

# **Annexes**

# ANNEX I

## Composition of the Commonwealth Observer Group

### THE OBSERVER TEAM

**Mr Austin Amissah** (*Chairperson*)

Former Attorney-General and Justice of Appeal, Ghana

**Professor Duncan Chappell** (*Co-Chairperson*)

Director, Australian Institute of Criminology

**Major-General Evaristus S O Armah (Rtd)**

Nigeria

**Major William Jansen**

Botswana Defence Force

**Mr Henry Jensen**

Former Deputy Commissioner, Royal Canadian Mounted Police

**Superintendent Sulaiman bin Mahmud**

Malaysia

**Senator Fred Mitchell, Jr**

Bahamas

**Mr Emmett Mitten**

Former Assistant Commissioner of Police, New Zealand

**Mr Simbi Mubako**

Former Minister of Justice, Zimbabwe

**Mr Anand Sharma**

Lawyer and former Member of Parliament, India

**Mr Robert Simmonds**

Former Commissioner, Royal Canadian Mounted Police

**Chief Superintendent Peter Stevens**

Britain

### SECRETARIAT SUPPORT STAFF

Mr Max Gaylard (*Team leader*)

Dr Moses Anafu

Ms Dale Gunthorp

Ms Colleen Lowe Morna

Mrs Gina Mason

Ms Charlene Lee Ling

Press Cuttings on COMSA's Work in Natal

New Nation, 11 - 17 December 1992, Page 8

Page 8 December 11 - December 17 1992 NEW NATION

▼ **Natal:** Attempts to get Inkatha and ANC together proving difficult as the two bodies accuse each other ▼

# Peace thrives, but . . .

☆ *Warring factions in trouble-torn Natal still find it hard to tolerate each other*



**Peace move:** Chief Aaron Ndwelane (left) and Prince Morris Maelala (right) address a peace meeting near Port Shepstone

**A**s eight buses, bursting with ANC members waving flags, pulled into Nyandezulu, near Port Shepstone, hundreds of Inkatha amabutho (soldiers) stood stone-faced waiting for them, under the Inkatha flag.

The situation was like a powder-keg waiting to explode. Then came a 29-year old member of the Zulu Royal family, Prince Morris Maelala, who ran between the two groups, confiscating flags and calming the tension.

"I am an Inkosi myself, and I used to be in charge of the amabutho. I know how to deal with situations like that," said Maelala, who was largely responsible for the success of last Sunday's joint Peace Rally in Nyandezulu.

No incidents of violence were reported by the SAP or unites

As a member of the Royal family, Maelala gained the trust of the chiefs and Inkathas, urging them to take the lead in bringing peace to their areas.

Sunday's meeting in Nyandezulu was officially called by Chief Aaron Ndwelane. The LDRC in Umbululu was formed after a meeting of all members of the regional authorities called by Chief Wellington Hlangwa.

Maelala said that Chief Mngosathu Buthelezi and King Goodwill Zwelithini knew what he was doing and they supported it.

Although reacting with a tinge of suspicion and disbelief, ANC leaders in both areas have supported the moves and pledged their support for peace structures.

In Nyandezulu, a resentment and development committee was formed to pave the way for the

refugees' return. The committee comprises representatives of the ANC, Inkatha, tribal authorities and the already existing LDRC.

Cyril Shezi of the ANC in Port Shepstone said: "We are not anti-chiefs. I respect my chief, Chief Ndwelane, and still consider myself his subject. We are only opposed to what they do in support of Inkatha."

The formation of the Congress of Traditional Leaders (Contralesa) as an ANC-aligned body underscores Shezi's point.

In support of Shezi, ANC chairman in Phaleni, near Richmond, Sifiso Nkabinde said: "We're not at war with them but because they get their salary from kwaZulu, the chiefs become victims if they don't toe the line."

ANC refugees have refused to report their pending return to Chief N Dlamini of Phaleni. Nkabinde added that even though Dlamini had been acquitted on several counts of murder, the community still considered him as guilty, as he had been tried "in an apartheid court".

