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THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION

FIRST INTERIM REPORT

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THE STATE PRESIDENT

THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION HAS THE HONOUR TO PRESENT ITS FIRST INTERIM REPORT.

R. J. Goldstone

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CHAIRMAN OF THE COMMISSION

CAPE TOWN

24 *JANUARY 1992*

1. The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation was appointed on 24 October 1991 by the State President in terms of section 3 of the Prevention of Public Violence and Intimidation Act, 1991 (Act 139 of 1991). Its terms of reference are contained in section 7(1) of the Act.

2. The Commission is constituted as follows:

Chairman	:	Mr Justice R J Goldstone
Vice-Chairman	:	Adv. D J Rossouw, SC
Member	:	Adv. M N S Sithole
Member	:	Ms L G Baqwa
Member	:	Mr G Steyn

3. The Commission held its first meeting on 28 and 29 October 1991. It discussed its terms of reference and considered the manner in which it should approach the broad mandate given to it. The following broad guide-lines were decided on:

(a) To emphasise its independence and in particular its independence from the Government and any political party.

(b) That a primary function of the Commission was to direct and co-ordinate the gathering of facts relating to public violence and intimidation in the Republic.

(c) That the Commission would not investigate past violence and intimidation save in so far as it might be directly relevant to the prevention of future violence and intimidation.

(d) That the work of the Commission, save in special circumstances, would be conducted in public.

4. Over 500 written requests for information concerning public violence and intimidation were sent by the Commission to all organisations which might have information relating thereto. These included all political parties, universities, newspaper editors, local authorities and civic associations. In response the Commission received relevant and useful information.

5.1 On 29 October 1991, the Commission established a committee of inquiry into the violence and alleged intimidation in Thokoza, on

the East Rand, since 8 September 1991. The allegations appeared to the Commission to reflect aspects of violence which had been reported from various parts of South Africa in preceding months. These included:

(a) The murder of participants in an Inkatha march.

(b) The murder of Mr Sam Ntuli, the chairman of the Thokoza Civic Association.

(c) The murder of people returning from the Ntuli funeral.

(d) The parlous living conditions in the hostels.

5.2 The Committee inquiring into these events is being chaired by Adv Sithole, sitting with Ms Baqwa and Mr R S K Tucker. The hearings are still in progress and it would be premature to comment on them at this stage. When they are completed the Committee will submit a report to the Commission.

6. In the middle of November 1991 the Commission established a second Committee to inquire into the violence and murders which took place at the President Steyn Gold Mine in Welkom on 3 November 1991 and which were associated with the national stay-away called for by a number of organisations on 4 and 5 November 1991. The terms of reference of this Committee include the relevance to the violence of the hostel system and of the national stay-away. This Committee is chaired by Mr Steyn, who is sitting with Adv. D Bregman, SC, and Mr R Zondo. Its hearings have also not been concluded and in due course it will also report to the Commission.

7.1 During December 1991 a third Committee was established by the Commission to inquire into the procedures relating to the organisation of mass demonstrations, the conduct thereof and the role and duties of the police and other security forces. This Committee was established taking the following into account:

(a) The fundamental right of free assembly and peaceful protest in a free and democratic society.

(b) The duty of the police to protect citizens who exercise those rights and members of the public who may be affected by the exercise of such rights.

(c) The potential for violence created by unpredictable and undisciplined conduct by mass demonstrators.

7.2 This Committee is under the chairmanship of Mr Justice Goldstone. The other members are Adv. Rossouw and Professor D van Zyl Smit, the Dean of the Faculty of Law of the University of Cape Town. During the week of 13 January 1992 the Committee heard evidence at Mooi River on violence and killings which occurred there on 3 and 4 December 1991. This inquiry was concluded on 21 January 1992. An interim report on urgent aspects of the Mooi River situation will be submitted to the Commission for consideration at its next meeting on 3 February 1992. It should now be reported, however, that the Committee was able to assist materially in the creation of a local dispute resolution committee at Mooi River and that both the IFP and the ANC leaders who will serve on this committee have publicly pledged to work for peace in the area. If any party appears to be blocking the peace process the Committee will return to Mooi River to hold further hearings with regard thereto.

7.3 With regard to mass demonstrations, the Committee has employed the services of leading South African and foreign experts on the subject. Representations have been sought from interested organisations, including the South African Police. In due course the Committee will also hold public hearings.

8. A fourth Committee of the Commission was established during January 1992 to inquire into violence in relation to public transport in South Africa. The need for such an inquiry arose because of the high incidence of violence, including a number of deaths, on trains in certain urban areas and what has been referred to as "taxi wars". The Chairman of this Committee is Adv. Rossouw. The members are Mr Steyn, Adv. B M Ngoepe of the Pretoria Bar and Mr L S van Zyl, a Cape Town attorney. Interested parties have been called upon to submit written evidence and the Committee will hold public hearings in due course. Prior to the establishment of this Committee, informal meetings were held by Adv. Rossouw with members of the Cape Town Peace Committee. The Chairman and members

of the Committee also held a meeting with senior members of the security department of Spoornet.

