

COMMISSION OF INQUIRY REGARDING
THE PREVENTION OF PUBLIC VIOLENCE
AND INTIMIDATION

REPORT ON THE CURBING OF VIOLENCE AND
INTIMIDATION DURING THE FORTHCOMING
SOUTH AFRICAN ELECTION

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REPORT TO THE COMMISSION OF INQUIRY REGARDING THE
PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION

BY THE

MULTINATIONAL PANEL TO INQUIRE INTO THE CURBING OF
VIOLENCE AND INTIMIDATION DURING THE FORTHCOMING
SOUTH AFRICAN ELECTION

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INTRODUCTION

On March 8, 1993, Mr. Justice Richard J. Goldstone announced the creation of a multinational panel to inquire into ways and means of curbing violence and intimidation during the election that was then expected to occur in early 1994 (and has now been scheduled for April 27, 1994) (see Appendices I and II). Mr. Justice Goldstone invited all interested parties to provide written submissions to the Panel by May 31, and public hearings on the Panel's report were scheduled for early August.

The Panel convened in Johannesburg from June 23 through June 26, reviewed submissions received from various sources (see Appendix III), and discussed a wide range of issues bearing on the minimization of violence before, during and after the election. It met again for three days in Cape Town at the beginning of August to review a draft of this report and prepare its final recommendations for submission to the Commission.

From the beginning, it was clear to the members of the Panel that, of necessity, the issues we were considering would overlap those that were the subject of the negotiations being conducted in the Multiparty Forum at Kempton Park. We determined, however, that, if we were to address comprehensively the elements of the election process that might bear on the prevention of violence, it was important not to limit the scope of our inquiry. Hence, we sought to explore, at least preliminarily, such issues as the

role of the proposed Independent Electoral Commission ("IEC"), the scheduling of the election, the voting process, and the counting of ballots, as well as more obviously pertinent questions relating to the role of the police, the role of monitors and observers, and the management of campaign rallies, marches and demonstrations.

The following report reflects the full range of the Panel's discussion, including the issues that bear directly on the problem of violence and those that relate more broadly to the structure of the election. The Panel recognises that much of what follows touches upon questions that have been the subject of extended consideration by the Technical Committees, of debate and negotiation among the representatives of the various parties, and comment by many thoughtful analysts of election systems. While mindful that their mandate carried them into areas immersed in the political process and that our recommendations would not necessarily be consistent with those that emerged from the multiparty negotiations, we nonetheless felt it important to offer their independent assessment of the potential for violence and intimidation and some possible steps that would minimise that risk.

This report does not purport to be, in any sense, an in-depth analysis of the election process or of the institutions -- government and non-government -- that are part of that process. Moreover, it must be noted that our discussions have taken place during a period of almost daily developments in the negotiations among the parties and prior

to any final legislative decisions concerning representation, the IEC, or the Electoral Act. Despite the substantial uncertainty concerning the constitutional and legal structure within which the election will be held, the Panel members have sought to offer suggestions that, whether they are accepted or rejected by the participants, will at least focus attention on some of the critical issues that must be addressed as South Africa moves toward the momentous events of 1994.

Whatever course the people of South Africa choose to follow as they create the structure for their first truly national election, two overriding principles should govern. First, it rests with the leaders -- political, religious, and community -- to set the standards by which the election will be conducted. Each must make it clear from the beginning, and at every opportunity thereafter, that violence and intimidation simply will not be tolerated. Second, the violence that does occur cannot be permitted to interfere with the democratic process. Those responsible for conducting the election and those participating in it must be fully and firmly committed to the proposition that the citizens of South Africa will vote on schedule, no matter what efforts are made to stop them.

ANALYSIS AND RECOMMENDATIONS

I. The Election Process

The Panel began by identifying the elements of the election process that were most likely to give rise, directly or indirectly, to the potential for violence and intimidation during registration process, the campaign, the balloting and the post-election period.

A. Implementing the Legislation

At the time of this report, the date fixed for the election will be less than nine months away. The Multiparty Forum, although working assiduously, has not yet adopted tentative "legislation" establishing a transitional government structure or an Independent Electoral Commission, and it is not expected to do so for another month.

