



INTERNATIONAL COMMISSION OF JURISTS



Voting for Peace

**An independent assessment of the prospects
for free and fair elections in South Africa
by
the International Commission of Jurists**

Geneva – Switzerland
November 1993

ICPR*VOT

Voting for Peace

**An independent assessment of the prospects
for free and fair elections in South Africa**

by

the International Commission of Jurists

LIBRARY

International Commission
of Jurists (ICJ)
Geneva, Switzerland

Members of the Mission:

Enoch Dumbutshena (Former Chief Justice) Zimbabwe

Adama Dieng (Secretary General of the ICJ) Senegal

John Macdonald Q.C. United Kingdom

Carl Lidbom (Former Minister of Justice) Sweden

Philip Amoah (ICJ Legal Officer for Africa) Ghana

ICPR * VOT

International Commission of Jurists

26 Chemin de Joinville - 1216 Geneva - Switzerland

November 1993

C. 1302

ISBN 92 9037 076.9

Summary of Main Recommendations

Elections should take place on the agreed date: 27th April 1994. They must not be postponed.

Elections must take place in the homelands and the "independent states" as well as in South Africa. The legislation setting up the "independent states" should be repealed.

The Internal Stability Unit, the KwaZulu Police and other homeland police forces must play no part in policing the election.

There should be a polling station with walking distance of everyone's home.

Local Investigation Units should be established to investigate criminal allegations against the police

A new Police Criminal Investigation Department should be established based on the Goldstone Investigation Teams

The United Nations must co-ordinate the help from the International Community. The Secretary General should send a Special Representative to South Africa to work with the OAU, the Commonwealth and the European Union to ensure that the assistance which is needed arrives in time.

The International Community should:

- a) Provide at least one monitor at all times at all polling stations
- b) Provide senior police advisers to support the South African Police at headquarters and at every police station which is involved in policing the election
- c) offer to provide a reserve peacekeeping force of four to five battalions, to be under a South African commander, and to be at the disposal of the Electoral Commission.

Contents

1. Free and Fair Elections	9
Essentials	9
The Challenge	10
A referendum?	10
No Delay	11
Elections Everywhere	11
2. The Political Violence	11
The East Rand	12
The Vaal Triangle	13
Natal North coast - Sundumbili	14
Natal - Lindelani	16
Natal - Bhambayi	16
Natal - Table Mountain	17
The Western Cape - Crossroads	17
3. The Third Force	18
4. The Freedom Alliance	21
5. The Police	23
The Need for Change	23
The Waddington Report	23
A Police Investigation Board	24
ICJ's Previous Proposals	25
6. The National Peacekeeping Force	26
7. The Electoral Commission	27
8. The Media	29
9. Conclusions	29
Policing the Elections	30
International Police Advisers and Monitors at Polling Stations	30
The Role of the United Nations	30
The Relationship between Monitors	31
The Role of the Commonwealth	32
Press briefings	33
A Reserve Peacekeeping Force	33
Appendix 1. Itinerary of the Mission	34
Appendix 2. Biographical Notes	38

1. Free and Fair Election

Essentials

The essentials of a free and fair election are:-

- a) that the ballot should be, and should be seen to be, secret;
- b) that everyone who wants to vote has a realistic opportunity of obtaining the necessary identification documents;
- c) that everyone has a polling station within reasonable walking distance of his or her home and
- d) that it is safe to vote and people believe that this is so.

In addition everything possible should be done to ensure that all parties and candidates have an equal opportunity of campaigning everywhere.

We welcome the Independent Electoral Commission Act which establishes the framework for universal elections in South Africa and the first draft of the Electoral Bill which will fill in the details. In Namibia the electoral law was not passed until four weeks before polling day. The Home Affairs Minister told us that he hopes the Electoral Bill will be in place in November.

People need to be reassured that the ballot will be secret, and that there is no way in which anyone can check up on how they have voted. We think it will help if, as is proposed, people can vote at any polling station in their region.

We were told that probably more than 3 million people do not have the identification documents envisaged in the draft law. The procedure for obtaining such documents is bureaucratic and slow. The process needs to be streamlined and taken out to the people who do not have identification documents.

We were told by Ministers that the present proposal is for 7-8,000 polling stations and, to our surprise, all parties seem to be working to this sort of figure. We think it is hopelessly inadequate. We are not in a position to assess the precise need, but we estimate from our own experience that it will be necessary to multiply the proposed number

several times if everyone is to be able to walk to vote. Mobile polling stations are not in our view a satisfactory substitute. We think it is better if all the polling stations are open throughout the election, so that everyone has an equal opportunity of voting.

We believe that the Independent Electoral Commission should succeed in ensuring a secret ballot, satisfactory identification documents for all, and the necessary number of polling stations. We trust that the Commission will begin its work before the end of November. The crucial question is whether it will be safe to vote and whether enough people believe that this is so.

We believe that it will be possible to hold satisfactory elections on the 27th April 1994.

We believe this having visited what the police tell us are some of the tensest areas in the country. We believe this knowing that the number of deaths from political violence in Natal has increased significantly over the last 12 months. We believe this knowing that the nature of the violence has changed and that professional marksmen are shooting people at random on an almost daily basis.

The Challenge

We believe that much can be done between now and the 27th April to make it safe for people to vote. This is a challenge for everyone in South Africa. It is also a challenge to the outside world, for without outside help it seems unlikely that free and fair elections can take place.

A Referendum?

President de Klerk has suggested that he may call a referendum on whether the process should continue if the Freedom Alliance do not accept the Kempton Park proposals for a new constitution. There are arguments in favour of such a referendum, but it would only be satisfactory if people believe it is safe to vote. South Africa will need as much outside help with a referendum as with an election.

No Delay

It is our judgment that the elections must not be postponed, even for a short time. Everywhere we have been in the townships, in the cities, in the countryside, people want the new South Africa to start on 27th April 1994. As a member of the United Nations Mission put it to us - "the only thing that is keeping the townships from exploding is the prospect of elections."