# Inkatha and ANC at historical rally

# It's a major peace breakthrough

By Sheila Park and Gregory Nots

A MAJOR breakthrough in the local peace initiative has brought new hope to the people of KwaZulu and Southern Natal.

It came at an historical peace rally at

Nyandezulu Primary School last Sunday, the first time that leaders of all interest groups were on the same platform spreading the peace message.

Attended by about

2 000 people, the meeting was arranged to allow Commonwealth monitors, the Local Dispute Resolution Committee and Chiefs Ndwalane and Mavundla from the Ensimbini area to meet.

Representatives of both the Inkatha Freedom Party and the African National Congress, including returning refugees and local community members, also braved the rain which fell consistently throughout the six-hour open air meeting.

Dr Moses Anafu of Ghana, the guest speaker, said the time for truth had come and to forget past events and face the future

He said the meeting had been called on the initiative of Chief Ndwalane.

Dr Anafu urged people to work together to end the divisions and to prevent disruption of education.

Mr Cyril Shezi of the ANC, who asked what had been achieved by the killings, said both parties had lost out. Now was the time to isolate those who liked violence and senseless killings from those who wanted peace.

Only peace would lead to unification, said Mr Shezi.

Chief Mavundla asked his people who had left their homes to return

No one had ever thought of such a challenge to other chiefs and leaders, said Dr Siyabonga Cwele, executive member of the ANC, who apologised to those who had been vilified by his colleagues.

Chief Ndwalane said no one had ever come to tell him the causes of the violence in his area and he did not know why people were killing one another.

"All the people in this area are my children, no matter the organisation to which they are affiliated," he said.

And when Chief

Continued on page 2

South Coast Herald  
11 December 1992

□ Stories from front page

## Major peace breakthrough

Ndwalane asked his people if they needed peace, they replied with a resounding "YES!"

Political tolerance was the only answer for peace in the area, said Chief Ndwalane. People must stay together and not be forced to join other organisations, he added.

After his speech, a committee was formed to look after returning

refugees, the restoration of homes and structures damaged by the violence and long-term development.

At the end of the meeting, ANC and Inkatha members shook hands.

Heather Harrison, administrator of Ziphakamise, said members of the community reported that for the first time since June, there

had been no sounds of shooting on Monday night. And boys from the ANC Madegane and IFP Mtengwane areas had met for a braai on Tuesday night.

Many people were elated by the success of the meeting, said Mrs Harrison. But she pointed out there were still fears that violence may break out again.

City Press, 13 December 1992

## Refugees are returning home

**By FRED KHUMALO**  
LAST week's installation of the Umbumbulu local dispute resolution committee has already started bearing fruit as thousands of refugees who fled Natal's south coast as a result of political violence are heading back to their homes.

A joint effort between representatives from the Commonwealth Observer Group, local business people, ANC and Inkatha representatives and 40 tribal chiefs from the south coast area last Friday saw the birth of a local dispute resolution committee.

"Immediately after launching the committee in Umbumbulu, we proceeded to Port Shepstone where a joint ANC-IFP rally was held," said Prince Morris Mad-

lala, who was one of the people at the forefront of the peace initiative.

Held under the auspices of Inkol Aaron Ndwalane, the Port Shepstone rally was the first eyeball-to-eyeball meeting between ANC and Inkatha supporters in the area which has been torn apart by violence.

After the Sunday rally, thousands of refugees who had fled the area were bused back to their homes to visitations and happy music.

A carnival spirit swirled in the area as yesterday's enemies embraced each other warmly and shared jokes.

Was a magic wand waved over this area, healing the wounds of the past?

"It's simple . . . we used nego-

tiating skills and elicited a commitment to peace from the local chiefs," said Madlala.

But, of course, independent peace facilitators from the Commonwealth Observer Group were instrumental in kickstarting the whole process, getting the local chiefs to communicate with ANC structures.

