

# VIOLENCE IN SOUTH AFRICA

The Report of the Commonwealth Observer Mission  
to South Africa

*Phase I: October 1992 – January 1993*



COMMONWEALTH SECRETARIAT

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1993

Commonwealth Secretariat  
Marlborough House  
Pall Mall  
London SW1Y 5HX  
Britain

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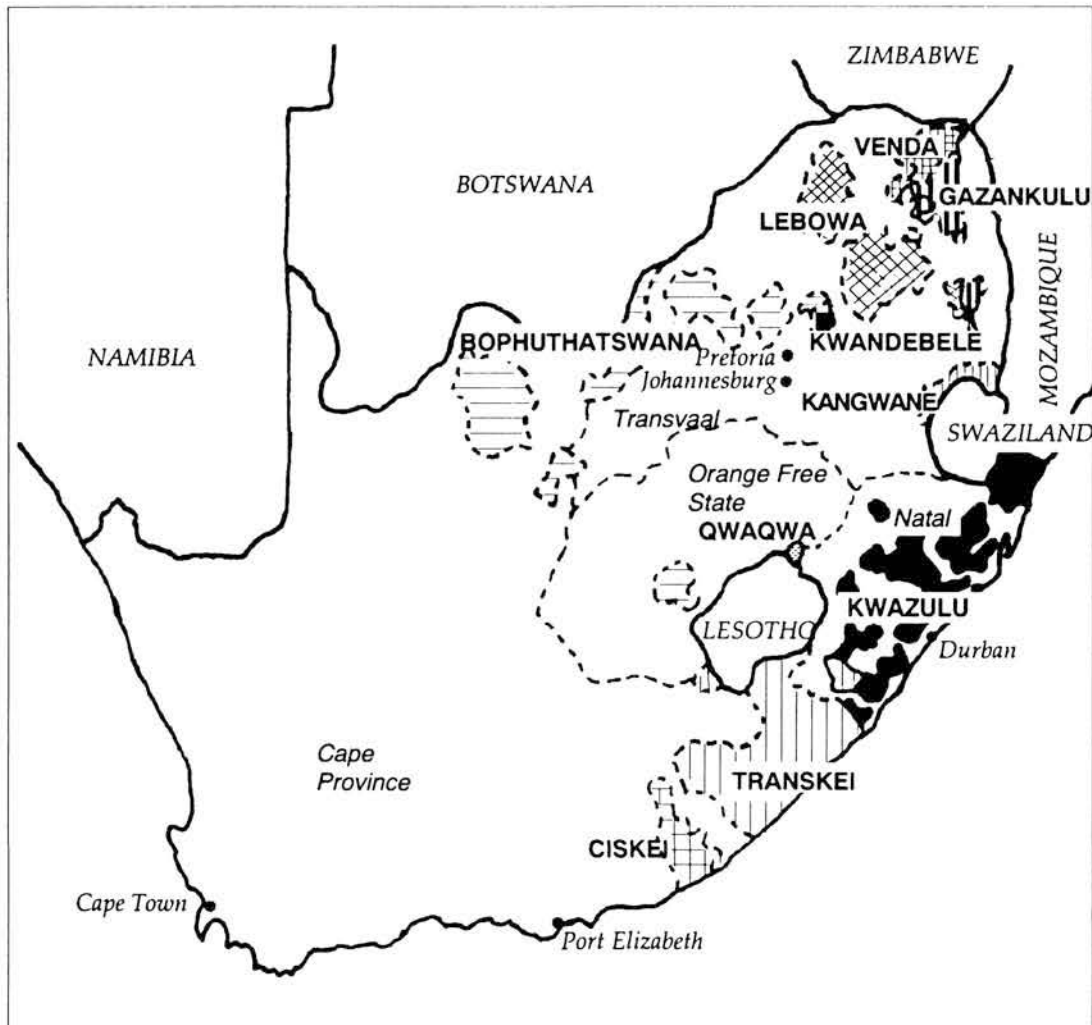
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## Map of South Africa and the 'Homelands'



## Letter of Transmittal



### Commonwealth Observer Mission to South Africa

1 Dee Road  
Greenside East  
Johannesburg  
Tel: 646 3519  
Fax: 486 0216

Dear Secretary-General,

We have the honour to transmit under cover of this letter the report of the first phase of the Commonwealth Observer Mission to South Africa covering the period from mid-October 1992 to mid-January 1993.

We need hardly say that we found the exercise both challenging and rewarding. It was an opportunity for us to make a contribution towards ending the violence in South Africa. But it was also an opportunity to serve the Commonwealth. Our involvement is therefore for us a source of pride, and we would like to thank you for the opportunity to serve the Commonwealth in so prominent an area of its endeavours.

As you know, the Government of South Africa, the political parties and representatives of all shades of public opinion have acclaimed the work of the first phase of COMSA. We have no doubt that the next phase of this exercise will be just as fruitful, and contribute to a peaceful transition to a democratic South Africa.

Justice Austin Amisshah

Professor Duncan Chappell

Chairpersons  
COMSA Phase One

H E Chief Emeka Anyaoku  
Commonwealth Secretary-General  
Commonwealth Secretariat  
Marlborough House  
London SW1

## Acronyms

ANC	African National Congress
APLA	Azanian People's Liberation Army
AZAPO	Azanian People's Organisation
CODESA	Convention for a Democratic South Africa
COMSA	Commonwealth Observer Mission to South Africa
COSAG	Concerned Group of South Africans
COSATU	Congress of South African Trade Unions
EC	European Community
HRC	Human Rights Commission
ICC	Interim Crisis Committee
IDASA	Institute for Democratic Alternatives in South Africa
IFP	Inkatha Freedom Party
ISU	Internal Stability Unit
KZP	KwaZulu Police
LDRC	Local Dispute Resolution Committee
LEAP	Legal Education Action Project
NGO	Non-governmental Organisation
NPC	National Peace Committee
NPS	National Peace Secretariat
OAU	Organisation of African Unity
PAC	Pan-Africanist Congress
PWV	Pretoria-Witwatersrand-Vaal
RDRC	Regional Dispute Resolution Committee
SACC	South African Council of Churches
SACP	South African Communist Party
SADF	South African Defence Force
SAP	South African Police
SAR	South African Rand
SARCC	South African Rail Commuter Corporation
TBVC	Transkei, Bophuthatswana, Venda and Ciskei states
TEC	Transitional Executive Council
UNISA	University of South Africa
UNOMSA	United Nations Observer Mission to South Africa

## CHAPTER 1

# Introduction

### Background

At their last summit in Harare, Zimbabwe, in October 1991, Commonwealth Heads of Government gave a mandate to the Commonwealth Secretary-General to visit South Africa and explore with the principal parties concerned ways in which the Commonwealth could assist in lending momentum to the negotiating process. In July 1992, during his third such trip to that country, the Secretary-General proposed to the Government and principal parties that a multidisciplinary team of Commonwealth experts provide practical assistance to arrest the ongoing violence, which had emerged as the key impediment to negotiations.

Soon after a United Nations Security Council debate on the issue and a visit to South Africa by Cyrus Vance on behalf of the United Nations Secretary-General, the United Nations Security Council adopted Resolution 772 on 17 August 1992. This Resolution:

- Authorised the United Nations Secretary-General to deploy, as a matter of urgency, United Nations observers in South Africa 'in such a manner and in such numbers as he determines necessary, to address effectively the areas of concern noted in his report, in co-ordination with the structures set up under the National Peace Accord'.
- Identified as areas of concern 'hostels, dangerous weapons, the role of the security forces and other armed formations, the investigation and prosecution of criminal conduct, mass demonstrations and the conduct of political parties'.
- Invited other 'international organisations, such as the Organisation of African Unity, the Commonwealth and the European Community, to consider deploying their own observers in South Africa in co-ordination with the United Nations and the structures set up under the National Peace Accord'.

Thereafter, the Commonwealth Secretary-General quickly constituted the Commonwealth Observer Mission to South Africa (COMSA). This group arrived in South Africa on 18 October 1992, two days after being briefed by the Secretary-General in London.

## Composition

In line with his original proposal, the Secretary-General invited member governments to nominate for the first phase of this mission (from October 1992 to January 1993) experts in a variety of relevant fields, including legal and judicial experts and persons with backgrounds in law enforcement, criminology, diplomacy, politics and community relations. The Secretary-General appointed Justice Austin Amisah, a former Attorney-General and Justice of Appeal in Ghana who is now serving as the President of the Botswana Court of Appeal, to chair COMSA. This he did from its arrival until December 1992, when due to prior commitments he had to leave. Professor Duncan Chappell, Director of the Australian Institute of Criminology and a Deputy President of the Australian Federal Administrative Appeals Tribunal, took over as Chairperson of COMSA for the remaining period. Dr Simbi Mubako, a law professor and former Minister of Justice and of Home Affairs in Zimbabwe, served as deputy Chairperson and spokesperson of the COMSA team at its regional office in Durban. Also included in the COMSA group were: a former Commissioner and a former Deputy Commissioner of the Royal Canadian Mounted Police; a former Assistant Commissioner of Police in New Zealand; a serving Chief Superintendent heading the Police/Community Relations Department at Scotland Yard in Britain; a serving Superintendent of Police from Malaysia; a lawyer and senator from the Bahamas; a lawyer and former Member of Parliament from India; a former General of the Nigerian Army; and a serving Major of the Botswana Defence Force. The observers were supported by a team of six Commonwealth Secretariat staff, led by the Director of the International Affairs Division, Max Gaylard. A full list of the COMSA members who participated in the first phase of this mission is at *Annex I*.

## Mandate of the Mission

During his briefing on 16 October 1992, the Secretary-General stressed that:

- In accordance with United Nations Resolution 772 of 17 August 1992, the Commonwealth mission would collaborate with the United Nations Observer Mission to South Africa (UNOMSA) and other international observers, and would co-ordinate closely with the National Peace Secretariat and other structures established under the National Peace Accord.
- Within that framework, however, the Commonwealth Group would retain its separate identity, reporting to the Commonwealth Secretary-General directly on all its work in South Africa. The Commonwealth Secretary-General stressed that each member of the Group would be serving in an individual capacity, and would be expected to make observations and judgments which reflected this independence.
- It was of crucial importance that the observers acted impartially and even-handedly in their dealings with all persons and organisations in South Africa.

At the end of the first phase of the mission (mid-January 1993), the Secretary-General would review the Commonwealth's role. This Report is a summary of the activities and observations of COMSA during this first phase.

## Deployment

Due to the relatively small size of the COMSA group (12 observers and six Secretariat staff), COMSA concentrated on the two regions of South Africa worst affected by the violence: the Pretoria-Witwatersrand-Vaal (PWV) area and Natal. COMSA also made four trips to the Border/Ciskei area, where tensions between the African National Congress and the Ciskei administration following the Bisho massacre of 7 September 1992 had led to a spiral of violence that threatened to become a new 'flashpoint'.

## Activities

In these areas, COMSA members focused on specific activities, where their particular range of police, military, legal, diplomatic and negotiating skills could be applied to optimum effect. In practical terms, the mission:

- Met with a wide variety of political parties, organisations and interest groups, including State President FW de Klerk and several government ministers; African National Congress (ANC) President Nelson Mandela; Pan-Africanist Congress (PAC) President Clarence Makwetu; Inkatha Freedom Party (IFP) leader Chief Mangosuthu Buthelezi; leaders of KaNgwane, Ciskei, Transkei, QwaQwa, Lebowa and KwaNdebele; senior officials of the Bophuthatswana administration; representatives of the Democratic Party, Conservative Party and Azanian People's Organisation (AZAPO); church groups; trade unions; and civic organisations and a variety of other non-governmental groups. In these meetings, COMSA sought primarily to listen to the views of those engaged in shaping the political future of the country, as well as to convey its deeply held view that violence in South Africa could not be effectively resolved as long as the political stalemate continued.
- Discussed with a wide range of experts at the University of South Africa (UNISA), University of Cape Town, University of the Western Cape and other specialist research bodies like the Human Sciences Research Council, the state of violence in South Africa and its causes and their views on ways of bringing this violence to an end.
- Attended and observed proceedings at political rallies, demonstrations, funerals and other public gatherings, with a view to helping pre-empt violence on such occasions.
- Acted to reinforce the work of the structures set up under the National Peace Accord – including the National Peace Committee, National

Peace Secretariat, Regional and Local Dispute Resolution Committees and the Goldstone Commission – through regular and visible attendance at their public functions, responding to requests for expertise and, where appropriate, playing a facilitative role.

- Established and developed channels of communication with the South African Police (SAP) and South African Defence Force (SADF) with a view to being able to provide constructive advice and assistance as appropriate. In the case of the SAP, COMSA found, and responded to a huge demand for expert advice in the field of police/community relations, through regular contact with senior officials, attendance and presentations at training seminars and contacts with the newly established Police Board.
- Acquainted itself with, and supported initiatives to help overcome the socio-economic causes of violence, including visits to several hostels and squatter camps, and discussions with relevant officials and community leaders on these issues.
- Liaised with the United Nations and other international observers, with a view to maximising the impact of the limited resources available in helping to arrest the violence.

The following chapters describe these key areas of activity in greater detail and the perceptions gained from them. They also offer some conclusions from COMSA's first phase of activity in South Africa.

## CHAPTER 2

# The Political Context

### Background

COMSA came to South Africa to provide practical assistance to indigenous structures seeking to promote peace. It would, however, have been impossible – indeed short-sighted – to have ignored the political context in which that violence occurred.

