

# SOUTH AFRICA IN TRANSITION

The Report of the Commonwealth Observer Mission  
to South Africa

*Phase III: August – December 1993*



**COMMONWEALTH SECRETARIAT**

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**1994**

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**This is the Report to the Commonwealth Secretary-General  
of the  
Commonwealth Observer Mission to South Africa (COMSA)  
on the  
Third Phase of its Activities**

# Map of South Africa and the 'Homelands'



# CONTENTS

	<i>Page</i>
Abbreviations .....	<i>(vi)</i>
<b>1. Introduction .....</b>	<b>1</b>
<b>2. The Political Context .....</b>	<b>6</b>
<b>3. The State of Violence .....</b>	<b>20</b>
<b>4. Strengthening the Structures set up under the National Peace Accord .....</b>	<b>26</b>
National Structures .....	27
Regional and Local Peace Committees .....	30
<b>5. Public Gatherings .....</b>	<b>40</b>
<b>6. Progress Towards Democratic Policing .....</b>	<b>47</b>
<b>7. Preparations for the Elections .....</b>	<b>54</b>
<b>8. The Media .....</b>	<b>66</b>
<b>9. Observations .....</b>	<b>76</b>

## ANNEXES

I	Composition of the Commonwealth Observer Mission .....	83
II	Letter to the Chairman of the National Peace Secretariat on the Carrying and Misuse of Weapons .....	84
III	Newspaper Article on the Marshal Training Programme .....	86

## Abbreviations

AMPS	All Media and Product Survey
ANC	African National Congress
APLA	Azanian People's Liberation Army (military wing of the PAC)
AV	Afrikaner Volksfront
AWB	Afrikaner Weerstandsbeweging
AZAPO	Azanian People's Organisation
CFTC	Commonwealth Fund for Technical Co-operation
CODESA	Convention for a Democratic South Africa
COMSA	Commonwealth Observer Mission to South Africa
COSAG	Concerned South Africa Group
COSATU	Congress of South African Trade Unions
CP	Conservative Party
DP	Democratic Party
IAC	International Advisory Committee
IBA	Independent Broadcasting Authority
ICC	Interim Crisis Committee
IDASA	Institute for Democratic Alternatives in South Africa
IEC	Independent Electoral Commission
IFP	Inkatha Freedom Party
IMC	Independent Media Commission
IMSSA	Independent Mediation Service of South Africa
ISU	Internal Stability Unit
JCMC	Joint Community Monitoring Centre
JOC	Joint Operations Centre
LHR	Lawyers for Human Rights
LPC	Local Peace Committee
(MK)	Umkhonto we Sizwe (military wing of the ANC)
NGOs	Non-Governmental Organisations
NP	National Party
NPC	National Peace Committee
NPKF	National Peacekeeping Force
NPS	National Peace Secretariat
ODA	Overseas Development Administration (Britain)
PAC	Pan-Africanist Congress
POPCRU	Police and Prisons Civil Rights Union
PWV	Pretoria-Witwatersrand-Vaal
RPC	Regional Peace Committee
RPS	Regional Peace Secretariat
SABC	South African Broadcasting Corporation
SACP	South African Communist Party
SADF	South African Defence Force
SAP	South African Police
SAPA	South African Press Agency
SERD	Socio-Economic Reconstruction and Development Subcommittee
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

This Report covers the activities of the third phase of the Commonwealth Observer Mission to South Africa (COMSA), from mid-August to mid-December 1993, when – after protracted negotiations – the country was preparing for its first democratic elections.

The concept of COMSA was first articulated during a visit to South Africa by the Commonwealth Secretary-General, Chief Emeka Anyaoku, in July 1992. Concerned by the level of violence, which had emerged as a serious threat to political negotiations, the Secretary-General proposed to South African leaders the establishment of a multidisciplinary team of experts to provide practical assistance in addressing this problem.

The mission was subsequently constituted in the context of United Nations Security Council Resolution 772 of 17 August 1992, which called on international organisations, including the Commonwealth, to deploy observers in South Africa to help arrest political violence.

COMSA began its work in South Africa with the arrival on 18 October 1992 of a team comprising experts in varying fields complemented by staff from the Commonwealth Secretariat.

After a review in January 1993 of the first three-month phase of COMSA activities, a second phase began in February 1993 and ran until May 1993. In light of widespread appeals from within South Africa for the mission to continue, the Secretary-General constituted a third group of 11 observers who arrived in mid-August 1993.

In the Communiqué following their October 1993 biennial summit in Cyprus, Commonwealth Heads of Government noted the 'important and widely acknowledged contribution' of COMSA in 'helping to stem violence, reconcile communities, return refugees and initiate socio-economic reconstruction.' They agreed that 'the mission should remain in South Africa until after the election planned for April 1994 when the situation would be reviewed in consultation with the new, democratically elected government.'

Heads of Government also welcomed a programme of developmental activities to be funded by the Commonwealth Fund for Technical Co-operation (CFTC) to strengthen National Peace Accord structures and assist the transition to a non-racial democracy.



In this context they 'accorded particular priority to the provision of technical assistance and training to promote improved police/community relations and in support of the Independent Electoral Commission (IEC), the Independent Media Commission (IMC) and the Independent Broadcasting Authority (IBA).'

Mention is made in the Report of the two projects funded through the CFTC that arose from problem areas identified by COMSA, and were initiated during this phase: a nationwide marshals training project, and a mediation/training project.

From 17–20 November 1993, the Secretary-General visited South Africa and held wide-ranging consultations with South African leaders on how the Commonwealth might usefully contribute to the remaining phase of the transition. As outlined in Chapter 9, these consultations will shape the fourth phase of COMSA, in which activities will focus increasingly on the preparations by South Africa for general elections scheduled for 27 April 1994.

### **Composition of the Team**

As in the previous two teams, COMSA observers covering the period of this Report included a strong contingent of persons with backgrounds in law enforcement. A Chief Superintendent heading the Police/Community Relations Department of Scotland Yard in Britain, who served on the first two teams of COMSA, stayed for the third phase. Other police officers were: a Superintendent in charge of the Singapore police public affairs department; and two Deputy Superintendents of the Royal Brunei Police. The team also included a retired Nigerian Army General.

Two observers from India had backgrounds in politics and the public service: a retired Speaker of the Legislative Assembly in the state of Rajasthan; and a retired Permanent Secretary in the Ministry of Transport. Zimbabwe seconded to the team an ex-Minister who had been closely involved in the negotiations for that country's independence, and with wide-ranging experience in developmental issues.

In addition – and in light of the forthcoming elections – the third COMSA team comprised two electoral experts: the Deputy Chief of the Electoral Commission in the province of Victoria, Australia; and the Principal Assistant Secretary of the Electoral Commission in Malaysia. The team also included a media expert – an Assistant Deputy Minister from the Department of External Affairs and International Trade in Canada.

These Commonwealth experts were complemented by Secretariat staff with backgrounds in diplomacy, the media and management. A full list of the observers is contained in *Annex I*.

COMSA worked closely with the CFTC-funded technical assistance component, established on the ground by a Canadian development adviser with several years experience of working with South African NGOs. A British

police Chief Inspector specialising in maintaining public order provided much of the international input into the marshals training programme, with assistance from COMSA observers with backgrounds in policing. A senior Zambian diplomat, with extensive experience in conflict resolution, at an international and grassroots level, was seconded by the Commonwealth to the National Peace Secretariat to assist with facilitation and training.

### **Mandate and Deployment**

The mandate of COMSA was defined by the Commonwealth Secretary-General in the first COMSA Report as follows:

- 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.

As in the first two phases, COMSA observers were deployed in two areas: the Pretoria/Witwatersrand/Vaal (PWV) region, and Natal, where violence in the country is most pronounced.

### **Activities**

COMSA's activities fell into three broad categories:

- establishing as a group contacts with a wide spectrum of political parties and interest groups;
- developing, on an individual basis or in small teams, special knowledge of the people, concerns and activities in particular geographical areas; and
- providing through COMSA specific expertise relevant to reducing violence and preparing for elections.

In pursuing its mandate the mission:

- met with the Government and most political parties, including their electoral and media departments and specialists. These contacts were maintained and expanded throughout the period;

- reported regularly to the Secretary-General on the political negotiations at the World Trade Centre which were most intensive, and reached their conclusion, during the period under review;
- participated in several conferences, workshops and discussion groups initiated by the National Peace Secretariat and its related structures and by academic and non-governmental organisations. COMSA received and responded to many invitations to make presentations at such gatherings, especially in areas such as policing, the media, and elections;
- sought to reinforce the structures set up under the National Peace Accord, through regular attendance of and contributions to the meetings of the National Peace Committee and National Peace Secretariat, as well as regional and local structures. COMSA in particular sought to consolidate the grassroots work begun during previous phases in Natal, which contributed to a substantial reduction of violence in some of the worst affected areas. The team also played an active role in the East Rand of the PWV, which has emerged as one of the worst 'pockets' of violence in the country;
- attended and observed hundreds of political gatherings, rallies and funerals, where the presence of local and international observers has played an important role in defusing potential violence. The CFTC-sponsored marshal trainer accompanied COMSA observers on many of these exercises and made use of this practical experience for the design of courses. The Marshal Training Programme arose from previous observations of the important role that marshals can play in containing violence at public gatherings – if properly trained;
- built on the previously established links with the South African Police (SAP) and South African Defence Force (SADF) with a view to assisting these structures in the transition to a new South Africa. COMSA also followed, and was involved in consultations on, the setting up of a National Peacekeeping Force for the elections;
- monitored progress towards, and contributed to discussions on, the forthcoming elections and the role of the media, through regular consultations with various parties and interest groups. These discussions form the basis of several preliminary observations in this Report. They have also been an important input into discussions on possible technical assistance in these areas, as well as Commonwealth plans for observing the elections; and
- continued consultations with a wide range of political and civic organisations on socio-economic reconstruction. The period under review witnessed the removal of remaining economic sanctions by the Commonwealth and other international organisations. Plans are in hand for a Commonwealth and United Nations-sponsored donor conference focusing on human resource development shortly after the elections.

### **Co-operation with other Observer Missions**

In all these activities, COMSA worked closely with the United Nations, European Community and Organisation of African Unity observer missions. The four missions met regularly to discuss issues of common interest and plan joint strategies. We frequently worked in teams and issued joint statements, some of which are quoted in this Report.

This daily co-operation, sharing of information and ideas has greatly enhanced our capacity. We are deeply indebted to our colleagues from the other missions for their support.

## CHAPTER 2

### **The Political Context**

COMSA's main objective has been to assist with efforts to contain the political violence which has threatened the negotiating process in South Africa. In both of its previous reports, the mission stressed that while it would be naive to assume that violence would end overnight with a new political dispensation, a democratically elected government stood a far better chance of coming to grips with violence than one which represented only a privileged minority.

At the time that COMSA released its second report in May 1993, multi-party negotiations had just resumed after a suspension occasioned by political violence. During the third phase, these negotiations reached their climax, with agreement on transitional arrangements leading to elections for a Constituent Assembly and an Interim Constitution.

Yet, as Commonwealth Heads of Government noted in their Cyprus Communiqué, the process remains 'fragile'. During the course of the talks four groups – the Inkatha Freedom Party (IFP), the Conservative Party (CP) and the 'homelands' of Bophuthatswana and Ciskei – withdrew from negotiations.

These groups, along with the Afrikaner Volksfront (AV), an umbrella for conservative organisations demanding a separate Afrikaner state, formed the Freedom Alliance which – at the time of writing – had refused to take part in the transitional arrangements. It remained unclear whether or not this coalition or its individual members would contest the elections.

On the other hand, the Pan-Africanist Congress (PAC) said that while it would contest the elections, it would not participate in transitional arrangements. The Azanian People's Organisation (AZAPO) stated that it would not contest the elections.

During the third phase of COMSA, we continued contact with a broad range of political parties and interest groups including: the National Party (NP); the African National Congress (ANC); the IFP; the Democratic Party (DP); the PAC; the Afrikaner Volksfront; South African Council of Churches; Consultative Business Movement; Institute for Multi-party Democracy; and Institute for Democratic Alternatives in South Africa (IDASA).

We held discussions with members of the technical committees drafting the Interim Constitution, Transitional Executive Council Act, and the Commission responsible for delimiting new regional boundaries. COMSA also

attended in an observer capacity the constitutional negotiations, and met informally with many of the negotiators at the talks which took place at the World Trade Centre in Kempton Park.

In the course of his three-day visit to South Africa, the Commonwealth Secretary-General attended the 18 November plenary of the multi-party negotiations which endorsed the transitional agreements. He subsequently met with State President FW de Klerk; ANC leader Nelson Mandela; IFP leader Chief Mangosuthu Buthelezi; PAC Chairman Johnson Mlambo; DP leader Zach De Beer, and AV leader General Constand Viljoen.

From all these contacts, we formed the view that the transitional agreements and arrangements offer a promising point of departure for South Africa's progress to a democratic and non-racial society.

Our strongest plea in this Report is that those remaining outside these arrangements return or join the process and contest South Africa's first democratic elections. We also urge that the issue of the 'homelands', which presents serious challenges in the run-up to elections, be addressed as a matter of urgency.

### **Securing Agreement on Transitional Arrangements**

For over three years since President de Klerk pledged to dismantle apartheid, efforts to reach agreement on transitional arrangements that would finally lead to democratic elections, and the adoption of a new constitution, ebbed and flowed.

The Convention for a Democratic South Africa (CODESA) came to a halt in May 1992, in part over continued allegations of state involvement in political violence. In its first Report, COMSA, among many others, urged that negotiations should not be held hostage by the violence, since delaying negotiations would only fuel more violence.

This principle was eventually accepted, as an even more representative group of 26 political parties and interest groups gathered this April at the World Trade Centre in a renewed effort to resolve the political conflict.

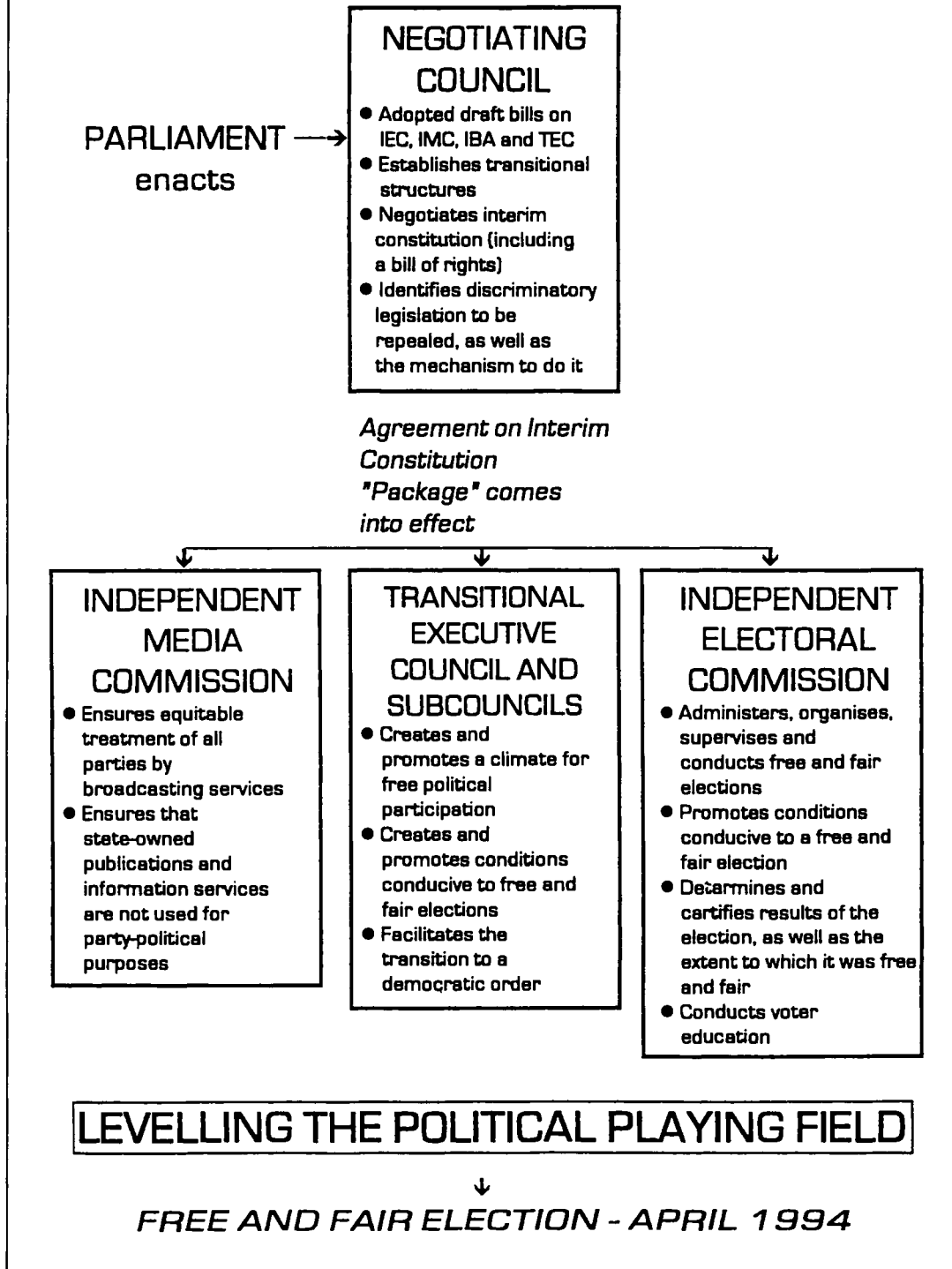
The determination of those involved to make progress is underscored by the fact that, when the negotiators failed to agree on a name for the negotiations they pressed ahead regardless.

On 15 June 1993, the Negotiating Council agreed by 'sufficient consensus' to hold elections on 27 April 1994. COMSA, which in its first Report stressed the importance of fixing an election date, to give the country 'a different sort of battlefield', hailed this development.

In early July 1993, the IFP and the CP withdrew from the talks, protesting against the two-phase process agreed on for the transition and the use of the 'sufficient consensus' mechanism to reach agreement on an election date. The mechanism, and the agreement, were subsequently upheld in the Supreme Court.

Table 1

## **THE NEGOTIATING PROCESS** **UNTIL THE ELECTION**



Source: Consultative Business Movement

On 23 and 24 September 1993, the four pillars of the transition agreed at the World Trade Centre – the Transitional Executive Council (TEC), the Independent Electoral Commission (IEC), the Independent Media Commission (IMC) and the Independent Broadcasting Authority (IBA) – were enacted by Parliament. The relationship between these is illustrated in Table 1.

The Commonwealth Secretary-General described the passage of these bills as an 'historic watershed' which marked the 'irreversibility of the ending of apartheid', and led to the lifting of remaining economic sanctions by Commonwealth governments and the wider international community.

Further difficulties were encountered in the negotiations when the two 'homelands' of Ciskei and Bophuthatswana, associated with the IFP and CP in the then Concerned South Africa Group (COSAG), withdrew, vowing not to incorporate the TEC legislation into their laws. The Freedom Alliance, launched in early October 1993, cemented the pact among the groups that had decided to boycott the talks.

While bilateral negotiations continued in an effort to draw the Freedom Alliance back into the talks, the 22 groups remaining in the talks at Kempton Park soldiered on.

Adhering to an earlier agreement that none of the legislation would become operational until the entire package had been agreed, negotiators returned to the table to find common ground on an Interim Constitution, an Electoral Act, and the removal of remaining apartheid laws.

Working against gruelling deadlines, the Negotiating Council finally delivered the full package of agreements for endorsement at a plenary session in the early hours of 18 November 1993.

At its historic last sitting in Cape Town in late 1993, South Africa's tricameral parliament was to end its existence with the repeal of remaining apartheid legislation, adoption of the Interim Constitution and Electoral Acts. At the time of writing, the four transitional pillars – the TEC, IEC, IMC and IBA – were coming into operation.

In seven months, South Africans from a broad political spectrum – ranging from the Afrikaner Volksunie (the conservative Afrikaner group which remained in the talks) to the South African Communist Party (SACP) – succeeded in finding a formula for the transition to a multi-party, non-racial democracy.

