107



AFRICAN NATIONAL CONGRESS

Tel: (011) 330-7000
Fax: 333-9090
333-4509
Telex: 42-1252

To: Mr F. W. De Klerk
State President of the Republic of South Africa
9th July, 1992

Dear Mr De Klerk

I acknowledge receipt of your reply dated 2nd July, 1992.

It is unfortunate that your reply has not addressed the issues I raised in my memorandum of the 26th June, 1992. Instead, you deliberately obscure matters.

It appears that we are all agreed that South Africa faces a serious crisis. When it comes to charting a way out of the crisis, however, it is clear that there are hardly any points of convergence.

This is particularly so because you have chosen to elevate a number of peripheral issues to the status of "fundamental" ones, while relegating those of critical significance to a secondary place. The matter is made worse by the factual inaccuracies, distortions and blatant party political propaganda involved in the manner in which you raised these so-called fundamental issues.

To call for face-to-face talks in such a situation is entirely unacceptable. We would sit down to do no more than haggle about what should constitute the agenda of such talks, rather than the serious business of taking our country to a democracy and developing firm foundations for curbing and eliminating violence.

Reaffirmations about your commitment to a negotiated resolution to the South African conflict need to be supported by stating positions which offer the potential to break the deadlock.

1 Negotiations

- 1.1. You state that "the fundamental difference between the approach of the ANC and that of the government regarding the purpose of negotiations lies, on the one hand, in our commitment to constitutionality and a transitional government as soon as possible; and on the other hand, on the ANC's insistence on an unstructured and immediate transfer of power before a proper transitional constitution is negotiated." (Paragraph 3, Page 4)
- 1.2. This is indeed a novel description of the purpose of negotiations, to say nothing about its gross distortion and patent party political propaganda. The characterisation of your own position as "commitment to constitutionality and a transitional government as soon as possible" bears very little relationship to the purpose of negotiations, as set out in the Declaration of Intent we adopted together at Codesa I, namely;

- "5. to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia:
- a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;
 - b. that the Constitution will be the supreme law and that it will be guarded over by an independent, non-racial and impartial judiciary;
 - c. that there will be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage on a common voters roll; in general the basic electoral system shall be that of proportional representation;
 - d. that there shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances;
 - e. that the diversity of languages, cultures and religions of the people of South Africa shall be acknowledged;
 - f. that all shall enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law."

Working Group 2 was specifically charged with determining the set of general constitutional principles consistent with and including those in the Declaration, as well as the form and content of the constitution making body / processes.

- 1.3. The question of a transitional government was the subject matter of one of the five working groups created at Codesa I. Unless the question of the constitution making body is dealt with as the primary focus of negotiations, issues relating to transitional arrangements are deprived of their proper relevance. Your insistence on elevating this to the central focus of negotiations betrays the positions your government has been taking and which lie at the heart of the crisis.
- 1.4. If there is to be a way out of this impasse then it is imperative that we isolate the question of transitional arrangements from that of the constitution making body. With regard to the constitution making body (Constituent Assembly), it is necessary that you pronounce yourselves in keeping with basic democratic principles. A democratic constitution will be fatally flawed if the body charged with drafting and adopting it, is itself undemocratic - be it in its composition or the way in which it is to function. Your response to our positions is therefore critical. It is the authority of the people, through their elected representatives,

that gives a constitution its fundamental legitimacy. Our position is founded on the basic features of any democratic structure charged with the task of constitution making:

- 1.4.1. The constitution making body shall be sovereign;
- 1.4.2. The constitution making body shall be bound by the general constitutional principles agreed upon at Codesa, with the necessary checks to ensure that these are adhered to;
- 1.4.3. It shall be democratically elected on the basis of one-person-one vote in the context of multi-party democracy where each party would be represented in proportion to the votes gained;
- 1.4.4. It shall be single chambered and shall not be subject to the veto or overseeing powers of any other body;
- 1.4.5. In the South African context there is the additional requirement that such a constitution making body constitute a unifying and legitimising process which must however not thwart the will of the overwhelming majority. Therefore, the constitution making body shall arrive at decisions by a two-thirds majority;
- 1.4.6. In order to ensure that regional differences, irrespective of whether they arise from ethnic factors or vested interests nurtured by the apartheid fragmentation of our country are fully accommodated, the Constituent Assembly shall:
 - * be composed of 50% delegates elected by means of a national list, and 50% elected on the basis of a regional list, both on proportional representation and one person one vote;
 - * In deciding on those aspects of the Constitution which deal with regional structures, their powers and duties, the Constituent Assembly would take decisions first by means of a two thirds majority of the entire Assembly and further that such a decision would require the endorsement of a two thirds majority of that half of the Constituent Assembly delegates who have been elected through the regional list.
- 1.4.7. So as to ensure that the transition is as expeditious as possible, there should be effective and timeous deadlock breaking mechanisms in the functioning of the constitution making body. The depth of the crisis facing our country is such that it is essential that there is a speedy transition to democracy. We cannot accept three years as a time frame for the Constituent Assembly to discharge its duties.

- 1.5. Your reply evades these questions. To the extent that it deals with any of them, what emerges is your opposition to such a sovereign and democratically elected constitution making body. The composition and function of this sovereign body is the acid test of your commitment to democracy.

You deliberately distort our proposals to constitute 'simple majoritarianism'. You falsely accuse us of wanting the Constituent Assembly to function in a constitutional void. At the same time you seek to pre-empt the work of the Constituent Assembly by the Codesa process.

Besides subjecting the work of the Constituent Assembly to the veto of a regionally elected Senate you seek to entrench federalism by subterfuge. This becomes clear by your requirement that the boundaries, powers, functions and form of regional government will have to be approved by the majority of the representatives from **each electoral region** that will be affected in **each** case.