As elaborated in subsequent chapters, violence in South Africa is deeply rooted in the apartheid system and the continued uncertainty which plagues the country despite the reforms announced by President de Klerk in February 1990. Although it would be naive to assume that the advent of the first democratically elected government in South Africa would lead to an immediate cessation of violence, COMSA is firmly of the view that a Government which enjoys the support of the majority of the population is in a far better position to address the issue of violence than one which does not.

An election would, in the first instance, provide political rivals with a different sort of battlefield and nullify any remaining arguments in favour of the use of force. A democratically elected government would then be in a position to undertake the long overdue task of restructuring the law enforcement agencies, which have all too often been a part of the problem, rather than of the solution. Most important, a government accountable to the majority of the population would be under tremendous pressure to confront the social and economic issues which are at the heart of the frightening spiral of violence afflicting South Africa.

Thus, although COMSA's immediate objective was to help restrain violence on a day-to-day basis, it sought to put this violence in the broader context of the urgent need for a negotiated political settlement.

### Contacts With Political Parties and Interest Groups

During its first week in South Africa, before the group split into the Durban and Johannesburg-based teams, COMSA was briefed by representatives of all the political parties who are signatories to the National Peace Accord, including the National Party, ANC and IFP. During that week, COMSA also met with ANC leader Nelson Mandela and PAC leader Clarence Makwetu.

Subsequently, the Durban-based team, led by COMSA Chairperson Austin Amissah, paid a call on Inkatha leader Chief Mangosuthu Buthelezi in Ulundi. The team also called on the ANC Natal Midlands Chairman, Harry Gwala, after the assassination of his deputy, Reggie Hadebe. COMSA kept in close contact with all parties in the Natal area, especially during negotiations with the IFP, the *amakhosi* (traditional chiefs) and the ANC in an effort to help establish Local Dispute Resolution Committees (LDRCs) and organise the return of refugees in Umbumbulu, and KwaNdwalane and KwaMavundla in the Port Shepstone area.

The Johannesburg-based team, meanwhile, attended a reception hosted by the Minister of Foreign Affairs, Roelof 'Pik' Botha, on behalf of State President, and were also received by a number of ministers in Pretoria, including Constitutional Affairs Minister Roelf Meyer, Minister of Law and Order Hernus Kriel and the former Minister of Local Government, National Housing and Manpower, Leon Wessels. The team held further meetings with the ANC and PAC, and initiated meetings with AZAPO, the Democratic Party and the Conservative Party.

Partly at the initiative of the National Peace Secretariat, and partly at its own initiative, COMSA visited a number of the 'homelands', including Transkei, Ciskei, Bophuthatswana, KaNgwane, QwaQwa, Lebowa and KwaNdebele. The primary purpose of these visits was to encourage – where this was not already the case – participation in the National Peace Accord, as well as to discuss the eventual reintegration of these territories into a new South Africa.

In between its other activities, COMSA also frequently met with political experts and interest groups including the South African Institute for International Affairs; the Institute for Democratic Alternatives in South Africa (IDASA); the South African Council of Churches (SACC); the Congress of South African Trade Unions (COSATU); prominent business people; and civic groups.

### **Visit by the Secretary-General**

Political contacts made by COMSA in South Africa were buttressed by the close personal contact the Commonwealth Secretary-General maintained with all parties and interest groups. During the first phase of the COMSA mission, the Secretary-General stopped over in Johannesburg where, in addition to consulting with mission members, he spoke on the phone with Foreign Minister Botha and met with Mr Mandela and Chief Buthelezi as well as John Hall, Chairman of the National Peace Committee and Dr Antonie Gildenhuys, Chairman of the National Peace Secretariat.

His visit took place against the backdrop of the National Peace Committee (NPC) meeting of 24 November 1992, at which it was announced that the ANC and Inkatha had agreed to a bilateral meeting between their leaders, and that

the NPC was inviting all signatories to a meeting which, it was hoped, might act as a catalyst for multi-party negotiations.

Welcoming these developments – which were among the first signals that the political stalemate that dominated 1992 might finally be broken – the Secretary-General called for “leadership and vision” in order that the final lap of South Africa’s political transition could be completed.

### **Signs of Hope Amid the Gloom**

COMSA feels that there are grounds for cautious optimism in South Africa in 1993 although there were many disturbing developments in the last quarter of 1992.

On the negative side, COMSA arrived in South Africa after the second Convention for a Democratic South Africa (CODESA) broke down over disagreements on a timetable for transition, the issue of power-sharing and what size of majority would be required in order that a new constitution could be accepted.

The possibility of a resumption of talks receded even further after the Boipatong and Bisho massacres in June and September 1992 respectively. These left in their trail a spiral of violence which in Natal escalated to the point where the Government was obliged to deploy additional security forces in the area. The fragile political tolerance that had begun to develop among the political parties also broke down.

The publication by Chief Buthelezi, the Chief Minister of KwaZulu and himself a traditional Chief, of a draft regional constitution which, if taken literally, would amount to the secession of Natal from the rest of South Africa, exposed the divisions that appeared with the breakdown of multilateral negotiations. The formation of the Concerned Group of South Africans (COSAG), including Inkatha, Ciskei, Bophuthatswana and white groups to the right of the political spectrum, such as the Conservative Party, has also heightened the danger of fragmentation and dissidence.

COMSA, like other international groups, was shocked by the findings of the Goldstone Commission (referred to also in Chapter 3) that the SADF’s Military Intelligence continued to wage a ‘dirty tricks’ campaign against the ANC long after CODESA began. The subsequent purge of the security forces initiated by President de Klerk has gone some way to restoring confidence in these forces. However, as elaborated in the conclusions of this Report, COMSA feels that far more needs to be done to rid the army once and for all of its covert operations.

COMSA also witnessed an outbreak of attacks claimed by the Azanian People’s Liberation Army (APLA), the armed wing of the PAC (see Chapter 3). These attacks were followed by retaliatory attacks by extreme right-wing elements and threats of ‘hot pursuit’ raids into Transkei and neighbouring

countries, where the APLA is alleged to have its bases. These threats raised memories of the apartheid regime's destabilisation operations against neighbouring countries. More disturbingly, the APLA attacks have provided ammunition for racist bigots at a time when South Africa desperately needs to nurture the process of reconciliation that began with the dismantling of apartheid legislation.

The ambivalence of the PAC over the APLA attacks, and its anger, however understandable, with the massive response generated by the deaths of a few white people, does not help efforts to redress the situation. COMSA is especially concerned over the breakdown of bilateral talks between the PAC and the Government. It had been hoped that these talks would clear the way for the PAC to participate in multilateral constitutional negotiations for the first time.

Despite these drawbacks, during COMSA's stay there were many determined efforts to promote peace and break the impasse hindering the resumption of negotiations. Bilateral contacts among the various groups and parties continued. While it was sometimes difficult to foresee how all these separate discussions would finally merge into one forum, there is no doubt that they have cleared much of the undergrowth which in the past has been a barrier to progress in the multilateral negotiations.

Throughout the post-CODESA II period, the ANC and the Government have maintained contact with each other through Mr Meyer and ANC Secretary-General Cyril Ramaphosa. After several months of not talking directly to each other, President de Klerk and Mr Mandela met again in September 1992. This led to the historic Record of Understanding between the ANC and the National Party. Despite accusations and counter-accusations over the implementation of measures agreed in the Record of Understanding (especially those relating to curbing violence), relations between the two parties have continued to improve.

The ANC's recently-adopted 'Strategic Perspectives', which endorse power-sharing even beyond a transitional period, is evidence of the spirit of give and take that appears to characterise the present relations between the organisation and the Government.

A Government-ANC *bosberaad* (bush meeting) in December 1992 is reported to have brought these two sides closer together, and a further summit between the leaders of the two parties was held.

The Government has also held bilateral talks with Inkatha, which objected strongly to the Record of Understanding, and COSAG, primarily to dissuade these groups from pursuing individual options by assuring them that they have a legitimate place in any future negotiations.

The ANC, as mentioned earlier, agreed in principle with Inkatha to a meeting between their two leaders. Like the Government, the ANC has also been conducting bilateral talks with a number of 'homeland' leaders, such as those in Bophuthatswana and Ciskei. Such contacts, though often fraught with

difficulty, can only help to reduce misunderstandings and misgivings created by the institutionalised separation of peoples under apartheid.

### **Areas of Consensus**

Although vast differences of opinion on the way forward remain, COMSA has gained the impression, through its many contacts, that a consensus is slowly emerging on an agenda for progress. This includes:

- The resumption of multi-party negotiations, fashioned after but not necessarily under the banner of CODESA, taking account of some of the structural problems of this forum. The most realistic assessment at this stage appears to be that such talks would resume by March 1993.
- The setting up of a Transitional Executive Council (TEC) that would allow all parties contesting the election to have a say in the running of key institutions of government in the run-up to the election.
- Preparations for the election, including voter-registration; the adoption of a transitional constitution providing for a constitution-making body; promulgation of election rules that would be fair to all; and the appointment of an independent Electoral Commission.
- The holding of South Africa's first one-person, one-vote election. The only major disagreement now is over when this would happen, with the Government maintaining that it would not be logistically possible for such an election to take place this year, and parties like the ANC and PAC insisting that elections be held in the last quarter of 1993.
- The election for a Constituent Assembly to draw up a new constitution while also serving as the legislature. It will then be decided whether another election is held for the first post-apartheid parliament, or whether the Constituent Assembly will simply become the new parliament.

### **Outstanding Issues**

The issue likely to become most contentious once this process is under way is that of the extent of devolution of power to the regions.

Closely linked to this issue is the reintegration into a new South Africa of the 'homelands' which opted for independence under apartheid laws – Transkei, Bophuthatswana, Venda and Ciskei (the TBVC states). So far all but Bophuthatswana have accepted the principle of reintegration. COMSA came away from meetings with representatives of the administration in Bophuthatswana, which has a strong ethnic identity and is economically better off than the other 'homelands', with the distinct impression that this will be a difficult issue to resolve. Similarly, after frequent trips to Ciskei, and talks with Brigadier Oupa Gqozo, COMSA formed the impression that reintegration,

even where the principle had already been accepted, would not be a straightforward affair.

Of immediate and major concern is that legislation adopted during the apartheid era which prohibits free political activity continues to exist in these territories. Such legislation does not help create an atmosphere conducive to free and fair elections. The international community has frequently been asked to put pressure on the 'homeland' administrations to lift these restrictions. However, COMSA is of the view that the South African Government, which heavily subsidises these administrations, has far more leverage in these matters, and indeed bears the primary responsibility for ensuring free and fair political activity in these territories. It is essential that free political activity in all parts of the country is possible before multi-party elections are held.

### **Areas of Concern**

COMSA believes that the two main areas of concern during the months ahead will be:

- **Ensuring the involvement of all players in the political process.** There is, in the view of many of the smaller groups, a tendency by the principal parties to take decisions without consulting them. For their part, the principal parties become impatient with the long drawn out consultative process and neglect to consult smaller groups, some of whom, they believe, are deliberately attempting to hold the process hostage. These arguments notwithstanding, COMSA urges all concerned to make every effort to work together to reach agreement. The exclusion of any group is, in the long run, a potentially destabilising factor.
- **The relationship between violence and the negotiations.** In the past, the continued incidence of violence has frequently been cited by various parties as a reason for not returning to the negotiating table. The arguments for this are understandable. However, COMSA believes that violence should not be allowed to hold the negotiation process to ransom. Negotiations must take place in spite of the violence. Indeed, the longer the negotiating process is delayed the more likely are frustration, anger and hatred, which are fuelling violence, to spill over into uncontrollable and widespread civil conflict. Time is of great essence for the success of the democratic transition and any delay may result in the forces of moderation losing the initiative to those of political extremism which are waiting to seize such an opportunity.

### **Role of the International Community**

The resolution of the conflict in South Africa is primarily a matter for the people of that country. It would be unwise for the international community to try to

be prescriptive or become directly involved in any way in the process, unless asked to do so.

There are areas, however, in which COMSA believes international observers can be of assistance.

While the immediate task of international observers is to help arrest violence and so contribute to the creation of a climate conducive to the resumption of negotiations, the international community can also – through continuous contacts such as those made by COMSA during its first phase – maintain pressure on all parties to return to the negotiating table.

Once the process of preparing for elections is under way, COMSA foresees a role for international experts in the practical preparations for, as well as observing of, the elections. This is an area in which the Commonwealth has gained considerable experience in the last few years and where it could be of assistance if requested.

These considerations suggest the need for the international community to continue to maintain a presence in South Africa up to, and including, the first democratic elections. This view is endorsed by a cross-section of political parties and interest groups in the country. Where the Commonwealth is concerned, the decision by the Secretary-General to extend the COMSA mission for a further period is an indication of his, and the Commonwealth's, commitment to ensuring as smooth a political transition as possible.

## CHAPTER 3

# The State of Violence

### A. OVERVIEW

The state of violence in South Africa was a major reason for the commitment of international observers to this nation under the terms of Resolution 772 of the United Nations Security Council. The nature of that violence has been vividly portrayed on the television screens of countless millions of people around the world. Massacres such as those at Boipatong and Bisho have now joined Sharpeville in the lexicon of place-names associated with apartheid and the bloodshed it has provoked.

The realities of the violence that touches the lives of South Africans every day became all too familiar to members of COMSA. Overwhelmingly, black South Africans are the direct victims. To live in one of the densely packed townships clustered around the predominantly white and affluent cities of Johannesburg, Durban, Cape Town and Pretoria, is to live with the prospect of sudden death or injury at school, while shopping and even at home.