It was also through the efforts of the Commonwealth group that the local representatives of the ANC and Inkatha agreed to meet and thrash out their differences.

While the ANC-Inkatha negotiations were under way, local chiefs also held a series of meetings in which the peace process was hammered out.

The rigorous process took five gruelling weeks of negotiations.

When the Umbumbulu dispute resolution committee was ultimately set up, happiness gripped the region as refugees returned to the homes they had fled as a result of the continuous conflict.

Said Commonwealth Observer Group head Dr. Moses Anafu: "The committee's task is to motivate the community and refugees to put the need for peace above old grievances, and to ensure that structures for security and reconstruction are in place as people return to their damaged homes, to help defuse the tension and keep the spirit of reconciliation alive."

People here attribute the peace settlement to both Inkatha's and ANC's earnest commitment to peace in the region.

# Peace hopes rise in troubled Ensimibini

MARTIN CHALLENOR  
Political Correspondent

Daily News  
Monday, 14 December 1992

A PEACE treaty was put in place in the troubled Ensimibini area on the Natal South Coast, just inland of Uvongo, at the weekend, at a reconciliation meeting brokered by the Commonwealth Observer mission in South Africa.

Representatives of the ANC, Inkatha, refugees from the area, and the tribal authority agreed to serve with local unrest monitors, clergy people and the SAP on a peace and refugee resettlement committee.

This could bring to an end three years of murderous conflict sparked by a challenge to the traditional leaders, and political rivalry between the ANC and IFP.

On Saturday, the parties were brought together by the Commonwealth Observer mission on an exposed hill slope in Ensimibini, flanked by burnt out huts. The area falls under Chief Samuel Mavundla. Observers from the United Nations, European Community, Organisation of African Unity and the international Ecumenical Monitoring Programme in South Africa were also present.

About 150 refugees from the area, mainly young people and many sporting ANC colours, arrived first in cars and two buses. Chief Mavundla, his Indunas and some members of the community were there to meet them, plus the Reverend Ron Brauteseth of the Methodist Church and Prince Maurice Madlala, a cousin of King Goodwill Zwelithini, who now works for the Commonwealth mission and was master of ceremonies.

After about 30 minutes, the IFP contingent arrived, led by a defiant Mr James Zulu. All the while, Mr Brauteseth led the refugees in prayer and hymn singing.

Singing and chanting, the IFP took up a position metres away from the refugees. The police drew back to encourage the two



CHIEF Samuel Mavundla urges his children to come home and to stop killing on the Natal South Coast.

groups to merge.

Major Herman Fourie of the SAP's Internal Stability Unit; and Dr Moses Anafu of the Commonwealth mission, who personally played a key role in setting up the peace meeting, met the IFP.

Speaking to his "children", Chief Mavundla asked them to "come back home" to rebuild their houses, but with discipline and respect.

"Killing must stop," he said. "I have reconciled with those who have insulted me."

After the speeches, six leaders from each side were called up. They shook hands and embraced. Mr Brauteseth led the meeting in singing hymns as the two halves of the community met again.

The refugees left the area after the meeting, as the committee is to arrange their permanent move back home. Chief Mavundla is to chair the committee. If peace prevails, funds from the National Peace Secretariat could be used to help rebuild destroyed houses.

## Renewed violence a bid to derail talks: IFP's Powell

Pietermaritzburg Bureau

A "TREMENDOUS upsurge" in political violence in the Natal Midlands in the past week could be linked to a bid to derail forthcoming peace talks, said the Inkatha Freedom Party's regional secretary, Philip Powell, today.

He said there had been almost continuous violence in various flashpoints throughout the Midlands since last weekend.

Mr Powell was ambushed by a group of gunmen who opened fire on his car in Imbali, Pietermaritzburg, on Saturday.

He and another IFP member had just left a function in the township when the attack happened. "There was at least one AK-47 and a couple of handguns.

"We returned fire. The exchange lasted for about a minute and then they ran away. I got only one bullet through the front door on the passenger side."