It is necessary that there should be a clear understanding that all interim arrangements relating to the administration and governance of regions shall be such as not to pre-empt the decisions of the constitution making body. The question of the form of government, be it federal or unitary or whatever, is a matter that should be left to a democratically elected constitution making body.

- 1.6. The manner in which you have elevated the transitional arrangements to the central focus of negotiations betrays your pre-occupation with obtaining guarantees of a constitutionally entrenched role for the National Party, which you recognise will remain a minority party in the event of a democratic constitution.
- 1.7. You are more than aware that your allegation that the ANC insists on "an unstructured and an immediate transfer of power" bears no relation to the truth. Long before Codesa was established, the ANC proposed that there should be an Interim Government of National Unity so as to ensure that no party occupies the position of player and referee. This demand was first put in the Harare Declaration of 1989. It was not put forward as an end in itself. It was proposed as a means by which a democratically elected and sovereign Constituent Assembly would be brought into being for the purposes of drafting and adopting a democratic constitution for a united, non-racial and non-sexist South Africa.
- 1.8. In the agreements reached at Codesa with regards to transitional arrangements it is clearly stated in Paragraph 1.12 of the Report of Working Group 3 that "the following agreements were reached with regard to the first stage of the transition. These agreements and their implementation are dependent upon agreement being reached by Codesa in respect of the second stage of the transition, including an Interim Constitution, and general constitutional principles".

- 1.9. Indeed we were all parties to the insertion of this clause. That is to say, there appears to be agreement that none of us could walk blindfolded into the first stage of the transition if we could not define for ourselves and for the citizens of our country the central question as to the nature and functioning of a constitution making body. At the same time it is evidenced in the records of Working Group 3 that the ANC fully supports constitutional and legislative measures to ensure that there is no constitutional void.
- 1.10. And yet at the same time you have sought, by one means or another, to get an unconditional commitment from us to transitional arrangements without a clear agreement on the constitution making body. That is why we insist that the deadlock with regard to the constitution making body needs to be addressed by you.
- 1.11. It is a matter of public record that with regards to the Interim Government arrangements, it is the ANC which insisted on the idea of an Interim Government of National Unity in order to stress the need for an interim period that would be broadly inclusive. In pursuance of such inclusivity we proposed that all parties elected would be represented in the Interim Executive in proportion to their proven electoral support.
- 1.12. In the light of these proposals we cannot understand why your party persists in seeking to impose undemocratic solutions. All parties, including yours, are assured of a place in the future on the basis of proven electoral support. All parties have been offered a place in the Executive in the interim period. To carry such interim arrangements into a future constitution to be adopted by the Constituent Assembly is to deny the principle of majority rule and vest minority political parties with veto powers. Furthermore this would place minority parties in a conflictual situation with the majority and undermine the security minority parties seek.

2 Violence

- 2.1. Your reply dismisses our charges against your government for involvement in the violence by a bland denial and the assurance that where "elements in the state structures err" you will not hesitate to take appropriate measures. To say the least this is most unhelpful in resolving the crisis. [See Annexure 1; Government complicity in violence.] In the statement of the emergency session of the National Executive Committee of the ANC we drew attention to the fact that your control of state power allows you the space to deny and cover up the role of the NP government, its surrogates, the state security forces and the police role in fostering and fomenting violence. Attached hereto are two further annexures setting out the evidence of numerous instances which unmistakably point in this direction [Annexure 2: Involvement of Security Forces in the fomenting and escalation of violence; and Annexure 3: South African Government support for the IFP]. The evidence relates to both acts of omission and commission.

- 2.2. In this context you do yourself a disservice by questioning the integrity of the ANC when you yourself have not carried out the agreements reached more than a year ago with regard to measures aimed at curbing the violence. Your remarks in relation to hostels and dangerous weapons are disingenuous. You are unable to cite even one tangible act you have taken regarding the upgrading of hostels. You provocatively put razor wire around Phola Park, yet you have not fenced-in a single hostel.
- 2.3. No one can be expected to go along with your protestations of clean hands and individual errors as a basis for resolving the problem of violence. The possibilities of finding a solution are made even more difficult by your insistence on making the rivalry between the ANC and IFP the primary factor. Government and the IFP have always acted together. We have yet to see a single condemnation by you of the IFP even though there are numerous cases of leading members of the IFP planning, directing and instigating violence on a mass scale. On the contrary there are persistent reports of government protection of IFP warlords by your security forces and police.

We can only conclude that the manner in which you called for a meeting between the IFP, ANC and the Government is aimed at blocking rather than resolving the problem of violence. Unless and until you take concrete steps against your state agencies and surrogates, the NP will remain part of the problem rather than the solution. Annexure 3 briefly sets out the nature of the relationship between the IFP and the NP government.

- 2.4. There are several categories of demands with regard to violence requiring immediate action by your government.

- 2.4.1. It is completely unacceptable that you should dismiss our demand for specific steps relating to covert operations and state security forces by denying such actions. Despite the recommendations of the Goldstone Commission, Battalion 32 has not been withdrawn from internal deployment. Former Koevoet members are deployed as units of the South African Police.

Special Forces remain in existence. In case after case investigations concerning the involvement of members of the security forces have been found to be inadequate and tardy. Repression and harassment are extant in some of the self-governing states and so-called Independent States.

Unless you act publicly on these issues the crisis will deepen. In the light of your total denial we suggest as a first and immediate step, that you personally take over responsibility for the portfolios relating to the security forces and the police.

- 2.4.2. The agreements reached with the ANC more than a year ago and aimed at measures which will remove the hostels from being used as fortresses of violence have not been implemented.

2.4.3. To justify inaction even at this stage on whatever grounds is to turn a blind eye to the hundreds of deaths and thousands of injuries attributable to attacks by hostel inmates during the period in which you have failed to take practical steps. The fact that none of your answers explains why you have failed to repeal the law which you brought into being legalising the carrying of dangerous weapons can only be understood in terms your special relationship with the IFP.