### Extent of Violence

On 10 December 1992, the Human Rights Commission (HRC) observed that by year's end, politically motivated violence would have resulted in:

- A total of 3,600 deaths, or 40 per cent more than in 1991. This means an average of 10 deaths a day for every day of the year.
- A total of around 6,000 injured, many of them maimed or scarred for life.
- Tens of thousands displaced and homeless.

Amongst the victims catalogued by the HRC are:

- train commuters – 275 dead and 550 injured;
- women – 218 killed and 251 injured;
- children – 10 killed and 81 injured;
- security force members – 116 dead and 180 injured;
- political activists – 100 assassinations.

COMSA was also told that a total of 226 police personnel were murdered while on duty in 1992.

The HRC figures relate only to political violence, which is difficult to define at the best of times. Comparable statistics on criminal violence are even less reliable, fraught as they are by the vagaries in the reporting behaviour of victims and by the unwillingness of the police to accept and record such reports. Members of COMSA were told frequently by the residents of townships that, because of widespread distrust of the SAP, even the most heinous crimes were often not reported.

This suggests that official statistics seriously understate the real extent of violence in most non-white areas of South Africa. Potentially, the most accurate figures are likely to be those for homicide, where a body has been found and counted. The homicide figures for 1992 are expected to total more than 15,000. In 1991 the SAP recorded 14,693 murders.

Some crude but revealing comparative statistics may assist in placing these grim totals in perspective. The United States, with a population approaching 250 million, has about 24,000 homicides each year – a rate of around 9 homicides per 100,000 of the population. This rate is four to five times higher than that of nations like Canada or Australia, and even more out of accord with the homicide rates of, for example, England and Wales or the Netherlands where the rates are about 1 per 100,000.

According to official sources the population of South Africa is about 30 million (excluding the self-governing and independent 'homelands') and the homicide rate at about 50 per 100,000 makes it one of the most violent countries in the world.

Members of COMSA visited many of the locations where violence had broken out or was in danger of doing so. They also spoke with many victims of violence who continue to reside in places like Alexandra, Katlehong, Soweto, Umbumbulu, KwaNdwalane and KwaMavundla. For the overwhelming majority of white South Africans, these places are known only as tiny reference points on a map, if indeed they are there at all.

The police, army, political parties, structures created by the National Peace Accord and independent monitors with whom COMSA maintained close contact were also confronted daily with issues of violence.

## **Causes of Violence**

From these contacts, it became evident to COMSA that the causes of violence in South Africa are complex and multi-faceted. These, briefly, are:

- South Africa has a long history of violence and much of the present conflict must be viewed within this historical context, including the legacy of the apartheid system.

- Violence in South Africa is supported by a deeply-rooted culture – both white and black – which uses it to resolve conflicts in the family and between and across different groups in society.
- Its causes, other than in the family conflict resolution area, are largely structural, and to be found in particular in the gross imbalances in the distribution of wealth in South African society. Violence is likely to be most extreme in societies where the gap between rich and poor is great. It is also likely to be inflamed when rising expectations of a redistribution of wealth are not seen to be met.
- The problem of crime committed by youth and youth gangs is becoming especially acute. With unemployment rates reaching 90 per cent or higher among black youths, the temptation to turn to crime as a means of survival or gaining self-respect becomes intense.
- The easy access to high-powered firearms provides the means for and raises the degree of violence.
- The present criminal justice system (examined in greater detail in Chapter 5) fails to protect society against criminal activities, especially violent crime, and so exacerbates the problem. The SAP, prosecution, courts and correctional agencies remain irrevocably tainted by apartheid. Informal justice systems, including people's courts, are widely utilised in many black communities across South Africa in preference to the formal justice system.
- Organised criminal activity is growing in areas like drugs, gambling, prostitution and weapon procurement. Some of the taxi wars also show signs of organised crime.
- Political rivalry and, of late, electioneering have fed on the underlying discontent, breeding an atmosphere of intolerance and one to which violence is seen as a legitimate way of resolving problems.
- State-sponsored violence remains a very significant and serious component of the problem. Allegations of a 'Third Force' operating as a destabilising element are supported by the recent revelations of the Goldstone Commission regarding continued covert operations (see also Chapter 2).
- For the foreseeable future, crime in general, and violent crime in particular, will be a major problem in South African society. The rate of crime has escalated dramatically since the reforms announced by President de Klerk in February 1990 and the criminal justice system has been thrown into disarray (see Chapter 5). Most crime in black communities remains unreported and crime statistics based on police reports are therefore largely meaningless.

### **International Observers**

The presence of the small number of 100 international observers in South

Africa may well have discouraged the incidence of violence. According to the HRC, politically related deaths, though still unacceptably high, dropped to a nine-month low in November 1992. The HRC attributed this, at least in part, to the presence of international observers – a view that was similarly expressed by many South African groups and individuals.

The perception is that individuals on all sides of the political and racial spectrum had ‘behaved better’ since the arrival of foreign observers in the country. COMSA members witnessed many situations at mass-action events where the potential for violence was great but where demonstrators and security forces exercised remarkable restraint and good judgment. In the past, COMSA was told, such laudable behaviour would not usually have been conspicuous. Examples of COMSA’s experiences are cited in Chapter 6.

### **Outstanding Concerns**

Several acute problems remain:

- The need for socio-economic reconstruction, as recognised by the National Peace Accord (see Chapter 4), is paramount.
- Inflammatory political statements, pointing to continued intolerance, are still commonplace.
- A troubling development which has surfaced since the deployment of foreign observers has been the outbreak of lethal attacks on whites, principally in the Eastern Cape region. Responsibility for these attacks, which received widespread publicity both in South Africa and abroad, was claimed by APLA, the armed wing of the PAC. The attacks were universally condemned by all the foreign observer groups, including COMSA, and by individuals and organisations on all sides of the political spectrum in South Africa and overseas. Inevitably, however, these attacks have already provoked retaliatory killings of blacks by some white groups. Further racially inspired killings could easily escalate into the bloodbath feared by those who have predicted that the transfer of power from whites to blacks in South Africa will be violent.
- The troubled state of the army, alluded to in Chapter 2. While encouraging steps are finally being taken to rid the army of covert operations directed against the country’s citizens, COMSA is of the view that the Government should take the initiative to overhaul the entire security services in readiness for the integration of all armed formations in the country. This view is further elaborated in the Report’s conclusions.
- The lack of a clear policy on, and an inability to deal with, the availability and use of weapons. South African whites have had legal access to weapons for many years. The SAP possesses and employs a vast array of weapons. Paramilitary organisations, including the numerous agencies offering security protection services, are well armed,

and some are reported to have caches of arms. Weapons continue to flood into South Africa across its now largely porous borders. An AK-47 worth about SAR20 on the open market in Mozambique can now fetch ten times that price in Alexandra. For thousands of illegal immigrants fleeing into South Africa from war-ravaged nations like Angola and Mozambique, this 'weapons currency' is their only guarantee of survival.

To date, the Government has agreed to prohibit the carrying and display of dangerous weapons at all public occasions, with certain exemptions based on guidelines being prepared by the Goldstone Commission. However, as COMSA witnessed several times, this proclamation is yet to take effect. More fundamentally, there is an urgent need for a comprehensive policy to address the issue of access to illegal weapons, which will otherwise be a destabilising influence well into the future.

## **B. TRAIN VIOLENCE**

Among the forms of violence that proved particularly disturbing and perplexing to COMSA were the indiscriminate attacks on commuter trains, primarily in the PWV area. According to statistics compiled by the HRC, in the first 10 months of 1992 alone, there were 269 train attacks involving 259 deaths and 469 injuries.

In an effort to gain a better understanding of this issue, which had become a major source of dread among ordinary citizens simply trying to get from their home to their place of work, COMSA observers based in Johannesburg designated train violence as a particular area of inquiry. In mid-November, COMSA representatives, along with other international observers, attended a briefing by senior representatives of the South African Rail Commuter Corporation (SARCC) on its efforts to secure commuter trains. Subsequent to this, COMSA initiated contact with community leaders from the ANC, COSATU, South African Communist Party (SACP) and Civic Association represented on a Train Accord agreement reached with the SARCC in May 1992.

As a result of these contacts, two Commonwealth observers attended a meeting of the Train Accord in early December where a decision was taken to invite international observers to all subsequent meetings, which are also attended by the SAP. At a subsequent meeting with community leaders COMSA introduced other international observers to the leaders.

COMSA also discussed the issue of train violence with the Johannesburg-based Independent Board of Inquiry, which had done a special study on train violence, and observed spot checks of commuter trains by the police in Katlehong along with other international observers and representatives of the Germiston LDRC. In these exercises and discussions, COMSA was struck by the following:

- The apparent lack of motive for train attacks, which affect members of a variety of political parties, men, women and children alike. Suggestions by senior government officials, including the Minister of Law and Order, that train violence may simply be the result of commercial rivalry among taxi owners were discounted by representatives of the SARCC, who pointed out that many taxi owners make their money by conveying commuters from their homes to the train stations. The Goldstone Commission's Interim Report on Train Violence of June 1992 explores wider correlations and points out the frequency of incidents of train violence near hostels. The Commission goes on to criticise the failure to secure hostels properly.
- The inadequacy, to date, of efforts by the law enforcement agencies to deal with train violence has reinforced the view among the trains' mostly black users that the police at best do not care about their plight, and at worst are helping to fuel the violence.
- The frustration felt by the public as well as the enormity of the task faced by the law enforcement agencies were dramatically brought home to observers when, during a spot check in Katlehong in November, police succeeded in confiscating one revolver, while at Soweto's Mlamlankunzi station not far away 38 people were injured and at least one person killed after seven gunmen opened fire on a commuter train. Police point out that it would be impossible for them to be at every station at every moment. The respective roles of the SAP (which has the responsibility of protecting human life) and SARCC (which has the responsibility of securing physical property) have also, until recently, been the source of some confusion.
- Encouraging steps are now being taken by the SARCC to secure trains by introducing a video surveillance system. In line with the recommendations of the Goldstone Commission, the SARCC is also introducing a 4,000-strong rail guard unit over the next two years. While recognising that such measures are costly and take time to put in place, COMSA urges that greater effort be made to expedite their introduction.

COMSA further urges that the SAP and SARCC make greater efforts to secure the access points of train stations so that weapons are not carried on to the trains in the first place. COMSA also strongly endorses the proposal contained in the Goldstone Commission's Interim Report on Train Violence for a national strategy to deal with the problem so that the approach of authorities is proactive, rather than reactive, as tends to be the case at present.

- The failure so far of the criminal justice system to apprehend the perpetrators of train violence. According to information supplied by the SAP to the *Weekly Mail*, by 5 November 1992, the number of arrests in this regard during the year was 121. There was only one conviction. As the Goldstone Commission report states, the result of this record is

that 'a very important aspect of criminal justice, i.e., the deterrent effect of the prosecution of criminals, is thus rendered ineffective.'

- A key reason cited by the police is the refusal of witnesses to come forward in cases relating to train violence. In COMSA's view, this reflects the poor state of relations between the community and the police, which can only be rectified through deliberate gestures by the police to improve their relations with the community. A case in point is the high regard which residents in Soweto accorded to a police officer who, as a result of his tireless personal efforts to secure the trains, is now suffering from Post-Traumatic Stress Syndrome. He should not have had to bear this amount of stress alone. Through the Train Accord, the SAP has a forum to communicate effectively with the community and solicit its help.
- COMSA is also convinced that persistent international attention to the issue of train violence, and a constant 'watchdog' role over the activities of the Train Accord, can play an important role in helping to stem the senseless violence on South Africa's trains. In this regard, COMSA urges greater participation in the Accord, which should also be given a higher profile at a national level, where its existence is still largely unknown.

### C. VIOLENCE IN NATAL

In South Africa, Natal/KwaZulu has always had the highest incidence of violence and the greatest number of casualties. There had been some revolts against unpopular chiefs by their people and the so-called 'witchcraft' or *muti* killings before, but these were not as widespread or as persistent as the violence that escalated in 1990 after the unbanning of the ANC and PAC. Well-planned armed raids, with automatic weapons sometimes used, became more frequent and in the cross-fire, large numbers of people were killed, injured or driven out of the area.

The socio-economic conditions that brought on the post-1990 upsurge of violence were the unchanged or deteriorating economic conditions despite the liberalising political climate. Perpetrators of violence in Natal invariably attributed their actions to ANC/IFP rivalry whether or not that was the case. Political intolerance between the two parties continues to manifest itself in violence and murders aimed at territorial control by driving out opponents of the dominant group in any one area. Members of the defeated group become 'refugees'.

## Traditional Authority and Violence

The present spate of killings in Natal has been described as 'black-on-black violence', 'inter-tribal warfare', and/or 'party political conflict'. It is all these and more. In a more subtle way it is a clash between traditional authority and values and advancing ideas of egalitarian democracy, accountability and change. The Zulus are a people with a strong sense of identity and national pride. In KwaZulu, traditional society revolves around a political framework that has changed little from the days of Shaka and Dingaan – that is the King, *amakhosi* and *induna* in that descending hierarchy. While the Zulu King's executive powers were curtailed by colonialism and apartheid he still wields enormous spiritual authority over the Zulu nation. He is recognised by all *amakhosi* and *indunas* as the fountain of their hereditary positions and all pay fealty to him.