The Panel is concerned, that, if formal adoption of this legislation must await the convening of Parliament in September and there then follows even minimal delay in implementing it, the IEC will not be in full operation until October at the earliest -- only six months before the election. Yet, although there will be no formal electoral structure in place, the campaign will already have begun. The parties will be raising funds, holding campaign rallies, and canvassing for voters -- all without a body of regulations or a code of conduct to govern their activities.¹

¹ Equally importantly, meaningful voter education can proceed only when campaign and voting procedures have been established.

Beyond the general structure set out in the election law, the IEC will have to promulgate detailed regulations governing the day-to-day operation of the election, that this will allow the participants in the political process (the parties, voters, and the international community) to understand the rules under which the election will be run. These regulations must first be subject to comment by the parties and by interested individuals, and that process too will consume substantial time.²

We note also in this regard that proportional representation ("PR") is not a self-implementing principle. Although the adoption of a PR system itself contributes to the minimization of violence by giving the parties a fairer share of seats in the constituent assembly than would a plurality or majority system, a number of difficult decisions remain to be made -- e.g., the formula for allocating seats, the threshold for representation, and the assignment of regional seats.

We emphasize here, as we will throughout this report, that there is no time to waste and that every possible step must be taken to shorten the period between the enactment of the implementing legislation and the establishment of operational government structures. Thus, for example, we do not believe it sufficient to have the Technical Committee draft, and the Forum approve, a statute creating the

² The police will be asked to respond to the special demands of the political process without adequate guidance, and there will be no forum in which the disputes that are certain to arise can be resolved.

Independent Election Commission; the Committee, in consultation with experts in the management of elections, should even now be working on the internal organization and staffing of the IEC and on the detailed regulations that will have to be issued almost immediately.

B. The Independent Election Commission

The early appointment and effective operation of the IEC is the key to a legitimate and peaceful election. If it is to be seen as a truly independent and credible body, it must have the authority to "conduct," not merely to "supervise," the election. We address in the following pages specific aspects of the IEC structure and operation relating to violence control, but we make the following general points to emphasize that confidence in the legitimacy and fairness of a free election is itself critical to the goal of violence prevention.

1. IEC Membership

The members of the IEC must, of course, be persons of stature who will not bow to political pressure. It has been suggested that the credibility of the Commission would be enhanced if some of its members were appointed from the international community. Although we recognise that some cosmetic value may attach to the presence of non-South Africans, we believe that the management of the election should be placed in the hands of South African citizens. Difficult decisions will have to be made, but the Panel believes that the Commission should confront those decisions without the temptation to use international members as either

shields or scapegoats. To the extent that there is some hope that the presence of international members would co-opt the international community and influence its assessment of the fairness of the election, the Panel believes that an insufficient justification for abdicating a responsibility that is properly lodged with the South African community.

This said, there is no reason why the IEC itself and its directorates should not be able to draw on the body of election expertise available in the international community. Consultants with experience in the management of elections are available through foreign non-governmental organisations ("NGOs"), through individual governments and through international governmental organisations ("IGOs").

2. Dispute Resolution

One of the most important roles the IEC will play is the resolution of disputes that arise during the course of the election -- disputes ranging from technical violations of campaign regulations to incidents of voter intimidation and other serious misconduct. The IEC must be able to investigate and to respond rapidly and credibly to complaints of misconduct because access to a forum that is capable of such response will go far toward minimizing the risk that disputes will result in violence.

The draft IEC legislation reviewed by the Panel does provide for an adjudicatory function but says nothing about how such a function would operate. The point made earlier about the importance of speed in establishing the electoral machinery is specially applicable here; the IEC must

be ready at the earliest possible date to assume responsibility for dispute resolution and enforcement of the election laws and regulations. The Panel is not in a position to recommend the creation of any particular adjudicative or enforcement structure, but whatever structure is adopted should have at least the following elements:³

- * An intake process, at the regional or district as well as the national level, to receive complaints, dispose of those that are without merit, and refer the others to the appropriate authority.
- * An office that can respond to questions and offer opinions and guidance to those who seek interpretation of the election laws.
- * A conciliation or dispute resolution function designed to resolve less serious problems without full-scale adjudication, including the power to impose lesser sanctions (e.g., fines below a certain level).
- * An investigative arm, with subpoena authority, to develop the factual basis for the more serious complaints.

³ There is some risk that this adjudicatory arm may be seen as pre-empting the role of an independent judiciary, but we believe that appropriate explanation of the purpose it is intended to serve, together with the continued availability of judicial review in the most important cases, should defuse this concern.

Sufficient staff from the police and from prosecutors' offices should be seconded to the IEC and operate directly under its authority.