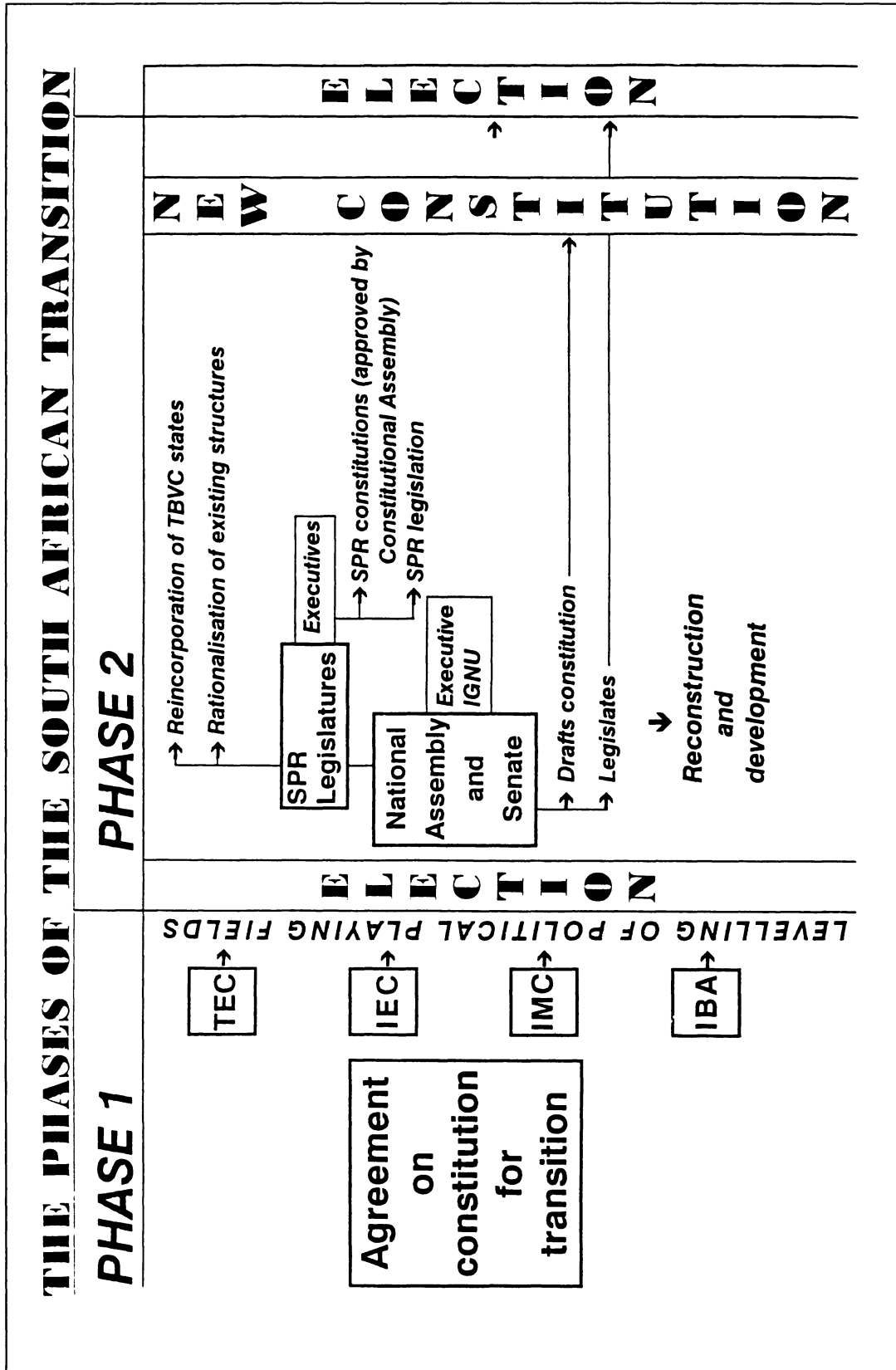
The achievements of this period are all the more noteworthy because of:

- the fact that this formula is an entirely South African solution, with the international community playing only a very limited, supportive role.

When the negotiations began, there were suggestions that an international mediator might be required. In the event, the majority of parties opted not to seek outside assistance. At times, not having a third party to play referee might have delayed the process. But the significance of insisting on a domestic solution is that after centuries of separation,



Table 2



Source: Consultative Business Movement

South Africans were forced to confront each other and each other's worst fears.

- the degree of inclusiveness, and role afforded to every player. In its first Report, COMSA stressed the importance of making the talks as inclusive as possible, even if this meant slowing down the process.

All groups with a stake in South Africa's future were invited to Kempton Park. We note the objection to the sufficient consensus mechanism but believe that short of unanimity, it was the best possible procedure.

The system of rotating chairpersons – cumbersome and inefficient at times – gave each group a chance to steer the talks at some point. And the parallel bilateral talks, which continued after the formation of the Freedom Alliance, are a testimony, in our view, to the continued desire for all South Africans to play a part in the process.

- the building of a culture of consultation. Despite the violence and political intolerance which continue to bedevil South Africa, and which we discuss in greater detail elsewhere in this Report, the Kempton Park talks have set in motion a culture of consultation which has begun to filter down to the grassroots.

This habit of talking things over, no matter how difficult the problem, is an important legacy of the transitional period for the new South Africa.

- the negotiations were throughout characterised by a spirit of give and take. At the beginning, for example, the ANC wanted the full task of drafting a constitution to be borne by the Constituent Assembly. In the end, it agreed to an Interim Constitution, with 32 constitutional principles with which a final constitution would have to conform.

As part of its 'power sharing' proposals, the Government had argued for a system of rotating presidents. It eventually conceded to a system of executive vice-presidents, with whom the President will have to consult as described later in this chapter under the section on the Interim Constitution.

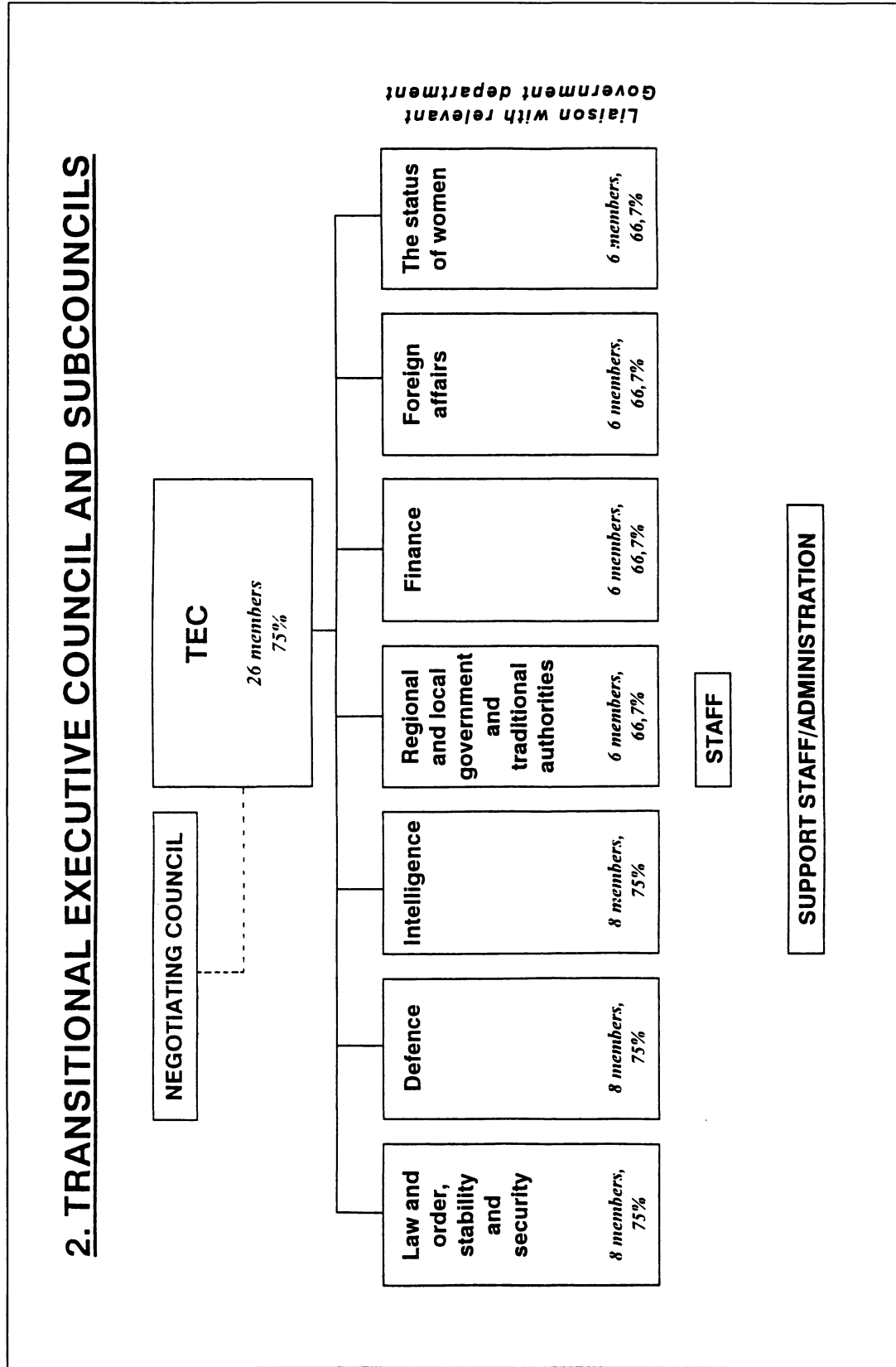
Evidence of compromise abounds in the Interim Constitution. For example, on the controversial issue of which official language to adopt (English and Afrikaans are currently the official languages of South Africa), the negotiators agreed to 11 official languages, with each province choosing which two it wants to use.

### **Stages of the Transition**

The transitional process, as agreed, is in two stages, illustrated diagrammatically in Table 2. They are as follows:

- a transition period in which the TEC supervises key arms of Government that have a bearing on levelling the playing field for free and fair elections.

Table 3



Source: Consultative Business Movement

- elections to a Constituent Assembly which both finalises the constitution during its first two years and serves as the country's Parliament. After the first two years, the Constituent Assembly will continue as the country's Parliament, until the next elections in 1999.

Some noteworthy features of this process, which seek to provide safeguards against excesses by any one party, are as follows:

- The Constituent Assembly, in drafting the final constitution, will be bound by 32 constitutional principles contained in the Interim Constitution. These guarantee, among other things, a multi-party democracy, three tiers of government and the recognition of civil liberties. The principles also enshrine broad parameters for the devolution of power to the regions.
- The Constitution will have to be approved by a two-thirds majority of a joint sitting of Parliament, comprising a 400-person National Assembly and 90-person Senate.
- Should a two-thirds majority fail to agree on the final constitution, the deadlock breaking mechanism agreed in the multi-party negotiations provides for a referendum in which 60 per cent of the voters would have to approve the constitution in order for it to be passed.
- The final constitution will have to be vetted by a Constitutional Court to ensure that it is in keeping with the constitutional principles agreed at the talks in Kempton Park.

This court will have the final say on matters relating to the interpretation, protection and enforcement of all provisions of the constitution.

After considerable and sometimes acrimonious debate, the method for appointing the Judges to this potentially powerful court was amended to give the Judicial Services Commission an influential role in the selection of the judges, previously left almost entirely to the discretion of the President.

### **The Transitional Executive Council**

The transitional arrangements rest on four pillars: the TEC, IEC, IMC and IBA. The last three of these institutions are discussed in Chapters 7 and 8. Overarching these three is the TEC, supported by seven sub-councils. These are illustrated in Table 3.

The TEC draws its membership from the negotiating parties which have pledged their support to the objects of the Council. These parties include:

- the Government;
- parties or political organisations involved in the negotiations;
- the TBVC 'states' (that is, the 'homelands' of Transkei, Bophuthatswana, Venda and Ciskei) which agree to incorporate into their statutes the

provisions of this Act, the IEC, Electoral, IBA and IMC Acts (only Transkei and Venda have so far taken these measures).

The objectives of the TEC are to: eliminate any impediments to legitimate political activity and intimidation; ensure that political parties are free to canvass support and hold meetings; ensure the full participation of women; and ensure that no government or administration exercises any of its powers in such a way as to advantage or prejudice any political party.

The TEC is empowered to 'request and obtain information in regard to, any decision and any proposed or intended action of that Government, administration or political party or organisation likely to have a bearing on the objects of the Council.' It can direct any Government or administration not to proceed with any legislation likely to 'have an adverse effect on the attainment of the objectives of the Council.'

After protracted debate at Kempton Park, it was agreed that the TEC should take decisions by a 75 per cent majority, except in matters relating to defence, in which an 80 per cent majority would be required.

Seventy-five per cent majorities will be required in the sub-councils of Law and Order, Defence and Intelligence, which will each comprise eight members (i.e. three members would have to vote 'no' for a decision to be blocked).

A lower 66.5 per cent majority vote is required for decisions in the sub-councils on Local Government and Traditional Authorities, Finance, Foreign Affairs and the Status of Women, which will each comprise six members (again, to block a decision, three members would have to vote against a motion).

How the TEC will work in practice remains to be seen. There is no historical precedent to this arrangement in which all parties contesting the elections supervise the existing government in its handling of these elections.

The duration of the TEC is likely to be short. It could be argued that the Council and its sub-council's will barely have time to find their feet, let alone delve into all the information to which they have access, before it is time for the elections to be held.

We firmly believe, however, that:

- The culture of negotiations and compromise built up at Kempton Park, rather than mathematical formulae, will be the most important factor in ensuring the smooth functioning of the TEC. Here, the observer role of the international community, which we discuss in greater detail in the concluding chapter, will be especially important.
- The TEC should adhere to its mandate of focusing on matters relating to the elections.

One of the dangers we foresee in the transitional period is that many South Africans, who have waited for decades for a new political dispensation, may have unrealistic expectations of the TEC.

On the positive side, the TEC will provide the opportunity for groups that have so far been excluded from Government to understudy many functions. This can only be beneficial to the new administration.

### **The Interim Constitution**

Despite various criticisms of the Interim Constitution, we believe that it provides South Africa with a firm basis for a new beginning. Some of its salient features are:

#### *A Government of National Unity*

South Africans had the choice, in deciding on transitional arrangements, to opt for the usual system in a democracy in which the majority party forms the government, and the others form the opposition, or to find a more inclusive formula.

The provisions for a Government of National Unity, in which parties with as little as five per cent of the vote will have a voice, is in our view a magnanimous gesture, which should help to allay minority fears.

Key features include:

- any party with more than five per cent of the vote will be entitled to seats in Cabinet. Although the present Government failed in its bid to secure a percentage vote by which Cabinet would take decisions, the final agreement encourages consensus to be sought wherever possible.
- a President, elected by a simple majority in Parliament (to avoid a separate presidential election), with considerably less powers than in the present Constitution.
- any party with 20 per cent of the votes, or if there are none except for the winning party, this party and the second largest party, will nominate Executive Deputy Presidents with whom the President must consult on major decisions including the allocation of portfolios in Cabinet. This provision assures minority parties a say in executive decisions.
- the above arrangements are to last for five years, i.e., three years beyond the adoption of the final constitution, and until the next election. These provisions, and the time frame, should reassure many of those who are still apprehensive over majority rule.

#### *Fundamental Rights*

The Interim Constitution contains a Chapter on Fundamental Rights which benefits from contemporary experience, containing several features which older democracies have had to incorporate, or are still debating.

Examples of these are the provision for gender equality; the right not to be discriminated against on the basis of sexual preferences, and the right of

every person 'to an environment which is not detrimental to his or her well being.'

The Chapter empowers a variety of persons and institutions: academic freedom is guaranteed; detainees are protected from abuse; minority language groups are entitled to their languages and cultural life; and education is deemed a universal right rather than a privilege.

However, the Chapter is also the product of tough negotiations and compromise, which has in parts resulted in awkward wording. The right to property, for example, has been qualified to allow for land reform, and that has in turn been qualified to prevent unfair expropriation. The final wording seems to leave considerable latitude for different interpretations.

Certain controversial issues remain. For example the 'right to life', does not specify the implications of this clause for abortion or capital punishment.

In an attempt to come to terms with the debate over whether or not human rights are socio-economic as well as political, this section of the Interim Constitution guarantees every child the right to education, security, basic nutrition, health and social services. This raises a number of questions: how childhood is defined, what is basic nutrition, health and social services, and whether or not adults should not be entitled to the same. These sorts of issues will have to be addressed in debates on the final constitution, or be left to the courts to decide.

They are, however, matters of detail which rest on a solid foundation of respect for human rights.

#### *Delimitation of Provinces and Provincial Powers*

The relationship between central and regional governments proved to be one of the most controversial in the negotiations, driven primarily by the demands of the groups which later withdrew from the negotiations.

At the one level, this has involved redrawing the map of South Africa to reshape its four administrative areas, the ten self governing 'homelands' and the TBVC 'states' into nine new provinces.

After much debate on this issue, it has finally been agreed that the nine boundaries initially recommended by the Delimitation Commission be included in the Interim Constitution for the purposes of the elections, with provision for changes to take place either through consensus being reached before the elections, or by referenda after the elections.

Among the controversial points are:

- whether or not Pretoria should be part of the Pretoria/Witwatersrand/Vaal industrial heartland (as favoured by the business community) or part of the Northern Transvaal province (as favoured by some of the Afrikaner population of the city).

- whether or not the Eastern Cape should be one region – incorporating the two ‘homelands’ of Ciskei and Transkei (as currently advocated by the Commission) – or be split into two regions.
- the proposed Northern Cape province, which has little economic rationale, but comes closest to accommodating the demands of right-wing Afrikaners for a separate state.

We appreciate why it has been necessary to defer final decisions on regional boundaries. However, conscious of the potential for conflict generated by disputes over boundaries, we urge that this issue not be unduly deferred.

Under the Interim Constitution, each province will have its own Legislature, an Executive Council of not more than ten persons and a regional head of government, or Premier. Each party with more than ten per cent of the provincial vote will be entitled to seats in Cabinet on a proportional basis.

Following considerable negotiations, driven largely by the bilateral negotiations between the Government, ANC and Freedom Alliance, significant powers have been devolved to the provinces.

Under the Interim Constitution, national and provincial governments will have concurrent powers in areas such as culture, education, health, welfare, housing, local government, transport, tourism, urban and rural development and trade.

An Act of Parliament can prevail over a provincial law in specific circumstances, such as instances in which it can be proven that a provincial government cannot handle a matter effectively; to ensure ‘uniform’ or minimum standards, or where a provincial law prejudices the economy of another province or the country as a whole.

These provisions have prompted criticism in some quarters that the central government will give with one hand and take away with the other, thus negating the concept of federalism.

The reality is that even in old established federations, centripetal forces are strong. The extent to which power remains in the provinces depends at least in part on the efforts at provincial level to assert and maintain their power.

In this regard, it is unfortunate that the parties most in favour of a federal solution in South Africa have remained outside or have left the negotiating process. Their case has been further weakened by a lack of clarity on the precise form of state they seek, with some espousing federalism, while others – in order to accommodate a separate Afrikaner state – advocate confederalism.

We believe that the Interim Constitution provides a reasonable basis upon which to build both unity and diversity in South Africa. How this works depends on the willingness of all the country’s peoples to play a constructive role. This again underscores the importance of all parties joining the transitional arrangements.



### *The 'homelands'*

One of the first major challenges that the TEC is likely to have to contend with is the complex issue of the holding of elections in the TBVC 'states'.

Despite an eleventh hour decision by negotiators to include the repeal of legislation creating these entities in the Interim Constitution, it seems unlikely that this will be effected before the elections. This raises several questions regarding the conduct of the elections in these territories, especially in Bophuthatswana and Ciskei.

The issue is one which COMSA has followed closely since the mission began. In its second Report, COMSA detailed its direct experiences in and views on the reincorporation of the 'homelands' as a precondition for free and fair elections.