Mr Powell said there were several other violent incidents in the Midlands at the weekend.

He said gunmen opened fire on a bus carrying IFP supporters back to Wembezi, Eastcourt, after the opening of a new branch of the party in Loskop.

He said two hostels occupied by IFP supporters in Bruntville, Moon River, were attacked and burned at noon on Saturday.

Mr Powell is to give evidence before the Goldstone Commission today.

## ANNEX III

### COMSA Statement on Criminal Justice System and Reply by Department of Justice

The Star, Friday 18 December 1992

# Criminal justice in SA criticised

By Peter Fabricius  
Political Correspondent

The Commonwealth Observer Mission to South Africa (Comsa) has criticised the country's criminal justice system, expressing surprise at low sentences and low amounts of bail granted for crimes of violence.

Comsa chairman Mr Justice Austin Amissah, former Justice of Appeal in Ghana and current president of Botswana Court of Appeal, was giving the mission's impressions of its two months of observing political violence at a press conference in Johannesburg yesterday.

He would not express an opinion on causes of political violence, but the levels seemed to have dropped lately and this had partly been ascribed to the presence of international observers.



Mr Justice Amissah... little community confidence in the judicial system.

Mr Justice Amissah said that an efficient and effective criminal justice system which commanded the confidence of the

people was a powerful instrument for the control of crime.

Comsa had often heard that the criminal justice system in South Africa had broken down or had lost the confidence of the majority of people, especially blacks.

"Comsa has noted with surprise the release on bail, sometimes on small sureties or bonds, of persons charged with the gravest of crimes."

This allowed them to repeat their offences, interfere with witnesses or escape.

"In cases of violence, the message sent out is that the courts are not interested in the protection of human life or limb."

He said Comsa had also noticed that sentences "tended to convey the impression that violent crime, even that ending in the loss of human life, is treated with less severity than the simplest offences against property, such as stealing of goods".

## Magistrate system under fire

Political Correspondent

The Commonwealth Observer Mission in South Africa (Comsa) has criticised the SAP's new system of appointing magistrates to check that people in police custody are not ill-treated — and has suggested that the National Peace Secretariat should do the job instead.

Comsa member Chief Superintendent Peter Stevens, head of Scotland Yard's department of community policing, said at a press conference in Johannesburg yesterday that this would improve the credibility of inspections of detainees.

He said the lack of public trust in the police and the widespread belief that arrested peo-

ple were ill-treated, or even tortured, meant that few members of the public were prepared to help prosecute offenders.

The fear of ill-treatment or of reprisal against witnesses led to great difficulty in convicting offenders. This meant suspects were more likely to be tortured to extract confessions.

Stevens said the police had recently introduced a system of magistrates visiting police stations to ensure detainees were not ill-treated.

But the reports of the magistrates were confidential and so the community was unaware of visits or of their findings. An opportunity to improve public confidence in the police had been lost.

Stevens said that in many countries, including Britain, there were systems allowing public visits to police stations. These visitors were given unimpeded and unannounced access to all police stations and detainees.

He suggested that selected members of local dispute resolution committees under the National Peace Secretariat should be given immediate access to police stations and the right to report publicly on what they found.

This would do much to allay fears of ill-treatment of detainees and to curb it if it occurred. Stevens said his plan was straightforward and not "resource-intensive".

RESPONSE BY THE DEPARTMENT OF JUSTICE TO PRESS  
ENQUIRIES REGARDING THE PRESS STATEMENT OF THE  
COMMONWEALTH OBSERVER GROUP TO SOUTH AFRICA (COMSA),  
ISSUED ON 17 DECEMBER 1992

In reaction to the report issued by COMSA the Department of Justice regrets to note that personal opinion on the criminal justice system in RSA had unfortunately been elevated to fact. It also notes that there is no factual backing for the criticism of COMSA and that it appears to be based on hearsay and one-sided perceived perceptions.