2.4.4. The measures that you have taken enabling the Goldstone Commission to incorporate an international assessor and to attach an evaluator to the police investigation team into the Boipatong massacre have not addressed our demand for an international commission of inquiry and the international monitoring of violence. It is unacceptable that your police force, which is an alleged party to the violence, should be charged with the investigations.

2.4.5. None of your explanations with regard to the release of political prisoners are sufficient to explain the reality that there are still hundreds of political prisoners in your jails.

2.4.6. With regard to repressive legislation your government refuses to countenance the repeal of legislation currently on your statute books and which has been universally condemned as repressive, illiberal and not conducive to free political activity. No claims regarding the duty to govern can justify their continued existence on your statute books. Our demands specifically drew attention to additional laws passed during the last week of the recent session of your parliament, that drastically restrict the rights of citizens and restructure the criminal law, and that are already being implemented.

2.4.7. Furthermore, your government persists in its course in unilaterally restructuring the affairs of our country at a time when you are supposed to be negotiating a transition to a democratic order. These efforts actually amount to pre-empting and foreclosing on the rights and duties of a democratic order.

3 Other issues raised in your letter.

3.1. In the face of the two critical issues which stand in the way of the transition to democracy, you have chosen to raise other issues as matters requiring urgent negotiations. Instead of addressing the critical issues with the statesmanship they require your entire letter takes the form of a party political reply. Perhaps this confusion on your side is understandable in the context of your being the head of the NP government. But it is inexcusable in the

context of your persistent claims based on the right to govern and your position as State President.

- 3.2. Your charges against the ANC and its Allies are part of the baggage of apartheid ideology. We reject with contempt your propagandistic version of what is supposed to be happening inside the ANC and the Alliance. It has been the tradition of successive National Party regimes to try to discredit our Movement on the basis that you know black people better than black people know themselves.
- 3.3. With the right to peaceful demonstration goes our inherent right to determine its nature and aims. The dangers of further violence must be laid at the doors of those who are resisting change. Successive NP regimes have always sought to crush our mass campaigns by raising the spectre of violence and disruption as being inherent in our campaigns. This was so in the case of the Defiance Campaign of 1952, the Freedom Charter Campaign of 1955, the Alexander Bus Boycott of 1957, the numerous national stay aways, etc, including those of the recent period.

But the record is clear; wherever and whenever violence raised its head, it has been initiated and provoked by the government side. And in the more recent cases they include your surrogates.

4 Conclusion

- 4.1. Given the party political nature of your reply, we would urge you to desist from this course in addressing our demands. Find a way within yourself to recognise the gravity of the crisis. The starting point for this is that you stop deluding yourself that it is the ANC and its Allies programme of mass action which is the cause of the crisis. It would be a grave mistake if your government thinks that resorting to repression and the use of the military and police power that it commands can be a means of resolving the conflict. Find a way to address the demands we have placed before you with regards to the negotiations deadlock and those relating to the violence so that negotiations can become meaningful and be vested with the urgency that the situation requires. Failure to respond in this way can only exacerbate the crisis. You may succeed in delaying, but never in preventing, the transition of South Africa to a democracy.

Yours sincerely,

Nelson R. Mandela

ANNEXURE 1

GOVERNMENT COMPLICITY IN VIOLENCE

The involvement of the security forces in incidents of violence is undeniable, having been established through exposures in the press, in the course of some trials and judicial statements, and more recently in Commissions of Inquiry.

The Government has tried to deny its responsibility by claiming that individual members of the security forces had acted outside the law and their instructions, and that such cases as were established had led to criminal prosecution. Not only is this justification inaccurate in terms of fact but it is also an abdication of responsibility.

The responsibility for protecting citizens vests with the government in any civilised society. The South African Government has failed to control violence: it has not been prepared to allow proper investigations and has not prosecuted many of those who have been involved. Government agents have been involved in the training, financing, arming and deployment of surrogate forces. Most conclusively, the SAG has patently and deliberately refused to act against members of the Security Forces who it claims were without its authority.

The acts of omission and commission by Government in numerous cases can only be explained in terms of direct complicity in the violence in order to make party political gains at great cost in black lives and economic damage to our country.

1. Failure to re-orientate and retrain the security forces.

It is well known that the South African Security forces were trained and deployed to defend apartheid and to wage war against the ANC and its members. It would be naive to believe that a Presidential speech on February 2nd 1990 would be sufficient to reorientate these forces. Yet no programme has been made to retrain the security forces to serve a democratic society.

2. Refusal to authorise Independent Investigations.

- 2.1. Notwithstanding the known orientation of the security forces, and the cases where police officers have admitted in Court that they were simply continuing the war against the ANC that they had been instructed to wage, Government continues to insist that investigations of police complicity in violence must continue to be conducted by the police themselves.

In the Trust Feeds Case the trial judge suggested a judicial commission of inquiry

into the police cover-up. The General Bar Council of South Africa called for a full public investigation presided over by a Supreme Court Judge. However, Minister Kriel has decided to appoint a Broederbond and ex-magistrate Willem Krugel to conduct the inquiry.

- 2.2. In South Africa more than in any other country, there is a need for independent investigations into the conduct of the police. That the lack of confidence in the police is justified, has been substantiated by a number of cases.

Police officers who have been named by Judges as involved in cover-ups have been put in charge of investigations. Captain Andre Kritzinger of the Soweto Crime Intelligence Service was mentioned by Judge Andrew Wilson as one of the police officers who tried to interrupt the investigations into the Trust Feed killings. Nonetheless, he was appointed as the investigating officer into an alleged police conspiracy to abduct and murder the Chairman of the Civic Association in Schweizer-Reinecke. [See Annexure 2 Section 5]

Captain Kritzinger has also been given responsibility for investigating the assassination of lawyer Bheki Mlangeni. At the inquest, he was forced to admit that he had deliberately tried to mislead the forensic expert who had been hired by the family, by claiming he was not aware of a police lab where the explosive PETN used in the killer bomb could be obtained, and also that he denied knowledge of an officer who worked there.