The executive power in KwaZulu is exercised on behalf of the King by the Chief Minister of the KwaZulu Government, whose role is similar to that of the British Prime Minister in relation to the Queen and her Lords. While the positions of the *amakhosi* and other traditional leaders are hereditary, the government in Ulundi, the Office of the Chief Minister, has the effective statutory power to appoint or dismiss and pay them on behalf of the King. It so happens that the Chief Minister is himself an *inkhosi* and President of the ruling IFP. Likewise most *amakhosi* are supporters of the IFP and some are members of the KwaZulu legislative assembly. In the present war of attrition between the ANC and the IFP the *amakhosi* and other traditional authorities have been inevitably sucked into the fray on the IFP side.

Some would say that the traditional authorities are the primary target not just of the ANC but of a whole array of groups of people and organisations – youth organisations, unionised industrial workers, civic groups and educated professionals – who are dissatisfied with, and critical of, the paternalistic and feudal style of government.

In their areas the *amakhosi* do have real power over people's lives. They can and do levy their own taxes ('Inkatha dues' and 'chief's travelling expenses' have raised controversy), they control allocation of land and they preside over criminal and civil cases. COMSA was told of cases of popular revolts and attacks on chiefs perceived as oppressive or corrupt by people who were not led by any political party. The entry of the ANC into the arena has simply provided a rallying point to the otherwise disparate forces of opposition. In political terms, the chiefs are seen as the pillars of the *bantustan* system of government and a symbol of apartheid.

Those who question and aggressively reject the traditional system tend to be young, unemployed, or educated professionals or members of the ANC. The chiefs and headmen, sensing a threat to their status and livelihood, try to defend the system. Where violence occurs, it is difficult and perhaps pointless to attempt to separate aggressors from those who acted in self-defence. Both sides have firearms which they occasionally turn on their opponents.

The *amakhosi* and *induna* claim that the ANC had brought AK-47s into Natal to attack them when they appealed to Ulundi for protection. In response, the KwaZulu government distributed, quite liberally, large numbers of G-3 automatic weapons to chiefs, headmen and bodyguards and other Inkatha supporters. On the other hand, the ANC say that it was they who acted in self-defence of attacks by G-3s. In some cases chiefs themselves led the *amabutho* on armed raids designed to drive ANC supporters out of their territories.

### State of Violence in Natal

When COMSA arrived in Natal, the devastating effects of the violence were obvious. Many houses, schools, shops and clinics had been destroyed, power lines pulled down and some churches closed. Public transport off the main roads was severely disrupted.

As a result of the struggle for territorial dominance, one party tends to be driven out of the battleground at the end of the fight. Several colonies of 'refugees' have mushroomed around the big towns. Around Durban, camps exist at Umlazi, Folweni, Adams Mission and Amanzimtoti; near Pietermaritzburg, displaced people have settled at Richmond, Mpumalanga, Table Mountain, Mooi River, Escourt and Greytown, and on the North Coast at Eshowe and Empangeni. By the time the COMSA team arrived in Natal the refugee population was estimated at over 100,000. These people sleep in tents and makeshift shacks, and sometimes in church halls and hospitals. They depend on charity for their food and clothing. Their security is in their own hands and they have sometimes been attacked by the same groups which drove them out of their homes or by new criminal elements. They dread the KwaZulu police (KZP) and do not trust the SAP.

The refugees' suspicion of KZP and SAP complicity in or complacency over these attacks has drawn denials and it is to be regretted that charges relating to these suspicions have so seldom been tested by judicial inquiry or trial. The suspicion, however, demonstrates, if nothing else, the depth of the distrust engendered by violence. In order to combat this deep-rooted violence effectively, the following factors need to be examined and remedial measures taken:

- *The clash between traditional authority, fearful and uncertain of its future role, and opposing groups demanding change.*

COMSA spent much time reconciling chiefs and headmen with their subjects, some of whom had been living in camps as displaced people for many months. The issues that separated or united the parties were not always easy to sort out. In all cases, the 'refugees' included numbers of young ANC supporters. Ranged opposite them were IFP supporters of all ages. Both sides were united by war fatigue and a longing for peace. *Sifuna uxolo* ('We want peace') was the common cry.

In all cases observed by COMSA the chiefs demanded, almost as a

condition for allowing the refugees to return home, *ukuhlonipha* (respect or recognition). Each chief stated that he was prepared to forgive even those who had insulted him. The chiefs received their *ukuhlonipha* with the ANC leaders stating categorically in their speeches that they recognised and respected the traditional position of chieftain in Zulu society and the chief as father of all his subjects irrespective of political differences. The chief echoed the same sentiments – ‘as chief I am the father of all my people irrespective of the political party they support.’ In the preparatory discussions and at these rallies, COMSA strove to drive home the point that the chief as *inkhosi* was above party politics and had to be respected by people of different parties or different religions and must in turn respect their rights. COMSA stressed also that democratic African government did not necessarily lead to the abolition of chieftainship, pointing out that in, for example, Ghana, Nigeria and Zimbabwe, chiefs and the traditional way of life still existed.

The lessons to be learned from this exercise are:

- Chiefs need to be reassured that peaceful co-existence of different political parties in their territories is possible;
- Political parties need to spell out clearly their policies towards traditional authorities; and
- Change and democracy are not aimed at abolishing tradition and respect for status of chief.

The tradition of chieftainship is a cornerstone of Zulu culture. Traditional systems also govern the economy of KwaZulu, as chiefs allocate housing, water supplies and other services, and levy taxes. Assuming that no party actually intends to destroy traditional authority, it is best to say so clearly. By removing fear and speculation a basic cause of violence in Natal/KwaZulu is removed, and possibly other parts of South Africa as well. The Commonwealth mission heard reports of corruption in the system, but is none the less aware that dismantling it would create a vacuum in authority and social identity which would cause massive upheaval. The experience of other African countries demonstrates that traditional structures can serve their societies well once integrated into democratic systems.

- *Intolerance and rivalry between political parties, that is, the ANC and the IFP, which are aimed at establishing territorial control.*
- *The easy availability of firearms including hand grenades, referred to earlier in this chapter.*
- *The question of the so-called ‘cultural weapons’ (spears, shields, knobkerries, sticks), which remains confusing and uncertain in law.*

The provisions of the Dangerous Weapons Act, 71 of 1968, and the Record of Understanding between President de Klerk and Mr Mandela

prohibit the carrying of these weapons at public gatherings, but this has not been enforced. At virtually all IFP gatherings in Natal/KwaZulu, whether political or traditional, people are armed. Chief Minister Buthelezi has publicly defied the banning of the carrying of cultural weapons, notably at two huge armed rallies in Johannesburg and Durban, saying that he was prepared to go to jail for his opposition to what he called 'cultural castration' of the Zulu nation (Focus on South Africa, November 1992).

The issue of cultural weapons remains controversial. At virtually every event observed by COMSA at which there was an organised tribal presence, cultural weapons were carried openly, and the police made no attempt to enforce the law.

The men carrying these weapons were well controlled by their marshals, and on no occasion did COMSA think that they represented more than a symbolic display of power. COMSA was also of the view that any attempt by the police to remove the weapons would have provoked violent resistance.

Those opposed to the public bearing of such weapons have warned, not unreasonably, that the custom 'contributes very substantially to a climate or psychology of coercion, intimidation and violence and the public perception that such behaviour is normal and lawful.' It has also been argued by political parties which do not encourage the carrying of clubs and spears that their supporters feel threatened by such displays, and are more likely to arm themselves in turn.

- *From the backlog of serious cases pending investigation and their performance in the past, it is clear that the investigative capacity of both the SAP and KZP requires a great deal of improvement.* The police are over-burdened and do not get sufficient co-operation from the population. Improvement may call for more resources, training and reorientation. Above all, it requires better relations with the public. This issue is examined in greater detail in Chapter 6.
- *In order to create an atmosphere of peace it is important that all practices and policies which cause friction and irritation between parties are removed.* One of these issues is the question of 'venues' for holding political meetings. The disputes occur in two ways:
  - (i) On several occasions COMSA and other international observers were called upon to intervene and defuse heated disputes as to whether meetings of the IFP and ANC advertised to take place at the same time, and at or near a common venue, should still go ahead taking into account the potential for conflict. COMSA attended on the occasion of one such dispute at Umlazi and spent the afternoon locked in arguments between the parties. Neither side would cancel or postpone its meeting or change it to another venue and it was finally agreed that both meetings would go ahead

but that a heavy police and observer presence would separate them. Leaders of the two parties also agreed to appeal to their followers through the press, radio and television, not to resort to violence. The two meetings, scheduled to be held only about 500 metres apart, ended without incident. Similar problems were to arise at several other meetings.

COMSA remains puzzled as to why simple organisational strategies used in other countries are not adopted with a view to avoiding such clashes in bookings for meetings in the first place. The appropriate authorities need to ensure that no two parties are booked at or near the same meeting place at the same time. The present practice unnecessarily ties down large numbers of the police force to guarding such meetings. In any case, the present practice is a sure way of perpetuating tension between the parties.

- (ii) A second aspect of the problem of venues relates to the often expressed grievance by the ANC that the KwaZulu Government allows government schools and halls to be used as venues for IFP political meetings, but denies the same privilege to the ANC. To the extent that this is true, the policy is manifestly unfair. A way has to be found for the KwaZulu Government to be even-handed in this regard.

## CHAPTER 4

# Strengthening the Structures of the National Peace Accord

### Introduction

United Nations Security Council Resolution 772 of 17 August 1992 called on international observers both to work in close co-ordination with, and help strengthen the structures set up under, the National Peace Accord. This Accord, signed by a broad spectrum of political parties and other interest groups on 14 September 1991, is one of the few truly consensual documents to have emerged in South Africa over the past two years. Its provisions are comprehensive, applications far reaching and its relevance extends well into the future.

Among the most positive impressions that COMSA carries from the first phase of its mission is the image of men and women from vastly different walks of life, racial and ethnic backgrounds and political persuasions, sitting around a table under the umbrella of the National Peace Accord structures to resolve their differences. The Peace Accord is, in the first instance, a forum for the reconciliation of South Africa's peoples, without which there can be little hope for a new tomorrow.

COMSA is proud to have been associated with the Accord, and is firmly of the view that without it, the levels of violence in South Africa would have been considerably higher. The fact remains, however, that levels of violence are still unacceptably high. Those involved in the workings of the Peace Accord structures are painfully aware of its shortcomings and are engaged in an introspective exercise to improve its efficacy. This Report, in outlining COMSA's interaction with the structures set up under the National Peace Accord, will therefore simply highlight the areas of the Accord which COMSA feels could be strengthened, and some of the initiatives which COMSA undertook in this regard.

### The National Peace Committee

Comprising the top leaders of all the signatories to the Accord, under the chairmanship of a South African businessman, John Hall, the National Peace Committee (NPC) is at the apex of the National Peace Accord structure. Its key preoccupation is to secure the continued political commitment of the signato-

ries to the functioning of the Accord. This, no doubt, is one of the most difficult tasks of all. For while it has proved fashionable to sign the Accord, there are few mechanisms to bind signatories to the agreement.

During its stay in South Africa, COMSA followed the efforts of Mr Hall and his team to resolve the dispute between the leaders of the IFP and ANC over whether or not the ANC breached the Accord by calling Inkatha a surrogate of the Government in a speech made by the ANC leader to the United Nations Security Council. It also followed the announcement by representatives of the two parties at an NPC meeting on 24 November 1992 that preparations would be made for a meeting between Chief Buthelezi and Mr Mandela. COMSA welcomes indications from officials of both parties, who have been preparing for this summit, that such a meeting might take place.

In the light of the growing public disillusionment over the lack of commitment by politicians to the Peace Accord, COMSA also strongly endorses the call by the NPC for a summit of leaders of all signatories to the Accord at the earliest possible date. Such a meeting, though not necessarily linked to multi-party constitutional negotiations, could act as a powerful catalyst for the crucial resumption of such talks.

### **The National Peace Secretariat**

During its first three-month phase, COMSA had extensive contact with the National Peace Secretariat (NPS), which sees to the day-to-day functioning of the Accord, particularly the establishment of regional and local structures, which are covered in greater detail below. Regular meetings were held by COMSA and other international observer groups with the NPS to co-ordinate activities and to exchange ideas. Further, COMSA often received requests from the NPS for assistance in various problem areas and it was to the NPS which COMSA first turned for help whenever confronted with problems. COMSA also attended two policy meetings of the NPS in November and December 1992. These were to be followed by a meeting in February 1993, where important strategic decisions on the way forward were to be made. The reflections under the heading 'Weaknesses in the Accord' at the end of this chapter to a large extent mirror views already held by participants in these structures, but are offered as areas which COMSA, from its contacts, feels to be particularly important.

### **RDRCs and LDRCs**

Unlike UNOMSA, COMSA did not have the human resources to designate observers to specific localities on a full-time basis. However, COMSA endeavoured to work closely with Regional Dispute Resolution Committees (RDRCs) and Local Dispute Resolution Committees (LDRCs) in areas facing particular

difficulties. The following are some examples of the work undertaken by COMSA to help strengthen structures set up under the National Peace Accord.

## Natal

At the time of the arrival of the Commonwealth team in Natal, only six of the 26 LDRCs envisaged had been set up in the province. Of these, only Pinetown and Umlazi LDRCs appeared to be functioning.

There were a number of reasons for this state of affairs. The KwaZulu Government and IFP have signed the Peace Accord, but the *amakhosi* (chiefs), as a group, have not. Some chiefs were suspicious of the local peace structures (LDRCs), which they seemed to perceive as taking on functions that properly belonged to chiefs. Then there were the rivalries between the political parties, which went to stifle efforts to achieve peace.