The Report mentioned the repeal of Section 43 of Ciskei's Internal Security Act, which had made it possible for opposition parties to campaign more freely in the territory. It went on to give an account of the continued existence of oppressive legislation in Bophuthatswana, and the negative attitude of the authorities there towards the presence of international observers.

During the third phase, COMSA, along with the other international observer missions, met with the leader of Bophuthatswana, Mr Lucas Mangope, and his cabinet, to discuss these issues. The Bophuthatswana delegation pledged to reconsider its stance against signing the National Peace Accord, and to set up a task force with the international observer missions to facilitate their access to the territory. Despite repeated queries, nothing came of these pledges.

We turned our attention instead to the more fundamental issue of the reincorporation of all four TBVC 'states' into South Africa, which would result in South African laws and transitional arrangements applying in these territories.

At a briefing by the responsible government minister in June, we were given to understand that reincorporation was imminent, and no longer dependent on the earlier idea of holding referenda in these territories. A document prepared by the Government outlined administrative arrangements post reincorporation and during the transition period. There has, however, still been no follow through on this proposal.

The difference between Transkei and Venda on the one hand, and Ciskei and Bophuthatswana on the other, is that while the former have agreed to incorporate TEC legislation into their laws, and allow the IEC, IMC and IBA to operate in their territories, the latter have rejected these measures.

Ciskei's military ruler, Brigadier Oupa Gqozo, is currently standing trial on murder charges. At the time of writing, the future of Ciskei remained uncertain.

In the final hours of the negotiations at Kempton Park, the parties voted to include in the Interim Constitution the repeal of the laws giving 'independence' to the TBVC states, and self governing status to the other 'homelands'.

However, it is not clear when the repeal is to take effect. The Interim Constitution only takes effect after the elections, which suggests that unless special provisions are made, the repeal of these laws will also only take effect after the elections.

Under the Electoral Act, persons with 'homelands' identification documents are eligible to vote. Venda and Transkei have indicated their willingness to allow the elections to be held in their territories, whether or not reincorporation has taken place.

Bophuthatswana and Ciskei, on the other hand, have warned that the Act extending the vote to citizens of the 'homelands' cannot be applied 'extra territorially'. In the worst case scenario, this means that voters would have to be transported across the 'borders' of these 'homelands' into South Africa in order to vote.

There will have been no guarantee prior to the elections that political parties campaigned freely in the territories. And the election tribunals will have no jurisdiction over persons in these territories accused of intimidation.

Short of full reincorporation of the TBVC 'states' into South Africa prior to the elections – which in our view would have been the most desirable option – we see no choice but to press Bophuthatswana and Ciskei to permit transitional arrangements in their territory, as has been agreed in Transkei and Venda. They would also have to be obliged to permit the election to take place within their territories, and to allow free access to observers: local and international.

## CHAPTER 3

### **The State of Violence**

On 3 November 1993, after a long day in the field, Reverend Richard Kgetsi, well known for his peace-making efforts in the Port Shepstone area of Natal, sat down in front of his typewriter to collect his thoughts. Minutes later, a bullet fired through the open window, hit him in the back. Bleeding profusely, Rev Kgetsi drove himself to the Murchison Hospital, and was rushed to Port Shepstone, where he died.

The Local Peace Committee, with which Rev Kgetsi had worked closely in his efforts to mediate grassroots conflicts in this troubled area of South Africa, expressed 'shock and paralysis' at the news of his murder. The ANC described the slaying as part of a 'broader strategy by third force elements to frustrate efforts to create peace and stability in our communities.'

In every quarter, the murder of this gentle churchman served as a startling reminder that despite the commendable strides that have been taken through the peace structures (see Chapter 4) in reducing violence, senseless killings continue.

#### **Extent of the Violence**

In its second Report, COMSA described the dramatic reduction in the level of violence in the PWV area at the beginning of this year, interrupted only by an increase in violence following the murder of SACP Secretary-General Chris Hani in April. We commented at the time that it remained to be seen whether levels of violence would subside, or rise with the political temperature in the country.

The sad reality is that the level of violence has remained at roughly the same level in the troubled Natal province, where tensions between the ANC and IFP are most pronounced. In the PWV area, where there is a persistent correlation between political developments and levels of violence, the incidence of violence has increased.

In July, the month when multi-party negotiators agreed on a date for the forthcoming elections, the number of politically related deaths rose to 581, the highest since the 709 deaths recorded in August 1990, when the Government and ANC signed the Pretoria Minute, and the ANC agreed to the suspension of the armed struggle.

Some 59 per cent of these deaths took place in the PWV region. Natal recorded its third highest monthly death toll, with 182 deaths in July. According to figures compiled by the Human Rights Commission – and corroborated by other sources – an average of 15 people a day continued to die as a result of political violence in September and October: 90 per cent of these in Natal and the PWV.

The total number of politically inspired deaths in 1993 had reached 3,521 by the end of October – a figure higher than the total deaths for 1992 of 3,492. This is also reflected in the higher monthly average of 352 deaths per month in 1993, compared to the 1992 monthly average of 291.

A report by a University of South Africa (UNISA) professor presented at a Centre for the Study of Violence seminar pronounced South Africa one of the most violent countries in the world – with a homicide rate twice as high as the next two countries on the list.

### **Causes of the Violence**

There seems little doubt, as stated in the first report of the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation (commonly known as the Goldstone Commission), that political rivalry – and especially the rivalry between the ANC and IFP – is at the root of much of the continued violence in South Africa. But this is only part of the problem:

- COMSA's first Report pointed to the deep socio-economic and psychological roots of violence in South Africa. Violence finds an easy breeding ground among unemployed youth, who use the political conflict as a cover for behaviour which is mainly criminal. Indeed, the UNISA report cited above estimates that only 10 to 13 per cent of the 22,000 homicides a year in South Africa are politically-related. The rest are criminal offences.
- During the period under review, we have witnessed a flurry of hit and run attacks by masked gunmen which have left a spiral of violence in their trail.

Examples of these are: the murder of six people, and wounding of nine others, on 21 September 1993 when men with AK-47s fired on a minibus taxi on the Old Vereeniging Road near the Phola Park Squatter Camp; the attack shortly after on taxi commuters in Wadeville which left 22 wounded, and the shooting on 29 September of residents of the Scaw Metals hostel in the East Rand.

In early October, there was an important breakthrough when citizens arrested, and handed over to the police, two youths involved in a hit and run attack on taxi commuters in the Pretoria township of Mamelodi. The four international observer missions requested – and have been given – a degree of access in monitoring this case, which could help to provide answers to the question of where these hit and run gunmen come from;

who sponsors them; and whether they are part of an organised network that is deliberately fomenting violence.

The outcome of this – and any similar investigations in the future – may begin to answer the question that has bedevilled all of us since we came: is there a ‘third force’ in South Africa?

It is interesting to note that, in the last few months, both Judge Richard Goldstone, Chairman of the Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation, and Dr Antonie Gildenhuys, Chairman of the National Peace Secretariat, have referred to the presence of ‘agents provocateurs’. The mounting evidence of sinister forces bent on impeding political progress is especially worrying in the run-up to elections.

- Security forces, either through acts of omission or commission, continue to be implicated in many of the cases of violence. During October, in a scene reminiscent of the worst days of South African destabilisation in neighbouring countries, the SADF attacked a house in Transkei, allegedly housing members of the Azanian People’s Liberation Army (APLA), the armed wing of the PAC. Five youths were killed.

Allegations of police complicity in violence in the PWV area have persisted. In the section on the Vaal in Chapter 4, we detail the suspicions that have been raised by the death in custody of two key suspects in major massacres there.

In the East Rand, the imposition of unrest regulations, far from helping to reduce violence, was followed by allegations of assault and torture of detainees by the police. International observers met some of these detainees at Boksburg prison, and witnessed physical evidence of their torture.

Since then, the Police Reporting Officer (a functionary of the National Peace Accord) for the PWV area has discovered a number of torture instruments at a base of the Internal Stability Unit (ISU, the public order division unit of the South African Police) in the East Rand. He has been inundated with reports of police brutality.

The bitter state of relations between the police and community in the East Rand is reflected in the call by the ANC for all white members of the ISU to withdraw from the East Rand.

COMSA does not believe that this is a practical solution, and realises that not all members of the Unit are equally to blame. However, until relations between the security forces and the community can be improved, these elements will continue to be part of the problem, rather than the solution. We elaborate further on this in Chapter 6, on Police/Community relations.

COMSA welcomes the announcement in early December by the Minister of Law and Order, following consultations with regional peace

structures, that unrest regulations will be allowed to lapse in the East Rand. This should assist in normalising relations between the police and community.

- The proliferation of private armies and weapons on all sides of the political spectrum has exacerbated violence.

During the period under review, there have been several murders attributed to left-wing forces, including the slaughter of eleven people in a church in a predominantly white suburb of Cape Town, and the murder of American student Amy Biehl in Cape Town.

By its own admission, the ANC has lost control of some of its self-defence units in townships such as the East Rand, where youngsters have set up barricades and 'no-go areas'.

On the other side of the divide, IFP supporters, many of whom live in hostels, are increasingly heavily armed. IFP leader Chief Buthelezi has called on all adult Zulus to donate (Rand) R5 each towards self-defence. The IFP has been training self-protection units in Natal/KwaZulu. There is considerable evidence of a flourishing trade in weapons smuggled into Natal from Mozambique via Swaziland.

On 25 June 1993, heavily armed right-wing elements invaded the World Trade Centre causing considerable damage.

The call by Afrikaner Volksfront leader General Viljoen for his followers to take up military training following the agreement at Kempton Park on an Interim Constitution, and reports of a right-wing raid on an SADF munitions depot near Pietersburg in November, raise serious concerns of an increase in right-wing violence.

## **Violence and the Elections**

There is considerable fear that violence will escalate in the run-up to the elections. Yet, as COMSA stated in its first Report, rather than act as an excuse to delay the elections, the threat of escalating violence should give every reason to adhere to the transitional timetable.

We also believe that violence can be minimised through a concerted and deliberate effort in the forthcoming months. Many of these measures are elaborated in other chapters of this Report, and are therefore listed briefly here:

- Continued efforts to draw parties remaining outside the negotiations into the transitional arrangements, as discussed in greater detail in Chapter 2. An example of this is the bilateral negotiations being engaged in by the ANC and Afrikaner Volksfront.

Despite the huge gap in their thinking, these two camps have realised that if they do not come to terms, violence will be the inevitable result. We salute the courage shown by both sides in attempting to bridge the wide gap between them.

- We call for similar efforts to be made to bridge the gap between the ANC and IFP. The summit between Mr Mandela and Chief Buthelezi in June raised considerable expectations at a grassroots level. At this summit, the two leaders pledged that 'none among (the two parties) should see it as necessary, no matter how serious the point of disagreement, to resort to violence'.

Sadly, this message does not appear to have filtered through to the grassroots. Plans for joint rallies by the two leaders have not materialised. The possibility has become even more remote as the political campaigning begins. We urge that maximum co-operation be sought between the two parties through the Peace Accord structures.

- In COMSA's second Report, we expressed our strong view, and we repeat it here, that the Peace Accord structures can work. A striking illustration of this is provided by the fact that of the violence taking place in the PWV, 80 per cent is in the East Rand. In Soweto, Alexandra and the Vaal violence has declined dramatically.

The Human Rights Commission attributes this decline in violence to the considerable peace-promoting efforts of the Wits-Vaal Regional and Local Peace Committees, and the ongoing efforts of the international observer missions. In Chapter 4, we outline the continuing efforts to strengthen the Peace structures, especially in Natal and the East Rand where COMSA has been focusing attention. These efforts can bear fruit.

- Coming to grips with the various armed formations in the country: The TEC sub-council on defence provides for all armed formations in the country to be registered in preparation for an integrated army. We urge all paramilitary forces in the country to lay down their arms and come forward.

We applaud the recent talks between APLA and the Government, which led to APLA declaring a moratorium. It is hoped that this will lead to a full cessation of hostilities. Later on in the Report, we discuss the formation of a National Peacekeeping Force (NPKF). This could prove a useful first co-operation exercise between the different armed formations in the country.

- The carrying of weapons in public places: We have commented on this problem in both our previous reports, and go into some detail on the need to curb this practice in Chapter 5.
- Political tolerance: In our last report, we dwelt at length on the need to cultivate a culture of political tolerance.

During the period under review, the international observer missions have on several occasions issued statements condemning inflammatory statements. We have witnessed many examples of intolerance: the body of an IFP supporter exhumed from a grave in a predominantly ANC-supporting area in the Vaal; the DP prevented from campaigning in Orange Farm; an ANC rally scuttled by the far-right Afrikaner

Weerstandsbeweging (AWB) in the Transvaal town of Middelburg.

But there have also been hopeful signs: 2,000 ANC supporters in Rustenburg refusing to respond to the chant 'kill the Boer, kill the farmer'; the NP holding a big multiracial rally at the World Trade Centre; and SACP leader Joe Slovo writing an open letter to the AV's General Viljoen inviting him to see how they might co-exist together, even if they do not like each other.

Part of Mr Slovo's letter bears repeating as South Africa prepares for its first democratic election:

I will not try to convert you. You would fail equally, if you tried to change me. That is not the real issue. The real question is whether we can live together in one country, acknowledging and respecting our differences. I believe we can.



## CHAPTER 4

### **Strengthening the Structures set up under the National Peace Accord**

For one day in 1993, peace reigned across South Africa. At the close of the day on 2 September, the beginning of a month-long peace campaign, police reported that for once, there had been no politically motivated deaths nationwide that day.

The day captured the imagination of all South Africans: black and white, rich and poor, young and old. In the townships, children scrambled up military vehicles waving flags depicting doves and chanting 'we want peace'. At noon, thousands poured out into the streets to form human chains and observe a minute of silence as a pledge of their support for peace.

In the East Rand, township residents, local and international monitors marched through some of the most troubled areas – on any other day 'no-go zones' – to send off six local peace monitors on a 'walk for peace' from Johannesburg to Durban.

As we note in Chapter 3, the peace that broke out across South Africa on this day was short lived. But the message that still resounds from this emotional occasion is that most ordinary South Africans yearn for peace.

Despite the violence that engulfs the country, striving to resolve problems peacefully remains a feature of South Africa. In 1993, for the third time in recent years, South Africa received recognition for this fact with the joint award of the Nobel Peace Prize to President de Klerk and Mr Mandela. The other South Africans who have received this award have been Chief Albert Luthuli and Archbishop Desmond Tutu.

On a day to day basis, efforts to achieve peace rest largely in the hands of the structures set up under the National Peace Accord signed by a broad cross-section of parties and interest groups on 14 September 1991. In accordance with our mandate, much of COMSA's effort during this phase has continued to be directed at assisting these structures, in close co-operation with the other international observer groups.

## NATIONAL STRUCTURES

### **The National Peace Committee and National Peace Secretariat**

At the apex of the National Peace Accord is the National Peace Committee (NPC), chaired by John Hall, and in which all signatories are represented at a senior level. The decisions of this committee, and the day to day co-ordination of peace efforts, are carried out by the National Peace Secretariat (NPS), the statutory body chaired by Dr Gildenhuys.

During the period under review, COMSA attended policy-meetings of the NPC and an internal review of its activities on 14 September 1993, the second anniversary of the signing of the National Peace Accord.

Co-ordination meetings with the NPS, and the other three international observer missions in South Africa (the United Nations, Organisation of African Unity and European Community), took place on a regular basis – usually once a week. At these meetings, we collectively drew to the attention of the NPS matters of concern to the international observer missions.

These frequently arose out of observations made at the local level (for example, the non-participation by a particular party in a Local Peace Committee, which was hampering the functioning of that structure). We also used these occasions to raise broader policy issues, such as the carrying and misuse of weapons in public places, cited in Chapter 5.

Initiatives taken by the international observer missions, such as the request to monitor the investigations into the Mamelodi killings mentioned in Chapter 3, were channelled through the NPS. The Commonwealth's bilateral technical assistance projects, described in this chapter and in Chapter 5, have been carried out through the NPS.

COMSA, along with the other international observer missions, has continued to attend the quarterly meetings of representatives of the NPC, NPS and chairpersons of the Regional Peace Committees, at which decisions affecting all these structures are taken.

From these contacts, we have formed the following observations:

- Administratively, financially and organisationally, the Peace Accord structures are on a considerably better footing than when we released our last report in May.

After considerable pressure, the NPS now has a degree of autonomy over its finances. In the past, direct Government financing of the NPS had tended to lessen its credibility. This is therefore a welcome development. We hope that, especially as South Africa enters the transitional period, it may be possible to include in the NPS staff persons drawn from outside the existing bureaucracy. The staff already working for the NPS are stretched and would be assisted, in our view, by additional staff, drawn from a broader spectrum.

In mid-1993, as one of the measures announced to help reduce violence, the Government pledged to increase financial support for the NPS. On the ground, there is evidence of infrastructural improvements. Several Regional and Local Peace Committees now have offices and equipment not in evidence before. We urge that, especially in the forthcoming months, when the Peace Accord structures are likely to face considerable demands in the run-up to elections, the necessary resources be made available.

Considerable efforts have been made to fill permanent staff positions in the regional and local offices. Because of the need to find persons for these posts who are neutral and acceptable to all members of these committees, this is not an easy task. In some areas finding suitable persons for these posts still poses problems (see section below on Local and Regional Peace Committees). However, we commend the efforts that have been made, and are especially pleased to note that attention is being paid to achieving racial and gender balance in these appointments, although this will continue to be a challenge.

- The extent to which the Peace Accord structures are known has improved substantially since we released our last report. Efforts like the peace campaign launched in September – with its flags, peace buttons, T-shirts, a peace song, and continuing advertisements in the media – have made an important contribution towards achieving this objective. However, as we note in the discussion on the East Rand below, the marketing campaign needs to extend beyond advertising, and include community meetings and interaction.
- As we have often commented in the past, and as the peace structures themselves are well aware, there is considerable scope for increasing the extent of participation. Many parties and entities are still not signatories – such as the PAC, Bophuthatswana and the AWB (see Chapter 2). We have been encouraged by indications from some of these groups that they are considering signing the Accord. We urge these groups to take this initiative, especially in the forthcoming months, when political tensions are likely to run high. Provision, and direct overtures, could also be made to interest groups not currently catered for in the Peace Accord structures, such as refugees and squatters, who are assumed to belong to one or other political party, but whom in reality may belong to none. We expand on this point in our discussion of the situation in the East Rand.
- The level of support for the peace structures at the highest political levels remains disappointing. For over a year, the NPC has been trying without success to assemble leaders of the signatories to the Accord for a meeting. Even an effort to get these leaders together for a short ceremony to receive public signatures supporting peace gathered during peace month has proved unsuccessful. While we appreciate that most leaders have been preoccupied with political negotiations in the last few months, we urge that they find time to publicly reaffirm their support for the Peace Accord.

- Inflammatory language, the training of private armies and the carrying of dangerous weapons – discussed in greater detail in Chapter 3 – all point to the continued breaches of the Accord: so numerous that many now go unrecorded. In our last report, we stressed that we did not think that this was a problem that could be solved through legislation. We recommended, and reiterate, the need for a concerted campaign to publicise such breaches whenever they occur, in an effort to get parties to apologise and make amends in response to public pressure. So far, the NPS' campaign has focused on publicising peace. There is perhaps a good case, especially in the forthcoming months, for publicising the misdeeds of those who continue to foment violence.
- Like most organisations in South Africa, the NPS has been considering what role it might most usefully play in the lead-up to and during the elections. The preliminary thinking is that the NPS and its related structures should intensify their current efforts to reduce violence, rather than replicate the work of the local and international groups expected to observe the elections. A paper on this issue by the NPS points out that the most serious problems during the elections are likely to be: the holding of public meetings in what is traditionally regarded as another party/organisation's territory, and the intimidation of campaign workers and members of the various parties.

We endorse the NPS view that these sorts of problems call for monitoring and mediation skills of the sort that the peace structures have been developing, and that the most useful contribution the peace structures can make to the successful holding of an election is to enhance these skills now through training.

