

**SOUTH AFRICAN GOVERNMENT OFFICE  
- WORLD TRADE CENTRE -**

13 May 1993

Head of the Administration  
Multi-Party Negotiating Process  
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE  
ATTENTION OF THE TECHNICAL COMMITTEE: VIOLENCE**

1. Attached is a submission by the South African Government entitled ***GOVERNMENT PROPOSALS FOR STRENGTHENING OF THE NATIONAL PEACE ACCORD (NPA)***.
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely

*Khawana*  
GOVERNMENT OFFICE: WORLD TRADE CENTRE

DEK

1993-05-12

The Head : Administration  
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World Trade Centre  
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Dear Dr Eloff

**GOVERNMENT'S SUBMISSIONS : TECHNICAL COMMITTEE ON VIOLENCE**

Enclosed please find the Government's submissions, titled  
"PROPOSALS FOR THE STRENGTHENING OF THE NATIONAL PEACE ACCORD"  
for the attention of the above-mentioned Technical Committee.

Yours sincerely



**D P A SCHUTTE  
MINISTER OF HOME AFFAIRS**

**NOTES: GOVERNMENT PROPOSALS FOR STRENGTHENING OF THE NATIONAL PEACE ACCORD (NPA)**

**1. BACKGROUND**

1.1 Democracy is impossible in a climate of violence and fear. Consequently the Peace Accord deals with various aspects designed to act as a catalyst in order to bring about and promote co-operation aimed at the prevention of violence and the attainment of peace.

1.2 One of the important functions of the National Peace Committee (NPC) is to mediate and adjudicate disputes between parties, which is performed both formally and informally. The adjudication, however, does not interfere with the normal function of the courts.

1.3 Problems experienced with the adjudication process include -

- \* parties against whom complaints are made, delay adjudication proceedings through the taking of trivial technical points.
- \* parties do not view the Peace Accord with the necessary seriousness. Examples can be sited where parties did not even attend adjudication proceedings.
- \* parties do not adhere to the findings of adjudicators.



- \* adjudications are not expedited and take too long to be concluded.
- \* bad communication exist between the NPC, adjudicators and parties.
- \* uncertainty about adjudication procedures.
- \* provisions of the Peace Accord are not strictly adhered to.

## 2. TRANSGRESSIONS OF THE NATIONAL PEACE ACCORD

2.1 Transgressions of the NPA can be divided into -

- A. Transgressions of the NPA which have been or are subject to formal adjudication by the National Peace Committee.
- B. Transgressions which have been or are subject to informal investigation by the National Peace Committee.
- C. Transgressions of a serious criminal nature which are dealt with through the normal criminal courts.

2.2 Since the signing of the Peace Accord, 11 complaints were formally adjudicated, a further two must still be adjudicated, whilst the National Peace Committee has investigated more than 150 informal complaints. The above-mentioned do not include a total

of 379 transgressions of the Peace Accord, which, due to the fact that it also constituted criminal offences, were dealt with by the criminal courts.

2.3 The most important shortcoming of the NPA, which leads to problems being experienced relate to the fact that the NPA does not contain any specific sanctions for non-compliance with the outcome of mediation, arbitration and adjudication procedures as is set out in Chapter 9 of the Accord.

### 3. CODESA ON THE NATIONAL PEACE ACCORD

3.1 Working Group One of the Convention for a Democratic South Africa (CODESA) discussed and agreed on certain aspects of the successful implementation of the National Peace Accord.

3.2 It was agreed that:

"In the light of the current level of violence that is devastating the prospects of peace and stability in our country, all political parties, organisations and administrations, participating in CODESA, in order to signify our common purpose to bring an end to political violence, recommit ourselves both in letter and spirit to the National Peace Accord."

(14 September 1991)

and

"It was agreed that it be recommended to the NPC to take active and urgent steps to ensure the legal enforceability of the Code of Conduct for political parties as provided for in clause 9.6 of the National Peace Accord."

(10.16)

3.3 Agreement was furthermore reached on matters pertaining specifically to transgressions of the National Peace Accord by political parties.

"The NPC take active steps to ensure that transgressing political parties, on presentation of the Commission's findings to them, respond in writing to the NPC, as provided for in the National Peace Accord.