At the time of COMSA's arrival, the general perception was that Natal was sliding towards an 'all-out civil war', and that the violence had gathered a momentum that could no longer be contained (*Weekly Mail*, 30 October–8 November 1992). The killing of a number of political leaders involved in the peace process only compounded matters.

Against this background, the Commonwealth team based in Durban concentrated its efforts on helping to form peace committees and to strengthen them where they already existed.

## Umbumbulu

Umbumbulu, a sprawling rural district of some 400,000 people in the upper south coast of Natal, was the first area in which the COMSA (Natal) team worked. It was the area worst affected by the violence in the whole country, and at the beginning of November 1992, shortly after the team's arrival, was declared an Unrest Area.

Previous efforts by the Natal/KwaZulu RDRC to bring the ANC and IFP together in an LDRC had proved futile. At the request of the Amanzimtoti Crisis Centre, an NGO catering for the needs of victims of the violence, and in consultation with the political parties and the *amakhosi*, COMSA agreed to help form an LDRC for the area.

It was clear from the outset that if the initiative was to prosper it would need to have the support of the *amakhosi* in addition to that of the political parties. The team therefore approached Inkhosi Wellington Hlengwa, President of the Umbumbulu Regional Authority, the equivalent of the House of Chiefs for the region, who agreed to co-operate. He called a meeting of the regional authority on 20 November 1992 at which the *amakhosi* gave their support for the initiative.

This was followed a week later on 27 November 1992 by a larger meeting which included the *amakhosi*, representatives of the IFP and ANC, leading business people, church leaders, the RDRC and NGOs. It was this second meeting which formally authorised the formation of an LDRC for Umbumbulu, which was duly launched on 4 December 1992. The establishment of the LDRC was described by the *New Nation* newspaper as an 'unsurpassed feat in the strife-torn Natal Upper South Coast'.

### **Port Shepstone Area**

The next area of major COMSA effort in Natal was in the Ensimbini Valley of the Port Shepstone area, on the Natal Lower South Coast, an area of some 50 square kilometres, with a population of 73,000.

Violence had been endemic in the area since the beginning of 1990. From its establishment in March 1992, the Port Shepstone LDRC had made several unsuccessful attempts to bring peace. The conflict had also generated a substantial number of refugees who made no less than three attempts to return to their homes, with each attempt ending in violence and death. By August 1992, the local press had effectively written off the area as a 'wasteland'.

As in Umbumbulu, the request for Commonwealth assistance in the Ensimbini Valley came from one of the most senior chiefs in the area, Chief Khawula of Umzumbe. The initiative was undertaken with the blessing of the Port Shepstone LDRC.

The two localities in question were KwaNdwalane and KwaMavundla, respectively ruled by Inkhosi Aaron Ndwalane and Inkhosi Samuel Mavundla.

Inkhosi Ndwalane was a particularly controversial figure. He had earlier served a prison sentence for the illegal possession of firearms, and at the time of the launching of the initiative was on bail after being charged with 11 counts of murder. It would appear that he had run his area with something of an iron hand in the course of which he had alienated many of the youth. An uprising of the youth against the perceived excesses of traditional rule at the beginning of 1990 compelled him to flee the area and to seek refuge at Umzumbe (Inkhosi Khawula's domain).

Between January 1991 and June 1992 the traditional forces launched a counter-offensive and systematically regained control of the area. According to local accounts, Inkhosi Ndwalane personally led some of the worst reprisals against the ANC-supporting youth, driving hundreds of them into internal exile, some of them as far afield as Durban.

By the time COMSA began to work in the area, feelings had hardened. Inkhosi Ndwalane had come to be seen by many as no more than an IFP warlord. When the COMSA team first announced to a full meeting of the Port Shepstone LDRC that Inkhosi Ndwalane wanted Commonwealth assistance to bring peace back to his locality, hardly anyone would believe this. It was therefore important first to ascertain the sincerity of Inkhosi Ndwalane's peace

intentions, and thereafter to convince all concerned, especially the ANC and the refugees, of this.

In the course of the protracted negotiations that followed, the Inkhosi gave a number of undertakings to the team. He agreed to observe scrupulously his traditional role as the father of the entire community irrespective of political affiliations and as such to be above partisan politics. He also agreed to allow the return of the refugees.

For their part, the ANC and the refugees informed the team that as long as the Inkhosi was truly non-partisan and acted as father figure to every member of the community, they would have no problem in recognising his authority and according him due respect.

COMSA felt that these mutual undertakings needed to be made public as a way of effectively underpinning the peace process. Accordingly, a peace rally was convened at Nyandezulu in KwaNdwalane on 6 December 1992. At this rally the Inkhosi and representatives of the ANC and the refugees made public their pledges.

As part of the agreement, a Resettlement and Development Committee was formed to supervise the orderly return and resettlement of the refugees; repair the houses damaged in the violence; settle local political differences; and promote the long-term socio-economic development of the area.

In KwaMavundla, COMSA followed broadly the same strategy as that pursued in KwaNdwalane. Unlike Inkhosi Ndwalane, Inkhosi Mavundla was not a controversial figure. True, the uprising of the youth early in 1990 had similarly compelled him to seek refuge in Ulundi; but his return had been considerably more peaceful than that of Inkhosi Ndwalane. He was associated with no excesses, and it proved a great deal easier to convince the ANC, the refugees and others of his good intentions.

The subsequent public rally in his area on 12 December 1992, which was attended by some 500 people, paved the way for the return of refugees and the establishment of a Reconciliation and Development Committee with broadly the same objectives as the Resettlement and Development Committee at KwaNdwalane.

A third rally, held on 13 December 1992 at Murchison in KwaNdwalane, was the biggest of the peace rallies in the Ensimbini Valley. It attracted no less than 6,000 people, and was jointly addressed by regional leaders of the ANC and IFP, all of whom called on their supporters to turn away from violence and to co-operate to make peace a reality in the valley. On 23 December 1992, between 350 and 400 refugees finally returned to their homes after a three-year absence.

The COMSA initiative in the Ensimbini Valley was described by the *South Coast Herald* as 'a major breakthrough' which brought 'new hope to the people of KwaZulu and southern Natal'. At the height of the troubles in the Port Shepstone area, the monthly death rate due to the violence averaged between

25 and 40. Since the beginning of December 1992, there have only been two confirmed fatalities.

Umbumbulu and Port Shepstone are now being hailed as the only two peaceful areas in the whole of Natal/KwaZulu. In this regard, it is significant that in its statement of 15 January 1993 the Continuation Committee of the IFP and the ANC preparing the ground for a meeting between Mr Mandela and Chief Buthelezi, 'warmly welcomed the positive developments that have taken place in such areas as Umbumbulu and Port Shepstone where the levels of conflict have been drastically reduced as a result of agreements arrived at by the IFP and the ANC.' The statement went on to urge 'all communities afflicted by violence such as Bruntville and Empangeni to follow these excellent examples.' Press cuttings of COMSA's work in Natal are attached at *Annex II*.

### **Pretoria/Witwatersrand/Vaal**

In the PWV Area, COMSA worked closely with the Wits/Vaal and Northern Transvaal RDRCs, and their associated LDRCs. A large part of this work involved providing encouragement by simply attending meetings and seminars and feeding back discreet advice to these structures as appropriate.

However, COMSA's particular range of skills was also put to use in various forms of specialist involvement. For example, COMSA actively supported a Police/Community Relations subcommittee of the Wits/Vaal RDRC (see Chapter 6).

In its attendance of rallies and demonstrations, COMSA's policing and diplomatic skills were frequently called on to avert what would otherwise have been sure incidents of violence. Examples of this are provided in Chapter 6. After this experience and similar experiences were relayed to the NPS it arranged a meeting between COMSA and the police to discuss the mission's observations on policing methods at public gatherings. These examples proved to be the basis of an interesting and constructive discussion with police at the grassroots level.

COMSA also frequently interacted with the Interim Crisis Committee (ICC) of Alexandra. Located in the northern suburbs of Johannesburg, Alexandra is a black township with an estimated area of 5 square kilometres, and a population of some 350,000. The initial briefing to COMSA members by the ICC suggested the existence of enormous problems in Alexandra. There were serious political differences between the IFP and ANC which surfaced in tensions between the hostel dwellers and other township residents. Unemployment and crime rates were also extremely high. Some of the residents were forced out of their homes due to the continuous violence.

Much progress has since been made through the genuine and commendable efforts of members of the ICC. Some SAR3.5 million was made available through the National Peace Accord structures to address socio-economic problems. The ICC facilitated talks between the hostel dwellers and the local

residents. This was followed by joint efforts by the local residents and the local authorities to clean up the area commonly known as 'Beirut'. Following a concerted effort by the ICC, the first official bilateral talks between the local ANC and the IFP in the area took place on 16 December 1992. The visible progress in Alexandra is an encouraging example of what the Peace Accord structures can achieve.

A highlight of COMSA's association with the Wits/Vaal area was its attendance, along with other observers and the Vaal LDRC, of a Peace Summit convened by the ANC/COSATU/SACP alliance in the Wits/Vaal region in November 1992. The meeting was held following complaints that the alliance's 'self-defence' units had been taking matters into their own hands and discrediting the alliance through these atrocities.

A meeting of this nature was bound to be fraught with difficulties. The presence of international observers played a crucial role in keeping the meeting on course; indeed the final communiqué referred to the 'inspiration' drawn from the presence of these observers. The meeting closed with the announcement of a Programme of Action to bring peace to the area, including a Code of Conduct to which all members of the alliance would be asked to adhere.

As a follow-up to this, local-level meetings have been held to publicise the agreements reached at the summit. Community leaders were initially undecided over whether or not to invite international observers to attend these meetings. However, through personal contacts initiated by COMSA, international observers were invited to the first such meeting, which also provided the opportunity for them to interact with people in areas considered unsafe for strangers.

COMSA is heartened by the recent statement by the PWV branch of the ANC – which suspended participation in the Peace Accord structures in this region following the massacre at Boipatong – that the flaws of the Accord do not warrant withdrawal from its structures. COMSA endorses the ANC-PWV statement that despite these flaws, 'the Peace Accord has the potential of laying a firm basis for peace in our country provided all signatories strictly adhere to the terms of the document.'

### **Border/Ciskei**

Although COMSA had no observers based in the Border/Ciskei area during the first phase, it followed, through several contacts and four trips back and forth to the area, efforts to resuscitate the Peace Accord structures there. The problems stemmed from the withdrawal of Ciskei from the Border/Ciskei RDRC early last year, on grounds of a lack of neutrality within the structure. As a result, the Peace Accord structures were rendered impotent at a time when they were most needed – following the outbreak of the Bisho massacre and subsequent spiral of violence in the region during the last quarter of 1992. This occurred as a result of attacks by ANC supporters on the property of Ciskei

officials, and counter-attacks on the ANC, which also alleged misconduct by the Ciskei Defence Force and SADF, which was called in to help protect Ciskei.

COMSA viewed these developments seriously because of their potential to spiral out of control and open a new frontier of violence in the country. The responsibility for helping to ease the tensions in the area rests primarily with the NPS. COMSA, through visits to the area by police experts, members of its team with diplomatic and legal skills and – on three occasions – the COMSA Chairperson, tried to the best of its ability to support NPS efforts to ease the tensions.

An underlying cause of the conflict in the area is the lack of free political activity in Ciskei. This is closely linked to the broader issue of the reintegration of the 'homelands' into a new South Africa which is crucial to any lasting solution to the current problems afflicting the region.

In the immediate context, COMSA welcomes a number of recent positive developments, which it believes occurred in part as a result of international pressure. These include: the recent withdrawal of the SADF from Ciskei; an abating of the ANC/Ciskei-linked violence; and a court case that has led to the overturning of Section 26 of the National Security Act, which permitted detention without trial.

Of grave disappointment to COMSA is the rejection by Ciskei of a compromise formula put forward by the NPS aimed at making it possible for Ciskei to participate again in the Peace Accord structures. COMSA strongly urges the Ciskei to reconsider this position.

### **Goldstone Commission**

Another key structure provided for in the National Peace Accord is the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation. Known as the Goldstone Commission after its founding Chairperson, Mr Justice Richard Goldstone, a Judge of the Appellate Division of the Supreme Court of South Africa, this body's primary mandate under the Peace Accord is to 'be used as an instrument; to investigate and expose the background and reasons for violence, thereby reducing the incidence of violence and intimidation'.

To carry out this mandate the Goldstone Commission has been vested with very extensive powers, including the right to compel testimony from those under investigation as well as the provision of documents and other material for evidence. In addition to the Chairperson, four other persons, including a former Attorney-General of the Cape Province, and a leading black advocate, comprise the appointed membership of the Commission.

Since its establishment, the Goldstone Commission has held a substantial number of Inquiries, most of them conducted in public, and has launched investigations into many sensitive and controversial issues. For example, at the time of the arrival of COMSA members in the country the Commission had just

released its preliminary report on the Bisho massacre. Subsequently, COMSA members attended the Goldstone Commission hearings at Vereeniging, investigating the Boipatong massacre. At those hearings the COMSA members had an opportunity to be introduced to Mr Justice Goldstone and his colleagues on the Commission.

In November 1992 the COMSA Chairperson, together with another member of the group with legal qualifications and a member of the Commonwealth Secretariat, met privately with Mr Justice Goldstone to discuss the work of his Commission. At that meeting it was agreed that COMSA would observe the Commission's hearings and, where appropriate, follow the public aspects of the Commission's investigatory work. Mr Justice Goldstone also explained the roles already being performed within his Commission by foreign police officers seconded to it by the European Community. These officers were, he said, invaluable aides to the investigators appointed to the Commission from within South Africa, giving enhanced credibility and strength to their endeavours.