3. Failure to protect witnesses

The Goldstone Commission (2nd Interim Report) expressed its concern for the safety of witnesses who might wish to testify before the Commission, and requested that "the Commission should as soon as possible be granted adequate means and procedures for offering protection to witnesses who testify before it or its committees". That this concern is well founded is illustrated by the following cases, which are just some of the many that have been reported:

- 3.1. Two days before he was scheduled to give evidence before the Commission, Saul Tsotetsi was murdered. Together with the Vaal Council of Churches, he had consistently drawn the attention of the SAP that the KwaMadala Hostel was the base from which attacks against residents of Boipatong, Bopelong, Sebokeng and Sharpeville were being perpetrated. He had also helped to bring to light that the SADF had sent call up letters to residents of the KwaMadala Hostel in November 1991.

- 3.2. A witness to the murder of NocoZola Ncalo and Samuel Pedi was killed within a week of the murder.
- 3.3 A witness to the assassination of Chief Maphumulo was killed the day before the inquest.
- 3.4. During the inquest in the "Black Cats" gang the leader of the gang in Wesselton was murdered, and the mother of a renegade Black Cat witness was also killed. [See Annexure 2 Section 7]

4 . Failure to act against members of Security Forces.

On a number of occasion Police officers involved in violence or in cover-ups have been identified by Commissions of Inquiry or in Court judgements. Nonetheless government has failed to take action. Nor does the government follow the normal practice of suspending officers under investigation.

- 4.1. No prosecutions have been instituted against CCB members arising from the findings of the Harms Commission, which uncovered evidence of murder, poisoning, kidnapping, arson, perjury and destruction of evidence by members of the SAP and SADF. [See: Annexure 2 Section 12.1]
- 4.2. General Neethling, Chief Deputy Commissioner of the SAP was found to have deliberately misled the Court and the Harms Commission, and is alleged to have provided the poison for murders. He has not been suspended from his duties.
- 4.3 Though there is prima facie evidence of the involvement of Lieutenant General Van Der Westhuizen in the assassination of Matthew Goniwe, Fort Calata, Sparrow Mkonto, and Sicela Mhlauli, he remains Chief of Staff Intelligence while investigations are being conducted. [See: Annexure 2 Section 12.4]
- 4.4. No action has been taken against Brig. Floris Mostert who refused to open his files to the Harms Commission and was accused of perjury by the Commission. Brig Mostert had arrested 2 SADF agents for the murder of David Webster.
- 4.5. Further examples are provided in Annexure 2 Sections 2, 3, 5, 8
- 4.6. In contrast to such inaction, Captain Dutton who conducted the investigation that led to prosecutions in the Trust Feed murder has found his unit disbanded and his cases transferred to others.

5. Failure to demobilise Koevet and Battalion 32

The Government's refusal to demobilise Koevet and Battalion 32 raise questions as to why the SADF requires foreign troops and mercenaries in 1992, notwithstanding that some have been given citizenship. These units are among the special forces that have been implicated in many

cases of violence and brutality . Battalion 32 has been deployed in Soweto, Thokoza, East Rand and Natal.

The conduct of these units when deployed against our people has been criticised repeatedly, not least by the Goldstone Commission. In its latest report, the Commission expressed its concern at what was described as the "unhelpful" response of the SADF.

[See also: Annexure 2 Section 5]

6. Use of censorship to prevent publication of evidence of security force involvement in violence

The involvement of the police in covert activities with official sanction has been confirmed by Government efforts to prevent exposures and the use of the courts to muzzle the press.

Alerted to the intention of the Weekly Mail to publish allegations concerning covert police bases operating in the Vaal, [See: Annexure 2 Section 12.2.] the police resorted to the Courts to limit the information published. The importance attached to the potential revelations was signalled by the presence in the court of a "battery of police Brigadiers and Generals".

Minister Kriel subsequently informed parliament that the SAP would in future "be forced to approach the courts" to prevent publication of such information.

If Government was indeed unaware of allegedly "illegal " activities it should be grateful to the press for exposing criminal activity. The resort to censorship attests once again to the complicity of Government.

ANNEXURE 2

INVOLVEMENT OF SECURITY FORCES IN THE FOMENTING AND ESCALATION OF VIOLENCE

INTRODUCTION

The crisis facing the country in respect of the violence taking place is one which could have been avoided if the security forces, namely the South African Police and the South African Defence Force had fulfilled their obligations to the citizens of South Africa.

This annexure serves to illustrate instances where the security forces have not only failed in their duties but played an active and determining role in the fomenting and escalation of violence. In so doing, it is clear that the intention of those security officers involved has been, both individually and collectively, to further the violence by taking political sides, which action has resulted in the deaths of numerous persons and the destruction of property.

It should be noted that reference is made only to those incidents which attracted the attention of the media and certain of those which have been presented in courts or commissions of inquiry. In addition, the majority of these incidents are recent. Taken together such incidents are indicative of a pattern of conduct which the South African government has made no attempt to change or curtail.

These examples not only detail allegations of direct police involvement in the violence, they also detail the fact that there has been very little or no investigation into many of these incidents. This is cause for concern in that the administration of justice and the Rule of Law are essential pillars of any civilised society. When such abuses take place, as detailed below, it is imperative that prompt and efficient action is taken by governments.