Elections Everywhere

The elections must take place everywhere, in the homelands and the independent states, as well as in South Africa. The homelands and the independent states were created by South African legislation as part of the grand design of apartheid. The independent states have not been recognised by the outside world. The legislation which was passed can be repealed, so that the traces of apartheid are removed. In any event it would be unacceptable if the millions of people who live in the independent states - we understand there are 3.5 million in Bophuthatswana alone - were not allowed to vote. If they cannot vote we fear there is a great risk they would take the law into their own hands, and cause chaos. This is a problem which the South African government must resolve now, so that voter education can take place, and everyone can be issued with an identity document.

2. The Political Violence

According to the Human Rights Commission in the three years to June 1993, 9,325 people have been killed in political violence in South Africa, that is an average of 259 deaths each month, or more than eight people murdered every day. 53% of the deaths in 1992-3 were in Natal where the average monthly toll has risen from 84 to 137 with relatively little fluctuation from month to month. Mercifully in the PWV region (the area around Johannesburg) which has always

been highly volatile there has been a fall in the number of deaths from 1,982 in year one, to 1,086 in year three.

The East Rand

We visited Tokoza, Katlehong and Phola Park on the East Rand with representatives from the PWV Regional Peace Committee. They told us that there have been times this summer when the fire services, ambulances and even the police have refused to go into Tokoza¹. The Peace Committee monitors have been the only people prepared to go in and pick up the bodies - "We just had to close our eyes and do it." They have also negotiated to make it possible for the services to go back into the area with considerable success. They have established a joint operations centre which brings together in one building the South African police (SAP), representatives from the African National Congress (ANC), the Inkatha Freedom Party (IFP), independent monitors and the peace committee. We went to the operations centre. The deterioration in the situation in the East Rand can perhaps be measured by the fact that on 28th March 1992, on our last mission, we spent an afternoon walking about Tokoza, talking to residents and discussing their problems, this time we were driven round the Township in the Peace Committee's armoured vehicle.

There are changes in the nature of the violence. The random killing by unidentified men which was a feature of the train violence has now become more widespread. In the East Rand there is continuous warfare between ANC residents and IFP supporters in the hostels. The hostel dwellers have pushed their front line forwards, raping women and driving people out of the houses which are nearest the

¹ Confirmation for this is to be found in an Evaluation of the Prospects of Free and Fair Elections ("the Police Evaluation Document") prepared by the Centre for the Interpretation and Analysis of Crime Information which the Commissioner of Police gave us which states that in some areas "the South African Police are experiencing a legitimacy crisis which makes policing very difficult and in some areas, such as townships in the East Rand, even impossible."

hostels. Both sides are concerned to maintain their means of access to the outside world. Taxi routes are vital, as is the railway line. The only way many hostel dwellers can get to work is by catching a train at Kwebne station next to the hostel, and so the railway line has been sabotaged repeatedly. The atmosphere is very tense. We watched young comrades putting together barricades of stones across the roads, effective road blocks, so that they can be in control at night. There is no shortage of guns.

The hostels lie at the heart of the problem in the East Rand. We did not spend any time in a hostel on this visit but the afternoon which we spent in the Bruntville hostel in March 1992 remains vividly with us. It is an inhuman system, which condemns men, desperate for work, to live away from their families in conditions of mind numbing squalor. In our last report we recommended that the hostels should be replaced by homes for families and single people which provide some privacy. A start has been made, but much remains to be done. The Goldstone Commission in its interim report dated 29th April 1992 said:

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

Judge Goldstone told us that this is one of his recommendations which has not been implemented. Hostels are a symbol of apartheid. The Transitional Executive Committee (the TEC) should give the replacement of hostels the highest priority. It is not too late to give people grounds for hope. The South African government has been very good at building roads for casspirs (armoured cars) and very bad at building homes for people.

The Vaal Triangle

We found the atmosphere in Sebokeng and Sharpeville more relaxed than in the East Rand. In Sebokeng we visited a rally organized

by POPCRU, the Police and Prison Officers Civil Rights Union, which has a substantial membership amongst black policemen. There must have been more than 200 policemen at the rally, mingling freely with residents from the township. 18 months earlier we would never have imagined that this could happen. The policemen told us that they thought it was important to try and explain to local people the difficulties which they encountered in their job. The community clearly accepted the policemen at the rally, but there was no acceptance for the IFP. It was made very clear that it would not be possible for the IFP to campaign in Sebokeng, because the residents are so hostile to Inkatha.

We spoke with the chair of the ANC local branch who welcomed the POPCRU rally. He told us that things were quiet in Sebokeng but that he feared it was the calm before the storm, and that the community had to be prepared for further murderous attacks. We take this very seriously. We remembered that when we visited Sharpeville in March 1992 and met the parents of two young men who had been killed by residents of the Kwa-Madala Hostel near Boipatong. We remembered the Vaal Council of Churches' concern that they had been unable to convince the police of the danger which the Kwa-Madala Hostel constituted for the community. The Boipatong massacre, in which 46 people were killed, occurred some ten weeks later on 17th June 1992. The residents of the hostel were suspects. Dr Waddington² in his report for the Goldstone Commission on the police response to the events in Boipatong said that there was a lack of effective intelligence and contingency planning.

Natal North Coast - Sundumbili

On 18th March 1992 we visited the squatter camps at Umlazi where 18 people including 15 women and three children had been killed in a

² *Director, Criminal Justice Studies, University of Reading.*

dawn raid on the 13th March 1992. We met with the community, who were very frightened. In answer to our questions the women were emphatic that the attack had been led by a large force of men wearing KwaZulu police uniforms. We believed them. On this mission we again met with people who had been shot and injured. This time it was in the stadium at Sundumbili. Again we were told that people in KwaZulu police uniforms were involved.

On 12th July 1993 the Congress of South African Trade Unions (Cosatu) applied to the Supreme Court for an order allowing them to hold a political rally in the stadium at Sundumbili because they and ANC had repeatedly been refused permission by the KwaZulu authorities. The Judge made an order permitting the rally to take place and it did so. On 26th September 1993 Cosatu held a second meeting at the stadium. It was the day after Chief Buthelezi had called on all Zulus to contribute 5 rand for a force to defend the Zulu nation. We met with Sam Zwane, the co-ordinator of Cosatu who had made the arrangements for the rally. He told us he had a meeting with the KwaZulu Police on Wednesday 22nd September. The Police Reporting Officer was present. It was agreed that Cosatu would abide by the terms of the previous meeting at the stadium. Mr Zwane accepted that Cosatu may not have complied with all the agreed procedures but the KwaZulu police knew in good time precisely when the meeting was going to take place.