Very shortly after this meeting, the Goldstone Commission announced that its investigators had raided a secret base maintained by an arm of the SADF Military Intelligence, and had seized documents which revealed the continuing conduct of covert operations against the ANC. This revelation, which was widely publicised in South Africa and abroad, prompted strong national and international condemnation of these operations.

Bold and courageous actions like these have won the Goldstone Commission a justified reputation for being one of the few official bodies in contemporary South Africa which are widely regarded as impartial and independent in the conduct of their business. These qualities are, as is made apparent in Chapter 6, still lacking in another national investigatory body, the SAP.

COMSA members observed the following Goldstone Commission activities, in addition to those mentioned above:

Durban, 2–3 December 1992: Public Hearings on the Violence in the Province of Natal.

Cape Town, 10–11 December 1992: Preliminary Inquiry into Automatic Weapons.

In addition to these observations, COMSA also held a number of informal discussions with members of the Goldstone Commission and its staff. As a result of these observations and interactions COMSA has formed the strong opinion that the Goldstone Commission represents one of the lynchpins of the National Peace Accord, and is deserving of the fullest support from all signatories to that Accord as well as from the broader spectrum of South African society.

Despite its public stature and the prodigious workload it has assumed, the Goldstone Commission would still seem to be a very thinly resourced body. Its members have in many cases not been able to relinquish fully other responsi-

bilities, including, in the case of Mr Justice Goldstone, obligations as an Appeal Court Judge. Much of the Commission's work is undertaken in committees established with other part-time members. The investigatory staff would also appear to be overstretched, and there is an apparent shortage of experienced and trustworthy police officers available from within the country to bolster their numbers. It is in this area that the international community, including observer groups, may in the longer term be able to provide further aid, assistance and advice.

Nevertheless, the innate strength of the Goldstone Commission lies in its indigenous origins and membership. Although spurned by some as another tool of the 'existing regime', the Goldstone Commission has risen above the mistrust in the current criminal justice system to provide a symbol of justice and fairness for the new South Africa.

### **Weaknesses in the National Peace Accord**

**Extent of participation:** An obvious weakness of the Accord is that not all parties and interest groups are signatories. This includes several political parties both to the left and right of the political spectrum, some of the 'homelands' and (as a group) the tribal authorities. In its meetings with representatives of all such groups, COMSA endorsed the call by the NPS for all parties to participate in the structures of the Accord, whether or not they were signatories, and to consider acceding to it as soon as possible.

**Breaches of the Accord:** COMSA welcomes suggestions from within the NPS that a set of procedures be developed for addressing the issue of members who withdraw from the Accord, or cease to participate in its activities. COMSA also endorses the idea of a permanent Task Force of 'wise men and women' to help resolve disputes that arise in relation to the Accord.

**Nature of Participation and Grassroots Support:** COMSA, in its contacts with the NPS and related structures, was concerned with the perception that participation in these structures was narrow-based, and that the structures were little known among the communities they served. Without in any way detracting from the dedication and hard work of those involved, COMSA feels that one of the reasons for this perception is the fact that the majority of the leaders of these structures are white, often serving in predominantly black communities.

One of the explanations offered is that, in order to assure the neutrality of chairpersons, these leaders are drawn from the established business community or churches, and as such – at least in the former case – are more likely than not to be white. Another explanation offered is the lukewarm attitude of predominantly black political parties to the Peace Accord structures in some areas.

Whatever the case, COMSA is of the view that – given the fact that the overwhelming majority of South Africa's population is black; that the worst

incidents of violence take place in black areas and are directed against black people; and that for the Peace Accord structures to be effective, they must take root in the communities they serve – a conscious effort needs to be made to make the leadership of the structures more racially balanced.

**Publicity:** The Peace Accord structures also need to be better known. The NPS is embarking on a major media campaign which should help publicise the Accord. The Accord is also – after some delay – being translated into various languages. However, COMSA is of the view that more meetings are needed between representations of the Peace Accord structures and the community generally, fashioned after the *kgotla* and *indaba* which traditionally are the fora for resolving problems. The decision by the NPS to encourage participation by NGOs more actively, and particular segments of society, such as women and youth, is also a welcome move in broadening participation and popularising its work.

**Shift in Focus to Socio-Economic Reconstruction:** COMSA fully supports the recent shift in focus of the Peace Accord structures from dispute resolution to socio-economic reconstruction, encapsulated in the proposed name change of Regional Dispute Resolution Committees (RDRCs) and Local Dispute Resolution Committees (LDRCs) to local and regional Peace and Development Committees. Such a shift rightly puts the emphasis on the root cause of violence in South Africa, which, if not addressed, will forever thwart attempts to combat violence.

**Full Implementation of Key Sections of the Accord:** While much has been done to set up the institutions envisaged by the Accord, some provisions have still only been partially implemented, or not implemented at all. Despite provisions for the appointment of Justices of the Peace to promote peace at the grassroots level, and to assist dispute resolution committees in their activities, none have yet been appointed. This is the more disappointing because under the terms of the Peace Accord, the Justices of the Peace would be empowered to investigate complaints pertaining to public violence and intimidation, and to issue orders to restore peaceful relations. COMSA joins the NPS in urging local communities to submit names of suitable candidates for appointments as Justices of the Peace, who could play an important role in giving the Accord muscle.

Elsewhere in this Report, reference is made to COMSA's dealings with the Police Board, which could play a vital role in helping to improve Police/Community relations. This fledgling body needs to be given every encouragement, and to become far better known both at a national and community level.

COMSA is pleased to learn that Chapter Ten of the Accord, providing for Special Criminal Courts, is now operational in the form of a law permitting violence-related cases to be dealt with expeditiously. It is hoped that this provision will be put to maximum effect in enhancing confidence in the criminal justice system, as well as acting as a deterrent against further violence.

## CHAPTER 5

### **The Administration of Justice**

Few areas of government in a nation state provide more compelling evidence of that state's commitment to the rule of law, and to the protection of human rights, than the administration of justice. Under the former apartheid regime in South Africa, the system of criminal justice – police, prosecution, courts and corrections – played a central role in enforcing the draconian laws which supported the apartheid structure. Under the guise of a set of legal rules and principles this system administered justice in a ruthless and efficient manner which paid scant regard to either the rule of law or basic civil liberties.

With the dismantling of the legal framework established by the apartheid state the entire South African system of criminal justice has been thrown into disarray. The vast enforcement apparatus put in place to administer these now defunct laws is still grappling with the task of identifying and responding to the needs of a new South Africa. Many of these needs and aspirations will eventually be incorporated into a new constitution. Almost certainly, that constitution will include a Bill of Rights which will set out the basic freedoms that all South Africans will enjoy. Such a constitution will place new responsibilities upon the courts and, to a degree largely unknown in the past, will require an independent judiciary to be the final arbiter of the rights of citizens.

Arriving as it did in the middle of this transition process, COMSA was able to observe at first hand the disarray in the criminal justice system. Most of these observations were of the police component of this system and much of this report is, therefore, taken up with descriptions of the police response to the problems of violence, and of the issues associated with the establishment of a new police service. However, COMSA members also formed impressions on the current status of the prosecution, court and correctional components of the system through, for example, discussions with faculty members of universities and criminological institutes; legal practitioners in both private and public practice; individual citizens, many of whom had been the victims of crime; and other informed observers of the contemporary administration of justice in South Africa.

Based on these sources of information, and on their extensive background reading of official reports and documentation on aspects of criminal justice in South Africa, COMSA formed the following views:

- The criminal justice system, already discredited by decades of associa-

tion with the structures of apartheid, has now lost the confidence and respect of most South Africans. This is especially so in the nation's townships where the formal justice system has in many cases been ignored in favour of an informal system administered by members of local communities.

This informal system has often been arbitrary and brutal. Swift and terrible retribution has been exacted upon some offenders in the form of 'necklacing' and other lethal punishments. In some communities, however, a more organised, fair but still informal justice system has been developed. In the Western Cape Province, for example, COMSA was impressed by the work of the Legal Education Action Project (LEAP), based at the University of Cape Town's Institute of Criminology, which has done much to assist with the development of such informal systems in local communities.

- As a result of the lack of public trust in the criminal justice system, few crimes are reported to the police, fewer still are detected and an even smaller number are prosecuted successfully. This Report contains many examples of the failures by the police to detect those responsible for the gravest crimes. Even when detection does occur, prosecution seems all too often to fail because of the intimidation or disappearance of key witnesses; the incompetence of those responsible for gathering the evidence for the prosecution; or the simple absconding of alleged offenders released on bail (see also Chapter 6).
- On the granting of bail in general, COMSA noted with surprise the release, sometimes on small sureties or bonds, of persons charged with murder or other very serious crimes. In cases of violence, the message sent out is that the courts are not interested in the protection of human life or limb.
- The courts are seen by the public as elitist and ill-equipped to quickly dispose of the volume of criminal cases which come before them. Despite the public's reluctance to report crime, which has been noted earlier, this volume is still very large. In the period from 1 July 1990 to 30 June 1991, for example, more than 2.2 million criminal cases were dealt with in the District Courts alone.

This volume of cases is reported to have caused a backlog of 20,000 persons in custody and awaiting trial. So overcrowded are South Africa's prisons that in early January 1993 the Correctional Services Minister announced that 7,500 convicted criminals were to be released from jails around the country to help relieve the pressure. The existing prison system, which was originally designed to hold 84,000 prisoners, is believed to currently hold 110,000, of whom 9,000 are children.

- The past sentencing practices of South African courts have been strongly influenced by the philosophies of deterrence and retribution. Apart from the massive use of imprisonment, South African courts have been

able to dispense capital punishment for murder and like crimes, as well as corporal punishment. A moratorium, which COMSA hopes becomes a permanent one, is in place on executing those sentenced to death. It is also COMSA's view that corporal punishment should have no place in the new South Africa.

- Given the overall severity of the sentences still available to and imposed by South African courts, COMSA noticed that the level of sentences sometimes provided for after conviction tends to convey the impression that violent crime, and even that ending in the loss of human life, is treated with less gravity than the simplest offences against property, such as the stealing of goods. For an effective control of crimes of violence this public perception of the sentencing practices of the courts needs to be removed.
- With regard to the expedition of criminal cases through the courts, the National Peace Accord contemplates the establishment of Special Criminal Courts to dispose of cases more quickly and effectively. However, COMSA was informed that rather than establish new judicial institutions, legislation had been enacted to permit existing courts to identify particular cases, involving politically motivated violence, to be handled in an expeditious manner. This legislation only came into operation in October 1992 and its effect and impact on the processing of criminal cases have yet to be determined.
- In the vast majority of the criminal cases which are processed through the courts defendants lack the benefit of legal representation. Until quite recently legal aid has only been available on a very limited basis in South African courts. A pilot public defender scheme has now been initiated in Johannesburg which if, as appears likely, is successful may well become a model for a much more expansive national programme with the commitment of substantially more funding to legal aid in general.

In late October 1992, a major conference was held in Johannesburg on the topic of 'The Right to Legal Representation: A Public Defender Service in a Democratic South Africa'. At this conference, which was attended by a COMSA member with legal qualifications, lawyers from a wide range of backgrounds and experience, including visiting experts from North America, Europe and a number of developing countries, discussed the difficult issues associated with the development of the right to legal representation in the new South Africa. It was recognised at this conference that even rich developed nations like the United States and Canada were finding the economic burdens of legal aid increasingly debilitating. Lawyers from countries like the Philippines and Chile stressed that, in the context of developing nations, competing demands for essential services like health care, housing and education often outstripped the need to invest funds in legal aid. There were also problems in delivering legal services of all types in the developing world because of the shortage of trained lawyers.

A shortage of this type undoubtedly exists in South Africa, where entry into legal practice has for decades been virtually the exclusive preserve of whites. Since the 1980s, that situation has begun to change slowly as more non-white students have gained admission to law schools. The composition of the benches of the nation's courts remains, however, overwhelmingly white and male.

Redressing the racial and gender balance of South African courts, and of the legal profession at large, will be just one of the challenging and time-consuming tasks which must be confronted by those committed to the process of democratic reform. Conferences like that held on the right to legal representation provide welcome and encouraging signs that these tasks are already being grappled with in a concerted and imaginative way.

Further evidence of the changes being considered or implemented was brought to the attention of COMSA by the Department of Justice. Following a press conference given by COMSA on 17 December 1992 in Johannesburg to describe some of the initial impressions gained by the group, including those relating to the administration of justice, the department issued its own press statement responding to many of the issues raised by COMSA. Copies of the statements by COMSA and the department, which were widely reported in the media, are attached at *Annex III* together with a number of clippings and editorial comments.

In early January, COMSA took up an invitation to meet with senior members of the Department of Justice to exchange views about the justice system. As a result of that meeting, which was attended by the department's Director-General and three of his deputies together with a representative of the NPS, COMSA hopes to hold a series of discussions with judicial officers, and other significant persons involved in the administration of justice, during the next phase of its mission. In addition to these discussions, COMSA intends to observe courts at work and to visit a number of correctional institutions in order to see at first hand how each of these components of South Africa's criminal justice system operates. From such discussions and observations may well flow proposals for ways in which practical advice and assistance can be provided by Commonwealth countries to those engaged in the daunting process of reform.