A question that has to be answered is **WHY HAS THE SOUTH AFRICAN GOVERNMENT FAILED TO ACT?**

1. **SEBOKENG: JUDICIAL COMMISSION OF INQUIRY (MAY 9 1990
- JUNE 16 1990)**

- 1.1 This was a judicial commission of inquiry conducted by Judge R. Goldstone into the murder of 5 persons and the wounding of 161. The incident took place on the 26th of March 1990. The effect of Mr Justice Goldstone's report on the 1st of September 1990, was that in the incident in question there had been no control over the policemen in the front line facing the crowd and prosecutions were recommended. In addition, the commission recommended that the conduct of all policemen who fired live ammunition be investigated with the aim of prosecutions to follow. To date, the trial of the

aforementioned policemen has not commenced although they have appeared in court.

2. **SEBOKENG - JUDICIAL INQUEST (NOVEMBER 15 1990 - MARCH 19 1990)**

This was a judicial inquest into the deaths of four persons on the 4th of September 1990, conducted by Mr Justice Stafford. In his judgment Mr Justice Stafford recommended four prosecutions of South African Defence Force personnel on charges of murder and assault with intent to do grievous bodily harm. To date these persons have not been brought to trial. In addition, Mr Justice Stafford stated that an internal inquiry conducted by the South African Defence Force into the conduct of their own men, which had absolved the SADF of any blame for the shooting was a "whitewash".

3. **DAVEYTON - JUDICIAL INQUEST (AUGUST 15 1991 - NOVEMBER 25 1991)**

This was conducted by Mr Justice O'Donovan into the deaths of 12 persons on the 24th of March 1991, who were fired upon by the police whilst gathered in an open field. In Mr Justice O'Donovan's judgment on the 26th of November 1991, he described the incident as a "slaughter", found that the police were guilty of the excessive use of firearms and that they had exceeded the grounds of self defence. He recommended the prosecution of every policeman involved in the incident who had fired live ammunition on charges of murder and culpable homicide. Despite the recommendation of the judge, the Attorney General declined to prosecute.

4. **GOLDSTONE COMMISSION OF INQUIRY INTO 32 BATTALION: PHOLA PARK (MAY 4 1992 - MAY 19 1992)**

The Goldstone Commission conducted an inquiry on the 4th of May 1992 into the conduct of members of 32 Battalion of the South African Defence Force. It was alleged that a large number of members of the Battalion had attacked the community of Phola Park and been responsible for a number of unlawful actions, including assault and rape. During the evidence of Captain Mark Hermansen of 32 Battalion he justified the use of force by members of his battalion on the grounds that they were involved in a war-type situation. The Goldstone Commission stated that it was unacceptable that a peace-keeping force should view its role in this way and recommended that 32 Battalion not be deployed in any black townships in South Africa. The response of the South African Defence Force, namely that of Lt. Gen. Meiring was that the Defence Force would deploy 32 Battalion as and where they were needed.

5. **THE GOLDSTONE COMMISSION OF INQUIRY**

On 10 December 1991 the New Nation newspaper referred evidence to the Goldstone

Commission concerning an alleged conspiracy involving two members of the South African Police relating to the abduction and murder of the Chairman of the Civic Association in Schweizer-Reinecke. The evidence included tape recordings of alleged discussions with the policemen concerned. On 17 December 1991 the Commission heard evidence, including that of the two policemen. The policemen denied that it was their voices on the recording. The Commission decided that there was prima facie evidence implicating the policemen and the matter was handed over to the Attorney-General of the Transvaal. In June 1992 the Commission held further hearings to enquire from the investigating officer, a Captain Kritzinger of the South African Police, as to why the investigation had not been completed. The matter has now been referred to the Attorney-General but no one has been charged to date. [See Annexure 1 Section 2 for further information on Captain Kritzinger]

6. TRUST FEED CASE (STATE v MITCHELL & OTHERS)

On the 23rd of April 1992 Captain Mitchell and four special constables were found guilty in the Natal Supreme Court of the murder of eleven persons at an area called Trust Feed in the Natal Midlands. The persons murdered were perceived by Captain Mitchell to have been ANC supporters. The incidents of murder took place at a time when there was intense violence taking place in the areas around Pietermaritzburg and in the Natal Midlands. At the time the violence was perceived as being Inkatha/ANC rivalry. In his judgment Mr Justice Wilson referred to police complicity in the crime and stated "a disturbing feature of this case is that as the evidence went on it became clear that the evidence of senior police officials could not be accepted and official records produced from files were also subject to suspicion and shown to be completely inaccurate". It further emerged in the trial that Captain Mitchell viewed the actions he had taken and the context in which they were taken as being a war situation against the ANC. In addition, the judge called for an investigation into the alleged coverup of the investigations and the involvement of policemen in "counter-revolutionary strategy". [See: Annexure 1 Section 2.1 and Annexure 3 Section 5]

7. GOLDSTONE COMMISSION OF INQUIRY: FEBRUARY 1992

In the commission of inquiry conducted by Mr Justice Goldstone into the funding by the South African Defence Force of front organisations currently involved in the violence, allegations were made in relation to certain murders that had taken place at Wesselton outside Ermelo in the Eastern Transvaal. In essence, the allegations revolved around South African Police collusion with local gangsters in support of Inkatha, which collusion resulted in a number of deaths. The Commission is presently hearing evidence into allegations that there were no proper police investigations into incidents of violence committed against ANC supporters. In one incident relating to the killing of 3 people at an ANC funeral it is alleged that police failed to prosecute KwaZulu policemen allegedly involved in the killings despite evidence of their involvement.

8. **SEBOKENG VIGIL MASSACRE**

In this matter in which 35 persons were killed, on the 12th of January 1991. Mr Justice Schutz acquitted the various accused after criticising the South African Police investigation and stating that the South African Police should have tried harder to find incriminating evidence.