The rally started at 1 p.m. At much the same time we were told some 200 to 500 IFP supporters gathered in the shopping centre nearby. They were not local people. At 3.20 p.m. the IFP supporters advanced on the stadium and broke into it, firing at the people attending the rally. We were told by Rafael Mpongose, one of the marshals at the meeting, that men in KwaZulu police uniforms were firing at the people as they ran away. We met three trade union members who attended the rally and were wounded at it. One of them still had a bullet lodged in his body. We believed what they told us.

We met with some local residents in Sundumbili in one of their houses. They were ANC supporters. They told us that they feared the KwaZulu police not the local Inkatha members. We asked them

whether they intended to vote in the elections. They told us that they will not be able to vote at Sundumbili if the KwaZulu police are at the polling stations. These were active supporters of the ANC. We have no doubt that they live in great fear of the KwaZulu police.

Natal - Lindelani

Thomas Mandla Shabalala, the Mayor of Lindelani, and a member of the IFP Central Committee took us round Lindelani where he has to look after 300,000 people. He showed us the clinic and the workshops which have been established in the township. We were able to meet some local IFP members. Mr Shabalala told us that in many areas, he mentioned Kwa Mashu, Umlazi, Port Shepstone and Wembezi, it would not be safe for IFP members to vote. He told us that the IFP cannot take part in elections without knowing what the constitution is to be. He said that Inkatha was going to hold a special conference in December to decide whether to take part in the election. Gavin Woods, the director of the Inkatha Institute expressed the personal opinion that the IFP would take part in the elections. It is time the whole community accepted that elections are going to take place and resolved to make a success of them.

Natal - Bhambayi

The South African police took us to Bhambayi, where violence has raged for 18 months as the community has split into two areas. One part which local people call the red area supports the ANC. The other part, the green area, now identifies with the IFP, based in neighbouring Lindelani. The ground between the two parts has been laid waste. We were taken by the Internal Stability Unit in two armoured cars. We drove through the red area, across no man's land and stopped in the green area. The police leapt out brandishing weapons. It seemed to us an inappropriate show of force. This is precisely the sort of display which the police must avoid if they are ever to win the confidence of residents devastated by mindless violence.

Natal - Table Mountain

On the 26th September we went to a well attended ANC cultural rally in KwaZulu, between Durban and Pietermaritzburg, with a backdrop of Table Mountain. Harry Gwala, the ANC chairman of the Natal Midlands told us that the violence is not so bad that elections cannot be held and that if the elections are postponed more people will be killed. Harry Gwala said that Chief Buthelezi did not have the capacity to wage civil war unless the police are on his side. He said that federalism "caused us a lot of problems." Harry Gwala is an influential leader in Natal. We believe that he can play an important part in helping the Election Commission to ensure that it is safe for IFP members to vote in places like Bruntville, Richmond and Wembezi. We would expect him to do so.

The Western Cape - Crossroads

The Western Cape is different. The Police Evaluation Document states that the violence in Crossroads has its roots chiefly in differences between the older, more traditional part of the community and a young and more westernised group. Both are aligned to the ANC. We think this is an over simplification. Most people in the community live in shack settlements, built from corrugated iron and cardboard boxes, which flood at the beginning of every long wet Cape winter. Since the 1980's violence has been associated with the development of land.

Between March and July this year 55 people were killed and 96 injured in incidents in Crossroads. This started when the Cape Provincial Administration insisted, against the advice of members of the Local Peace Committee, on pressing ahead with a development project which involved the destruction of peoples' homes, without consulting one section of the community.

We met with Depouche Elles whose house was attacked on 17th March when Joyce Ndinsa, the woman who had cared for Depouche since he was eleven years old was killed, together with Sicelo Pauli and Temezi Soga. Since the attack Depouche's home has been raided by the police who started shooting and kicked the door in. They did not have a

search warrant. On 16th April shacks were attacked and burnt and shots were fired. Witnesses saw an old man, Mr Mgcina, pushed into a burning house where he burnt to death. Eye-witnesses identified the attackers as including two members of the Big Eight taxi gang and two special constables. Sixteen witness statements were taken. Local people say that the SAP and the South African Defence Force were present during the attack, but did nothing to assist residents. On 16th May four people were shot dead at close range.

We also met with Johnson Mpokekompe, who works on the SANCO (South African National Civics Organization) peace desk, and who is in close touch with the grass roots. He has survived assassination attempts and his near relatives have been killed. The body of one, a boy of 16 was discovered with 5 bullet wounds, two in the neck, one in the temple and two in the back. He was 16 years old. Johnson told us that the killers are working for money. It seems probable that some third force is ensuring that the violence at Crossroads does not burn itself out. Our most serious concern is that with more than 55 murders in the last year nobody has been convicted. This is a damning indictment of the police.

3. The Third Force

In "Agenda For Peace" we noted that one of the questions we were repeatedly asked was, is there a third force stirring up the violence? Our answer was that we thought the Trust Feed Case proved conclusively that violence was being provoked by some elements in the security forces. That remains our view, and we are reassured that Judge Goldstone reached similar conclusions in his important speech to the Annual General Meeting of the Law Society of the Cape of Good Hope on 4th October 1993. We think it is worth setting out Judge Goldstone's views at length. He said:-

"Allow me to say a few words on the question of third force involvement in the violence. What is the evidence in support of Security Force involvement in current violence? In the

first place there is proof of covert criminal activity in the 1980's. The activities of the CCB speak for themselves. Without anticipating any finding which may be made at the Goniwe Inquest, some of the evidence relates to further possible involvement by the military or police in criminal activity at that time. Then there was the secret funding by Government of the IFP and the training by the South African Defence Force of Inkatha supporters in the Caprivi in 1986 and the subsequent involvement of some of those trainees in recent political violence.