9. On 10 December 1991 the New Nation newspaper referred evidence to the 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. The attorneys of New Nation and the State Attorney were present during the hearing of the evidence.

10. The Commission was concerned by press reports of the attitudes of the PAC and AZAPO to recent incidents of violence concerning, respectively, the tour of Mr Paul Simon and the murder of policemen. The Commission did not wish to act on the strength of press reports only and has consequently invited the presidents of both organisations to meet with it during the week of 27 January 1992. Further steps will have to be considered in the light of the responses to these invitations.

11. In the Weekly Mail of 3 January 1992 allegations were made concerning the instigation of township violence by a covert operation directed by the South African Defence Force. The Chairman of the Commission immediately requested the Editor of the Weekly Mail to furnish the Commission with any evidence which would tend to establish that such activities were currently continuing. On 9 January 1992, the Minister of Defence, Mr R P Meyer, MP, formally requested the Commission to investigate the allegations. The Commission will begin to hear evidence in Cape Town on 4 February 1992.

12. The Commission has made a number of informal enquiries from the South African Police and other organisations concerning reports of alleged public violence and intimidation. The responses have been helpful and constructive.

13. It is obviously too early to begin to draw conclusions from the information which has already come to the attention of the Commission. In particular, the Committees of inquiry are yet to report. However, the Commission has no doubt that its very existence is serving an important purpose. The fact that there is an independent body which can receive and ask for information in an area which has hitherto been one of secrecy in which rumours have abounded is itself encouraging. The fact that the Commission operates in public stimulates debate on these topics and that is also to the benefit of the public, the Government and political parties and organisations.

14. The Commission is of the view that prompt establishment of and action by its committees may result in the decrease of violence. However, the Prevention of Public Violence and Intimidation Act, 1991, requires committees to have at least three members, one of whom must be one of the five members of the Commission. All the members of the Commission are at present serving on committees and consequently the Commission at this stage is unable to inquire into several situations of violence which require its urgent attention. The Commission recommends that the Act be amended as soon as possible by removing the requirements that a minimum of three persons be appointed to committees and that a member of the Commission should serve on every committee.

15. The Commission would like to express its appreciation for the willingness and enthusiasm with which eminent and busy persons approached by it have agreed to serve on its committees.

DIE KOMMISSIE VAN ONDERSOEK INSAKE DIE VOORKOMING VAN OPENBARE GEWELD EN INTIMIDASIE

EERSTE TUSSENTYDSE VERSLAG

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DIE STAATSPRESIDENT

DIE KOMMISSIE VAN ONDERSOEK INSAKE DIE VOORKOMING VAN OPENBARE GEWELD EN INTIMIDASIE HET DIE EER OM SY EERSTE TUSSENTYDSE VERSLAG VOOR TE Lê.

R J Goldstone

R J GOLDSTONE
VOORSITTER VAN DIE KOMMISSIE

KAAPSTAD
24 *JANUARIE 1992*

1. Die Kommissie van Ondersoek insake die Voorkoming van Openbare Geweld en Intimidasie is op 24 Oktober 1991 kragtens artikel 3 van die Wet op die Voorkoming van Openbare Geweld en Intimidasie, 1991 (Wet 139 van 1991), deur die Staatspresident aangestel. Sy opdrag is vervat in artikel 7(1) van die Wet.

2. Die Kommissie is soos volg saamgestel:

Voorsitter	:	Regter R J Goldstone
Ondervoorsitter	:	Adv D J Rossouw, SC
Lid	:	Adv M N S Sithole
Lid	:	Me L G Baqwa
Lid	:	Mnr G Steyn

3. Die Kommissie het sy eerste vergadering op 28 en 29 Oktober gehou, waartydens sy opdrag bespreek is en aandag geskenk is aan die wyse waarop hy die breë mandaat wat aan hom gegee is, moet benader. Daar is op die volgende breë riglyne besluit:

(a) Om sy onafhanklikheid en in die besonder sy onafhanklikheid van die Regering en enige politieke party te beklemtoon.

(b) Dat dit 'n primêre funksie van die Kommissie is om die insameling van feite rakende openbare geweld en intimidasie in die Republiek te rig en te koördineer.

(c) Dat die Kommissie nie geweld en intimidasie van die verlede sal ondersoek nie behalwe in soverre dit regstreeks verband kan hou met die voorkoming van toekomstige geweld en intimidasie.

(d) Dat die werk van die Kommissie, behalwe in spesiale omstandighede, in die openbaar sal geskied.