## CHAPTER 6

# Policing and the Way Forward

### A. STATE OF THE SOUTH AFRICAN POLICE

#### Background

Law enforcement is a formidable problem in South Africa today. In any society undergoing massive political change, the agencies of law enforcement come under pressure, but in South Africa the problem is compounded:

- The main role of the police and army has hitherto been to enforce apartheid laws. In the segregated black areas, the emphasis was largely on the suppression of political dissent.
- Black South Africans, in consequence, came to see the police not as their protectors, but as an alien force to be feared.
- The police, particularly black police in black areas, are isolated (by social distrust and often by tribal and language differences) from the community. Many police have been killed.
- The South African law enforcement agencies have been isolated from international advances in the techniques of community policing.
- During the apartheid era, sectors of the law enforcement agencies were involved in the military operations and covert destabilisation of neighbouring countries. There is a popular perception that many of those involved are still in uniform, some in discrete units, others as senior officers. Involvement in domestic political intimidation by a section of the police has been exposed by the Goldstone Commission. Such exposures have strengthened fears of a secret 'Third Force' endeavouring to derail the negotiations towards democratic government.
- There is a proliferation of agencies with often overlapping duties. This causes confusion among the population and fuels suspicions of evasion of responsibility.
- Crime has increased enormously.

As a result of all these factors, morale, especially in the police, is very low.

None the less, COMSA found, among police leaders, and often also in the field, a commendable determination to protect potential victims of violence, and also to change the structure and culture of the services to enable them to serve a future democratic South Africa.

COMSA was particularly strong on policing, including among its membership five policemen, including a former police commissioner, a deputy commissioner, an assistant commissioner and a chief superintendant concerned with community policing. COMSA also included several lawyers with extensive police-related experience, and a criminologist.

COMSA teams, therefore, made contact with the appropriate police authorities immediately after arrival in both the Johannesburg and Durban areas. These authorities made them most welcome. Invitations to lecture and to participate in activities were often issued to COMSA members who were invited to come back on many occasions. The group endeavoured to give technical assistance where requested, and to offer what advice and support it could to those officers most concerned with reform of police structures.

COMSA had originally hoped to follow particular investigations closely to determine how they were approached. But an application made by another observer mission to the Ministry of Law and Order that the policemen on its team be allowed to follow particular cases met with a negative response from the Minister, who advised COMSA accordingly.

Apart from the SAP, the various 'homelands' maintain their own police forces, such as the KwaZulu Police Force (KZP). These forces receive technical assistance from the SAP. In some cases, territorial jurisdictions of homeland and SAP forces are not distinctly drawn or seem to overlap. This can lead to popular confusion and the shifting of responsibility. COMSA was not able, because of time constraints, to study the homeland police forces closely, or to explore the relationship between them and other agencies.

COMSA did not study the SADF, except insofar as it acts as a support organisation for the police. It also did not study the military wings of the political parties or the private protection units of the communities.

### **The South African Police**

The SAP today is, for the size of the nation it serves, a relatively small force of some 85,000 police personnel, plus 11,000 police assistants. This force performs all police duties, including the investigation of crime and the enforcement of law and order.

For the purpose of crowd control at demonstrations, marches, rallies, etc., the SAP is supported by the Internal Stability Unit (part of the SAP and successor to the Riot Squad) and South African Defence Force (SADF). Homelands police forces such as the KwaZulu Police (KZP or popularly ZP) are also involved in control of violence. In addition, the ANC, PAC and AWB have military wings purportedly engaged in protecting their communities, and

armed private security agencies work in white middle-class areas.

The SAP uses military rankings and the ISU wears camouflage uniforms similar to those of the army when on public order duties. As a result, given the small size of the SAP and its frequent appearance in the company of the ISU and SADF, there is sometimes confusion about ultimate responsibility.

It is the general view of COMSA that South Africa is under-policed. An indication of this is the proliferation of armed security companies dealing with attacks and burglaries. In many cities, the traffic police, who do not serve with the SAP, are the most visible sign of law enforcement.

The Minister for Law and Order, Hernus Kriel, at his meeting with COMSA, admitted that South Africa had fewer policemen for the size of its population than most countries. But he expressed satisfaction that increased budgets over the last three years were enabling the force to be enlarged; he felt that the first concern should now be improvement in its quality.

COMSA police experts in Natal found the police to be under heavy pressure. They encountered detectives carrying as many as 50 open murder dockets and were told of instances where an investigator had 150 open investigations of all categories. The police had a vast volume of work to deal with; led stressful lives; often had to act under provocative circumstances; operated within a culture with a long tradition of violence, and officers on the front line were frequently young men deployed immediately after training who felt threatened and sometimes afraid.

However, the performance of the SAP in Natal, while commended in several quarters – particularly when contrasted with that of the KZP – has also come under criticism. As the first phase of COMSA ended, international observers drew to the attention of Mr Kriel allegations of serious police misconduct in the handling of an outbreak of violence between the ANC and IFP in Mooi River, Natal. At the time of writing, a response from the Minister was awaited.

### **Perceptions of the Police**

The vast majority of black South Africans continue to have little confidence in the police. Their perception of the SAP is that it is incompetent, unfair, hostile and a force which secures convictions, whenever it is so inclined, through forced confessions.

The SAP are also accused of inefficiency in investigating crime, with the result that few prosecutions lead to convictions.

In the case of the KZP, the police themselves have been cited as a cause of the breakdown of law and order. In Natal/KwaZulu, where the KZP is regarded by ANC supporters as the private army of their rival, the IFP, some ANC supporters view the KZP as an undisciplined and partisan force suppressing civil and political freedoms.

COMSA observers were often told by members of the black community,

notably the refugees, that they would never report any criminal incident to the police. If they did, they believed they would not get justice but merely become involved in a police exercise which could expose them to reprisals.

This is clearly judgmental: however, it comes not from the observers, but from communities which the SAP has a duty to serve. It would be difficult to find any significant section of the black population of South Africa today which regards the police as an impartial force labouring under considerable difficulties in the proper discharge of its duties. Black South Africans fail to understand how a police force once so efficient in maintaining apartheid laws now appears so helpless in securing convictions in cases involving blacks.

The remainder of this chapter is cast in the light of this need and desire for change within the South African police.

## **B. POLICING AND THE WAY FORWARD: POLICE/COMMUNITY RELATIONS**

### **Background**

President F W de Klerk, addressing international observers on 11 November 1992, said:

The Government is aware of the perception of the lack of confidence in the South African Police at grassroots and regional levels.

We appreciate the need for confidence-building at the regional level and are pleased to see the advances made in many areas, fully cognisant that there is still some way to go ...

The role foreseen by the United Nations for the observers and accepted by the EC, OAU and Commonwealth, namely to promote existing peace structures and to advance communication between the police and the local communities, will be of the greatest service to South Africa.

The police, after years of enforcing unpopular laws, have found it difficult to accept that the enforcement of the law is secondary to public peace and well-being. The absence of a tradition of community-oriented policing and policing by consent poses a considerable challenge to those seeking to reform the present arrangements.

Community perceptions of the police as a hostile, oppressive, partial and unfair institution will only be altered by a clear willingness on the part of the police to change. The onus is on the police to ensure fair treatment in their relationship with members of South Africa's diverse communities. However, the concept of discretion to ensure that policing is sensitive and in tune with the wishes of the public involves a change of culture which is difficult for many officers to accept.

In a later conversation with COMSA observers, President de Klerk said:

I have addressed the 400 highest ranking police officers. I told them that they are no longer a political police – they are out of the political arena and that in future building good police community relations was to be a priority.

As indicated earlier, COMSA detected a willingness to accept this change in some senior police officers. This change was exemplified by the appointment of a Lieutenant-General, supported by two black Major-Generals, to lead a Community Relations Department as from 1 December 1992.

Training of Community Relations Officers for each police district is now under way. COMSA members gave lectures at two courses on international trends in community-police relations and were also invited to address four more courses early in 1993, as well as address the Police Academy Graaff Reinet (Senior Management Development Course).

This first step, the creation of a Community Relations Department on 1 December 1992, is to be commended. However, community relations must be seen as central to the duty of all officers – not as a marginal specialisation of a few. The concept of community-oriented policing has to permeate the entire police organisation.

### **Community/Police Consultation**

Public trust, confidence and support in policing has to be earned. Public involvement in the police decision-making process is vital to building rapport. There is no substitute for dialogue through a recognised consultative process.

Consultation is not necessarily about agreement. Operational control will remain with the police, but consultation is a way of obtaining the best information on which to base decisions. It is also essential to providing a high quality of service to communities.

Resources are finite and in order to ensure their most effective use, the police must allocate resources according to public needs and expectations. Unless there is ongoing consultation, the police will not be able to provide value for money and will be inefficient in delivering service.

Currently, the police frequently present their communities with final decisions, leaving no opportunity for comment or discussion. Often, these decisions are of great importance to a community. A case in point is the imposition or removal by the police of a night curfew without community consultation or the opportunity for public opinion to be heard or alternative options to be considered. Such an incident occurred at an ICC meeting in Alexandra, attended by COMSA, at which security forces announced the immediate lifting of unrest regulations, including a night curfew, to the surprise of all those present as they had neither been informed nor consulted.

This state of affairs is surprising as RDRCs and LDRCs exist in most areas and the Peace Accord states that:

3.2.3 The police shall be guided by a belief that they are accountable to society in rendering their policing services and shall therefore conduct themselves so as to secure and retain the respect and approval of the public.

3.2.3.1 In order to facilitate a better communication with the community, the police shall, in each locality where a LDRC exists:

- (i) Consult regularly with:
  - (a) the LDRC, or in its absence, community leaders, including representatives of signatories to this Accord, and
  - (b) community leaders, on the efficient functioning of the police in that community and shall regularly communicate with such committee representatives or leaders on the issues raised by them with the police.

Community trust is reduced when decisions are imposed without prior discussion. Perceived police duplicity and partiality reinforces the mistrust. A common complaint from LDRCs is that agreements are reached and then broken. This can occur when, for example, the senior officer is changed, or the ISU is on duty, not the local police, and the ISU denies knowledge of local agreements or allegedly does not consider itself bound by such agreements.

In order to ensure a more co-ordinated and enduring approach, one RDRC, that for Wits/Vaal, has established a Community Relations Subcommittee which has begun to prepare a proposal for consideration by the Regional Commissioner of Police that a system of formal consultation be established to consider any future declaration of Unrest Areas. COMSA has been involved in supporting the proposal, and if accepted, one of the first Community/Police Consultative Committees in South Africa will be established. In time, the remit of such a committee could be extended to include all police decisions of concern to the community.

It is encouraging that COMSA members in Durban observed a quite well-developed community-based policing programme in several communities. These included a regular monthly meeting in Durban, convened and chaired by the District Commissioner, at which representatives of the community discussed with the police problems in the area, such issues as crime trends and community concerns. Discussions at these meetings were quite frank. Such meetings could usefully be replicated elsewhere.

### **Police and Courts**

A problem often cited by the police is the practice of granting bail to accused persons, frequently in even the most serious of cases, including multiple murder charges. It was said that this practice often led to the complete disintegration of cases due to the intimidation, or elimination, of witnesses, fear in the community and a general feeling that the justice system was incapable of protecting the rights of victims of crime.

The practice of routine granting of bail has been explained on the basis of relieving pressure on the backlog of cases before the courts and the overcrowded prisons. But the effect has been seriously to undermine the South African criminal justice system, as explored in greater detail in Chapter 5.

### **Persons in Custody**

There is a tendency for the police to rely on confessions as the primary source of evidence for prosecution. This approach leads to the abuse of suspects in

custody. The lack of trust in police handling of prosecutions and the widespread belief that persons arrested are ill-treated has led to the refusal of sections of the public to be party to the prosecution of offenders.

Even when there may be community agreement that punishment for crimes is warranted, witnesses seldom come forward for fear of reprisals from the defendant's supporters. This has made it difficult to secure convictions without admissions of guilt. In turn, police reliance on confessions increases public suspicion that torture is used.

Press reports fuel public suspicions of cover-ups and police brutality. An example is the allegations in 1992 of Dr Jonathan Gluckman, a pathologist, that large numbers of prisoners had been unlawfully killed whilst in police custody. Police officers appointed by the Government to inquire into these allegations subsequently stated that most of Dr Gluckman's allegations were unfounded. However, the public is likely to have little confidence in an investigation of police by police, however fair or impartial such an investigative body may be.

To ensure that regulations concerning the correct treatment of prisoners are properly applied, a system of magisterial visits by recently retired magistrates to police stations has been introduced. This reform is valuable but may not be regarded as sufficiently independent. The reports are confidential and whilst such visits may affect the police, the community is unaware of the visits or the findings. Thus, the opportunity to improve public confidence in the police is lost.

COMSA observers have discussed with senior Community Relations Officers the concept of lay visits by members of local communities to police stations. This has been introduced very successfully in Britain and elsewhere where visitors must be given unimpeded access to all those held in police detention. In Britain, they arrive unannounced and play a valuable role in shedding light on areas of the police working-environment previously hidden from public scrutiny.

Such visits, with public reporting of the visitors' findings, would do much to allay fears of ill-treatment and, if improper conduct did occur, to curb it. This is a straightforward solution to a serious question of public mistrust and one that is not resource-intensive.

### **Communication with the Public**

The SAP has frequently been criticised for the apparent inability of its officers to communicate with the public. An example is the lack of communication between marshals and senior officers during the policing of demonstrations. On occasion, no attempt is made to discuss the day's event or resolve difficulties. The militaristic appearance of the police at political events has also come under criticism. Units of the different organisations, armed with automatic weapons, remain well apart from the people in their heavy armoured vehicles.