There was the Trust Feeds case where senior police officers were party to covering up political murders at the instance of a police officer by members of the police force under his control.

Then there is the unhappy inability on the part of the South African Police to apprehend and successfully charge any but a small number of persons who have been responsible for the large number of murders committed on trains and in other public places. This too, has added to the suspicion or perception that there is security force involvement in that violence.

Add to all of that the effects of the Commission's raid on the Department of Covert Collection in November 1992 and the discovery that Military Intelligence at that time was employing a man with a serious criminal record to undermine officials of the ANC. And, take into account the consequent action by President De Klerk in effectively dismissing 23 senior officers of the South African Defence Force some three weeks thereafter. Today, almost 10 months later the reasons for their dismissal have not been made public.

To this already long list of relevant evidence I would add that the present head of Military Intelligence, General van der Westhuizen, less than a month ago refused to answer questions put to him at the Goniwe Inquest on the grounds that the answers would tend to incriminate him. He is still in a

position of great authority in the Government service and able to influence further investigations, inter alia, into his own conduct.

That all amounts to strong circumstantial evidence of involvement by the Security Forces in current political violence. On the other hand, there are substantial reasons for concluding that the interests of the Government and the National Party would be strongly against such destabilising activity. They are too firmly and irrevocably committed to the present negotiated peaceful change. If the process fails so, too, do they. Their interests since 1990 are very different from those which preceded that eventful year. Then, there is the terrible loss of life in consequence of murderous attacks on so many members of the South African Police. A Committee of the Commission has been sitting for some months hearing relevant evidence in that regard. Those attacks are hardly likely to be the actions of the Security Forces.

Nonetheless, almost daily there is indiscriminate killing of people with the obvious motive of destabilising the country. Strange men with automatic weapons shooting people at random in townships from minibuses. There is evidence, hotly contested, from time to time of white persons being involved in massacres - Boipatong is one example.

*As a lawyer and as a judge I have little doubt that a considerable cause of some of the political violence is the work of **agents provocateur**, but, by applying the same logic and reasoning to known facts I do not know who is responsible for it. The obvious suspects are one or more of those parties who are resisting change and who threaten violence in order to do so. But there are a number of those parties - white and black. Without evidence, without proof, no judicial commission has the right to pronounce judgment."*

We agree, and it is against this assessment that a judgment of the possibility of holding free and fair elections must be made.

4. The Freedom Alliance

The unlikely collaboration between the white right and the black "Bantustan" leaders (Chief Buthelezi, Lucas Mangope of Bophuthatswana and Oupa Gqozo of Ciskei) is now virtually all that stands between South Africa's negotiators and a new democratic constitution. Dr Ferdi Hartzenberg leader of the Conservative Party, former Defence Force Chief General Constand Viljoen and Chief Buthelezi have threatened civil war if their signatures are not on the final settlement. Hartzenberg and Viljoen have issued a statement that they have not changed their demand for an Afrikaner Volkstaat, or separate state. The KwaZulu Legislative Assembly announced on the 5th November 1993 that right wingers have begun training about 500 men for "self protection units" in Natal.

The ANC and Nationalist Party tabled proposals for a federal constitution on 1st November 1993 which list 20 fields in which regional legislatures will have parallel powers to central government, including education, policing and health services. Under the proposals the Central Government will be able to overrule the regions on various grounds from the maintenance of uniform norms or standards to the economic and security interests of the rest of the country. The Freedom Alliance say this is not enough.

We talked to Andries Beyers M.P. about the proposals for an Afrikaner Volkstaat. In 1990 he led a demonstration of 100,000 against the unbanning of Nelson Mandela. He identified two areas, one in the Northern Cape where 69% of the population are Afrikaans speaking, and the other, a small area around Pretoria, where 50% are Afrikaans speaking, which might be Afrikaner provinces. Andries Beyers himself accepts that there could be no discrimination against non-Afrikaners in these provinces but the difficulty is that the majority of the right wing want some form of apartheid back. He told us that he estimated that there were about 2,000 potential right wing terrorists, who could make it very difficult to rule the country. He thought it would be quite easy to identify these people, a view which the Commissioner of Police did not deny. The majority of the right, who have much to lose, would he said be greatly influenced

by Viljoen, whom he described as a hero from the time he led the South African troops in Namibia.

The Federal solution on offer gives the IFP as much as they can reasonably expect. The difficulty here is that a recent poll found that Buthelezi had only 33% support in his Natal stronghold and one third of his voters are white. The poll suggests the ANC is increasingly the most popular party among the Zulus. This is in line with our own observations during three visits to Natal since September 1990. It is waning support which makes Buthelezi dangerous, but against this must be set Harry Gwala's view that Buthelezi does not have the capacity to wage civil war without the support of the police.

It is to be hoped that IFP will not take a short term view. If the polls are right and the IFP enjoys 33% support in Natal, as 25% of the population lives in Natal, this means 33 seats in the 400 seat Federal Parliament and a third of the seats in Natal, if the current proposals are adopted. This would give the IFP a considerable political base for the future.

Neither Lucas Mangope, nor Oupa Gqozo enjoys anything like this support. Mangope's support base in Bophuthatswana, where the repression is comparable to South Africa proper twenty years ago, is infinitesimal. The negotiators at Kempton Park agreed in the first week of November that legislation hampering free political activity in Bophuthatswana and Ciskei should be rescinded.

The risks posed by the Freedom Alliance are obvious, but if they do not take part they court civil war and will lose the opportunity to influence the political process. The African National Congress and the National party are standing firm on the view that those who do not show support for a new South Africa will be left behind. Their decision is to be welcomed, but this must not be translated into a decision that Ciskei and Bophuthatswana are left out of the elections. We believe the best course is for those who believe in the democratic process to proceed with the elections everywhere as quickly as possible. Which brings us to the crucial question what can be done to make it safe for people to vote? Here the first issue is the role of the South African Police.

5. The Police

The Need for Change

We were told by a resident of Grassy Park, outside Cape Town, that “the role of the police all over the world is restraint”. That is the all pervasive view in South Africa and it must be changed. The function of a police force is to protect the public and bring those who break the law before the Courts.