4. Meer as 500 skriftelike versoeke om inligting oor openbare geweld en intimidasie is deur die Kommissie gestuur aan alle organisasies wat moontlik oor tersaaklike inligting beskik. Dit sluit in alle politieke partye, universiteite, koerantredakteurs, plaaslike owerhede en burgerorganisasies. In reaksie daarop het die Kommissie tersaaklike en nuttige inligting ontvang.

5.1 Op 29 Oktober 1991 het die Kommissie 'n komitee van ondersoek ingestel na die geweld en beweerde intimidasie in Thokoza, aan die Oos-Rand, sedert 8 September 1991. Na die Kommissie se mening het die bewerings betrekking op aspekte van geweld wat in die voorafgaande maande uit verskeie dele van Suid-Afrika aangemeld is. Dit sluit in:

(a) Die moord op deelnemers aan 'n Inkatha-optog.

(b) Die moord op mnr Sam Ntuli, die voorsitter van die Thokoza Civic Association.

(c) Die moord op mense wat van die Ntuli-begrafnis teruggekeer het.

(d) Die haglike lewensomstandighede in die hostelle.

5.2 Die komitee wat na hierdie gebeure ondersoek instel, staan onder voorsitterskap van adv Sithole, en die ander lede is me Baqwa en mnr R S K Tucker. Die aanhoor van getuienis is nog aan die gang en daar kan dus nie in hierdie stadium kommentaar daarop gelewer word nie. Sodra dit afgehandel is, sal die komitee 'n verslag aan die Kommissie voorlê.

6. In die middel van November 1991 het die Kommissie 'n tweede komitee ingestel om ondersoek in te stel na die geweld en moorde wat op 3 November 1991 by die President Steyn-goudmyn op Welkom plaasgevind het en wat verband gehou het met die nasionale wegblyaksie wat 'n aantal organisasies vir 4 en 5 November gereël het. Die opdrag van hierdie komitee sluit in die verband tussen die geweld aan die een kant en die hostelstelsel en die nasionale wegbly-aksie aan die ander kant. Die voorsitter van die komitee is mnr Steyn, en die ander lede is adv D Bregman, SC, en mnr R Zondo. Die aanhoor van getuienis is ook nog nie afgehandel nie e: die komitee sal te geleëner tyd ook aan die Kommissie verslag doen.

7.1 In Desember 1991 is 'n derde komitee deur die Kommissie ingestel om ondersoek in te stel na die prosedures rakende die organisering van massabetogings, die hou van sulke betogings en die rol en plig van die polisie en ander veiligheidsmagte. Hierdie komitee is ingestel met die volgende voor oë:

(a) Die fundamentele reg op vryheid van samekoms en vreedsame protes in 'n vrye en demokratiese samelewing.

(b) Die plig van die polisie om burgers wat hierdie regte uitoefen en lede van die publiek wat deur die uitoefening van daardie regte geraak kan word, te beskerm.

(c) Die potensiaal vir geweld wat geskep word deur onvoorspelbare en ongedissiplineerde gedrag van massabetogers.

7.2 Hierdie komitee staan onder voorsitterskap van regter Goldstone. Die ander lede is adv Rossouw en professor D van Zyl Smit, Dekaan van die Regsfakulteit aan die Universiteit van Kaapstad. Gedurende die week van 13 Januarie 1992 het die komitee op Mooirivier getuienis aangehoor rakende geweld en moorde wat op 3 en 4 Desember 1991 daar plaasgevind het. Hierdie ondersoek is op 21 Januarie 1991 afgehandel. 'n Tussentydse verslag oor dringende aspekte van die Mooiriviersituasie sal aan die Kommissie voorgelê word vir oorweging op sy volgende vergadering op 3 Februarie 1992. Daar moet nou egter gemeld word dat die komitee daarin geslaag het om wesenlike bystand te verleen met die daarstelling van 'n plaaslike geskilbeslegtingskomitee op Mooirivier en dat sowel die IFP- as die ANC-leiers wat in hierdie komitee sal dien, hulle in die openbaar daartoe verbind het om hulle vir vrede in die gebied te beywer. Indien enige party die vredesproses in die wiele skyn te ry, sal die komitee na Mooirivier terugkeer om verdere getuienis in dié verband aan te hoor.

7.3 Wat massabetogings betref, het die komitee die dienste verkry van vooraanstaande Suid-Afrikaanse en buitelandse deskundiges oor dié onderwerp. Vertoë is gevra van belanghebbende organisasies, insluitende die Suid-Afrikaanse Polisie. Die komitee sal te geleëner tyd ook in die openbaar getuienis aanhoor.