### **The Seconding of a Commonwealth Facilitator/Trainer to the NPS**

At the heart of the work of the NPS and the local peace committees is the dedicated effort of facilitators who strive to bring warring factions into dialogue, and search for creative solutions to the myriad of problems – economic, political and social – which beset communities in South Africa. The country, through the work of the NPS, specialised mediation services and independent bodies such as the churches, has developed an impressive indigenous capacity in mediation, but there is still a scarcity of these skills.

Arising from the contacts between COMSA and the NPS, in June 1993 the Chairman of the NPS requested the Commonwealth to assist in the development and training of facilitators working with local and regional peace committees.

Based on this request, the Commonwealth seconded to the NPS, utilising the resources of the CFTC, a Zambian diplomat with experience in conflict resolution at both international and local level. His duties include the provision of support and on-the-job training to facilitators working at the grassroots level, and contributing to the NPS' efforts to strengthen its overall capacities in this area, which falls under the NPS Training Subcommittee.

## **Socio-Economic Reconstruction and Development**

In the second COMSA Report, we cited an example of successful reconstruction by peace structures in the Ensimbini Valley to rebuild houses destroyed in the violence as part of the peace agreement. At the same time, the Report noted that there were serious administrative and political problems within the Socio-Economic Reconstruction and Development Subcommittee (SERD) of the NPC hampering the effectiveness of this aspect of the Peace Accord's work. These weaknesses have persisted.

In October, SERD conducted a major review of its mandate and modus operandi to address some of these problems. In these discussions, it became evident that the development environment in which SERD operates has changed significantly since the signing of the Peace Accord in September 1991.

The most important change has been the mushrooming of NGOs and community organisations, and the creation of forums in virtually every sector – health, education, housing, and electricity to give some examples – and at a regional level in the Western Cape, Orange Free State, Eastern Cape, Border Kei, Natal/KwaZulu, Eastern Transvaal, Northern Transvaal, and the PWV area.

These forums were established to address development problems and to constrain 'unilateral' planning by Government agencies. Some of the forums, such as the National Hostels Co-ordinating Committee, have responsibilities which overlap with concerns of the peace structures.

The challenge for the NPC is to maintain its focus on dispute resolution and avoid duplicating the work of these specialised bodies. To effect this, it has now been decided that SERD committees should operate directly under Regional Peace Committees, with the NPS providing an information/co-ordination function.

It is hoped that this structure will make SERD more responsive to the needs at a local level, where its primary function will be to galvanise resources in support of peace initiatives.

To succeed, SERD will need to develop at the regional level a knowledge of available resources, and the skills to involve a wide range of economic actors – from local government, to parastatals, forums and the development community. COMSA will provide whatever assistance it can to achieve this objective.

## **REGIONAL AND LOCAL PEACE COMMITTEES**

By far the greatest proportion of COMSA's time has been spent interacting with the regional and local structures of the National Peace Accord.

At present, there are 11 Regional and 85 Local Peace Committees across the country. Because of our limited numbers, we concentrated on just two regions, Natal and the PWV region which, as described in Chapter 3, are the worst affected by violence.

## **Natal/KwaZulu**

At the end of the period under review, 15 out of a planned 26 Local Peace Committees (LPCs) had been established in Natal and the self-governing 'homeland' of KwaZulu.

COMSA focused its attention on helping to strengthen the existing LPCs, and trying to set up liaison committees or actual LPCs in areas where these do not yet exist. COMSA, along with other international observer missions, also continued to monitor major public gatherings in various parts of Natal/KwaZulu.

### *Umlazi*

The Umlazi LPC was one of the first to be established in Natal. It meets regularly and is quite active. However, violent incidents continue to occur in the area. A high proportion of this violence arises from rivalry between hostel dwellers and others, including squatters, perceived to be on opposite sides of the political divide. In addition, the IFP charges that the Internal Stability Unit (ISU) deliberately targets members of the party.

The area known as Unit 17 in Umlazi consists mainly of hostel dwellers. Although IFP leaders have been taking part in the work of the Umlazi LPC, the local IFP leaders from Unit 17 declined to co-operate with, or be represented in, the LPC. This naturally weakened the LPC.

At the request of the LPC Chairman, COMSA explored the possibility of bringing the IFP leadership of Unit 17 into the LPC. The local IFP leaders initially agreed to meet only COMSA at a venue outside Umlazi. At this meeting with COMSA held in Durban on 14 October 1993, they expressed their distrust of the LPC and of the police, especially the ISU. COMSA was able to persuade them to meet with the Chairman of the LPC and later with representatives of the police. Further meetings between all parties concerned took place in October and November.

It is hoped that the dialogue which has now commenced between the local leadership of the IFP and the LPC will lead to local IFP representatives joining the Committee.

### *Umbumbulu*

COMSA played an active role in facilitating the launch of the Umbumbulu LPC on 4 December 1992. A number of violent incidents, involving the IFP and ANC, recurred in August and September 1993, causing tension in the LPC. COMSA actively participated in meetings aimed at strengthening and revitalising the LPC, which continues to meet regularly and is an important stabilising factor in the area.

### *Kwa-Makhutha*

Initially, the Kwa-Makhutha area fell under the Umbumbulu LPC. In view of

its size and the need for closer attention to the problems of violence in the area, it was felt that a separate LPC would be desirable. COMSA encouraged the launching of a Kwa-Makhutha LPC and helped to organise a historic joint rally of the IFP and ANC at the Kwa-Makhutha Football Stadium on 22 August 1993. Such developments have helped to reduce tension in the area. COMSA's thrust now is to help consolidate these gains.

#### *South Durban (Lamontville)*

The South Durban LPC experienced tension relating to clashes between the ANC and the police, and non-participation by the IFP. The Chairman of the LPC sought the help of COMSA in bringing the IFP back into the LPC. COMSA contacted senior leaders of the IFP who expressed reservations about the LPC. We continued our interaction with the LPC and the IFP leaders. It is gratifying that the IFP has now agreed to attend LPC meetings.

#### *Port Shepstone*

An LPC has been in existence at Port Shepstone since March 1992. COMSA's initiatives during the first phase in KwaNdwalane and KwaMavundla and during the second phase in Ezingolweni, detailed in the previous reports, had helped to reduce violence in the area. Regrettably, tensions resurfaced, and the region witnessed many violent incidents during the period under review. COMSA's help was sought by a representative of the LPC. An urgent meeting was called by the LPC on 21 September 1993, after which COMSA visited the KwaNdwalane area. We spoke to local ANC and IFP leaders, and met Chief Ndwalane at his residence on 24 September. Unfortunately, subsequent violent incidents in the area, including the killing of Chief Ndwalane's brother, have proved to be major set-backs. The area will be focal to COMSA's efforts in the forthcoming months.

### **The PWV region**

#### *The East Rand*

As described in Chapter 3, although violence has continued to escalate in the PWV region, 80 per cent of this has occurred in the East Rand, and this has been restricted even further to just two townships: Thokoza and Katlehong. This area became the major focus of our attention in the PWV region during the period under review, and also of a joint initiative by the four international observer missions, in consultation with the Wits/Vaal Regional Peace Secretariat, to try to help stem the violence.

The causes of the continued high incidence of violence in the East Rand townships are complex:

- The area has the greatest number of hostels of any of the sub-regions of the PWV: Katlehong – 7, Thokoza – 4, Vosloorus – 8 and Tembisa – 5. These

hostels serve the industrial areas of Alberton, Germiston, Kempton Park and Benoni/Boksburg. They house single men removed from their families, who often remain in the rural areas. These unnatural living conditions, coupled with political factors, have led to a considerable amount of the violence in the PWV area being associated with hostels. Whereas elsewhere in the PWV area – such as Soweto – efforts to conclude peace pacts between hostel dwellers and their neighbours have helped to reduce violence, such efforts are in their infancy in the East Rand, and have so far made little headway.

- Tensions between the ANC and the IFP are particularly high in the East Rand. Thokoza and Katlehong are virtual war zones with large stretches of 'no-go' areas for particular political organisations. Hostel dwellers in Katlehong, many of whom are aligned to the IFP, are trapped inside the hostels unable to get to work because the railway lines have been sabotaged. Township residents in certain sections of Thokoza have been forced to flee their homes due to alleged intimidation and attacks by Thokoza hostel dwellers. On the other hand, Zulu-speaking residents in some sections of Katlehong have been forced to flee their homes by the ANC 'self-defence units'. The presence of a strong PAC contingent in the nearby squatter settlement of Phola Park adds to the political complexities of the area.
- Police/community relations are weak in the East Rand, and have been exacerbated by it being declared an unrest area, giving the police wide powers of detention, in May 1993. As described in Chapter 3, there have been numerous allegations of torture by the police, particularly those stationed at Nyoni Farm, isolated Headquarters of the ISU, and the Political and Violent Crime Investigation Unit, situated outside Vosloorus in Boksburg. The discovery by the Peace Accord's Police Reporting Officer of torture equipment in the possession of the ISU in the East Rand has lent credence to these allegations.

On 6 September – four days after Peace Day – thousands of ANC supporters from the Kathorus (Katlehong/Thokoza/Vosloorus) area marched on the ISU Political and Violent Crime base in Vosloorus. The community demanded the withdrawal of white members of the ISU from the area. Although this is impractical (a view that COMSA conveyed to senior ANC leadership at the time), the demand underscores the tenuous relations between the police and community in the area.

- Commercial rivalry between taxi associations adds to the violence in the area. In October, violence was narrowly averted after local and international observers intervened to defuse a clash between two taxi associations in the town of Germiston. This clash also had political undertones, as the two groups belonged to different political parties.
- Peace structures in the area are weak. At the time that COMSA began the third phase of its work, the IFP had suspended participation in the Germiston/Katlehong LPC due to the murder of the IFP representative



(who was also the vice-chairperson of the LPC) allegedly by ANC elements. His body was subsequently stolen from the mortuary, adding to the anger among IFP supporters.

The chairperson of the Germiston/Katlehong LPC, who had displayed outstanding courage, sustained serious injuries after youths claiming PAC allegiance stabbed her while she was monitoring a rally. For a variety of reasons, this chairperson resigned on 25 August 1993.

A new chairperson has been appointed, and an IFP representative has attended some meetings, although this has been sporadic, due to the security problems he experiences in getting to meetings. While every effort is being made to strengthen the LPC, it remains fragile.

The Thokoza LPC has not had quite the same problems as the Katlehong/Germiston LPC. However, it too has been weakened by the frequent non-attendance by one or other party of crucial meetings, the non-accessibility of the Thokoza office to some residents of the area and frequent personality clashes.

As part of the peace month activities, the Wits/Vaal Regional Peace Secretariat organised two peace conferences to attempt to come to grips with the problems affecting these two townships.

The Thokoza Peace Conference, which was attended by the SAP, IFP, ANC and the civic associations, closed with a programme of action and resolutions to bring peace to the area, covering such aspects as political tolerance, policing of the area, housing and construction, education and peacekeeping.

Unfortunately, for a variety of reasons, mainly relating to the political tensions in the area, there has been very little follow-up on these resolutions.

The planned Katlehong peace conference failed to materialise, due to non-attendance by the IFP and the police.

- Difficulties experienced at the Joint Operations Centre: In response to the escalating violence, and in light of the weak local structures, the Wits/Vaal Regional Peace Committee helped to set up a Joint Operations Centre (JOC) at the Natalspruit hospital in Germiston, staffed largely by monitors from the region. The purpose of this centre was to serve as a information gathering base, from which monitors and the ISU could then be sent out to trouble areas. The four international observer groups assisted on a roster basis.

Several problems surfaced with regard to the operations of the JOC. These were partly technical and organisational. In an effort to assist on this front, the CFTC-funded marshal trainer carried out a review of the JOC which was forwarded to all interested parties.

More fundamentally, political parties were often inadequately represented at the JOC and the IFP was often not represented at all. The SAP was

frequently represented by junior ISU officers. On several occasions, local monitors complained that they were harassed by the ISU in the course of their monitoring duties, especially while they were out on patrol in the night in the Regional Peace Secretariat's bullet-proof vehicle, commonly known as the 'iron dove'.

### *Initiatives by the International Observer Groups*

In an effort to offer practical assistance to the peace structures and communities of the East Rand, international observer groups formed an 'East Rand Task Force' comprising representatives of each of the four missions. This task group held a wide range of consultations with chairpersons of the local peace committees in the East Rand; officers of the Regional Peace Secretariat (RPS) involved in the area, and other interest groups. It became apparent to us that:

- unless peace could be achieved, there was no hope of beginning reconstruction in the East Rand;
- achieving this peace rests on the initiative being taken first and foremost by those affected.

While recognising that the local structures in the East Rand are weak, we also felt that in its efforts to assist the area, the RPS may have inadvertently discouraged local initiative.

In the course of several meetings with the RPS on the JOC, the international observer missions encouraged the regional authorities to hand over the operations of this centre to the local peace committees.

The process of decentralising the JOC and strengthening the LPCs in the area is currently in progress. A number of additional and follow-up measures will need to be taken. These might include:

- regular attendance by regional officials and international observers of LPC meetings, and continued encouragement of all parties to participate.
- renewed efforts to convene peace conferences in the area. In this context we welcome the pledge by the IFP and ANC, at a meeting at the RPS office in early December, to begin a series of consultations aimed at achieving peace in the East Rand.
- the revival of community meetings, such as used to be held in Katlehong/Germiston, at which LPC members interacted with the community and helped them understand the functions of the LPCs. Although the peace structures are better known than they used to be, in troubled areas like the East Rand their conciliation and mediation functions are little understood.
- the development of police/community relations subcommittees in all the East Rand LPCs.
- we have followed with interest newspaper reports of possible joint patrols of the East Rand by the SAP, ANC, IFP and PAC. We strongly support this forward-looking concept which could be the precursor to an integrated

police and defence force. In addition, we hope that the East Rand will be a major focus of the new National Peacekeeping Force (NPKF), which we discuss in Chapter 7.

- a concerted effort is required to resolve the issue of evicted home-owners and refugees in the East Rand. This may require that legal assistance be made available through the peace structures.
- once sufficient calm is restored, we recommend that the SERD make the East Rand a priority. We are convinced that resources can be raised from local business sources and the international community for socio-economic reconstruction and development in the area. However, this needs to be co-ordinated by one body, in close consultation with the local community.

### *The Vaal*

In our last report, we cited the Vaal triangle as one of the most tense areas in the PWV region. Since then, the situation in this area – associated in the public mind with many of the worst massacres in South Africa, like Boipatong and Sebokeng – has shown signs of improvement.

According to figures provided to COMSA by the SAP, the number of deaths peaked in April and May 1993, when 55 and 72 people were killed. In August, September and October, the number of people killed declined to 35, 53 and 32 respectively. The Human Rights Commission estimates that of the latter, seven were politically motivated murders.

During the period under review, COMSA, along with the other international observer missions, continued its efforts to strengthen the Vaal Local Peace Committee, through regular attendance of its meetings, those of its subcommittees, and the several workshops that have been held in the area.

Police/community relations in the area, which we highlighted in our last report as being among the worst in the region, have shown some improvement, although many of the underlying suspicions remain.

The death in custody of an IFP member Victor Kheswa caused disquiet both in the IFP (whose pathologist claimed that he had not died of natural causes, as stated by the police) and the ANC (which alleged that he had been deliberately killed to cover up police involvement in the several counts of murder for which he was to be tried).

The latter theory was compounded by the death days later of one of the accused in the Boipatong massacre after he allegedly jumped out of a moving police van taking him to an identity parade, and was run over by a police van following behind. The driver of the van was the same officer as had been temporarily suspended in connection with the Kheswa case.

Hundreds of complaints of police misconduct in the Vaal have been brought to the attention of the Police Reporting Officer for the Wits/Vaal area.

Suspicions surrounding the police handling of the Sebokeng massacre, to

which we refer in our last report, prompted the LPC, supported by international observer missions including COMSA, to request that the case be handled by police from outside the area.

A compromise reached with the Deputy Attorney-General at a meeting in Pretoria in August gave the Police Reporting Officer a considerable hand in monitoring the investigation. An assistant attorney-general was put in charge of ensuring that the investigation is being properly handled. At the time of writing, nine people had been arrested in connection with at least 60 killings in Sebokeng.

The police/community relations subcommittee of the LPC has helped to reduce some of the earlier tensions, as has the interest shown in the area by the Police Reporting Officer. Following an investigation by this Officer, the SAP agreed to disband its notorious 'Yankee Squad', seen by township residents as a major source of violence in the area.

COMSA attended a two-day workshop on police-community relations in the Vaal convened and facilitated by the Institute for Democratic Alternatives in South Africa (IDASA) in October. All major players in the region attended the workshop, where the SAP and ISU explained their role in maintaining peace.

At the end of the workshop, the participants resolved to establish and maintain an interim facilitation committee to co-ordinate the setting up of local police/community forums in various parts of the Vaal Triangle, including Sharpeville, Sebokeng, Boipatong and six other townships.

In an unexpected move, but one which underscores the improving relations between the police and community in the area, the municipality of Sebokeng, a predominantly ANC-supporting area, offered the freedom of Sebokeng to the deputy commissioner of police for the region in November.

Relations between the ANC and IFP in the Vaal continue to be tense, although their participation in the LPC has helped to defuse some potential conflict. During the period under review, COMSA, along with other international observers, monitored a funeral in which an IFP official was buried – after much negotiation – in the predominantly ANC area of Evaton.

Soon after our departure, the body was exhumed and burnt by ANC youth. After further protracted negotiation, a second funeral was held.

A potential conflict was averted in November when, after similarly complex negotiations, the IFP agreed not to bury one of its supporters in a predominantly ANC area, and instead held the funeral in the largely white town of Vereeniging.

The Vaal LPC has laboured under numerous other pressures. In July, the ANC and its allies withdrew from the LPC, citing their dissatisfaction with the attitude of the police towards the investigation of the Sebokeng massacre.

It took several weeks after the LPC had been to see the Deputy Attorney-General (as mentioned above) for the ANC to come back into the LPC.

This considerably hampered the work of the committee. COMSA, along with other international observers, drew this issue to the attention of senior ANC leaders.

Since the ANC's return, it has alleged that improper procedures were followed in appointing a field-worker, and demanded that the field-worker and chairperson step down. At the time of writing, this issue had not been resolved.

We strongly urge that these sorts of issues be addressed as soon as possible, and in a constructive manner. For all the difficulties it has faced, the Vaal LPC has been one of the stronger peace structures in the PWV region. Its efforts have undoubtedly been a major factor in the reduction of violence in the area.

The volatile mix of factors that could lead to an explosion of violence in the area – especially in the months of heightened political activity ahead – has not disappeared. Local peace structures will need to remain particularly vigilant.

#### *Alexandra*

COMSA has continued to support the commendable efforts of the Alexandra Interim Crisis Committee (ICC) in consolidating the fragile peace that has been achieved there.

We have regularly attended meetings of the ICC and its subcommittees, as well as numerous events organised by the committee to spread the message of peace to the community.

Since our last report, the tide has perhaps turned in Alexandra from trying to prevent acts of violence toward solid peacemaking.

A year and a half ago, a near-war was raging between the ANC and IFP supporters in the community. 'No-go' areas were controlled by one or other of the parties and thousands of people were forced to flee their homes.

Today the burnt out shells of their homes remain in the area known as 'Beirut'. Returning these 'displacees' to rebuilt homes remains the most intractable problem being tackled by the ICC. Progress on this issue has been painfully slow but there has been progress. Committees are hard at work and discussions have reached the stage where demolition and reconstruction details are under active consideration.

The peace structures in the community are also in the process of undergoing a transformation.

The ICC, which was formed on 1 April 1992, falls under the National Peace Accord. However, from the outset it has emphasised socio-economic reconstruction as being a vital goal if peace is to be achieved.

The ICC and its subcommittees, security, socio-economic development and communication, have been meeting weekly and are action-oriented.