The Police Commissioner told us that in the first eight months of 1993 there were 3,460 attacks on the SAP, 130 policemen were murdered and there were 323 incidents in which the homes of policemen were damaged. These are horrifying statistics. There is no doubt that there is a deep gulf between the police and the public. This is not surprising as the police were used for over 40 years to enforce the evil apartheid regime, but it does mean that the police are often the targets of the community’s anger and that this is not always deserved. It is going to take a long time to change the SAP into a civilian public service which has the respect and support of the community.

We are encouraged that many in the SAP do seem to accept that fundamental change is necessary. The Police Evaluation Document acknowledges that the police has a great need for integration into, and interaction with, the community. “*Maybe!*” the documents says “*the time has arrived where we must put our differences aside and take mutual responsibility for solving the conflict that is tearing South Africa apart*”. The police also need to become much better at the job. There is still an enormous gap between aspirations and actuality.

The Waddington Report

This is underlined in Dr Waddington’s report on the policing of the 1992 Boipatong massacre. In a damning paragraph on a failure of leadership he said:-

“This police operation has been bedeviled by a failure of leadership at all levels: contingency planning was

inadequate; non-commissioned officers were left at the scene of a rapidly unfolding disaster to make fateful decisions as best they could; a small number of scenes of crime forensic examiners have been allowed to be swamped by the demands routinely made upon them; systems for dealing with problems which regrettably are all too common in South Africa have not been established; command has been notable by its absence for much of the time; junior officers have not been adequately debriefed and lessons have not been learned; the welfare of individual officers seems not to have been attended to; and all the while community relations have suffered.”

Amidst all this gloom and negative appraisal, there is an important source of relief to the SAP and that is that Dr Waddington's inquiry uncovered no information that suggested any complicity on the part of the SAP in the attack and at the beginning of the report Dr Waddington stresses that many of the SAP officers he and his colleagues met, especially those in junior commissioned and non-commissioned ranks, impressed them as dedicated, hard working and committed individuals.

The Natal Proposals for a Police Investigation Board

There have been some positive developments. Arising out of the Goldstone Committee Inquiry into allegations of torture by the SAP at Mooi River, there have been extensive talks between the SAP in Natal and local branches of the ANC about the establishment of a Local Investigation Unit to investigate criminal allegations against members of the police. As a result of these talks the SAP made public proposals which they intended handing to the Goldstone Commission. The proposals provided for the selection of policemen who were going to work in the Unit by an independent panel; an element of public accountability, through the involvement of the Attorney General and the Police Reporting Officer; and, for the work of the Unit to be overseen by the Goldstone Investigation team under Colonel Dutton and his international police observers.

The proposals were sent to Pretoria and at the last moment the Commissioner of Police decided that they should not be implemented. General Steyn, the Regional Commissioner for Natal told us that he regretted that the proposals had not been carried into effect. The Commissioner of Police explained that he had shelved the proposals because the Security Forces Inquiry Board Act had introduced a comprehensive scheme and there was no need for local experiments. This explanation would have been more convincing if the Security Forces Inquiry Board Act had been brought into force. The Commissioner agreed that this had not happened. We also note that the scope of the Act is much narrower than the scope of the Natal Proposals.

This was a missed opportunity. The implementation of the Natal Proposals would have led to a dramatic improvement in relations between the police and the community in the Natal Midlands. It would also have provided, and this is even more important, a real check on police complicity in crime, on the sort of events which were uncovered in the Trust Feed case. This is what is sorely needed. The Natal Proposals should be brought into force immediately and the scope of the Security Forces Inquiry Board Act broadened to bring it into line with the Proposals.

ICJ's Previous Proposals

In "Agenda for Peace" we recommended that a new detective agency should be established to investigate crime. We still think there is a need for this. The investigation teams which the Goldstone Commission has established have been very successful. The Goldstone Commission will not last for ever. We suggest that the Investigation teams should form the nucleus for the new agency which is needed.

We also repeat our suggestions that senior civilian administrators should be introduced into the SAP at all levels and that young graduates from all sections of the community should be recruited into the police force at officer level. In the short term it will also be necessary to send suitable candidates for training overseas.

Our final recommendation concerned the KwaZulu Police. On this mission we were told again that all KwaZulu policemen are members of the IFP and have given an oath of fidelity to the KwaZulu State. Since we published "Agenda For Peace" the Goldstone Commission in its interim report has said:

"The widely held view by a large number of people in KwaZulu and neighbouring areas that the KwaZulu police are a private army of the IFP is a matter of great concern in relation to the curbing of violence in those areas. No less disturbing is the evidence that has been given concerning unlawful activities by senior members of the KwaZulu Police."

The Goldstone Commission is currently investigating the KwaZulu Police. In "Agenda For Peace" we recommended that policing in KwaZulu and Natal should be brought under unified command. This may not go far enough. It would be no surprise if the Goldstone Commission recommends that the KwaZulu police should be disbanded. We do not wish to anticipate the Commission's report and we therefore merely add that the KwaZulu police must play no part in policing the election, that must be the task of the SAP. This will be an immense challenge for the SAP, who have no experience of policing an election involving the whole population, and who will have the eyes of the world upon them. They will need help. We return to this below.

6. The National Peacekeeping Force

The negotiators at Kempton Park place high hopes on the new National Peacekeeping Force which is provided for in the Transitional Executive Council Act. Section 16 (10) of the Act provides:-

"The National Peacekeeping Force shall be comprised of members of -

- (i) all military forces, as far as practicable in equal numbers, except in so far as any such force prefers to*

contribute fewer members to that Force; and

(ii) every policing agency which falls under the authority and control of a participant in the Council, wishing to be represented in the force."

The Negotiators hope that the National Peacekeeping Force will be deployed in the most volatile areas by April. Senior policemen told us that it is not envisaged that it will police the elections. The Deputy Minister of Law and Order told us that the National Peacekeeping Force is likely to number 3,000 to 7,000.