(10.17.1)

"The finding of the Commission be made public in order to bring such parties to account for their transgression of the National Peace Accord.

(10.17.2)

#### 4. GOLDSTONE COMMISSION ON THE NATIONAL PEACE ACCORD

4.1 Amongst others, the Goldstone Commission proposed in its report regarding the Bisho-insident that the ANC leadership should censure Mr Kasrils and others. In the Third Interim Report of the Goldstone Commission it is said that "consideration should be



given to agreement on the **withholding of permission to address public meetings** for a given time as a legally enforceable penalty for clear breaches of this kind".

4.2 In the **Thokoza-report** the Goldstone Commission said the following in paragraph 2.5:

"Rumour is clearly a trigger for violence. Where rumour is **deliberately and maliciously started, and is false or is based on a negligently unsubstantiated allegation**, it is potentially much more dangerous than a bomb threat, which does in fact carry criminal sanctions. We therefore recommend that urgent consideration be given to **imposing criminal sanctions** on anyone acting in that way."

## 5. POSSIBLE SANCTIONS AND MECHANISMS

Strengthening of the Accord could be done by non-statutory and statutory means and consideration should be given to the adjudication of less serious transgression by the NPC or an adjudicator on an expeditious way, whilst more serious transgressions should be heard by a statutory tribunal and be enforceable by courts of law.

### 5.1 Non-Statutory Mechanisms

5.1.1 Non-statutory enforcement mechanisms could be inserted

into the Accord by means of a further amendment of Chapter 9. Such a mechanism could entail:

- \* the appointment of a full-time adjudicator, which could be a retired judge who is acceptable to all parties;
- \* procedure of a summarily informal nature. Record of the proceeding should however be kept;
- \* the power to impose a fine on a party/organisation;
- \* that the decision of such an adjudicator be final; and
- \* that all parties bind themselves to such decision and the payment of a fine which is imposed on it.
- \* that record be kept of all previous transgression by a party which does not keep to the orders made against it.

## 5.2 Statutory Mechanisms

5.2.1 Serious consideration should be given to the possibility of making the Code of Conduct for Political Parties and Organisations, as is contained in Chapter 2 of the NPA, applicable on all political parties and organisations, irrespective of the fact that they are signatories to the NPA or not. This could however only be done if the Code of Conduct is given statutory power, and



sanctions, applicable to all political parties and organisations, are contained in such an Act.

5.2.2 Although the present procedures as set out in Chapter 9 of the Accord and strengthened by the proposal in paragraph 5.1.1 (above) could be sufficient for minor breaches, more serious breaches or recurring breaches should be heard by an impartial tribunal constituted from retired judges. A possibility would be that a tribunal consisting of three judges be appointed or that a single judge hear the dispute or complaint in the first instance with a right of appeal to such a tribunal.

5.3 Because the **seriousness** of a specific breach or transgression of the NPA may differ from incident to incident, it would not be an easy task to determine which acts, constituting a breach, should be heard by which forum. It is, however, felt that all **wilful acts which has the potential to lead to bloodshed or serious damage to property** should be heard by a statutory body as set out in paragraph 5.2. Such body could be empowered to make the following orders:

- \* order the party to rectify the breach, and should it fail, impose a fine;
- \* impose a fine on a party or person, which fine shall have the effect of a civil judgement, but could be reduced if a party publicly distance itself from the events or take steps to prevent recurrence thereof;

- \* prohibit the publication of any statements of political leaders and political propaganda of a party or organisation;
- \* to bar the receipt of foreign financial aid;
- \* freeze internal funds; and/or
- \* in the case of recurring serious breaches or commitment to armed action order the cancellation of registration of the party or declare the party or organisation unconstitutional or unlawful. (This function could, once a Constitutional Court has been established, be performed by such Court)

#### 6. VICARIOUS LIABILITY OF LEADERSHIP OF A PARTY OR ORGANISATION

The Code of Conduct contained in Chapter 2 of the NPA could be amended by inserting a provision that the leadership of a political party or organisation shall be deemed to have identified itself with, and condoned, an act which constituted a transgression of the NPA by an enrolled member or by a person which is part of or identifies himself with a group of persons taking part in a public gathering which was organised by such party, unless the leadership of such party or organisation publicly distances itself from the conduct of such person and takes active steps to prevent a recurrence of such conduct.