It is regrettable that COMSA apparently did not deem it fit to share their concerns with the Chief Justice, any other Judge, Attorney-General or the Department of Justice before the issuing of its report - thus not applying the audi alteram partem rule. Such deliberations would undoubtedly have served an useful purpose in informing COMSA of the true facts regarding the criminal justice system and would have influenced their value judgment were they prepared to evaluate the facts in an unbiased way.

The sweeping and generalised statements by COMSA and in particular the following statements are categorically denied -

- \* "the criminal justice system in South Africa has broken down or lost the confidence of the majority of the people"
- \* "the courts are seen by the public as elitist and ill-equipped to quickly dispose of the volume cases"
- \* "the courts are not interested in the protection of human life of limb"
- \* "the level of sentences sometimes given after conviction ... tend to convey the impression that violent crime, even that ending in the loss of human life, is treated with less severity than the simplest offences against property such as stealing of goods."

A few facts which are indicative of the true position in regard to the criminal justice system are the following -

- \* the South African prisons are full of people sentenced to long

periods of imprisonment, and even to death, for violent crimes, indicating the courts' ability and willingness to impose severe sentences;

- \* whenever departmental monitoring shows an upward trend in crime, special measures are implemented. Eg. extra courts and additional manpower were utilised in areas of concern such as Natal - the result being that the court rolls are now back to normal;
- \* a lack of witnesses due to intimidation is a problem that has been highlighted by judges such as Mr Justice Didcott and Mr Justice Wilson and the Department again earnestly invites witnesses to testify so as to bring to book all perpetrators of, inter alia, violent crimes. Recent measures by the Minister of Justice and the Department regarding witness protection were furthermore specifically implemented to assist in this regard;
- \* statistics reflect that 66 823 and 2 368 280 cases were respectively heard in regional and magistrates courts during the 1991/92 year, which illustrates that members of society have confidence in the courts and do not hesitate to turn to them;
- \* in exercising their discretion regarding bail our courts endeavour, as in other democratic Commonwealth countries, to maintain a balance between the protection of the liberty of the individual and the maintenance of the effective administration of justice. The eminent South African Law Commission has furthermore, after wide consultation with, inter alia, all branches of the legal profession, recently completed a report regarding the South African law on bail and has recommended, inter alia, that an accused be entitled to be released on bail pending the conclusion of the trial unless the court is convinced on the basis of the available information that there are valid grounds why he should be kept in custody. This report is now being considered by the Minister of Justice who will table it in Parliament in due course;
- \* initiatives such as lay assessors; the decriminalisation of certain offences; the establishment of "night courts", "courts on standby", "mobile courts"; the creation of alternative adjudicating methods and the enhancement of the Office of the Justice of the Peace have furthermore shown to be popular and are contributing in bringing justice closer to the people;

- \* the Criminal Law Second Amendment Act, 1992 (Act 126 of 1992) addresses the need for special criminal courts and procedures to dispose of criminal cases quickly and indications are that measures under this Act will contribute effectively to speedier adjudication;
- \* Since 1990 an Attorney-General is in terms of sections 310A and 316B of the Criminal Procedure Act, 1977 (Act 51 of 1977) entitled to appeal against a sentence imposed in a criminal matter, which is in his opinion inadequate. The independence of the Attorney-General has also been confirmed by the promulgation of the Attorney-General Act, 1992 (Act 92 of 1992).

South Africa is justifiably proud of its legal system which ranks amongst the foremost in the world. This, however, does not mean that changes cannot be effected to improve the system. The South African legal system is therefore continuously, involved in a process of dynamic change and the Minister of Justice and Department of Justice have not and will not hesitate to take the lead in this regard.

However, a generalised, ill-informed and superficial evaluation such as contained in COMSA's report, only serves to create incorrect perceptions and present a disservice to the people of South Africa.

Nevertheless, COMSA is invited to meet with the Department and present any substantial matters, facts or proposals which can help to improve the administration of justice even further.

ISSUED BY ADV P A DU RAND: CHIEF LIAISON OFFICER: DEPARTMENT OF JUSTICE