For example, the Security Task Group was quick to establish a 24-hour monitoring patrol service a few months ago when violence erupted on the East Rand and in the neighbouring township of Tembisa. The Joint Community Monitoring Centre (JCMC) includes members of the two main political parties and the security forces working together. The JCMC patrols are a visible presence on the streets of Alexandra and have played an important role in preventing violence.

In December, after lengthy negotiations that underscored the political tensions beneath the surface in the township, the ICC formally became a Local Peace Committee (LPC). It is hoped that the Alexandra LPC will continue to consolidate the peace and reconstruction efforts in the community.

## CHAPTER 5

### Public Gatherings

Public demonstrations, funerals and rallies are a staple in the political diet of South Africa and are of particular importance as a symbol of free political activity. Observing such events is one of the most regular tasks of the international observer missions. COMSA has attended many such events during the period covered by this Report.

In this chapter, we highlight some of the lessons and outstanding problems which surround the conduct of public political events. Addressing these problems will be all the more urgent in the coming months, as the number of such events can be expected to increase dramatically in the run-up to elections. We also describe a national programme for training marshals which the Commonwealth, working with Britain's Overseas Development Administration (ODA), has assisted the National Peace Secretariat to develop.

#### Prerequisites for Peaceful Public Gatherings

The essential elements of peaceful public gatherings are:

- joint planning between organisers, monitors and police on the route, timing, assembly and dispersal of those involved.
- effective communications at all times between these parties to address problems quickly.
- the willingness of each party to respect the spirit as well as the letter of the law.
- effective control of traffic.
- agreed procedures for control of the crowds at the event with a commitment from all parties to comply with the agreements.
- contingency plans to address sudden emergencies or criminal actions.

#### Display and Use of Dangerous Weapons

In its previous reports, COMSA has highlighted, and strongly objected to, the widespread practice at public gatherings in South Africa of carrying weapons. Unfortunately, this practice appears – if anything – to be getting worse: a fact that is extremely worrying, especially in the run-up to elections.

In June, we witnessed heavily armed right-wing elements break into the World Trade Centre, smashing glass doors and threatening those inside with their weapons. These demonstrators were apparently not disarmed because their weapons were licensed. Police also argued that if they attempted to disarm the demonstrators, more violence would have occurred.

At just about every public gathering we have been to, and especially at funerals, those participating have carried either traditional weapons or guns – licensed and unlicensed. The police generally do not attempt to disarm those carrying weapons at such occasions because – as in the case cited above – it is argued that such action would in itself lead to violence.

Funerals in South Africa are occasions with a higher than normal risk of violence. In cases where death was a result of violence, gun salutes at the graveside are normal, with weapons often smuggled to the graveside (wrapped in blankets) in vehicles carrying mourners.

In early October at an ANC funeral in Katlehong, rapid volleys were fired from dozens of AK-47s above a crowd of mourners and in front of South African Defence Force (SADF) vehicles. COMSA observers withdrew before the procession moved off for safety reasons, and to avoid the impression of condoning this behaviour.

Local peace monitors from the East Rand Joint Operations Centre (see Chapter 4) returning from the event reported it as quiet: a situation which we found disturbing as it suggests that this sort of behaviour is now regarded as normal. In a separate incident at a peace rally in Vosloorus in early September, although marshals searched those entering the stadium for weapons before the commencement of the rally, no action was subsequently taken to stop about twenty people who danced into the stadium carrying axes and firing into the air with automatic weapons.

These sorts of experiences prompted COMSA and the other international observer missions to write a joint letter to all political parties, through the Chairman of the NPS, protesting against the display and misuse of weapons at public gatherings. A copy of this letter is attached at *Annex II*.

## **Co-operative Planning and Communications**

### *Rally to John Voster Square*

On 30 October 1993 some 5,000 IFP demonstrators marched from Jeppe Railway Station to Police Headquarters at John Voster Square in Johannesburg to protest at the alleged improper alliance that had been established between the predominantly black Police and Prisons Civil Rights Union (POPCRU) and the ANC.

The route took the protesters across the full width of central Johannesburg. The following points illustrate that poor co-operative planning and communications can increase the risk of violence in public gatherings:



- The assembly point was in an open field near Jeppe Station. In such a location, and without prior planning, the senior SAP officer present had great difficulty tracing the Senior Marshal on duty. There appeared to be no central organisation for the event.
  - Marshals were not clearly identified.
  - Many of the demonstrators were drinking alcohol and some were drunk by the end of the day.
  - Every one of the over 4,000 male demonstrators carried traditional weapons, including axes and spears. Under the influence of alcohol, some mock battles developed into exchanges of blows using weapons.
  - The march started off without any signal or co-ordination.
  - A demonstrator carrying a firearm was arrested as the march moved off.
  - Neither the organisers nor the SAP had warned the numerous street vendors along the route of the march of the impending demonstration. These were terrified by the sudden onslaught. On the return march (along a different route) some demonstrators looted and robbed fruit and refreshment stalls. The SAP responded with gunshots and tear gas, and made several arrests.
  - The IFP march in identified groups, i.e. residents of particular towns/villages/hostels do not intermingle. As each group of 500 to 1,000 demonstrators completed dances and mock battles, huge gaps opened within the march, leaving distances of up to a quarter of a mile long between the different groups. This made it difficult to maintain any form of control over the march.
  - A known Chief Marshal set a poor example when he started to spray graffiti on walls along the route.
- All told, the demonstration lacked meaningful control and marshalling.

### *The Chris Hani Murder Trial*

During the final court proceedings in early October of the Chris Hani murder trial, supporters gathered daily outside the Supreme Court in Johannesburg.

The lack of sensitivity shown by authorities on this highly emotive occasion illustrated how police tactics often add to, rather than reduce, tension at public gatherings.

There had evidently been no co-operative planning; for example:

- police parked their vehicles in front of the court in a way bound to be obstructive if people gathered.
- no area was set aside to allow the safe gathering of demonstrators while facilitating traffic flow.
- when a small group of demonstrators arrived they were immediately dispersed by police dogs.

- there was no effort to agree to a reasonable compromise between protecting the integrity of the court and ensuring the right to demonstrate. Police simply shouted '500', referring to the legal prohibition of demonstrations within 500 metres of the court.

At lunchtime, ISU personnel were preparing to tear-gas what they deemed to be an 'illegal' demonstration. Frantic negotiations between marshals – who maintained that the demonstration had been agreed to by the police officer in charge – and the ISU ensued in the absence of this officer.

In the end, the ISU did not resort to tear gas, but it is a matter of real concern that the ISU even considered using tear gas in the busy central business district to disperse approximately 50 demonstrators who posed no threat to public order.

On the next day, the area was cordoned off with barbed wire but demonstrators flowed into the open pavements. Police again cleared the area using dogs, infuriating the demonstrators.

#### *Union Rally in Krugersdorp*

In contrast to the first two examples, in October COMSA attended a union rally in Krugersdorp on safety issues which illustrated how, with co-operative planning and communications, marches can be conducted in an orderly manner.

March organisers and a community relations officer of the SAP met prior to the march to plan the day and there was a good working relationship between them. At the outset marshals and representatives of the SAP and ISU met to reconfirm arrangements.

During the rally, police escorted a number of AWB members away from the scene. With the exception of some overcrowding of the pavements, the march organisation was exemplary.

A notable feature of the march was the fact that SAP officers walked alongside the demonstrators. This helped create a less intimidating relationship between marchers and police, who were seen to be facilitating and protecting marchers, rather than representatives of a remote force.

Security forces have an unquestionable duty to maintain order, but a common theme of all COMSA reports has been that this can be achieved by co-operation rather than confrontation.

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

International observers can frequently apply their experience of crowd control constructively in particular events. Far more important, however, is the development of good working relationships among those involved in an event, starting well in advance of the day. Common sense and goodwill on both sides can avert confrontation. We have cited some examples of how bad planning

and inappropriate behaviour can increase tension. Part of the solution to this problem rests in the training and development of better practice on all sides.

### **Marshal Training Programme**

Conscious both of the constructive role that marshals can play in averting violence at public gatherings, and the need for more systematic training, the Wits/Vaal Regional Peace Secretariat began early this year to develop a curriculum for such training.

The Goldstone Commission report on preventing violence during the elections, presented on 8 August, recommended that international organisations 'provide experts to assist in the training of the police and of marshals'.

Earlier in the year, a multi-national panel, which included COMSA's police/community relations expert, had met at the University of the Western Cape to consider taking forward the recommendations of the Commission. One of the initiatives which came out of this meeting was the writing of an outline training programme for marshals.

COMSA drew this work to the attention of the RPS and participated in a series of consultations on the RPS curriculum. It became apparent during these consultations that some political parties objected strongly to relying on the SAP delivering the training. They would only participate if foreign police experts, whom they perceived as neutral, conducted the courses.

Following an approach from the Wits/Vaal RPS, COMSA helped to source expertise for this project from the CFTC fund for South Africa mentioned in Chapter 1. Course costs were met by the ODA. A British police Chief Inspector with experience in public order assisted in the pilot phase of the project under the guidance of COMSA's police/community relations expert.

The pilot phase, which commenced in October, consisted of 20 ANC chief marshals. Subsequent courses in the pilot phase included an additional 71 marshals from the ANC, 80 from IFP, and 65 from the National Party. A newspaper report on the project is attached at *Annex III*.

The course, which lasts for five days, addresses planning and liaison with security forces and the police, techniques for maintaining discipline, crowd control, use of radios and communications, as well as knowledge of the National Peace Accord.

Central to the course is the development of co-operative skills between the community and the police to avert violence. The courses include presentations by, and discussion with, representatives of the ISU, SAP and SADF as well as simulation exercises/case studies and briefings on the National Peace Accord and the role of monitors.

### **Assessment of the Marshal Training Programme**

There have been two opportunities to assess the practical value of the Marshal

Training Programme and to observe at first hand trained Chief Marshals in action.

*IFP Youth Brigade March, 6th November 1993*

On this occasion, 1,200 IFP members marched from Germiston Railway Station to Germiston Police Station to protest against alleged SAP and SADF involvement in the violence on the East Rand. In contrast to the IFP march on John Voster Square mentioned earlier, we observed the following:

- Although all men again carried their traditional weapons, 30 identified marshals, most of whom had received training, controlled the event.
- Marshals were briefed at the start of the day.
- The Senior Marshal (one of the trainees) met the ISU Commander and discussed the days events.
- Vulnerable premises were protected by marshals staying ahead of the march and remaining in front of such premises until the march had passed.
- Marshals protected the police station targeted by the demonstrators.

These measures ensured a well ordered, peaceful demonstration.

*COSATU March, 28th October 1993*

Senior ANC marshals on the training programme faced their first major test at a massive rally of the Congress of South African Trade Unions (COSATU), to which the ANC is allied, on 28th October 1993. COSATU called the march from Isando Railway Station to the Kempton Park Conference Centre to protest against certain labour provisions in the draft Interim Constitution.

On the day, some 10,000 persons assembled in an open field near the railway station. Marshals succeeded admirably in keeping access roads and footbridges open to the assembly point. No persons or groups were permitted to loiter in such a way as to obstruct the flow of pedestrians.

At the assembly point, a group of about 1,000 youths began to run the one kilometre to the entrance to the Conference Centre which was heavily guarded by armed SADF personnel and ISU police officers. The ISU had placed a water cannon at the entrance of the Conference Centre and openly displayed tear gas guns and canisters, as well as sub-machine guns.

The line of marshals across the entrance held, preventing contact between the Security Forces and assembled youth. After about three hours the crowd dispersed peacefully without a single arrest. Marshals received high praise from all observers for their exemplary conduct.

Apart from the technical training that the marshals have received, one of the most useful outcomes of these courses has been in promoting, often for the very first time, direct dialogue between the marshals and police.

The SAP has fully supported this training and the community relations officers have provided enthusiastic help. The importance of this is reflected in the following evaluation at the end of one course by a Chief Marshal:

I most liked to talk with people which I told myself are enemies e.g. the ISU, police and SADF but now I will try my level best to communicate with them, change the views of each other.

The first course proposed a new set of guidelines on planning procedures for use between Chief Marshals and the ISU. These proposals are now being taken forward by the Police/Community Relations Subcommittee of the Wits/Vaal RPC.

### **Future Plans**

Based on the success of the pilot phase, the Commonwealth, NPS and ODA co-operated in a national training programme launched in late November with the aim of training an additional 2,000 marshals in the first quarter of 1994.

The programme will also include a special seminar for senior negotiators involved in planning major events. Two Zimbabwean police officers will shortly augment the Commonwealth team.

## CHAPTER 6

# Progress Towards Democratic Policing

### Introduction

Previous COMSA reports began to address aspects of the police role and functions in a democratic society and identified several challenges faced by the South African Police (SAP) in transforming itself from a force to a service. We focused primarily on the importance of building confidence and trust of communities in their local police in order to move towards policing by consent.

The first COMSA Report noted that the following values and attributes underpin democratic policing services:

- service not force
- fair and non-discriminatory service delivery
- care and compassion
- showing professional and ethical behaviour
- support for victims
- willingness to admit mistakes and learn from them
- minimal use of force
- openness to change
- a visible, reassuring presence
- accountability
- a prompt service.

In past reports, we measured actual police practices against these yardsticks and commented on many shortcomings including: the use of lethal force; unprofessional investigative techniques; partisan policing; the use of torture to obtain confessions; double standards and mixed messages especially where police agreements with local people are contradicted by the intervention and behaviour of the Internal Stability Unit (ISU), the SAP's public order division.

COMSA has continued its close consultations with the SAP through:

- talks and lectures to police community relations officers and at training colleges of the SAP;
- a presentation to the ANC Youth League on community policing;

- interaction with the police community relations subcommittees of both regional and local peace committees;
- attendance at community policing seminars;
- a visit to the ISU training base and discussions with those in charge of the curriculum;
- continued contact with the Police Board set up under the National Peace Accord;
- contact and discussion with academics at the University of the Western Cape, University of South Africa (UNISA) and the University of Witwatersrand involved in research on a new South African police force.

From these contacts, we are assured that the SAP has begun the transformation from a force to a service, symbolised by the change of name to the South African Police Service in the Interim Constitution.

There is still scope for ensuring that the culture change is not simply cosmetic. For this to happen, the service ethos must permeate the entire organisation from top management to the grassroots level. This will involve a comprehensive review of the structure of the organisation and the extent to which it supports open, participative, fair and accountable practices.

### **Progress towards Community Policing**

When the SAP created a community relations division on 1 December 1992, the chasm between police and communities was so vast that many critics questioned the feasibility of applying any model of community policing to South Africa.

Under the circumstances, COMSA is heartened by the commitment to change among officers from this division, exemplified by the dramatic increase in the number of local police/community forums where lively dialogue is taking place between police and communities.

COMSA has welcomed the opportunity to be part of this process by providing advice and guidance both at the police academy and police colleges as well as to police/community forums.

Several challenges still remain:

- There are still many parts of the country where old enmities endure and where much remains to be done to improve communication between the police and community.

An example is the declaration of unrest areas in the East Rand without consulting local forums which we mentioned in Chapter 4. This undermines the forums and suggests that police may pick and choose which issues to share with local communities.

Another example is the patchiness with which accredited visitor schemes are being introduced despite local agreements and support for

this practice of allowing lay persons to visit police cells and places of detention. This has raised questions over the commitment of the SAP to the scheme.

- Although the community relations division is an example of positive leadership in this field, there are some police divisions and individual senior officers who do not appear to have embraced the changes. It is essential under a democratic police service that all officers understand and practise the new principles of service delivery in their day to day work.
- Better relations between the police and community can only be developed if communities play an active part. COMSA will continue to support initiatives to assist communities to develop their own agendas for local policing so as to ensure that their priorities are reflected in police planning.

### **Provisions for Community Policing in the Interim Constitution**

The Interim Constitution – when it comes into force after the elections – will require the SAP to establish community police forums at police station level. The functions of these forums will include:

- the promotion of local accountability;
- the monitoring of the effectiveness and efficiency of the service;
- advising the Service on local policing priorities;
- the evaluation of the provision of visible police services including siting and staffing of police stations, investigation of complaints, provision of protective services at demonstrations, patrolling and prosecution of offenders;
- requesting enquiries into policing matters in the locality.

The introduction in the Interim Constitution of an independent complaints investigative body under civilian control to oversee complaints against the police is a further example of a desire to enhance public confidence in the police and extend the principle of openness to third party scrutiny.

This role has, in the interim, to some extent been performed by the Police Reporting Officers established under the National Peace Accord whom we mention in Chapter 4.

### **Structure of the SAP**

COMSA welcomes the provision in the Interim Constitution for National and Provincial Commissioners of Police. For community policing to succeed, it is essential that power be devolved from the centre to provincial and local level.

An example of where such authority is essential is the prevention of



central units entering station areas without approval of the local commander, so destroying hard won local agreements on policing practice.

This obstacle to effective police/community relations has been noted in previous COMSA reports, and the issue now been taken up by all station commanders and community forums that COMSA has had contact with. It is vital that the problem of autonomous central units being licensed to disrupt harmonious police/community relations be addressed immediately.

The current six separate divisions of the SAP with their own reporting structures inhibits clear lines of communication and the development of a shared vision. It is hoped that under the new legislation, these structures will be co-ordinated at least at regional level, to remove this hindrance to efficient policing.

It is also hoped that the change to a service will be accompanied by a reduction in the number of ranks and the demilitarisation of the rank structure.

### **Composition of the Police Service**

Previous COMSA reports have noted the under-representation of women and blacks within the SAP.

Women are poorly represented at all levels of the police establishment and are currently discriminated against in several ways, including terms and conditions of service and placement within the organisation in secretarial and menial positions rather than in mainstream policing.

Pervasive sexism is reflected in the reference to police 'men' in all notices and training materials. The commonly heard sexual innuendoes and jokes in SAP circles do not create a welcoming atmosphere for women and may indeed discourage women from applying.

Similar comments apply to the under-representation of black people in management positions at all levels despite being in a majority at the lower levels of the organisation. Institutionalised racism undermines individual self esteem and alienates black police officers.

The dissatisfaction of these officers has several times been reflected during the period under review in marches organised by the Police and Prisons Civil Rights Union (POPCRU). We welcome the decision to allow the police to legally unionise and trust that the legitimate demands of POPCRU will be addressed.

Several progressive initiatives are indeed under way to prepare black police officers to take up senior positions. Affirmative action training programmes developed at the University of Witwatersrand through the Public and Development Management Executive Programme and by the Community Peace Foundation at the University of the Western Cape will accelerate the culture change programme by ensuring placement of suitably qualified black officers at key levels in the new SAP.

These initiatives need to be accompanied by adequate support mechanisms and behavioural changes within the organisation so that new entrants are not marginalised or undermined.

It would be timely for the recently formed National Coalition on Gender and Policing Issues to develop and press for affirmative action schemes for women in the police.

### **Children and Criminal Justice**

COMSA has been impressed by the work being carried out by Lawyers for Human Rights (LHR), an influential South African NGO, in obtaining legal representation and release from prison of young people.

However, the task of notifying the parent or guardian of an arrested child should be a matter of routine for the police. Their failure to do so has led to children as young as eight years old being unnecessarily remanded to prison.

We are aware that while some of the youth in jails are charged with serious crimes, the majority are charged with minor offences and could be released into the care of their parents. Such youth should not be in prison, where they are often exposed to worse crime, such as sexual assault and male rape which now appear commonplace in many secure establishments.

Whilst whipping has been removed from the statute books of most modern legal systems, it is still a commonly applied sentence for juveniles in South African courts. It is hoped that this practice will be abolished when the Chapter on Fundamental Rights in the Interim Constitution comes into force after the elections.

### **Developing a Human Rights Culture in the Police**

In any society, police have extensive powers and responsibilities. They enjoy enormous discretionary powers. At the point of arrest and detention, an individual is potentially vulnerable, isolated from the rest of society and often not within view of a third party. Unless police are ethical, and exemplify high standards of personal conduct, they are likely to resort to force to obtain the information they need.

International standards provide illuminating and helpful guidance on police conduct to avoid this sort of eventuality.