9. **TRAIN MASSACRES**

- 9.1 Since August 1990 until the present day there have been over 80 incidents of assault and/or mass killings on the trains operating in and around Johannesburg. As a result of the above 180 persons have been killed and over 550 wounded.
- 9.2 In respect of the above unlawful actions we are aware of only one successful prosecution to date. It is difficult to believe that the South African Police, with all the resources at their disposal, are unable to achieve a higher success rate.
- 9.3 There are numerous individual incidents that are cause for grave concern. In this respect we refer to the massacre which took place on 10 October 1991 on a train near Katlehong when a number of persons allegedly opened fire on innocent commuters and 5 persons were killed. On this occasion two persons were arrested by angry commuters who subsequently handed the arrested persons over to the South African Police. An identification parade was held, at which one of the arrested persons was positively identified by four victims. This took place in October 1991. The trial of the arrested person has yet to commence, although he has appeared in court.
- 9.4 The fears of the communities affected by such incidents of violence were confirmed by the evidence of the secret witness in the Goldstone Commission, known as "Zero One". In essence, he gave evidence before the Commission of Nancefield hostel dwellers being involved in the Kliptown train massacre in which six persons died on the 26th of June 1991 as well as the Nancefield train massacre in which nine persons died on the 23rd of October 1991. He was able to carry out positive identifications of the persons involved, as a result of which certain persons were arrested. Charges were subsequently withdrawn, even though the secret witness himself was not approached to testify by the South African Police.

- 9.5 A further example of police inaction in relation to deaths on the trains is that which took place on the 22nd of October 1991 in which persons in or near the Nancefield hostel opened fire on a passing train causing the deaths of 9 persons and injuries to 36 others. After the attack an ambulance which came to the assistance of the victims was fired upon as were members of the South African Police who approached the area. Thereafter a contingent of South African Police attempted a search and seizure raid upon the premises of the hostel. Armed hostel residents refused to allow the police entry to the hostel. The police then retreated and the unknown gunmen were able to make good their escape. Nancefield hostel is mainly occupied by supporters of Inkatha.

- 9.6 On 15 May 1992, the day of CODESA II, one thousand armed IFP supporters arrived at Isando station. Members of the Internal Stability Unit failed to disarm these men and allowed them to storm onto a train which was already carrying passengers causing these passengers to jump out of the train's windows. However, the Internal Stability Unit subsequently escorted the men back to their hostels. On the same day a group of armed IFP supporters disembarked at New Canada station. Again they were not disarmed but were sent back by train to their hostels. On the return journey one person was killed and one person was injured.

10. HOSTELS

- 10.1 The number of murders and unlawful acts associated with hostel dwellers, primarily those occupied by Inkatha supporters are shocking. From July 1990 to April 1992 there have been 212 attacks launched from hostels on township residents. At least 1 000 persons have been killed and over 3 500 injured.

- 10.2 Despite the fact that there have been numerous press reports in relation to particular hostels being used as launching pads for attacks on the community, particularly hostels such as the Alexandra hostel, Jabulani and Kwa-Madala hostel, there has been no effective action.

- 10.3 An illustration of police inaction in relation to hostel dwellers is the Swanieville incident. The attack occurred on 12 May 1991 and 27 people were killed. IFP

spokesperson, Suzanne Voss, confirmed that IFP supporters were responsible for the attack and that the motive was revenge. The South African Police claimed that the reason why they were not on the scene at the time of the attack was that they were busy changing shift. The South African Police escorted the attackers back to the hostel after the attack.

- 10.4 The issue of hostels was also raised in paragraph 3.2 of Judge Goldstone's interim report of the 29th of April 1992 when he recommended that all hostels should immediately be adequately and securely fenced off. He further stated that a strong and efficient police presence should ensure that no arms are taken in and out of hostels. However no effective action seems to have been taken and the unlawful acts of the residents of certain hostels continued.
- 10.5 This culminated in the tragedy of Boipatong on the 17th of June 1992. It is submitted that the Boipatong tragedy could have been avoided had the police acted on the recommendations of Judge Goldstone in respect of hostels.
- 10.6 See also Annexure 3 Section 8.

11. USE OF DANGEROUS WEAPONS

- 11.1 The carrying of dangerous weapons has contributed significantly to political violence in South Africa. In spite of many laws, regulations and by-laws, the South African Police have failed to prevent the carrying of dangerous weapons or to prosecute those who do. At a recent Commission of Inquiry into acts of violence at Mooi River, Judge Goldstone found that, in terms of existing legislation, the police should prevent the carrying of dangerous weapons and that the carrying of such weapons was a contributing factor towards violence.
- 11.2 At the time of the signing of the National Peace Accord, the government promised to promulgate new regulations relating to the carrying of dangerous weapons at political events. They took over five months to do this and even then did not go far enough.
- 11.3 Since the Dangerous Weapons Proclamation has been issued the South African Police have still, on occasions, failed to act against Inkatha members or supporters who, often in open defiance of the proclamation, have persisted in carrying dangerous weapons at political gatherings.
- 11.4 On 29 February 1992, the day after a proclamation was issued, the Inkatha Freedom Party held a march in Durban at which dangerous weapons were openly carried. The police attempted to negotiate that the marchers leave their weapons behind but eventually gave up and allowed the march to continue.

11.5 This conduct on the part of the South African Police indicates that the police are unwilling to enforce the law. This was also addressed in the second interim report of the Goldstone Commission which stated that "the Commission finds it unacceptable that even the limited ban on the carrying of weapons to political meetings has been ignored by the IFP on at least one occasion during a march through the streets of Johannesburg. This public flaunting of the law in the presence of the South African Police presence is unfortunate and should not be allowed to occur again in the future."