The effect of such law enforcement formations, however peaceful, is to give the impression of a formidable, fearsome and remote power.

Another dimension is the apparent reluctance of police on occasion to use their discretion in potentially explosive situations. COMSA observed many instances when the police applied the law under circumstances which seemed to make little sense. In some cases, by taking action to enforce a law during a public rally they actually fuelled violence.

A case in point is a recent incident in Ratanda, in which the COMSA team, working closely with the LDRC, was called on to help mediate between the police and an angry crowd following an attempt by the police to arrest a 'wanted' community member who had been spotted from a helicopter during an emotionally charged funeral. The atmosphere became even more heated when the police arrested a community leader who got into a fight with one of the police officers. The two COMSA observers present were able to persuade the police that it would be in their interests to release the community leader in exchange for co-operation by the community in finding the wanted person who – during the fracas – had got away.

As stated earlier, it would be unfair for COMSA observers to be judgmental. The SAP must be assessed taking account of the violent environment in which they operate. As mentioned earlier, many policemen have been killed, and concern for personal safety is natural. This in part explains the heavily armed, almost military style of law enforcement of police in patrolling townships. If better relations are to be achieved between the police and the black population, such an approach has to change.

This raises questions about the functions of policing and whether the focus should be on force or service. If the police are to be responsive to local needs and expectations, there is no doubt that the service model has most to commend it. It demands, however, a fundamental shift in policing style. The military model of policing which predominates at present can only exacerbate the tensions and escalate violence. Its emphasis on technical efficiency and the use of the police as a reactive force to suppress dissent do not fit comfortably with the visions of the new South Africa – where the emphasis is on peaceful co-existence and conflict management through dialogue.

The service model supports the new emphasis by attention to the overall effectiveness of policing. This leads to a consideration of qualitative measures derived through working together with local people and demonstrating care, concern and fairness in police–public interactions.

In this approach, it is the way in which police relate to individuals and local communities that is valued. The police are not simply a remote oppressive force to be called in times of crisis; they become an integral part of the identification of problems and the quest for solutions. Given the history of police/community relations, a shift to the service model will be a long-term process, and one that will not happen of its own accord. All parties need to work together in a constructive partnership to make it happen.

## **The Police Board**

A Police Board was established under Paragraph 3.3 of the Peace Accord which provides that:

### **3.3 Police Board**

3.3.1 A Police Board shall be established whose composition shall comprise of both members of the public and representatives of the police in equal numbers. The chairperson is to be appointed by the Minister of Law and Order from one of the members representing the public.

3.3.2 The members of the public shall be appointed by the Minister of Law and Order to the Police Board from names put forward by unanimous decision by the National Peace Committee. The Minister for Law and Order shall have the discretion to appoint further members from parties who are not represented on the National Peace Committee.

3.3.3 The function of the Police Board shall be to consider and to make recommendations to the Minister of Law and Order in regard to the policy relating to the training and efficient functioning of the police, with a view to reconcile the interests of the community with that of the police.

COMSA observers were invited to address a full meeting of the Police Board on 25 November 1992. Issues discussed included community policing, quality of service and instruments of control. The discussions lasted for three hours, and the Board showed great interest in the concept of police providing a 'service' and policing by consent.

The Board is still seeking a 'role' and COMSA's input in the area of strategic planning was welcomed by the Board in considering ways to focus its activities. In order to create a service culture it will be necessary to consider the training and communications implications. There is little doubt that external support and advice drawing on good practice from elsewhere will continue to be necessary in the immediate future.

## **Recruitment**

At present the SAP does not enjoy a high standard of pay and benefits, or social standing in the society it serves. Recruits do not originate from the better educated or more enlightened sectors of black or white populations. Most senior appointments are made from within police ranks and the police 'culture' is narrowed accordingly. Some cross-fertilisation, with recruitment from a cross-section of racial and social groups, including from universities, is essential for forward-thinking. To be attractive to this wider group, police work would have to be better rewarded.

## **Training**

A service-oriented model of policing places a high value on the following attributes:

- service not force
- people-centred, caring and compassionate
- showing professional and ethical behaviour
- fair and non-discriminatory services

- support for victims
- willingness to admit mistakes and learn from them
- minimal use of force
- open to change, participative and consultative
- visible reassuring presence
- proactive, providing reasonably prompt, polite service
- accountable

The agenda for police training will require, *inter alia*, a focus on community relations, interpersonal skills including counselling, equal opportunities, ethics, civil liberties, conflict management and problem solving. COMSA has already made a contribution to this process. What is required is a fundamental reorientation to equip the police to serve the people of South Africa during the 1990s and beyond.

## Conclusions

On 17 November 1992, the Goldstone Commission published a report of its findings on a series of murders at Thokoza. Its observations strongly endorse two of the recommendations in this Report:

The legitimising of the security forces is a matter that has always been high on the Commission's agenda. Until South Africa has a police force and a defence force that have the confidence and support of the vast majority of our people, violence will continue to be difficult, if not impossible, to curb.

The Commission considers it doubtful whether the security forces can achieve the aforesaid goal without outside assistance. Meaningful steps in the right direction have already been taken by the SAP. What further steps should be taken and whether the Commission should be involved in this regard is a matter that the Commission will consider early next year.

Because of its lengthy isolation, South Africa has been secluded from international trends and developments in policing. COMSA submits that without the help of the international community in training and facilitating dialogue, the SAP will not be able to move from a force dedicated to law enforcement to a police providing the full range of services demanded by the community in a new South Africa. COMSA has already made a considerable impact in this regard, and should stand ready to be of further assistance.

## CHAPTER 7

### Observations

#### Violence and the Political Transition in South Africa

Violence in South Africa is deeply rooted in the country's history and continued political uncertainty. A Government which is accepted by all peoples of South Africa would, in COMSA's view, be in a better position to deal effectively with the violence than a Government which does not. Progress towards a political settlement, which, it is hoped, would also bring with it fundamental socio-economic reforms, is therefore crucial to providing a long-term solution to the problem of violence.

In this context, although a reduction in the level of violence is highly desirable, it seems unrealistic to COMSA to expect this reduction as a precondition for the resumption of multi-party negotiations. Violence must not be allowed to hold the political process to ransom. Time is of the essence for forces committed to democratic change and any delay will weaken the moderates and fuel the machinations of extremist elements.

COMSA welcomes the positive signals – including the recent bilateral discussions between the Government and the ANC, and preparations for a meeting between the leaders of the ANC and IFP – that the deadlock in multi-party negotiations during the latter half of 1992 may soon be broken. It is the fervent hope of the Commonwealth observers that such talks will resume in 1993, and that the country's first democratic elections will be held as soon as is feasible thereafter.

The Government bears the primary responsibility for ensuring the protection and security of all citizens. However, the situation demands that all signatories to the Peace Accord take their share of the responsibility in reducing tension and promoting peace. In this regard, COMSA strongly supports the call by the NPC for a summit of leaders of all signatories to the Accord at the earliest possible date.

Crucial to the transition under way in South Africa is the building of a culture of political tolerance still lacking in many of the utterances of political leaders as well as in the laws in force in the 'homelands'. COMSA urges the removal forthwith of all remaining barriers to free political activity, as well as a concerted effort by all the country's leaders to start creating conditions conducive to the holding of a free and fair election, which should become the prime focus in the forthcoming months.

In this regard, COMSA is deeply disturbed by the outbreak of APLA attacks on white civilians, the right-wing counter-attacks and the threat of a Government hot-pursuit raid into Transkei. This spiral of violence, apart from threatening human lives, has the potential to rekindle racial animosity and detract from efforts to find a peaceful solution to the country's political crisis. COMSA strongly urges the leaders of all those involved in this unfortunate development to act with restraint and in the broader interest of South Africa as a whole.

### **Covert Operations**

COMSA is also shocked by the recent revelations of the Goldstone Commission regarding a campaign by the SADF's Military Intelligence to discredit the ANC after negotiations had begun. These revelations add weight to the widespread belief in a sinister 'third force' bent on fomenting political violence. President de Klerk is to be commended for the internal review he has initiated into the workings of the Military Intelligence and the subsequent purge of its ranks. However, COMSA urges the Government to seize this opportunity to rid the army of all covert practices once and for all and to undertake a major reassessment of its security apparatus so as to draw a distinction between external and internal threats.

There is no legitimate place in a democratic country for the application of covert operations directed internally at its citizens. To guard against this, there needs to be appropriate civilian control over intelligence gathering and a clearer distinction between the role of the military and that of the police.

COMSA recommends that the limits of authority of the intelligence apparatus be defined in law and that a watchdog civilian body be established to monitor the legitimacy of the activities of the intelligence machinery. It also recommends that any restructuring of the security forces that is undertaken be done with a view to facilitating the integration and joint control of these forces with other armed formations in the country under a new political dispensation.

### **Investigation into all Armed Formations in South Africa**

To assist this process, COMSA urges all affected parties to co-operate fully with Mr Justice Goldstone in his proposed investigation into all armed formations in the country. Such an exercise, if expeditiously and professionally undertaken, would help to exorcise the mutual suspicions and fear that hinder progress towards a truly democratic society.

### **Reform of the Criminal Justice System**

Equally important is the reform of South Africa's criminal justice system which, discredited by decades of association with the system of apartheid, has largely broken down. Few crimes are reported, fewer still are detected, and an even smaller number are prosecuted successfully in the courts. Lack of

confidence in the South African police is widespread among all sectors of South African society, but especially among black South Africans, who until recently were largely viewed as the enemy by the police. Despite some promising signs of recognition of the need for change within the criminal justice system, that system continues to allow deaths to occur in police custody; the maltreatment of persons subjected to police interrogation; the non-representation of most defendants by lawyers in criminal cases; the detention in adult prisons of as many as 9,000 children; the release on bail of persons charged with the gravest crimes; and the infliction of both capital and corporal punishment.

An effective overhaul of the criminal justice system is only likely to occur under a new, representative political authority. However, COMSA recommends that the policy of releasing on bail people charged with serious crimes and the level of sentences for crimes of violence be reviewed as a matter of urgency.

Perceptions of the police, so deeply rooted in South Africa's racially divided past, may take a generation or more to change – and even then, only with a great deal of positive effort on the part of the police and community leaders. However, genuine efforts among the more enlightened police officers to start changing the image of the SAP now deserve international support. COMSA welcomes the recommendation by the UN Secretary-General in his latest report to the Security Council that 'police officers of various countries, with the requisite skills and experience, should be invited to South Africa to observe and, as appropriate, advise South African police personnel on the conduct of investigations'.

During the first phase of its involvement in observing the incidence of violence in South Africa, COMSA found a thirst for knowledge on international trends and practices in policing which Commonwealth countries, because of their common traditions, are particularly well placed to provide. In the course of extensive interchanges with the South African police, COMSA put forward the concept of lay visits by members of the local community – possibly LDRCs – to police stations as a means of enhancing public confidence in the service the police provide. It is hoped that this idea will be further pursued. Similarly, COMSA hopes that the initiative by the Wits/Vaal RDRC to establish a Police/Community Relations subcommittee will be replicated in all regions. COMSA also sees considerable scope for strengthening and enhancing the status of the Police Board, set up under the National Peace Accord, as potentially a key instrument for improving police community/relations.

### **The National Peace Accord**

The National Peace Accord, despite its shortcomings, remains one of the most significant developments in South Africa during this transitional period. It is an impressive and imaginative document which COMSA has been proud to be associated with. The sight of people from different races and ethnic backgrounds, from different walks of life and with differing political beliefs sitting

around a table exchanging views with each other, is one of the most encouraging things that COMSA has seen in South Africa. The Goldstone Commission – one of the three main pillars of the Peace Accord – occupies a unique position of authority and influence, and deserves strong support. There are, however, a number of measures which could be taken to strengthen the structures set up under the National Peace Accord, most of which are readily recognised by those concerned, and are already the subject of an internal review. COMSA would therefore simply wish to strongly endorse:

- the new emphasis by the National Peace Accord structures on Peace and Development, rather than dispute resolution. This shift in emphasis rightly puts the focus on socio-economic issues which are at the root of much of the violence in the country.
- efforts to achieve greater and more diversified participation, especially by those who are not yet signatories to the Accord and among those who are, to achieve more balanced racial representation in the structures set up under the Accord.
- greater political commitment by those who are signatories to the Accord, as well as agreed proceedings for dealing with breaches of its provisions.
- full implementation of key sections of the Accord which so far have received little attention: for example, the appointment of Justices of the Peace at the local level and raising the profile of the Police Board.
- a bolstering of the resources available to the Goldstone Commission and, where appropriate, greater international support and participation in its activities.

### **The Role of International Observers**

The presence of international observers has played a visible and widely acknowledged role in helping to calm the political atmosphere in South Africa. The ability of the four different international organisations represented in South Africa to work harmoniously together, despite their differences, is evidence of the common cause that binds them in this mission. COMSA recommends that an international presence of some form be maintained in South Africa up to and including the first democratic elections. As time goes on, and greater confidence is built between the observers and the people they are serving, it is hoped that observers are able to play a more proactive role, while maintaining the neutrality crucial to their efforts.

# **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

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▼ **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 Madiela (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 Madiela, 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 Madiela, 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 unrest

As a member of the Royal family, Madiela 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.

Madiela 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 Phatheni, 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 Phatheni.

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 CHALLENGOR  
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

COMMONWEALTH SECRETARIAT  
MARLBOROUGH HOUSE, PALL MALL, LONDON SW1Y 5HX

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