

COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC
VIOLENCE AND INTIMIDATION

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Private Bag X858
PRETORIA
0001

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Fax: (012) 320 3812

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M. Worsley
SECRETARY OF THE COMMISSION

ADDRESS LETTERS TO SECRETARY: COMMISSION OF INQUIRY REGARDING
THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION

STATEMENT READ BY MR JUSTICE R J GOLDSTONE AT THE COMMISSION'S
PRELIMINARY HEARING INTO THE BOIPATONG MASSACRE HELD AT PRETORIA
ON MONDAY 6 JULY 1992

A. ENQUIRIES BY THE COMMISSION

The Commission consists of five members and a small staff. It is obviously unable to enquire into every one of the many tragic incidents of violence which regrettably have become a daily occurrence in South Africa. In deciding which incidents to investigate the Commission has regard to many factors and primarily its most important task which is to find ways and means of curbing violence. When it declines to investigate any particular situation or incident of violence, in no way does it lack a full appreciation of the personal and public tragedy associated with needless and often mindless loss of life or serious injury. The Commission holds preliminary enquiries in order to assess whether the issues are such that a full enquiry is necessary having regard to the Commission's resources and terms of reference.

B. THE BOIPATONG ENQUIRY

1. Some incidents cry out for full and exhaustive enquiry. The Boipatong massacre is one. The number of people who were murdered and injured, the personal tragedy of the bereaved families and the justified anger of all decent people demand answers to the ques-

tions which so obviously arise in relation to the events of 17 June 1992.

2. The legal representatives of the parties have assisted the Commission with regard to framing terms of reference relating to the enquiry. They are the following:

- (a) The identity of the persons directly responsible for the massacre;
- (b) The cause of the massacre and the nature, time and place of the planning of the massacre and the persons responsible for the massacre and the planning thereof;
- (c) The action taken by members of the South African Defence Force who were in the vicinity of the KwaMadala Hostel immediately after the massacre;
- (d) Whether any steps could or should have been taken by the South African Police to prevent or avert the massacre;
- (e) The nature and efficiency of the investigation by the South African Police after the massacre;
- (f) Steps which should be taken to prevent or avert any recurrence of such acts of public violence.

3. With the concurrence of the Minister of Justice, the Commission has decided that a Committee of the Commission should be established to conduct the full enquiry. It will consist of myself as chairman. The members will be Adv D J Rossouw SC and Adv M N S Sithole. Justice P N Bhagwati, the former Chief Justice of India, will assist the Committee as an assessor.

4. All of the legal representatives appearing before the Commission are agreed that they are not yet in a position to begin the enquiry. It has been agreed that it will commence on 4 August 1992 at 10 am at a venue to be announced.

5. In its Second Interim Report the commission recommended that the Government empower it to offer adequate witness protection to persons testifying before the Commission. The Minister of Justice has informed the Commission that this recommendation has been accepted and discussions are presently being conducted by the Commission with officials of the Department of Justice with regard to appropriate regulations. It is hoped that the regulations will be in force by 4 August 1992.

6. Justice Bhagwati has generously agreed to return to South Africa in order to sit with the Committee. I would like to express my sincere appreciation to him for agreeing to do so. The Commission is indebted to him more especially as his wise counsel and wide experience have already been of much value to the Commission.

C. GENERAL POLICY CONSIDERATIONS

1. In view of the present climate of violence and political volatility in the country, the Commission has unanimously decided to make public its views on a number of issues.

Allegations of responsibility for violence

2. With regard to the involvement in current violence of Government and the Security Forces different kinds of allegations have been made by some political leaders and by some newspapers. They include:

- (a) Direct complicity in or planning of current violence by the State President, members of the Cabinet and senior members of the South African Police and Defence Force;
- (b) Direct complicity in or planning of current violence by members of the middle or lower ranks of the South African Police and Defence Force;
- (c) Unwillingness or inability by the State President and members of the Cabinet to take adequate steps to prevent current violence;
- (d) Unwillingness or inability by the of Security Forces to prevent current violence.

3. No evidence has been submitted to the Commission which in any way justifies allegations of any direct complicity in or planning of current violence by the State President, any member of the Cabinet or any highly placed officer in the South African Police or Defence Force. But if such evidence is submitted to the Commission it will be thoroughly investigated.

4. In the absence of such evidence the Commission considers that allegations to the effect that Government and Security-Force

leaders are themselves directly responsible for the commission of violence are unwise, unfair and dangerous. They are dangerous particularly because they are likely to exacerbate the climate of violence and frustrate and retard attempts to curb violence.

5. Evidence in support of the other kinds of allegations concerning Government and Security Force involvement in the violence has been received by the Commission. The serious acts of violence committed by 32 Battalion in Phola Park has been reported by the Commission to the State President. Other evidence of misconduct by members of the Police or Army are currently being heard and considered by Committees of the Commission.