11.6 See Also Annexure 3 Section 7.

12. COVERT OPERATIONS

12.1 The Harms Commission commenced its investigations in Pretoria in February of 1990 into the existence of hit-squads operating within the ranks of the South African Police, specifically at Vlakplaas, as well as within the ranks of the South African Defence Force, specifically the Civilian Cooperation Bureau (CCB). After months of evidence the Commission finished in August 1990 and Mr Justice Harms produced his report in December of 1990. His report confirmed that a number of illegal acts were found to have taken place which were committed by both the South African Police squad operating from Vlakplaas as well as the CCB. Such acts included attacks upon prominent anti-apartheid activists; attacks upon the premises of anti-apartheid organisations and included the bombing of Athlone House in Cape Town. To date we are not aware of any prosecutions that have resulted from any of the above unlawful acts. In fact, evidence has emerged that the South African Police squad operating from Vlakplaas is still in existence and members of the CCB have confirmed that the operations of the CCB have not yet been wound up. [See Annexure 1 Section 4.1]

12.2 The above must be seen in conjunction with the extremely serious allegations made by the Weekly Mail into covert police bases operating in the Vaal. The police admit that such bases operated from private property, used false vehicle registration plates, false company names and false telephone numbers.

12.3 In addition, the existence of a Koevoet police squad operating from Goldfield's colliery outside Witbank as well as the finding of a number of weapons, including a trunk full of R1 rifles and ammunition for use by the squad is cause for the gravest concern and alarm.

12.4 It should be noted that even where persons have been killed as a result of assassination type activities and where names have been linked to the killings of

such persons, effective action has not been taken. In this respect, we refer to the killing of Matthew Goniwe, Fort Calata, Sparrow Mkonto and Sicela Mhlauli. A document made public by Major General Bantu Holomisa reflects a signal message form from a member of the South African Defence Force, namely a Lieutenant Du Plessis referring to a conversation between Brigadier Van Der Westhuizen of Eastern Province Command and General Van Rensburg of the state security council in which they refer to the "permanent removal from society" of Matthew Goniwe and others. Van Der Westhuizen, now a Lieutenant General and Chief of Staff Intelligence, has still not been suspended from duty pending the outcome of the commission of inquiry in spite of the fact that there has been no denial from the South African Defence Force headquarters with regard to the authenticity of the signal.

- 12.5 In relation to the death of lawyer, Bheki Mlangeni on the 15th of February 1991 by a tape recorder bomb intended for Dirk Coetzee there are further examples of inadequate investigation. In this case it emerged during evidence at the judicial inquest into his death that the police had only conducted competent finger print tests on the 18th of May 1992, some 15 months after his death, this despite the fact that an adequate finger print had been found on the tape and inside the tape recording machine. In addition, no competent handwriting samples were taken from the prime suspects in relation to the murder of Mlangeni until the inquest had in fact commenced.

13. CONCLUSION

- 13.1 It is clear from the above that the security forces have failed in their duty to enforce law and order and protect innocent persons, and that the South African Government has failed to take action to meet its responsibility of protecting all citizens.

Even in cases where the police were warned in advance of particular attacks no effective action was taken. An example is the violence that occurred in Sebokeng on the 22nd of July 1990 and about which the Minister of Law and Order, the Commissioner of Police as well as the Divisional Commissioner of Police were warned some 48 hours before. No effective pre-emptive action was taken and as a result 18 persons were killed. The above was the first major incident of violence in the Transvaal and set the trend, with few exceptions, for future South African Police security force conduct in relation to such violence.

ANNEXURE 3

SOUTH AFRICAN GOVERNMENT SUPPORT FOR THE IFP

Government and the security forces have supplied, armed and trained Inkatha in order to foment and extend violence. In addition, as indicated in the Trust Feed case, security forces have deliberately acted to extend Inkatha control over territory and people. The failure of Government to implement agreements and recommendations regarding hostels, and their actions concerning so-called traditional weapons - first legalising their use and now failing to restrict them - serve the same purpose.

Since the main targets of Inkatha violence are opponents of the South African government, the latter is a principal beneficiary of the violence inflicted by IFP supporters. This is not accidental and the IFP supporters involved in violence have acted as surrogates of the South African Government.

Different aspects of the relationship are treated in more detail below, or in other documents.

1. FINANCIAL SUPPORT

Secret financial support from the South African government in the form of funding of rallies was exposed by the press and is now well documented. It has been acknowledged by the South African government, as was the financial support which was given to Inkatha's trade union section, United Workers of South Africa (UWUSA). Even though F W De Klerk stated in July 1991 that all secret funding to the IFP had ended in March 1990, the SAP confirmed in December 1991 that they had funded a rally organised by the IFP Youth Brigade in January 1991.

2. MILITARY TRAINING

At least 200 Inkatha members received military training from South African security forces in the Caprivi Strip in late 1986 and early 1987. As in the case of other kinds of support for Inkatha, this was exposed by the media and at first denied by the government. After this training they were housed at a secret camp in Mkuze in Natal, before some were absorbed into the Kwazulu Police. They were taken into the KZP without official induction and issued with false police identity cards, and paid a monthly salary at the Inkatha offices in Ulundi from a secret account funded by Military Intelligence. Other training courses were also conducted at Mkuze and elsewhere. As well as training further Inkatha members after these courses, several of those who have been identified as receiving such training have subsequently been involved in violent activities, including participation in hit-squad activities.

3. LINKS WITH MILITARY INTELLIGENCE

Revelations by a former member of the Central Committee of Inkatha, not challenged by the

authorities, show further links with Military Intelligence. This involved MI front organisations - part of a nation-wide network - which provided leadership and political education courses for members of Inkatha's Central Committee and Kwazulu cabinet ministers. Some of this training was conducted at the secret camp at Mkuze. Other aspects of this relationship included the drawing up and printing of leaflets by the SADF for Inkatha's use.

4 . KWAZULU POLICE

The Kwazulu Police (KZP), a force under Inkatha control and membership of which effectively requires Inkatha membership, are trained and in many cases receive logistical support from the South African Police. The political partisanship of the KZP in their operations has been established by monitoring groups and in court cases.