It must not be another para-military unit. It must act in accordance with the new concept of policing for the benefit of the community. The commanders must be chosen with care. The force must undergo rigorous training. The international community must be prepared to help with these tasks. Lawyers For Human Rights in their proposals for a national peacekeeping force suggested that it should take over the infrastructure of the Internal Stability Unit. Even if this is done, we think it will be a great achievement indeed if the peacekeeping force is ready to play a constructive role in the trouble spots by April.

7. The Electoral Commission

Under section 4 of the Electoral Commission Act the Electoral Commission is established to administer, organize, supervise and conduct free and fair elections; to promote conditions conducive to free and fair elections and to determine and certify the results of the elections, and to certify to what extent the results of elections have been free and fair. The Electoral Commission Act binds the State and the State President (section 3) and prevails over any other law in so far as such provisions relate to the conduct and supervision of elections (section 34).

Section 5 (2) of the Act provides that the State President shall, upon the advice of the Transitional Council, appoint not more than five persons from the international community as members of the Commission in a non-representative capacity. Such international members have the same rights and powers as other members but do not have the power to vote. Section 14 provides that the State President shall, upon the advice of the Transitional Council, establish a committee to be known as the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions.

Section 13 gives the Commission power to assume responsibility for the administration, organization and conduct, whether directly or indirectly, and the supervision of the administration, organization and conduct of any election and power to take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties.

In our opinion this places the Commission firmly in control of the policing of any election.

The Act provides for the Commission to establish an election administration directorate, an election monitoring directorate and an election adjudication secretariat. The Election Monitoring Directorate is to consist of a Chief Director (Monitoring), and such other officials as the Commission may consider necessary.

- Section 24 provides that the Chief Director (Monitoring) shall-
- a) appoint monitors and co-ordinate their functions to observe and report to him on the electoral process;
 - b) register observers and regulate their activities, and publish guidelines and a Code of Conduct binding upon all such observers
 - c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties. "International observers" is defined in section 1 (xvii) to mean representatives of intergovernmental organizations and foreign governments accredited by a committee-sub of the TEC in order to observe and report on the electoral process.

Everyone who wants to observe the elections should be sure that they have been appointed, registered or accredited in compliance with this section, otherwise they may not be able to obtain access to the polling stations and the count.

8. The Media

The Independent Media Commission Act has set up a Media Commission and it is clear that South Africa today has something approaching a free press. We welcome these developments. The media and the press have a crucial role to play, and this is especially so because it is clear that it is going to be difficult, if not impossible, for the political parties to have free access to voters in all places. The areas which are of particular concern are the ANC and IFP strongholds and the rural areas, where farm workers tend to be isolated from the rest of the community. This was also a problem in Namibia.

The leaders of all political parties must spell out in the clearest terms that their opponents should be allowed to hold meetings and canvass the electorate. We think there is another way in which this problem can be partially overcome. Representatives from all parties should debate the issues with each other regularly and in particular on the radio. The debates must not just be in English and Afrikaans, the politicians must go on the radio and talk to each other in the languages which the voters speak at home.

9. Conclusions:

Practical Safeguards and International Assistance

Free and fair elections will only take place if people feel that it is safe to vote. What needs to be done and what help should the International Community provide?

Policing the Elections

1. The Electoral Commission has the responsibility for the conduct of the election and to take such measures as it considers necessary to prevent intimidation.
2. The KwaZulu police, the other homeland police forces and the Internal Stability Unit must play no part in policing the election.
3. The National Peacekeeping Force, if it is ready for service, will be deployed in a peacekeeping role in the unrest areas.
4. The policing of the election will primarily be in the hands of the SAP who will be responsible to the Electoral Commission, from whom they will take their orders. The SAP have no experience of policing an election of this kind. They will need help.

International Police Advisers and Monitors at Polling Stations

5. The International Community should provide a team of senior police advisors to help at the Headquarters which is directing the operation, and enough experienced police officers so that one is always available at every police station which is involved in policing the election.
6. There should be a polling station within reasonable walking distance of everyone's home. The International Community should provide a peacekeeping officer at all times at all polling stations. The Peacekeeping Officer should be responsible to the Presiding Officer for providing a calm environment at the polling station. It should be the Peacekeeping Officer's responsibility, in consultation with the Presiding Officer, to summon assistance if needed.

The Administration of the International Help - The Role of the United Nations

7. The proposals which we make involve a much greater

commitment by the International Community than is currently envisaged. We make these proposals because we believe they are absolutely necessary. The International Community's response must be properly administered. The United Nations must play the leading role and co-ordinate the response of the Commonwealth, the European Union (The European Community) and the OAU. The United Nations must also ensure that the best use is made of international Non Governmental Organizations (NGOs) and others who are keen to help. We believe that the most useful role they can play is as part of the Peace Corps we discuss under 9 below.

8. The United Nations should immediately set up a working party, led by a Special Representative appointed by the Secretary General, with participants from the OAU, the European Community and the Commonwealth, to decide how best to provide the help which is needed.
9. We believe that the United Nations should co-ordinate the provision of the police advisers, wherever they come from and whoever finances them. We think about 1,000 police advisers will be needed. The police advisers should serve under the auspices of the United Nations and should be seconded to the SAP. We believe the United Nations should also co-ordinate the provision of the corps of peacekeeping officers (The Peace Corps) and arrange for their training. The Peace Corps will need a nucleus of experienced policemen, but the majority of the Corps, could be recruited from NGOs and other volunteers. They should wear United Nations uniforms. They must be given four to eight weeks basic training.

The Relationship between International and South African Monitors

10. It is important that the police advisers and the members of the Peace Corps (whom we together call the International Monitors) should comply with section 24, and be properly integrated into the structures laid down by the Electoral Commission Act. The task of the International Monitors is to reassure people that it is safe to

vote. The Electoral Commission will also appoint a network of South African monitors who will watch over the whole election process and stop skulduggery at the polling stations and during the count. The two teams have complementary tasks and they must work closely together.