Some of the most fundamental rights of individuals, enshrined in international human rights instruments, are of significance to the police service. These include the United Nations Declaration of Human Rights, the United Nations Code of Conduct for Law Enforcement Officials and United Nations Criminal Justice Standards for Peacekeeping Police.

Police are required, in terms of international standards, to uphold fundamental human rights, treating every person as an individual and displaying respect and compassion towards them. Every individual has a right to freedom

of thought, conscience and religion, opinion and expression, peaceful assembly and association, to live in privacy and peace. Protecting individual rights also protects the rights of society.

The United Nations Universal Declaration of Human Rights refers to:

- non-discrimination
- the right to life, liberty and security
- the right not to be subjected to torture or to cruel, inhuman or degrading treatment
- recognition as a person before the law
- equal protection of the law
- a remedy when rights are violated
- not being subjected to arbitrary arrest or detention
- fair trial
- the presumption of innocence
- no retrospective legislation
- freedom from arbitrary interference with privacy
- the right not to be arbitrarily deprived of property
- freedom of thought, conscience and religion
- freedom of peaceful assembly and association.

Police powers are therefore subject to checks and balances. Police exist to maintain and sustain rights and freedom not detract from them. The pursuit of an offender acknowledges and respects the dignity, rights and freedoms of the victim. If police infringe the rights of the suspect, they diminish and compromise their own cause. Article Two of the UN Code of Conduct for Law Enforcement Officials states:

In the performance of their duty, Law Enforcement Officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Similarly, police may not act against individuals who are not suspected of having committed an illegal act merely on the basis of their race, religion or political belief.

At the heart of human rights charters and laws is the principle that individuals are entitled to be treated with compassion and respect and it is essential to recognise the dignity of all. Police who breach these principles in democratic societies are answerable to the law.

Another important principle underpinning international policing is that of minimum force. Force may be exercised only when justified in order to effect an officer's lawful purpose and to restore the peace. In extreme cases, deadly force may be used. However, in the vast majority of cases, the UN Code of Conduct stresses that use of firearms should be kept to minimum.

Community policing will only become a reality if police act with fairness, integrity and impartiality in carrying out their duties.

Fairness applies internally in the way individuals are recruited, selected, appraised, deployed, promoted and supported through equality initiatives and affirmative action. Fairness applies externally in ensuring non-discriminatory service provision.

Developing a human rights culture in the police will ensure that ordinary people who are given extraordinary powers behave in a professional and ethical way, both within the station and in their relations with the public.

There is already a considerable amount of training in civil liberties in South Africa. The challenge is for all members of the SAP and their local communities to work together to create a human rights culture of which everyone can be proud.

COMSA welcomes the steps already being taken by the SAP to address many of the issues covered in this Report. The rapid progress which has been made over the year that we have been in South Africa bodes well for the future. We offer every encouragement to the South African Police Service as it strives to become a democratic, consultative and professional service.

## CHAPTER 7

### Preparations for the Elections

Few elections have been awaited with greater anticipation than that due to take place in South Africa in April 1994. The right of every South African to vote is a culmination of decades of bitter struggle within the country, and a concerted international campaign against apartheid.

In their October 1993 Cyprus Communiqué, Commonwealth Heads of Government 'recognised the historic significance of the April 1994 election' in South Africa. But they also 'recognised the difficulties in the way of a free and fair election in view of the prevailing circumstances in the country. They therefore agreed that a sizable international observer presence would be indispensable if confidence in the process was to be assured and the people of South Africa enabled to cast a valid ballot.'

The Heads of Government saw a Commonwealth Election Observer Group as an 'important component of a wider international presence', and agreed to set up a special voluntary Commonwealth fund to help meet the costs of this observer group.

The third phase of COMSA, which – as noted in Chapter 1 – included electoral expertise, took a close interest in the development of arrangements for the elections.

COMSA studied the electoral legislation as it evolved in the Negotiating Council of the multi-party negotiations. We met with members of the 'electoral' departments of the political parties; officials of the Department of Home Affairs which conducted the segregated elections of the past; and representatives of the other international observer groups and South African non-governmental organisations likely to be involved in monitoring the elections. We also attended a number of conferences on electoral matters such as that on polling and election campaigns organised in November by the Institute for Multi-party Democracy and other bodies.

In addition, COMSA had extensive contact with NGOs conducting educational programmes in democracy and voting, such as the Institute for Democratic Alternatives in South Africa (IDASA), the Matla Trust and the Independent Mediation Service of South Africa (IMSSA). A number of us attended voter education courses conducted by IMSSA.

From these contacts, we are of the view that apart from the basic issue of

free and unimpeded political campaigns, and reasonably peaceful electoral environment, the most important challenges in the conduct of South Africa's first democratic elections are likely to be ensuring:

- that all voters have the necessary documentation to enable them to vote;
- that voter education reaches all potential voters; and
- that all voters are safe to vote.

We elaborate on these issues in Chapter 9, summarising our main observations. In this chapter, we assess the legal provisions for the elections, and proposals for a National Peacekeeping Force to help keep the peace in the run-up to, and during, the elections.

### **Legislative Framework for the Elections**

Two major pieces of electoral legislation were negotiated at Kempton Park.

The Independent Electoral Commission (IEC) Act, passed by Parliament in September 1993, provides for a commission of seven to eleven South Africans and up to five international members who will serve in a non-voting capacity. The functions of the Commission include the organisation and conduct of the elections, the conduct of voter education and the certification of the election.

The Electoral Act, which was expected to be adopted by Parliament during its December sitting, sets out the details of the electoral system. The proposed system of proportional representation is contained in the Interim Constitution and the Electoral Act.

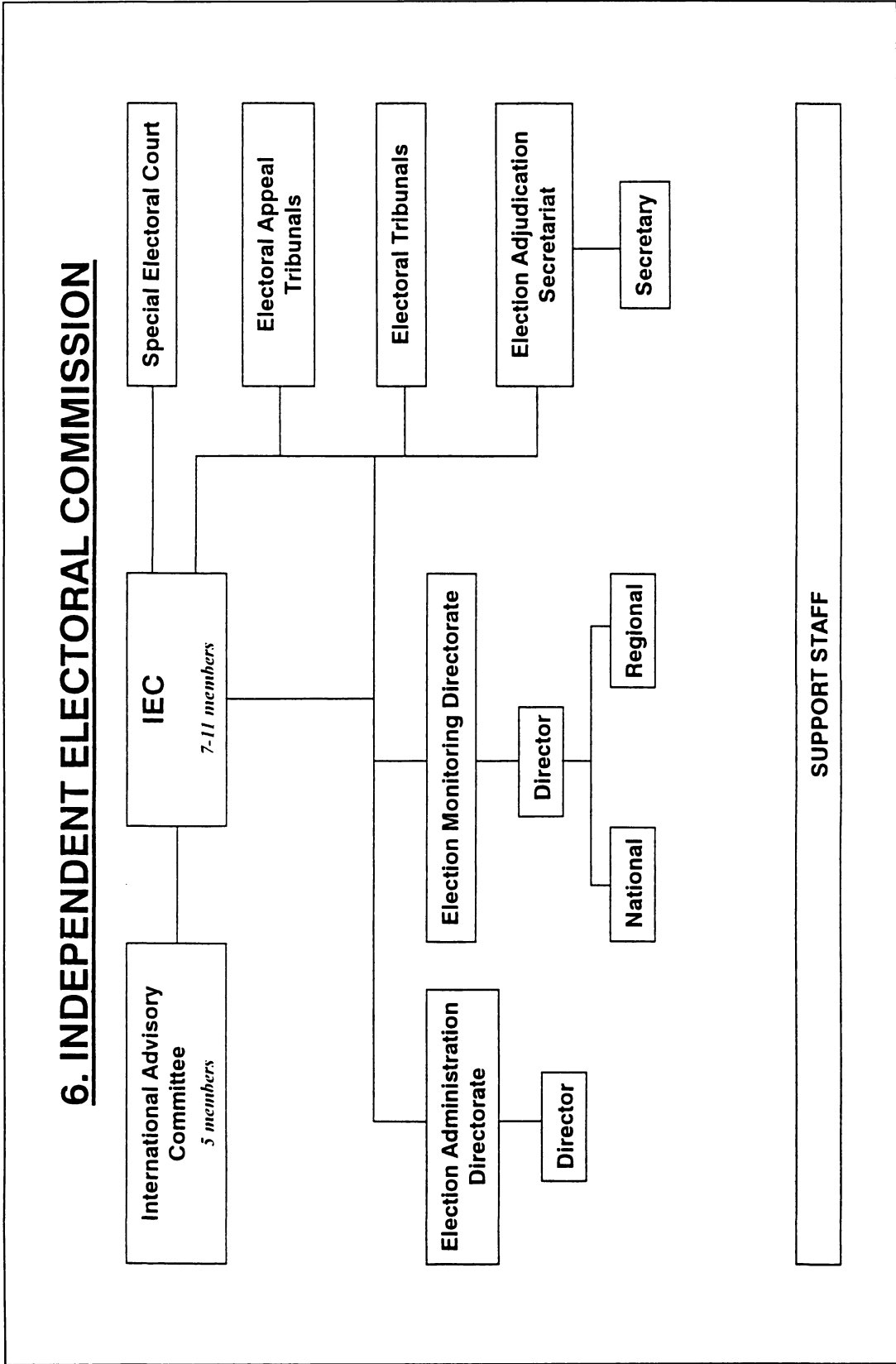
### **Proportional Representation**

The first non-racial elections will be conducted under a form of proportional representation which was judged by the negotiators to be the most appropriate electoral system to meet the needs of South Africa and its people. The system will provide for representation for all political parties in proportion to the number of votes they obtain. It is a key element of the inclusive structures which have been set up to inaugurate the new South Africa.

The electors will vote for political parties and the successful candidates will be taken from party lists which will be published in advance of voting day. Casual vacancies after the elections will be filled by taking the next available candidate from the list of the party concerned. If a member of parliament ceases to be a member of the party which endorsed him or her, a vacancy will arise automatically.

'List systems' of proportional representation similar to that proposed for South Africa commonly include a threshold proportion of the vote which political parties must attain before achieving any representation at all. However, in order to ensure that the elections are as inclusive as possible, no such threshold will apply in South Africa's first democratic elections.

Table 4



Source: Consultative Business Movement

Four hundred candidates will be elected to the National Assembly. Accordingly, a political party can be assured of representation in the National Assembly with as little as approximately 0.25 per cent of the national vote. Such a minimal requirement will ensure that a political party with even limited support will achieve representation in the National Assembly.

Two hundred of the seats in the National Assembly will be allocated to the provinces roughly according to population. The allocation will vary from about 43 in the PWV to about four in the Northern Cape. While not disturbing national proportionality, these seats will be filled from the provincial lists of the parties.

This system will mean that at least half of the members of the National Assembly retain a degree of responsiveness to the needs and desires of the provinces. Accordingly, the advantages of constituencies will be retained at least to some extent.

The decision in the last stages of the negotiations to adopt a single ballot system for both national and provincial elections, as opposed to a separate ballot for each, provoked contentious debate at Kempton Park. The objections of some of the parties, who argued that the provision amounted to a limitation on the freedom of choice of the voters, were overridden in the final hours of the negotiations. The issue continues to provoke debate and, in our view, the controversy is likely to persist.

### **Independent Electoral Commission (IEC)**

The IEC will comprise 7–11 South Africans appointed by the State President on the advice of the TEC.

In addition, there is provision in the IEC for up to five non-voting international members. There is also provision for an International Advisory Committee (IAC) of technical experts.

Like the South African members, the international officers will be appointed by the State President on the advice of the TEC. The size of the IEC is, by any standard, large. This may prove cumbersome, but we recognise that such numbers are probably necessary given the current political realities of South Africa.

The structure of the IEC is shown diagrammatically at Table 4. We welcome the fact that the monitoring function has been seen as important enough to justify a separate directorate. The monitoring directorate will appoint and co-ordinate election monitors, register and regulate the activities of observers and facilitate the role of international observers.

The IEC will establish Electoral Tribunals across the country. The Tribunals will investigate electoral infringements and irregularities, including possible breaches of the Electoral Code of Conduct. There will also be a number of Electoral Appeal Tribunals, each of which will be chaired by a judge of the Supreme Court.



A Special Electoral Court will be chaired by a judge of the Appellate Division of the Supreme Court. The other members of the Special Electoral Court will be two judges of the Supreme Court appointed by the Chief Justice and two other persons. The jurisdiction of the court will include interpretation of the electoral law and the hearing of appeals from the decisions of the Electoral Appeal Tribunals.

The Electoral Act provides for the establishment of party liaison committees at the national, provincial and local levels. The committees will comprise the national, regional and district election agents of registered political parties and will be chaired by representatives of the IEC.

The purpose of the committees is to liaise between the IEC and the parties especially on matters such as staffing, the location of voting and counting stations, and infringements of the Electoral Code of Conduct.

If the election is to run smoothly, a co-operative relationship between the IEC and the parties is essential. It seems to us that the party liaison committees are a mechanism which is likely to foster such a relationship.

The IEC will appoint provincial electoral officers, district electoral officers, presiding officers and voting officers for each voting station, and counting officers and enumerators for each counting station.

The national party liaison committee will be given two days to comment on all appointments. The IEC will consider such comments before finalising appointments. It is possible that the two-day period will be too short, given the number of appointments in question and the need for national party agents to consult widely before commenting on appointments.

The staffing of the IEC presents particular problems. On the one hand, compared with other nations in transition to democracy, South Africa is well endowed with human resources. On the other, constructing a staffing profile which will be acceptable to the range of political parties and reflect the composition of the population will be a particular challenge.

The difficulty arises from the history of job reservation under apartheid. Many of the staff of the existing Department of Home Affairs have experience in the conduct of past elections, albeit on a racial basis, and their skills and experience are factors to be considered. However, to achieve a balance which reflects the new South Africa, it seems to us that a significant number of IEC staff will need to be drawn from outside the existing bureaucracy.

It may not be possible to obtain all the necessary supplementary staff within South Africa. There may be a role for the international community, especially with regard to providing technical expertise.

For example, many Commonwealth countries have skills in the training of electoral officials. International organisations and individual foreign governments should be ready to respond to requests from the IEC. It is pleasing to note that all indications are that the international community is willing to help in this way.

## **Code of Conduct**

When a political party applies to the IEC for registration, it must affirm its commitment to the Electoral Code of Conduct. Lists of party candidates submitted to the IEC must be accompanied by declarations of commitment to the Code of Conduct.

The objectives of the Code are to promote the conduct of free and fair elections and to create a climate of political tolerance.

The Code:

- binds political parties, groups and individuals to respect the rights of others to express divergent political opinions, canvass support and campaign for election;
- commits signatories to: ensure that voters are not intimidated or coerced; repudiate bribery, the incitement of hatred and false allegations; comply with electoral processes and co-operate with the IEC;
- further commits signatories to avoid discrimination on the grounds of race, sex, ethnicity, class, gender and religion, and to promote the role of women in the electoral process;
- binds parties and candidates to accept the outcome of the elections and the IEC's certification of the results.

The Electoral Tribunals and the Electoral Appeal Tribunals can impose a wide range of sanctions for breaches of the Electoral Code of Conduct. These include formal warnings, fines, forfeiture of electoral deposits, withdrawal of access to the media, withdrawal of the right to campaign, removal of public funding and cancellation of the right to contest the elections.

The Electoral Code of Conduct is much more comprehensive than similar codes elsewhere. The range of sanctions should allow the IEC to make a considered response to breaches of electoral law and practice. However, a few points which we consider important are not included.

- There is no explicit injunction to maintain the integrity of ballot boxes and ballot papers.
- There is no requirement to take account of the special needs of the disabled.

## **Offences**

The Electoral Act sets out a range of offences relating especially to intimidation, undue influence, bribery, impersonation and interference with free canvassing and campaigning. Penalties include fines, imprisonment or both.

Once the date of the elections is gazetted, printed material such as pamphlets and posters must carry the name of the printer and publisher. There is a ban on demonstrations and marches within 48 hours of voting day and on public meetings of a political nature within 12 hours.

## **Public Funding**

There is provision for financial assistance to registered political parties for the conduct of election campaigns. Initial grants will be available if any independent opinion poll recognised by the IEC shows that a party concerned has at least two per cent support nationally or regionally.

Alternatively, a party can collect 10,000 signatures nationally and 1,000 in five regions. If a party only wishes to obtain funding for individual regions, the requirement is 3,000 signatures in the region(s) concerned. Further grants will be based on the results of the elections.

Fifty per cent of these grants will be distributed equally between the parties which obtain at least one seat in the national or provincial parliaments. The other 50 per cent of the funds will be distributed in proportion to the number of votes obtained by each party.

## **The Franchise**

Voters must be at least 18 years old. The following categories of persons will be entitled to vote:

- citizens and permanent residents of South Africa;
- children and spouses of citizens and former citizens of South Africa, provided that the persons concerned intend to reside permanently in the country.

There are a limited number of exclusions, notably the mentally ill, those dependent on drugs, and prisoners convicted of major offences. We commend the negotiating forum for its inclusive approach to the franchise.

## **Documentation Required to Vote**

In order to vote, the voter must bring a 'voter eligibility document' to the voting station. Voter eligibility documents are defined as identity documents, temporary identity certificates, reference books and temporary voters' cards. Temporary voters' cards will be issued if the IEC considers such action to be necessary.

It is not proposed to construct an electoral roll, but rather to rely on eligibility documents to establish the voter's identity, and to prevent impersonation and multiple voting by dipping each voter's finger in an invisible ink that can be identified at any polling station.

The construction of an electoral roll would be an extremely difficult and costly task, given the current situation in South Africa.

In certain areas, endemic unrest means that the preparation of such a roll would be almost impossible. Indeed, in some instances, the very attempt to enrol voters could well be an additional inducement to violence. In any case,

there is now insufficient time to construct a roll to meet the 27 April 1994 target date for the elections.

In our view the proposal to use eligibility documents and invisible ink is the only workable alternative. However, there is concern over the large number of potential voters – mainly rural women – who have no identity document of any kind. We have heard many sad stories of the difficulties that such people are experiencing in obtaining the necessary documentation. This is likely to be a major challenge for the IEC. We urge that no effort be spared in ensuring that voters have the necessary documentation to enable them to vote.

### **Election Timetable and the Registration of Parties**

The State President will determine the day(s) and hours of voting on the advice of the Transitional Executive Council. The decision must be gazetted at least 60 days before voting day. The Electoral Act provides that voting will take place on not more than two days, one of which will be a public holiday.

Two days would afford more opportunities for the electors to vote, but there are certain risks entailed in extending the voting beyond one day, including possible violence and a greater threat to the security of the ballot papers.

Political parties must apply to be registered to contest the election within ten days of the election day(s) being gazetted. Applications must include the proposed name of the party, the symbol of the party, a photograph of a party leader (if required), the names of the party election agents and, if applicable, the abbreviation of the party name.

The IEC may refuse registration if the proposed name of the party, the symbol or the abbreviation are likely to deceive or confuse the voters. Registration may also be refused if, in the IEC's opinion, it is likely to be an incitement to violence or hatred, or to cause serious offence to sections of the population.

Applications for registration must be accompanied by a deposit of R25,000 for the National Assembly and R5,000 for each provincial legislature which the party intends to contest. The deposit will be forfeited to the state if the party fails to win a seat in the election concerned. We note that the percentage of the vote required to avoid forfeiture will vary greatly from province to province.

### **Candidates**

Under the Interim Constitution, every South African citizen has the right to stand for the National Assembly with the following exceptions:

- prisoners serving a sentence of more than twelve months;
- unrehabilitated insolvents;
- those of unsound mind;

- holders of 'office of profit' under the Republic. (This, however, does not include those in receipt of a government pension, members of the security forces, Justices of the Peace, Ministers and members of Parliamentary committees.)

Registered parties must submit their lists of candidates to the IEC within 30 days of the gazetting of the election date. The IEC will publish the list within five days of the deadline. If the candidates die or nominations are withdrawn before voting day, the parties concerned will be able to nominate placements and revised lists will be published.