6. The Commission will continue to investigate allegations of violence alleged to have been instigated by supporters of the African National Congress and the Inkatha Freedom Party.

7. So, too, the Commission will continue to investigate any allegations concerning the unwillingness or inability of the Security Forces to prevent violence and those relating to the adequacy or sufficiency of steps taken by them to do so.

8. The Commission is of the view that in order for a Government to gain the respect and support of its citizens whom they serve, it must be able to demonstrate that it has full control of its security forces. In turn the security forces must be able to secure the lives and homes of the people. Such a state of affairs cannot be brought about without active co-operation between the

security forces and the vast majority of the citizens and their political representatives. How to bring about such a state of affairs is the most urgent and daunting task of the Commission.

9. The Commission appeals to all the political leaders in South Africa to actively assist it in this task.

Non-co-operation with the police

10. In its Second Interim Report the Commission set out a number of reasons for the distrust and mistrust of the South African Police by so many South Africans. The Commission remains deeply aware and concerned at this state of affairs.

11. If acts of violence were to be committed by or with the complicity or with the active support or connivance of members of the South African Police, it could not be expected of the victims of violence to co-operate with the Police in subsequent enquiries into the violence by the Police. The Government and the Security Forces should therefore understand and appreciate the anger and frustration of so many South Africans. It will take more than the abolition of racial legislation and statements of good intention to achieve racial and ethnic harmony in South Africa. Whether or not groups of former Koevoet members employed by the South African Police are involved in incidents of violence, the infamous reputation of Koevoet is such that the very existence of such a group in South Africa in 1992 is calculated to cause yet further distrust

and suspicion of the security forces. The wisdom of employing such a group or groups must be open to serious question.

12. But at the same time, in the current climate of distrust and suspicion community leaders should be particularly careful not to make allegations of police misconduct or complicity which are not materially substantiated by facts.

Ignoring recommendations of the Commission

13. The Commission is distressed that some of the considered and urgent recommendations made by it have been ignored. In particular it would refer to the following:

14. In its Second Interim Report the Commission reported that:

"Hostels are common to most of the worst areas of violence. All hostels should immediately be adequately and securely fenced. A strong and efficient police presence should ensure that no arms are taken in or out of hostels. It should also be in a position to protect all hostel dwellers from external attack."

The only response to date has been a statement on behalf of Government that R294 million has been allocated for the upgrading of hostels. As far as the Commission is aware no action has been taken to date.

15. The Commission's recommendations, made in January 1992, concerning policing in Mooi River have been ignored. No reasons have been furnished for so doing.

16. The Commission's recommendations concerning the deployment of 32 Battalion in peace-keeping operations were met with what can generously be described as an unhelpful response from a senior member of the South African Defence Force. No reasons have been furnished for ignoring the Commission's recommendations.

17. In December 1991, the Commission referred to the Attorney-General of the Transvaal a *prima facie* case of involvement by policemen in Schweizer-Reneke in an unsuccessful conspiracy to murder an ANC leader in the town. Notwithstanding constant enquiries by the Commission the police investigation has taken an unacceptably long time. Eventually the Commission felt obliged to call the investigating officer to testify in public and explain the delays.

18. The Commission by no means expects that recommendations made by it should necessarily be accepted or implemented. It does expect, however, that they will not be ignored. If they are not accepted or not implemented the Commission believes that it and the public are entitled to be informed of that fact and of the reasons therefor.

19. If the Commission is to continue to serve any purpose it must retain such national and international credibility as it may have

earned. To ignore its recommendations can only be calculated to diminish if not destroy the credibility and effectiveness not only of the Commission but also of the Government.

20. The Commission's recommendations concerning the bearing of weapons in public has been partially but inadequately implemented.

Mass action

21. Public demonstration is a fundamental democratic right though in times of political tension it may have the potential for violence. For that reason, some months ago the Commission set up an international panel of experts to assist it in making recommendations to the State President on the rules and procedures which should apply to public demonstrations, marches and picketing. That panel will report in public in Cape Town on Thursday. It is the hope of the Commission that at the end of the public debate which will follow the Report, an accord will be reached on such rules and procedures.

22. In the view of the Commission the right to public demonstration is especially important at a time when the disenfranchised majority of South Africans have no alternative peaceful means of political action. But at the same time this right should not be exercised in such a way that it is calculated to lead to violence.

Appeal to leaders

23. The Commission appeals to all of our country's leaders to spare no effort in re-establishing appropriate ways to continue the search for a peaceful transition to a democratic form of government. Without it the efforts of people of peace will come to nought and the activities of the instruments of the Peace Accord will become irrelevant.

Anticipation of the findings of the Commission

24. The Commission has previously welcomed vigorous public debate on matters referred to it for enquiry and on its reports. However, it views with concern recent press comment which anticipates findings which have to be made by the Commission. In particular there has been comment on the credibility of witnesses who have testified before the Commission and findings have been stated in matters which have yet to be decided by the Commission. This practise is regrettable and it is hoped that it will not be repeated.