11. The Electoral Commission should establish regional offices in each of the main centres. The International Monitors should be based round these regional offices and should report to them. They will need their own direct communication system, both with the Electoral Commission's offices and with local police stations. The International Monitors will also require their own transport. The United Nations should ensure that the International Monitors live close to the places were they are going to work and can meet and spend time with their South African colleagues.
12. We think the Senior Police Adviser and the Head of the Peace Corps should be appointed members of the Electoral Commission under section 5(2) of the Electoral Commission Act.
13. While the Peacekeeping Officers at the polling stations should be seen to be UN personnel, they should also be appointed as monitors by the Chief Director (Monitoring) under section 24(a) of the Electoral Commission Act, and they should ultimately be responsible to the Electoral Commission.

The Role of the Commonwealth

14. The Commonwealth has great experience of monitoring elections. We hope that they will bring a team to monitor the elections which will be entirely separate from the Electoral Commission. This would be a source of strength. If the two bodies reach different conclusions they will be able to discuss and decide how any differences should be resolved; if they are agreed it will reassure the people of South Africa and the International Community, and help everyone to ensure the results of the election are accepted.

Press Briefings

15. The United Nations, the OAU, the European Community and the Commonwealth Missions should hold regular press briefings, nationally and locally, to explain the nature and help which is being provided by the outside world.

A Reserve Peacekeeping Force

16. In our opinion the National Peacekeeping Force is unlikely to be adequate, or to be in place by April. We, therefore, think the International Community should offer to provide a reserve peacekeeping force if the TEC and the South African Government ask them to do so. We envisage that a force of four or five battalions, to be at the disposal of the Electoral Commission, might be sufficient. The United Nations should co-ordinate the provision of this force. We think that countries like the United Kingdom, the Netherlands, the Scandinavian Countries, India and members of the OAU, which have a particular interest or responsibility for South Africa should be asked to contribute to the force. The Peacekeeping Reserve should be deployed, ideally, from 1st February 1994 and should be under the command of a South African, appointed by the Electoral Commission. The Peacekeeping Reserve should only be used as a last resort on the instructions of the Electoral Commission.

The prize of a democratic, free, prosperous South Africa is a very great one. We were assured by Ministers that help would be welcomed. The International Community must not fail South Africa.

Appendix 1.

The Itinerary

Wednesday 22 September

15.00 Rev. James Buys. National Executive South African Council of Churches.

Thursday 23 September

13.00 Lunch with Ahmed Motala, Solly Sithole, Horst Kleinschmidt, Ngomotso Morake.

16.00 Beyers Naude.

17.30 Lawyers for Human Rights: Brian Currin, Aubrey Lekwane, Indarin Govender.

Friday 24 September

09.00 Pan African Congress.

11.00 African National Congress. Zola Skweyiya and Panwell Maduna, Legal department.

14.00 Briefing meeting with PWV Peace Committee. Matlopi Sello and Charles Barnard, followed by visit with the Peace Committee to Thokoza and Katlehong in the East Rand.

17.00 EC mission Ambassador von Stulpnajel.

Saturday 25 September

10.00 Meeting with Independent Forum for Electoral Education Cecilie van Rit, Sheena Duncan, Stefan van der Merwe.

11.15 Max Coleman, Human Rights Commission.

12.30 Visit to Sebogeng and Sharpville with Peace Action, including POPCRU rally.

Sunday 26 September

14.00 ANC cultural rally near Table Mountain, Natal. Harry Gwala ANC Chair - Natal Midlands Region.

17.00 John Jeffries.
Evening Meeting with church leaders in Pietermaritzburg arranged by Peter Kerchhoff. PACSA.

Monday 27 September

09.30 Visit to Sundumbili, Natal north coast, arranged by Network of Independent Monitors (NIM) and Human Rights Commission (HRC). Roy Ainslie and Linda McLean.
Evening Meeting with Lawyers from NADEL and Society of Black Lawyers.

Tuesday 28 September

10.00 Advocate Karl Koenig and Colonel Frank Dutton.
15.00 Gavin Woods, Director of the Inkatha Institute.
16.30 Howard Varney. Legal Resources Centre.
Evening Dinner with Steve Collins IDASA.

Wednesday 29 September

09.00 SAP Lieutenant General Steyn, Regional Commissioner, and other senior Police officers.
11.30 Commonwealth monitors, Moses Anafu, Major General Ndiomu, Prince Madlala.
15.00 Thomas Shabalala IFP Central Committee.
16.00 Visit to Bhambayi with SAP.
17.30 Archbishop Hurley, Archbishop Napier, Bishop David Russell and other Natal church leaders. Paddy Kearney. Diakona.

Thursday 30 September

08.00 Visit to Lindelani with Thomas Shabalala.
10.00 Natal Forum for Democracy.
16.45 Arrive Cape Town.
18.00 Jeremy Sarkin (University of the Western Cape) and Mary Barton (Black Sash).
Evening Rev Jan Thyse Dutch Reformed Mission church and the community in Grassy Park.

Friday 1 October

- 10.00 HRC. Jane Connolly and Sdu Gumede.
11.00 NIM. Ntobili Balfour and John Oliver.
12.00 UMAC. Urban Monitoring Awareness Committee Rachel Brown and Len Mxolisi Khalana.
14.30 SANCO with Johnson Mpokompe.
16.30 National Women's Coalition, Anne Birch (Women's Alliance) Elmarie Nisbet (coordinator for the Nat. Women's Coalition in Cape Town) Margaret Fourie (Women 2000).

Saturday 2 October

- 10.00 Visit Crossroads with Depouche Elles.
12.00 Visit Khayelitsha.

Sunday 3 October

- 08.45 Breakfast with Judge and Mrs Richard Goldstone.
13.00 Depart for Johannesburg.
18.00 Muna Ndulo, U.N. Mission.

Monday 4 October

- 9.00 Meeting in Pretoria with Danny Schutte, Minister for Home Affairs.
11.00 Andries Beyers MP.
13.00 Lunch with Sir Anthony Reeve British Ambassador.
15.00 G.B. Myburgh, Deputy Minister of Law and Order and South African Police, General Van der Merwe, General Swatte and Brigader Arbery.