We note that, given the number of positions to be filled and the probable number of political parties, the lists of candidates will be lengthy. We suggest that the IEC give careful attention to the format for the publication of the lists. It should be possible for candidates of particular provinces to be readily identified. We also suggest that consideration be given to producing posters showing lists of candidates for display at voting stations.

### **Ballot Papers**

The ballot papers will include the names of the parties, their abbreviations, their symbols and the photograph of a leader of the party. There is provision for the production of ballot papers in several languages as determined by the IEC.

The inclusion of photographs on ballot papers can cause problems if there is a change of party leadership shortly before voting day. However, in an electorate such as South Africa's in which literacy levels are low, we consider that the advantages of including photographs clearly outweigh the disadvantages.

### **Voting**

The method of voting will be as follows:

- the voting officer will examine the voter's eligibility document and confirm the voter's identity;
- the voter's right hand will be checked to see whether it carries the identification mark which would indicate that he or she has already voted;
- the voter's right hand and identity document will be marked;
- the electoral officer will hand the voter a ballot paper, having placed the official mark on the reverse;
- the voter will take the ballot paper to a voting compartment and vote by placing a cross or other mark in the space next to the party of his or her choice;
- the voter will display the official mark to the voting officer and place the ballot paper in the ballot box.

All persons except electoral officers, party voting agents, monitors, observers, candidates and those actually voting will be excluded from voting stations.

The Presiding Officer may assist the illiterate, the blind and the incapacitated, providing that any marking of the ballot paper is witnessed by at least two party voting agents. The legislation also makes provision for interpreters.

Party agents may object to voters on the following grounds:

- the voter is not the person described in the eligibility document;
- the voter has already voted;
- the voter is not entitled to vote.

There has been considerable discussion of the need for 'tendered voting'; that is, the system by which voters whose eligibility is disputed at the voting station are able to place their ballot papers in envelopes containing the details of the dispute.

Tendered voting is a useful mechanism in that it helps to avoid confrontations in the voting station and allows disputes to be settled in a more considered atmosphere after the poll has closed.

The Goldstone Commission, in its report on preventing violence during the elections, advocated the use of tendered votes in a wide range of circumstances. The Negotiating Council considered a proposal for using the mechanism under narrower conditions, but in the end decided to reject the use of tendered votes altogether.

While we recognise that tendered votes could prolong the count, we note that the absence of any such provision is likely to increase the level of disputes in voting stations and could result in the disenfranchisement of voters.

Voters who, because of illness, disability or pregnancy, cannot attend a voting station on voting day will be entitled to a 'special vote' on the day before voting day at any location approved by a Presiding Officer. Electoral officials will also visit prisons, hospitals and nursing homes in order to collect special votes. The Electoral Act makes provision for mobile voting stations and voting stations abroad.

## **The Count**

Ballot papers will be counted in district centres which will be designated as 'counting stations'. Political parties will be advised of the time and place of each count. All persons except electoral officers, party voting agents, monitors, observers and candidates will be excluded from counting stations.

Ballot papers will be valid provided that there is a mark which clearly indicates the intention of the elector. Political parties may request the counting officers for a recount. If any such request is refused, there is provision for an appeal to the IEC.

The Electoral Act is somewhat unclear as to when the results by counting centre will be announced. The final results for all counting centres will not be known for some days. It is common practice elsewhere to announce provisional results as soon as they become available. In our view the general public's right to information is the overriding consideration. We suggest that provisional results by counting centre be announced as soon as they are available.

### **Certification**

Within ten days of voting day, the IEC is required to certify that the elections were substantially free and fair or, alternatively, to declare that it is unable to do so. A 75 per cent majority of IEC members present is required for the certification.

### **Security Arrangements for the Elections: The National Peacekeeping Force**

As part of its close interest in the preparations for the elections, COMSA followed the debate at Kempton Park on the creation of a National Peacekeeping Force (NPKF), now provided for under the TEC Sub-Council on Defence.

Members of the mission with police, military and political backgrounds participated in a number of seminars and workshops on this matter, organised by the Institute for Defence Policy and Project for the Study of Violence. We also had private meetings with Umkhonto we Sizwe (MK), the military wing of the ANC, and senior SAP and SADF officials on the proposed force.

The concept of an NPKF arose for two reasons:

- the apparent lack of confidence by many South Africans in the SAP and SADF; and
- the fact that there is unlikely to be an international peacekeeping force for the South African elections.

The NPKF is provided for under the TEC Sub-Council on Defence. Provisions include:

- All security forces and armed formations in the country – police and military – are invited to participate. (In effect there are 17 of these, including the SAP and SADF, the police and military forces of the 'homelands' and military wings of various political parties.)
- Although the NPKF is to have its own distinctive uniform and insignia, transport, accommodation, equipment and other logistic support are to be supplied by the SADF.
- The NPKF, which will report to the TEC, will be under the command of a sub-council comprising representatives of all the groups participating in the force.
- The international community is invited to assist in training the force.

### *Concerns*

- There is concern among some security experts over the shift in emphasis during the genesis of the idea, from a service organisation to a force trained along military lines.

At a recent seminar on the NPKF, which brought together the SADF, SAP, MK, international observers, and non-governmental organisations, concern was expressed that if the NPKF used guns as its first line of defence, it could soon become as discredited as the ISU.

- The limited time within which to mould the new force: With the TEC established in December, recruiting and interviewing for the NPKF is unlikely to start before the end of the year. If the force is to be deployed before elections in April 1994, training would be restricted to six weeks to two months. In our assessment, to mould these diverse forces, a longer training period would have been desirable.
- Size of the force: The size of the force is now expected to be 10,000 at the most (compared to the original proposal by the LHR of 30,000). Assuming three shifts a day, only some 3,000 of these troops would be on duty at any given time in the country. Even if these were concentrated in the most violent areas, they would still be a thin force on the ground. This means that there will still be a heavy reliance on the existing security forces.
- Relationship to existing security forces: The TEC gives the sub-council on defence powers to work out this relationship. It would clearly be necessary for it to have good relations with the existing forces.
- Composition: So far, the IFP, far-right and APLA forces have declined to join the NPKF, raising questions about the credibility of the force in areas where these groups have support.

### *External Assistance*

COMSA is well aware of all the concerns listed above. We are of the view, however, that in so far as a political decision has been taken to go ahead with the NPKF, our most constructive input would be to encourage whatever assistance the Commonwealth can offer.

We also agree with those who suggest that, in so far as South Africa is likely to continue to require a special public order force after the elections, the NPKF has a relevance beyond the immediate objective of ensuring a peaceful election.

COMSA thus urges governments and international organisations to be prepared to offer whatever training and other assistance might be required by the NPKF to ensure that it becomes a credible force for maintaining law and order, before, during and after elections.



## CHAPTER 8

### **The Media**

In its second Report, COMSA recognised the extent to which an open and unbiased media will be an important component in making a considered judgment on whether South Africa's April 1994 elections have been free and fair.

Following the release of the second COMSA Report it was decided that media experts would be included in the next phase of the mission.

In particular, the media specialists were to:

- Monitor and report on the treatment of election news in the public and private media, giving special attention to the role of government information services and the South African Broadcasting Corporation (SABC).
- Monitor access to the media by the political parties.
- Maintain contact with the Independent Media Commission to be set up under the Transitional Executive Council and comment on its role and effectiveness.

Over the period covered in this Report, COMSA's media representatives held meetings with most of the political parties, attended meetings of the Multi-party Negotiating Council on the Independent Broadcasting Authority (IBA) and the Independent Media Commission (IMC) bills, and visited the news and public affairs department of the SABC and the editorial offices of a number of major daily newspapers. Regular contact was also maintained with a number of NGOs promoting a more open and balanced media, in particular the Public Broadcasting Initiative, the Campaign for Open Media, the Institute for the Advancement of Journalism and the Broadcast Monitoring Project.

#### **The South African Media**

The South African media have long been criticised both domestically and internationally for the extent to which they are monopoly controlled and for the pro-government bias of the SABC and the failure of the print media to accurately reflect the diversity of South African society. The media, in particular the SABC, were widely viewed as central to the dissemination of apartheid ideology and thus the protection of the state. The criticism of South Africa's media has not faded with the dismantling of apartheid.

Ownership of the media in South Africa is highly concentrated and almost exclusively in the hands of what is regarded as 'the white establishment'. Historically, the broadcast media has been controlled by the state. The print media is dominated by four monopolies.

While this situation has begun to change, there is no doubt that the most influential and popular media in the run-up to the elections will remain under the control of minority interests or, in the case of the SABC, managed on a day to day basis by the same group of people who were in charge in the past.

### **The Print Media**

South African newspaper readers are an elite group. The country has a population of approximately 40 million yet only 1.5 million newspapers are sold every day. Weekend circulation is slightly higher at 2.2 million. Even taking account of the 60 per cent illiteracy rate and a youthful population, the disparity is only partly explained. Newspaper editors and others claim there is no reading culture and thus not many customers beyond the middle class which is largely white.

There are some interesting statistics in the latest All Media and Product Survey (AMPS) done by the South African Advertising Research Foundation that suggest that circulation figures might not tell the full story.

The survey divides readers into four groups: Whites, Coloureds, Indians and Blacks. The *Star*, which has a daily circulation of 216,000, registers more black readers (483,000) than all the other groups combined (400,000). However, more whites (53 per cent) buy the paper than the other groups. According to the survey almost 6 million South Africans (15 per cent of the total population) read a daily newspaper. The statistics show 3.1 million white, coloured and Indian newspaper readers. The figure for black South Africans is 2.8 million.

Four South African print media conglomerates control almost 90 per cent of the country's daily newspaper production and almost all weekend circulation. One group alone, Argus, produces more than 60 per cent of the newspapers sold daily in South Africa. There is also a high degree of vertical integration linking newspaper interests to production and distribution, the national press agency, South African Press Agency (SAPA) and the privately owned TV channel M-Net.

Although ownership of South Africa's print media is highly concentrated there is a degree of diverse political opinion reflected in the various publications.

A cursory scan of news headlines on any given day could lead one to believe that South Africa has a critical, probing and healthy written press. However, on closer examination it becomes clear that, with some exceptions, criticism of the Government is tepid. The examination and criticism of state institutions, in particular the police and army and the political parties, is still an area where journalists tread warily.

Following years of tight government control over the media it is not surprising that, with some notable exceptions, there is no tradition of investigative journalism in South Africa and particularly not in the subject areas cited earlier. At some of the larger newspapers this is slowly beginning to change. There is also a small number of newspapers, mostly weeklies, which do try to appeal to a wider cross-section of South African society.

These publications often contain probing articles on current issues and generally present more balanced and independent views. However, their circulations are small and many of them are in a constant struggle for survival.

At most South African newspapers, the journalists and the senior editorial staff are still overwhelmingly white and male. However, black journalists are filling positions at some of the major dailies in increasing numbers. Most newspapers are actively recruiting black journalists. In an effort to speed up the process some have established active in-house training programmes to upgrade the skills of new recruits and existing staff.

While a number of newspapers are making serious efforts in their news and feature pages to reflect the diversity of South African society, they are naturally driven by the realities of maintaining their revenues. These pressures inevitably result in some editorial policies and decisions which tend to play to the interests of their readership.

Advertisers in South Africa naturally target those groups with the largest amount of disposable income. This factor, despite the readership statistics cited earlier, has so far kept the newspaper market oriented toward the middle class which is predominantly white.

A notable exception is *The Sowetan* which is the largest circulation newspaper (234,000 copies issued daily) in the country. *The Sowetan* is a highly successful and profitable newspaper. The national readership survey shows that 1.5 million black South Africans read it every day. This is a staggering multiple of over 6 persons reading each copy. The paper does attempt to present and reflect the political views and aspirations of the majority black population.

However, the paper is still part of the Argus group. Argus is pursuing divestment options and there are proposals being discussed that would result in significant black participation in the ownership of the paper.

## **Radio & TV**

South Africa has a small number of private radio stations and one 'border' television signal – Bophuthatswana TV (BOP-TV) – which reach listeners and viewers in some areas of the country. However, any examination of the electronic media must centre on the SABC.

The SABC exerts near monopoly control over the airwaves. With three TV channels and 22 radio stations, the SABC reaches almost 25 million listener/viewers a day. In a country where 60 per cent of the population is illiterate this

concentration will be of particular significance during the election campaign.

The SABC does speak to all South Africans. Their radio stations broadcast in English, Afrikaans and all the predominant African languages. The African-language stations draw the largest audiences (12 million listeners a day) and are by far the most popular media in the country.

Each of the three SABC TV channels has distinctive features. TV-1 broadcasts in English and Afrikaans and is considered by most people to be the 'white' channel. The AMPS survey bears this out. Of the 5.4 million viewers, 2.9 million are white and just over a million are black.

The second channel, CCV, has tailored its programming to appeal to the majority of South Africans. Many of its programmes feature black South African presenters, musicians and actors. It is watched by 7.6 million South Africans – 5.7 million of whom are black. The third channel carries educational programmes.

Over the past few months, we have noted a growing trend on a number of SABC TV programmes, particularly in the area of news and public affairs, to include more subjects and programmes that would be of interest to the majority black population. In addition, black spokespersons in increasing numbers are showing up as guests or experts not only to discuss political subjects but health, education and other lifestyle issues.

The SABC unlike most other state-owned broadcasters does not depend on the Government for its financing. The bulk of the R1.2 billion annual budget comes from a combination of advertising revenues and licence fees levied on radio and television set owners. Therefore, the future of the corporation is not simply a matter of restructuring the organisation and changes in programme policy. At the end of the day, the key issue will be how the new SABC will be financed in an increasingly fragmented and competitive media market.

Control of the SABC has only recently been removed from the direct authority of the Government to an Independent Board of Directors. Most of the management structures and indeed the senior managers who ran the corporation as a Government mouthpiece during the 1980s are still in charge.

Only small changes to the news and current affairs departments and their programming have been made so far. While it is generally agreed that the SABC must be restructured and have its mandate redefined, it is unlikely that this process will be significantly advanced before voting day.

The SABC Board, in anticipation of the approaching new media order, has begun to tackle the key questions of affirmative action in staffing and presentation of more diverse views and opinion in their public affairs and news programming. Discussions have also been initiated looking at the mandate, structure, financing and future of the SABC in the electronic media marketplace of the new South Africa.

The new Board of Directors has released a statement outlining the values and vision which they have agreed should guide the corporation in its renewal.

The statement stresses the board's commitment to transform SABC into an independent public broadcaster that will reflect in its staff and programming the diversity of South African society.

The news and public affairs management and staff have recently launched a consultative process aimed at renewal. This has produced a Code of Conduct for SABC editorial staff. The text takes its cue from the Code of Conduct for Broadcasters included in the IBA Act.

The SABC Editorial Code begins with the following statement: 'We shall report, contextualise and present news honestly by striving to disclose all essential facts and by not suppressing relevant, available facts, or distorting by wrong or improper emphasis.'

The Code goes on to deal with the issues of journalistic independence, responsibility for serving the public, allowing news values to prevail in reaching editorial decisions and ensuring that no person or event is depicted in a manner which would encourage or indicate any form of discrimination. All editorial staff were consulted before the draft Code was finalised. It was then submitted to the Board of Directors for approval.

In order to prepare and encourage SABC personnel to be agents of change within the corporation, a number of training programmes have been instituted. Editors, journalists, producers, technicians and some middle managers are attending these training sessions. Most of these sessions are funded by other countries but organised by local NGOs with an interest in a more open and independent South African media.

The lecturers are from European and North American broadcast networks. These activities are already proving helpful in improving the standards and competence of personnel but the freedom to apply these newfound and enhanced skills will rest in the final analysis with senior management.

In the short term attention will be directed at the manner in which the SABC conducts itself during the election campaign. Given its dominant position, and multitude of signals in all languages, what will be watched most closely is whether the corporation is giving fair and unbiased coverage to all political parties contesting the elections. The management is aware of the intense scrutiny that will be directed at SABC programming during the election period and they are examining various ways of dealing with the situation.

Two factors are causing difficulties for those involved in the election planning process. First of all no precedents exist of covering an all-inclusive election. This is being addressed by looking at experiences in other countries, training programmes and brainstorming sessions. But more importantly the media is faced with a stipulation in the law that all political parties must be treated equitably without this being clearly defined.

The SABC appears to be taking a defensive approach to dealing with this situation. Detailed logs of election coverage and programming will be kept. This is entirely legitimate.

However, what will be critical to observe is whether the psychology of the stopwatch will have an influence on editorial decisions and thus election coverage. For instance, it may lead to unimportant events being broadcast merely to establish balance between parties.

COMSA believes that time measurement is only one aspect of assessing balance and bias. In addition to keeping time logs attention needs to be paid to equitable and balanced coverage. This is far more complex, as it involves the actual content of reports and rests ultimately on the extent to which journalists and editors are fair and objective in their approach.

To help with the evaluation of election coverage, a number of Commonwealth countries are considering assisting local media monitoring efforts already in operation. South African and international experts from Commonwealth countries would work together to produce a daily snapshot of election coverage. It is hoped that this daily analysis will provide an objective point of reference and perhaps assist parties bringing complaints about unfair or biased coverage before the IMC.

In the period ahead, preoccupation with the election and campaign coverage is likely to divert some of the attention and energy of the board and senior management away from the major changes which must be made to convert the SABC from state broadcaster to public broadcaster.

### **Regulation of the Media**

Given the importance of the media, the politicians engaged in the multi-party negotiations process took a number of steps that were aimed at creating a level playing field for the parties contesting the elections. The focus was on the electronic media where two bodies, the Independent Broadcasting Authority (IBA) and the Independent Media Commission (IMC), were created. These are illustrated in Table 5.

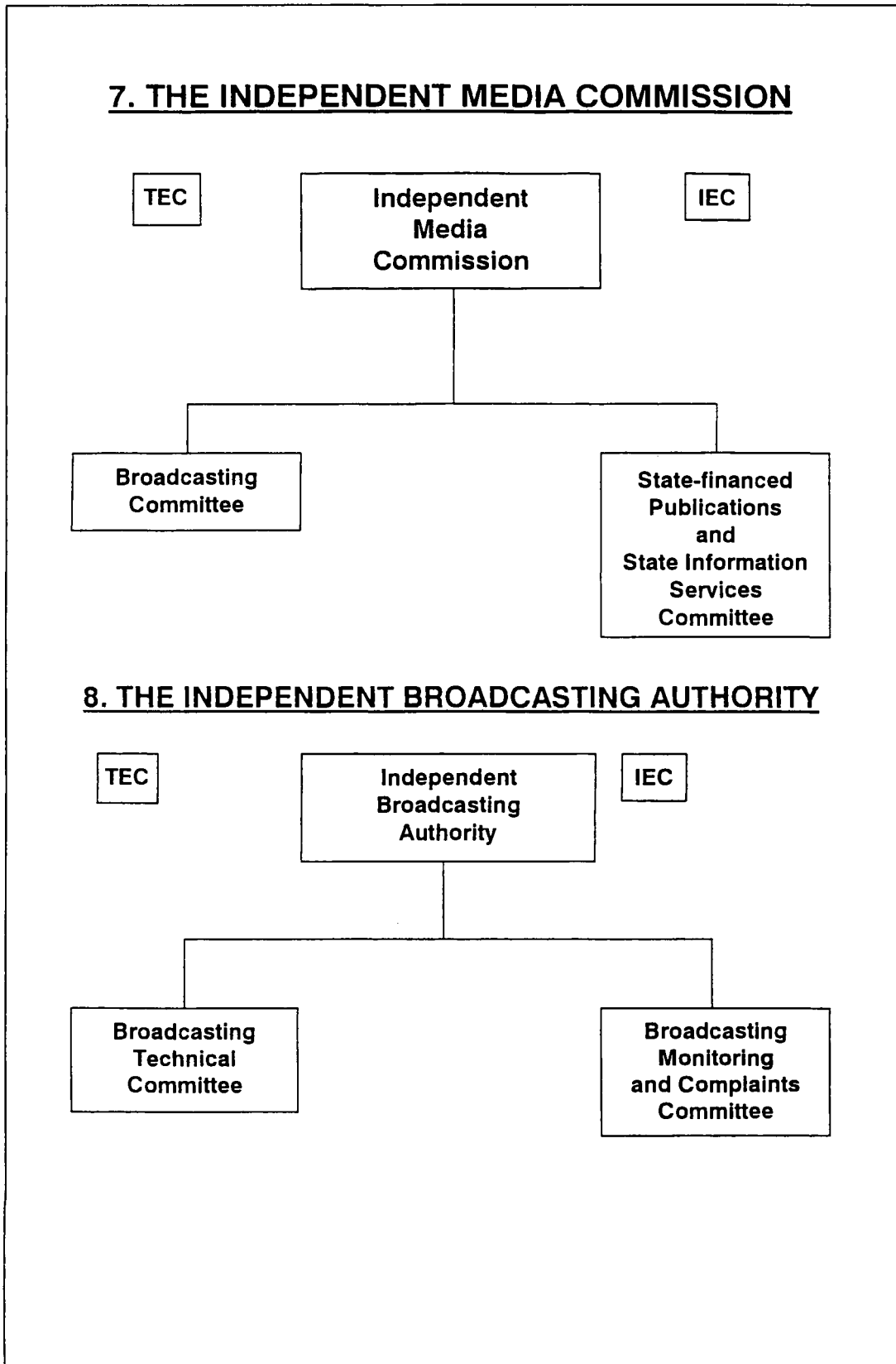
The print media has been left to regulate itself through its own established bodies including the Press Council.