A report by the Durban offices of the Legal Resources Centre (LRC) and the Human Rights Commission concluded that the KZP were an obstacle to peace in the area. The report lists incidents of harassment and intimidation; collusion with vigilantes involved in violence and the disruption of legitimate political meetings.

- 4.1 In March 1992 up to 100 members of the KZP were involved in a massacre of residents at the Uganda squatter camp, according to reports cited by the International Commission of Jurists.
- 4.2 Amongst the officers of the KZP who have been prosecuted and convicted for illegal activities was Khetani Shange who, having been sentenced to 27 years by a judge who described him as one of the main players in a reign of terror carried out against residents of KwaMashu and 'a beast in police force clothing', was released after serving just 9 months. Shange's case was one of five cited in the report by the LRC in which the KZP appeared to have been involved in suppressing or interfering with evidence.
- 4.3 As noted above those given military training at Caprivi were subsequently absorbed into the KZP, as were policemen involved in the Trust Feed massacre (see below) as part of the attempt to cover-up the police role in the killings.

5 . COLLUSION OF SAP WITH INKATHA

The Trust Feed case revealed an operation by members of the SAP carried out against people believed to be ANC supporters [See Annexure 2, Section 6]. A community was deliberately destabilised and hostility created between ANC and Inkatha supporters by the police, leading to the establishment of Inkatha control over the community. The court heard from the policeman responsible that police had previously assisted Inkatha by unlawful means to take over areas. The court was told that special policemen for this role were recruited for the police by Inkatha leaders in each area. Other incidents have involved forms of collusion with Inkatha supporters engaged in violent attacks, either through failure to act on warnings that attacks were violent or through failure to disarm people who subsequently carried out attacks. Such cases are detailed elsewhere. [See Annexure 2 Sections 7, 9.4, 9.5, 9.6 and 10.3]

6. PREFERENTIAL ENFORCEMENT OF THE LAW

As far back as 1988 it was being argued that one or two vigorous prosecutions at that stage would have ended the violence. This was not done.

- 6.1 Two cases concern Kwazulu MPs. Samuel Jamile, Kwazulu Deputy Minister of the Interior, was eventually charged of attempted murder and convicted. But this was only after he was released on the instruction of a member of the security police after having been charged for the first time. David Ntombela, a Kwazulu MP, was charged with the murder of a mother and daughter in 1987, but immediately released on R100 bail. The charges were withdrawn after the inquest into the deaths because the only witnesses were children, proper investigations not having been pursued by the police. He has been implicated in a number of other crimes, including the planning of the Trust Feed massacre, but in these cases too proper investigations have not been conducted.
- 6.2 A more recent case concerns the killing of 17 residents, mainly ANC supporters, in Bruntville, Mooi River, in December 1991. Within the last fortnight the Minister of Law and Order announced that charges against 175 hostel dwellers were withdrawn because of lack of evidence. This follows an earlier finding of the Goldstone Commission that the Mooi River Police are biased towards Inkatha and that their evidence-gathering procedures in this case were shoddy.
- 6.3 Exceptionally early releases from prison of Inkatha supporters include not only that of the KZP policeman Shange mentioned above, but the release in April 1991 of four Inkatha supporters, between four and eight years early from sentences imposed for their part in a brutal massacre of seven youths in 1987.

7. CARRYING OF DANGEROUS WEAPONS

While the law governing the carrying of dangerous weapons makes no reference to Inkatha - or any other organisation by name - the relaxation of restrictions on the carrying of dangerous weapons in 1990 and the failure to act to prohibit the carrying of such weapons during the past year, has been directly related to the use of such weapons by IFP supporters in the violence aimed at extending their control.

In late 1990, after the unbanning of the ANC, it was clear that provisions in the Natal Code of Zulu Law restricting the carrying of dangerous weapons were being defied - but instead of enforcing the relevant provisions F W De Klerk amended them to permit the carrying and use of so-called 'traditional weapons'. Despite a subsequent court ruling that the amendment was invalid; rulings and recommendations from the Goldstone Commission on the subject; and the issuing of the Dangerous Weapons Proclamation there has not been effective action to prevent the carrying by IFP supporters of such weapons which have been used in violent attacks, including the killing of people. [See also Annexure 2 Section 11]

8 . HOSTELS

The fact that the hostel system has been one of the major sources of violence over the last two years is universally acknowledged. Equally clear is the fact that the hostels most commonly and closely involved in the violence are occupied predominantly by IFP supporters.

The consolidation of certain hostels as Inkatha strongholds and bases from which attacks have been launched on surrounding communities, was initiated in July 1990 with a series of attacks on hostels, in which residents not prepared to accept this use of the hostels were driven out. In one of the first and critical attacks in this process, on Sebokeng hostel in July 1990, both the Minister of Law and Order and the Commissioner of Police were warned of the attack three days before it took place, and failed to take any preventive measures. [See Annexure 2 Section 14.1]

The failure of the government to implement agreements reached on hostels and recommendations of the Goldstone commission have therefore been an undeniable factor in prolonging and enhancing the capacity of Inkatha to inflict violence and insecurity on communities within reach of hostels. [See Annexure 2 Section 10]

9 . GOVERNMENT SILENCE

The failure of the government to condemn IFP violence or the public display of dangerous weapons by IFP supporters, stands in marked contrast to its attitude to the call for mass action by the ANC and its allies.

No condemnation has ever been made of the activities of the two Kwazulu MPs, Jamile and Ntombela, referred to above.

F W De Klerk has as yet made no comment on remarks made in his presence on June 16 by the leader of the IFP, remarks which the Star described as 'inflammatory political blackmail' and an 'implied but unmistakeable threat of violence if he does not get his way at Codesa'.