8. 'n Vierde komitee van die Kommissie is in Januarie 1992 ingestel om ondersoek in te stel na geweld met betrekking tot openbare vervoer in Suid-Afrika. Die behoefte aan so 'n ondersoek spruit uit die hoë voorkoms van geweld, insluitende 'n aantal sterfgevalle, op treine in sekere stedelike gebiede en in wat as "taxi-oorloë" bekend staan. Die voorsitter van die komitee is adv Rossouw, en die lede is mnr Steyn, adv B M Ngoepe van die

Pretoriase Balie en mnr L S van Zyl, 'n prokureur van Kaapstad. Belanghebbende partye is versoek om skriftelike getuienis voor te lê, en die komitee sal te geleëner tyd getuienis in die openbaar aanhoor. Voor die instelling van hierdie komitee is informele vergaderings gehou tussen adv Rossouw en lede van die Kaapstadse Vredeskomitee. Die voorsitter en lede van die komitee het ook 'n vergadering gehou met senior lede van Spoornet se veiligheidsafdeling.

9. Op 10 Desember 1991 het die koerant New Nation getuienis rakende 'n beweerde sameswering, waarby twee lede van die Suid-Afrikaanse Polisie betrokke sou wees, rakende die ontvoering van en moord op die voorsitter van die Civic Association in Schweizer-Reneke na die Kommissie verwys. Die getuienis het bandopnames van beweerde samesprekings met die betrokke polisiemanne ingesluit. Op 17 Desember 1991 het die Kommissie getuienis aangehoor, insluitende dié van die twee polisiemanne. Die polisiemanne het ontken dat dit hulle stemme op die opname is. Die Kommissie het besluit dat daar prima facie-bewys is wat die polisiemanne impliseer, en die aangeleentheid is aan die Prokureur-generaal van Transvaal oorhandig. Die prokureurs van New Nation en die Staatsprokureur was teenwoordig tydens die aanhoor van getuienis.

10. Die Kommissie was besorgd oor persberigte oor die houdings van die PAC en AZAPO teenoor onlangse voorvalle van geweld rakende onderskeidelik die toer van mnr Paul Simon en die moord op polisiemanne. Die Kommissie wou nie bloot op grond van persberigte optree nie en het gevolglik die presidente van albei organisasies genooi om met hom samesprekings te voer gedurende die week van 27 Januarie 1992. Verdere stappe sal oorweeg moet word in die lig van die reaksies op hierdie uitnodiging.

11. In die Weekly Mail van 3 Januarie 1992 is bewerings gemaak rakende die aanstigting van geweld in swart woongebiede deur 'n koverte operasie van die Suid-Afrikaanse Weermag. Die Voorsitter van die Kommissie het die redakteur van die Weekly Mail onmiddellik versoek om die Kommissie te voorsien van enige getuienis wat daartoe kan dien om te bepaal of sulke bedrywighede steeds voortgaan. Op 9 Januarie 1992 het die Minister van Verdediging, mnr F

P Meyer, LP, die Kommissie formeel versoek om die bewerings te ondersoek. Die Kommissie sal op 4 Februarie 1992 in Kaapstad begin met die aanhoor van getuienis.

12. Die Kommissie het 'n aantal informele navrae tot die Suid-Afrikaanse Polisie en ander organisies gerig insake berigte van beweerde openbare geweld en intimidasie. Die reaksies was nuttig en opbouend.

13. Dit is klaarblyklik nog te vroeg om te begin om afleidings te maak uit die inligting wat reeds onder die Kommissie se aandag gekom het, veral aangesien die komitees nog moet verslag doen. Die Kommissie het egter geen twyfel nie dat sy blote bestaan 'n belangrike doel dien. Die feit dat daar 'n onafhanklike liggaam is wat inligting kan aanvra en ontvang op 'n terrein wat tot dusver met geheimhouding en talle gerugte gepaard gegaan het, is op sigself bemoedigend. Die feit dat die Kommissie in die openbaar optree, stimuleer gesprekvoering oor hierdie onderwerpe en dit is ook tot voordeel van die publiek, die Regering en politieke partye en organisasies.

14. Die Kommissie is van mening dat die snelle instelling van en optrede deur sy komitees tot 'n afname in geweld kan lei. Die Wet op die Voorkoming van Openbare Geweld en Intimidasie, 1991, vereis egter dat komitees uit ten minste drie lede moet bestaan en dat een van hulle een van die vyf lede van die Kommissie moet wees. Al die lede van die Kommissie dien tans in komitees en gevolglik is dit vir die Kommissie in hierdie stadium onmoontlik om ondersoek in te stel na verskeie geweldsituasies wat sy dringende aandag vereis. Die Kommissie beveel aan dat die Wet so gou moontlik gewysig word deur die verwydering van die vereistes dat komitees uit 'n minimum van drie lede moet bestaan en dat 'n lid van die Kommissie in elke komitee moet dien.

15. Die Kommissie betuig graag sy waardering vir die gewillighei en geesdrif waarmee vooraanstaande en besige persone wat hy genader het, ingewillig het om in sy komitees te dien.