### **The Independent Broadcasting Authority (IBA)**

The IBA will be the regulator of the electronic media. The authority will grant new licences, establish conditions for the extension of new licences and following public hearings have a deciding role in establishing the responsibilities of both public and private broadcasters.

The IBA legislation includes tough provisions to guard against ownership concentration and cross-media ownership. The new authority is also charged with enforcing the South African content regulations under the Act, and a Code of Conduct which will apply to all broadcasting services. Advertising will be subject to regulations in the Code of Advertising Practice administered by the Advertising Standards Authority of South Africa.

Table 5



Source: Consultative Business Movement

The IBA will have a monitoring and complaints committee to ensure compliance by broadcasters. The Act provides for stiff penalties, including fines and even imprisonment in some cases.

The IBA legislation also addresses a number of issues related to broadcasting services during an election. There are strict controls on party election broadcasts, the placement and content of political advertising and the equitable treatment of political parties by broadcasting agencies during an election period.

It is unlikely that the IBA will grant any new broadcast licences before the elections. Even if there were new licences, there is little chance they could be operational before late 1994. However, over the long term the IBA will be a powerful force to bring about fundamental changes such as more choice and greater competition in the electronic media in South Africa.

Most significantly, the new legal structure regulating broadcasting will over time lead to a break-up of the SABC's near monopoly of the airwaves. It is anticipated that the key questions of the SABC's mandate and structure as a public broadcaster, independent from government in the new South Africa, will be addressed by the IBA over the next year but not before the elections.

### **The Independent Media Commission (IMC)**

The IMC Act builds on the election provisions in the IBA legislation. The commission which comes into effect once the election period begins is focused exclusively on the electronic media.

The IMC will have wide powers during the election period. It will oversee the allocation to the political parties of free broadcast time that will be made available, as the law states, 'on an equitable basis'. With respect to programme content, the IMC has been charged with monitoring all broadcasting services to see that coverage of political events on news and public affairs programmes is fair and balanced. Finally, the commission has been given overall responsibility for ensuring that all political parties who wish to purchase advertising time have an opportunity to do so.

The IMC Act also requires the commission to monitor all state-financed publications and state information services during the election period. This is to ensure they do not include any political advertising or issue any statements that the commission considers might advance the interests of any political party.

In order to enforce the Act, the IMC can conduct hearings and levy stiff fines on broadcasters. The commission also has the authority to make any regulations, consistent with the law, that it feels are necessary to carry out its mandate. The IMC remains in operation only until the elections are over.

COMSA would encourage those bodies responsible for conducting the elections and monitoring the media, the IEC and IMC, to inform the media at the earliest opportunity of the mechanics and rules of the game.



It will also be important for these bodies to have good media relations teams that are accessible to the media throughout the campaign. Only a well informed media can be expected to carry out its responsibilities effectively.

### **Provisions on the Media in the Electoral Act**

There is also a number of provisions in the Electoral Act and the Independent Electoral Commission Act that impact on the media and set guidelines for their activities during the election campaign. The most notable are the 21-day pre-election ban on the publication of opinion polls and controls on the content and placement of political advertising in publications.

COMSA believes that most of the provisions contained in the different pieces of legislation are fair and reasonable and should help encourage the media to contribute responsibly to the public debate during the election campaign.

However, we feel there are three notable exceptions.

- The stipulation that all political parties are 'to be treated equitably' in electronic media coverage might have been defined more clearly. It has been left to the media and the IMC to interpret the meaning in practice of 'equitable'. We consider that common sense and good judgment applied by both the media and the Commission will be critical.
- In our view, allowing the print media to regulate itself through its own established bodies is unfair. Regulation by the Press Council cannot be compared as equal to the requirements and sanctions of the IMC legislation which applies to broadcasters. We can fully understand the pre-occupation of the politicians with the electronic media but surely a level media playing field should ideally include all the players.
- The new South Africa is headed toward a society where open debate and the free flow of information will be enshrined in law. We believe the 21-day pre-election prohibition on publication of opinion polls is excessive. We hope that sometime in the future South African legislators will reduce the 21 days to something like 48 hours before polling and in time perhaps eliminate this ban altogether.

### **The Media and the Elections**

COMSA feels that the election campaign presents a unique and immediate opportunity to make some major changes. Covering these elections will be a new experience for the South African media. A great number of journalists, in particular black journalists, have never covered any election. The period ahead presents a formidable challenge not only for them but for their managers as well.

We are pleased to note the numerous efforts under way to train and re-train journalists. This will equip them with new skills and begin the process of

converting the country's journalistic culture from one which responds to instructions from state authorities to a more open, objective and independent approach.

During the forthcoming elections there will be periods of intense activity and often many events will be competing for media attention on a given day and in the same general location. The South African media does not have unlimited resources, and choices, often difficult ones, will have to be made on what to cover.

In this regard, COMSA has observed a certain unevenness in the press operations of the different political parties. Advance notice, proper facilities for media coverage and continuous and open relations with the media by all political parties will be important to avoid accusations of unfairness.

### **Violence and the Media**

A critical problem in South Africa is that, as a result of violence, political parties and their supporters do not have equal, safe and unrestricted access to all areas of the country. The same can be said for the media. A number of journalists have been killed and others injured in the course of covering the events over the past few years. The election campaign poses equally formidable challenges.

In the current environment, which is exacerbated by intense political competition, there is a danger that intimidation will prevent the media from covering certain campaign events. We believe that the impact of violence on media coverage cannot be underestimated. Any monitoring of election coverage must look not only at what was covered and what was not, but also clearly determine the reasons why certain events were sparsely covered or not covered at all.

COMSA urges that every effort be made by the political parties to ensure access to events by the media and generally facilitate the work of the media in all areas of South Africa in the run-up to and during the elections.

## CHAPTER 9

# Observations

### **The Political Transition**

COMSA salutes South Africans for the momentous political achievements during the second half of 1993. This period witnessed agreements on transitional arrangements for the first democratic elections and the adoption of an Interim Constitution to guide the country until a new constitution is agreed after the elections. We commend the determination shown by those involved in the negotiations; the spirit of give and take which prevailed, and the culture of consultation evident throughout the proceedings. The fact that, notwithstanding the seriously conflictual backdrop, these agreements were reached entirely by South Africans, talking to each other in their own country, is especially noteworthy.

Unfortunately, there are still groups both to the left and right of the political spectrum which have either withdrawn from, or refused to take part in, the transitional arrangements. All considered, we believe that the transitional arrangements provide a viable basis upon which to build a new order.

In their efforts to accommodate the demands of the parties outside the negotiations seeking a federal solution, the parties which remained in the talks went a long way towards devolving powers to the regions. The various safeguards that we enumerate in this Report make it unlikely that these powers will be whittled down during negotiations on the new constitution after the elections. In our view, the best way of ensuring that strong regional governments evolve is for those parties most convinced of this approach to play an active role in the transitional arrangements.

Some parties have either said they will not contest the elections, or that they will contest the elections but not participate in transitional arrangements. We urge all political parties both to participate in the transitional arrangements, which are key to ensuring a level playing field, and to contest the elections.

As in our previous reports, we are concerned at the continued lack of clarity over the 'independent homelands', which have not yet been reincorporated into South Africa, and which appear likely to maintain their present status until after the elections. At the very minimum, we feel it is essential that Bophuthatswana and Ciskei – the two 'homelands' that have

refused to incorporate transitional legislation into their statutes, and to permit the holding of an election on their soil – be obliged to take these measures.

The international community has never recognised the independence of these territories. It is inconceivable to us that the voters from these areas should have to be transported 'into' South Africa to cast their ballot, in conditions where parties have not been permitted to campaign freely among them. We urge that the TEC take measures to resolve this matter as early as possible.

### **Violence and the Elections**

There are widespread fears that political violence, already so endemic in South Africa, will escalate in the forthcoming months. Some surveys have shown that substantial percentages of the electorate could choose to stay away from the polls as a result of intimidation. Such surveys are most worrying and underscore the need for a concerted campaign, with the highest level of political support, to ensure that voters are safe to go to the polls.

Despite the continued high levels of violence which we detail in this Report, most incidents of politically related violence take place in just two areas of the country: Natal and the PWV. Within the PWV region, the areas in which violence occurs have been reduced to just two townships (Katlehong and Thokoza). This suggests that the war against violence can be won.

The structures established under the National Peace Accord have played a major role in reducing violence and require every support – financial, moral and political – in the forthcoming months. We commend the decision by those managing these structures to maintain their focus on violence in the tense months ahead, rather than turning their attention to monitoring the elections. We especially call on leaders of the signatories to the Accord to restate their support for it at a public summit, and make every effort to respect its provisions in the coming months.

Among the provisions most often breached is that prohibiting inflammatory statements. While we have noted some improvements in the exercise of political tolerance, the country still has huge areas that are 'out of bounds' to one or other political party. Only rarely does one hear political leaders exhorting their followers to allow other leaders to tread the same ground as them. For this message to sink home, it has to be articulated over and over again, from the highest levels. We urge that all South African leaders show the way.

Another frequent breach of the Peace Accord is the display and misuse of weapons at public gatherings. We have commented on this issue in both our previous reports. With the prospect of hundreds of public gatherings daily in the lead-up to elections, this is a matter that can no longer be avoided. Legislation is only part of the answer. Firm leadership on the issue, and a 'buy-back' scheme such as we proposed in our last report, also need to be brought into play.

Threats of civil war both to the right and left of the political spectrum are worrying. We welcome the talks that took place between the Government and APLA and hope that they will lead to a cessation of hostilities. We also welcome the talks that have taken place between the ANC and Afrikaner Volksfront, and the efforts to bridge the wide gap between these two groups.

With regard to security during the elections themselves, we note several concerns relating to the establishment of a National Peacekeeping Force, based largely on the limited time in which to set up the force, and the threat that some groups will not participate in it. We urge that the force be as inclusive as possible, and call on the international community to be ready to assist the establishment of such a force.

The main responsibility for providing security throughout the country during the election period will continue to rest with the SAP and SADF. These have made some important strides in improving their relations with the community. However, the declaration of an unrest area in the East Rand for much of 1993 worsened relations between the community and ISU, which was accused of torturing detainees. We welcome the lifting of these unrest regulations in December, and trust that such measures will not be resorted to during the campaign and election period without, at the very least, consulting the Peace Accord structures.

### **Provisions for the Elections**

In its report of August 1993 on the prevention of violence and intimidation during the election period, the Goldstone Commission urged that the Independent Electoral Commission be established as soon as possible. Since this legislation was tied to other transitional agreements, it was only possible to establish the IEC in December. This means that, in order to hold elections in April, the IEC will be under considerable pressure. We urge that every support be given to this body to facilitate the enormous task that it has to undertake.

Two of the major issues that the IEC will have to address are making sure that all voters have some form of identity to enable them to vote, and that voter education has reached all parts of the country. Ensuring appropriate security arrangements will also be an important preoccupation.

As we note in this Report, the IEC is well served by a sound structure, including operational, monitoring and adjudicative functions. The legislation also provides sensible mechanisms for liaison between the IEC and political parties.

The Electoral Act is comprehensive, covering the essential elements that make for a free and fair election. Key features include: public funding which will place all political parties on a more even footing, and a well developed Code of Conduct which should greatly assist in creating a culture of political tolerance. The system of proportional representation which South Africa has opted for is a key element in the inclusive structures of the transitional period, which should assist national reconciliation.

## **The Media**

South Africa's all-inclusive elections may prove to be not only an evolution for the country but also for the media as well. The Multi-party Negotiating Council agreed some sensible and workable rules. We have noted a number of shortcomings in the legislation, but believe that overall the provisions should encourage the media to give balanced and fair coverage.

The creation of the IMC and IBA has stimulated debate within media circles, especially the SABC, on how to handle intense political competition. This debate and the influence it is likely to have on the coverage of the elections could be a turning point in freeing South Africa's media, and especially the state-owned media, from the past practice of overwhelming support for the government of the day.

## **COMSA's Role during the Transition**

COMSA's mandate – to provide practical assistance in helping to reduce political violence – will assume particular significance in the charged atmosphere that can be anticipated during the forthcoming months. We will continue our role of maintaining close contact with all political parties; seeking to strengthen the structures set up under the National Peace Accord; and working wherever appropriate with the SAP and SADF.

However, COMSA will also make use of its electoral and media expertise to take an even closer interest in the preparations for the elections; thus assisting the Commonwealth in:

- identifying possible areas in which it can help to provide technical assistance – such as in the IEC, IBA, IMC and NPKF; and
- preparing for the work of the Commonwealth Observer Group to the April 1994 South African elections.

# **Annexes**

## **ANNEX I**

### **Composition of the Commonwealth Observer Mission**

#### **THE OBSERVER TEAM**

**Mr P M Abraham**

Former Permanent Secretary, India

**Mr Abdul Rahman bin Ismail**

Principal Assistant Secretary, Electoral Commission, Malaysia

**Haji Abu Daniel bin Dato Haji Abu Zar**

Deputy Superintendent, Royal Brunei Police  
Brunei Darussalam

**Mrs Victoria Chitepo**

Former Minister of Tourism, Zimbabwe

**Mr C Peter Daniel**

Assistant Deputy Minister, Communications and Culture  
Canada

**Mr Foo Kia Juah**

Police Superintendent, Director Public Affairs Department  
Singapore

**Mr Timothy Glanville**

Electoral Officer, Australia

**Haji Hasrin bin Haji Sabtu**

Deputy Superintendent, Royal Brunei Police  
Brunei Darussalam

**Major-General Charles Ndiomu, Rtd**

Nigeria

**Chief Superintendent Peter Stevens**

Head, Police/Community Relations Department, Scotland Yard  
Britain

**Mr G P Tiwari**

Former Speaker, Rajasthan Legislative Assembly, India

#### **SECRETARIAT STAFF**

**Mr Max Gaylard**, Director, Political Affairs Division

**Dr Moses Anafu**, Special Representative of the Secretary-General to South Africa

**Ms Colleen Lowe-Morna**, Political and Media Adviser



## ANNEX II

### Letter to the Chairman of the NPS on the Carrying and Misuse of Weapons

UNITED NATIONS  OBSERVER MISSION  
IN SOUTH AFRICA

4 November 1993

Dear Dr. Gildenhuys,

Carrying of Weapons in Public Places

At several of our meetings with you, we have commented on the disturbing presence of weapons and ad hoc firing of shots at public gatherings. Despite the many representations made through you, and direct communications on this issue with political parties, the phenomenon appears to be getting worse: a fact that is particularly worrying in the run-up to the many gatherings anticipated during the election campaign.

The Code of Conduct for Political Parties and Organizations agreed by the signatories to the National Peace Accord states that people attending political gatherings, marches or meetings may not have, carry or show any weapons or firearms. The Goldstone Commission has recommended that the carrying of weapons at public gatherings be banned. The draft code of conduct for the elections being debated in Kempton Park makes a similar recommendation. All four of the international observer missions are totally opposed to individuals being allowed to carry weapons at public gatherings.

Despite these facts we have been to funerals in troubled areas like the East Rand recently at which shots have been fired randomly into the air, and local peace monitors have reported the situation to be "normal" on their return to the Joint Operations Centre. These sorts of reports suggest that such behaviour has come to be regarded as acceptable: a development that we regard as most disturbing.

The presence and misuse of weapons at public gatherings exposes many innocent people, including our observers, to unnecessary danger. More fundamentally, our presence at such gatherings may be misconstrued as condoning such behaviour.

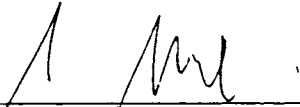
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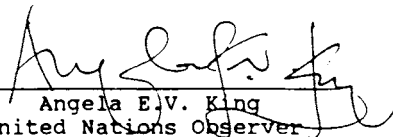
Dr. Antonie Gildenhuys  
Chairperson  
National Peace Secretariat  
P.O. Box 9700  
Johannesburg 2000


- 2 -


Given the seriousness of the issue, we request that it be placed on the agenda of the forthcoming meeting of signatories of the National Peace Accord, with a view to securing a reaffirmation and compliance with the provisions made in the Accord on the matter.

We also urge that there be more public destruction of weapons seized by the police. This, in our view, would go a long way in helping to erase suspicions, restore confidence in the genuine intentions of the Security Forces and act as a powerful deterrent, as well as galvanise public opinion against the carrying of weapons in public.

  
Ambassador P. von Stulpnagel  
European Community Observer  
Mission in South Africa

  
Angela E.V. King  
United Nations Observer  
Mission in South Africa

  
Sam Ibok  
Organization of African Unity

  
Colleen Morna-Lowe  
Commonwealth Observer Mission  
in South Africa

ANNEX III

Newspaper Article on the Marshal Training Programme

THE WEEKLY MAIL & GUARDIAN  
November 12 to 18 1983

WEEKLY MAIL / SOUTH AFRICA

13

# Success for 'marshal plan'

## Commonwealth police are training marshals from South Africa's political parties and the project is already bearing fruit, writes Stephen Laufer

A South African police force taught by British marshals the finer points of peaceful crowd control last week, they claimed the first major practical victory for their new multi-party public order programme.

The project, which is funded by Britain's overseas aid ministry and organised by the Commonwealth Observer Mission in South Africa, is designed to produce a cadre of trained, unarmed marshals which will supervise demonstrations organised by the political parties to which they belong.

The Inkhatha trainees follow a 100-strong African National Congress contingent, which faced its first test immediately following graduation when it was responsible for policing the recent Cosatu march on the World Trade Centre.

"They saved the day when a breakaway group tried to rush the police cordon at the entrance to the negotiating building," reported Peter Stevens, the Metropolitan Police chief superintendent who initiated the programme. "The marshals' line held under pressure as they had been taught, and direct contact between the police and the demonstrators was averted."

The marshals' strength and influence lies in their allegiance to the group they are regulating, says Stevens. "The fact that

impressed at the willingness of all sides to listen and talk to each other. "There was initially a great deal of antipathy between them, but the recognition that they depend on each other to keep the peace is beginning to dawn."

For many marshals, says Stevens, the training is seen as a stepping stone to a police career. "They want to protect their people, many would like to become police officers."

Meanwhile, the trainers are gearing up for their first National Party contingent, which will include 60 black marshals from Soweto and 20 whites.

"Then it's off to Cape Town," says Ellison, "where we'll also be training PAC marshals at their request."

marshals and demonstrators to simulate crowd control situations.

In the classroom, the most fruitful moments have often come during encounters between the trainees and representatives of the Internal Stability Unit, reports trainer Louisa Ellison. A chief inspector in charge of policing football matches and other large crowd situations in London, she has been

marshals and demonstrators to simulate crowd control situations.

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