Tuesday 5 October

- 8.45 Drive to Rustenburg
Meeting with the Rev. Johannes Tselapedi Ecumenical Forum on Human Rights in Bophuthatswana
Sophy Moldkoane Rustenburg Regional Council of Churches
12.00 Drive to Zeerust
Meeting with representatives from Lawyers for Human

Rights, Mafikeng Anti-Repression Forum and University of Boputhatswana.

Wednesday 6 October

- 09.15 **Beyers Naude.**
- 12.00 **Press Conference Carlton Hotel Durban Suite.**
- PM **Swedish Representative. Mr. I. Stjernberg.**
- 19.30 **Linda Zama. Attorney African National Congress.**

Appendix 2.

Biographical Notes

JUSTICE ENOCH DUMBUTSHENA

Enoch Dumbutshena was Chief Justice of Zimbabwe from 1980 to 1990 and is presently a judge of the Supreme Court in Namibia. He is Vice President of the ICJ.

ADAMA DIENG

Adama Dieng, is a Senegalese jurist who is Secretary-General of the ICJ. He is an executive member of a number of international human rights organisations and has acted as consultant to UNESCO, International Committee of the Red Cross, UN Centre for Human Rights and the African Commission for Human and People's Rights.

JOHN MACDONALD, Q.C.

John Macdonald is a British human rights lawyer. He represented Yuri Orlov, the distinguished Soviet dissident in his ten year fight for freedom. He has acted for Canadian Indians at risk from the Trudeau Government and the people of Barbuda in the Antigua Constitutional Conference at Lancaster House in 1980. He visited Namibia with a Parliamentary delegation in June 1989. He was part of the ICJ mission to Natal during August and September 1990.

CARL LIDBOM

Carl Lidbom is a Swedish lawyer and judge. In the 1970s he was a member of the Swedish government first as Minister of Justice, thereafter as Minister of Trade. He has also been a member of the Swedish Parliament. He was Swedish Ambassador to Paris from 1982 until 1992. Among several International missions, he was an observer at the first free elections in Zimbabwe.

PHILIP AMOAH

Philip Amoah is a Ghanaian lawyer who is the ICJ legal officer for Africa. Prior to his present position, he was associate professor of law at the university of Swaziland.

Notes

1. *Enoch Dumbutshena, Adama Dieng, John Macdonald and Philip Amoah were members of the ICJ mission to South Africa in March 1992.*
2. *The Christian Fellowship Trust, which has been working with grassroot communities in South Africa for the past 25 years, arranged the itinerary for the mission and provided the ICJ with contacts in the townships and with organisations working for peace. Members of the Mission would like to thank Alison Harvey, the Secretary of CFT, for all the help she gave them.*
3. *The International Commission of Jurists thanks SIDA for its contribution to the cost of publishing this report.*

MEMBERS OF THE INTERNATIONAL COMMISSION OF JURISTS

President

JOAQUIN RUIZ-GIMENEZ

President, Spanish Committee of UNICEF; Professor of Law, Madrid; former Ombudsman of Spain

Vice Presidents

ENOCH DUMBUTSHENA

Former Chief Justice of Zimbabwe

LENNART GROLL

Judge, Stockholm Court of Appeal, Sweden

TAI-YOUNG LEE

Director, Korean Legal Aid Centre for Family Relations

CLAIRE L'HEUREUX-DUBÉ

Supreme Court Judge, Canada

Members of Executive Committee

MICHAEL D. KIRBY (Chairman)

President, NSW Court of Appeal, Australia

DALMO DE ABREU DALLARI

Professor of Law; Director, Department of Legal Affairs of Sao Paulo, Brazil

DESMOND FERNANDO

Barrister; former President, Bar Association of Sri Lanka

ASMA KHADER

Advocate, Jordan

KOFI KUMADO

Senior Lecturer in Law, University of Ghana

FALI S. NARIMAN

Advocate; former Solicitor-General of India

CHRISTIAN TOMUSCHAT

Professor of International Law, University of Bonn, Germany; Chairman, UN International Law Commission

Commission Members

ANDRES AGUILAR MAWDSLEY

Judge, International Court of Justice; former member, Inter-American Commission on Human Rights; Venezuela

MOHAMMED BEDJAOUI

Judge, International Court of Justice;

ANTONIO CASSESE

former Algeria's Ambassador to the UN in New York

SIR ROBIN COOKE, KBE

Professor of International Law, European University Institute;

MARIE-JOSÉ CRESPIN

President, European Committee for Prevention of Torture; Italy

DATO' PARAM CUMARASWAMY

Judge; President, Court of Appeal, New Zealand

ROBERT DOSSOU

Member, Constitutional Council, Senegal

DIEGO GARCIA-SAYAN

Advocate; former Chairman of Standing Committee on Human Rights, International Bar Association, Malaysia

SIR WILLIAM GOODHART, QC

Advocate; Professor of Law, University of Benin

RAJSOOMER LALLAH

Executive Director, Andean Commission of Jurists, Peru

NIALL MACDERMOT, CBE, QC

Advocate, United Kingdom

DANIEL HENRI MARCHAND

Supreme Court Judge, Mauritius; member, UN Human Rights Committee

J.R.W.S. MAWALLA

Former ICJ Secretary-General; former Minister of State for Planning and Land, United Kingdom

FRANÇOIS-XAVIER MBOUYOM

Professor of Social Law, France

FLORENCE N. MUMBA

Advocate of High Court, Tanzania

DORAB PATEL

Advocate, Cameroon

BERTRAND G. RAMCHARAN

Investigator-General, Zambia

HIPOLITO SOLARI YRIGOYEN

Former Supreme Court Judge, Pakistan

CHITTI TINGSABADH

UN Coordinator, Regional Political & Security Cooperation; Adjunct Professor, Columbia University School of International Affairs (New York); Guyana

THEO C. VAN BOVEN

Senator, Argentina; Chairman, Human Rights Committee of the Inter-Parliamentary Union;

JOSE ZALAQUETT

Privy Councillor; Professor of Law; former Supreme Court Judge, Thailand

Dean, Faculty of Law, University of Limburg, Netherlands; Member, UN Committee for Elimination of Racial Discrimination

Advocate; Professor of Law, Chile

SECRETARY-GENERAL

ADAMA DIENG