- * An enforcement arm responsible for screening the more serious cases and acting for the Commission in adjudicatory proceedings.

- * An adjudicating arm, staffed by one or more judges assigned to the IEC for the duration of the election, who would hear cases brought by the enforcement office and impose sanctions where a violation was found.⁴

- * The decision of the adjudicating tribunal and the sanction imposed may be appealed to the full Commission. Judicial review of the IEC's decision should be available only in the most extraordinary circumstances and then on an expedited basis.

3. Staffing

Full authority for conduct of the election must rest with the IEC, but it must be in a position to draw on the experience of Home Affairs personnel, who are the only ones with experience in the management of elections. Those

⁴ Alternatively, where the enforcement office recommends imposition of the most severe sanctions, original jurisdiction might lie with the Commission.

officials obviously bring with them the burden of suspicion that, for many, attaches to the present government. We believe, however, that the tension between the need for a staff that can proceed with minimum start-up time and the desire to establish the independence and credibility of the IEC can be reconciled by establishing at once an executive arm responsible for organizing the IEC's operations and then seconding the necessary Home Affairs staff to the IEC for the duration of the election. It is particularly important that there be, at the earliest possible date, efficient regional and local IEC offices, and to that end it may be necessary to place greater reliance on Home Affairs Personnel. The IEC staff at both the national and local levels must, however, come rapidly to reflect a broad cross-section of the South African community. By training this new staff and by drawing on the expertise of consultants from outside South Africa it should be possible to create an administrative structure that is both effective and insulated from suspicion.

4. Remediation

Particularly in what for most will be their first election, it is incumbent on the IEC to serve an educational and remedial function. It must actively seek out information about the ongoing election process -- where it is working well and where it is not -- and assist the participants in adhering to the law and the code of conduct. Critical to this effort is the collection of intelligence (in the best sense of the word) from all available sources, and

the IEC should assign that responsibility to a special unit within its investigative staff.

In addition to providing formal and informal opinions to those who seek them, IEC representatives at national, regional and local levels should reach out to the parties, offer training programmes and other assistance, and make every effort to prevent serious violations before they occur. They should also issue public reports, identifying problems that have arisen and the steps that should be taken to resolve them so that resort to the imposition of sanctions occurs only where absolutely necessary.

5. Sanctions

Even if the IEC makes every effort to prevent violations of the election law, there will arise situations in which disciplinary action is required. In those cases, the IEC's credibility -- the perception of the contestants that it can serve as a vehicle for resolving disputes that might otherwise be resolved in the streets -- depends on its ability (and its willingness) to respond rapidly and, when a violation of the election law or the code of conduct has been established, to impose fair but meaningful sanctions. This is an extraordinarily difficult task.

The administrative sanctions that might be imposed, depending on the seriousness of the violation, range from private or public admonishment through increasingly severe fines, to loss of access to the media or of the right to participate in multiparty debates, up to the political death sentence -- an order barring a party from the ballot in

one or more areas or nationally. Finding the proper point along this spectrum is a delicate process, at best.

Presumably, technical violations of the election laws (e.g., occasional failure to report donations) can be dealt with by assessing financial penalties, at least in the absence of a pattern that demonstrates wilful refusal to play by the rules. Continuing violations reflecting such a pattern or more serious offenses (e.g., obstructive or intimidating conduct) must be dealt with sternly, for once there is any sense in the political community that the IEC is reluctant to act, it will find it difficult to recover its credibility.

On the other hand, the more severe penalties themselves pose serious systemic dangers. To deprive a party of access to the media or of the right to contest the election in a particular area, for example, risks driving it into outlaw status and thus forcing it to adopt violence as its only means of expression. Also, it may well be the case that the smaller, less affluent parties will be the ones least likely to abide by the rules and the ones that will suffer most from even modest sanctions, while the larger parties will be able to shrug off even substantial monetary penalties and thus exacerbate the minor parties' sense of isolation.

Nonetheless, it appears to the Panel that it would be the greater evil for the IEC not to respond with sufficient severity. The more dramatic sanctions should not be imposed unless there is a pattern of serious violations, and the offending party must be given a full and fair hearing

commensurate with the severity of the punishment. Certainly, a bar order should not be imposed without the concurrence of a super-majority of the IEC (i.e., a 75% vote), and some of the lesser but nonetheless severe sanctions could require a two-thirds vote. In any event, it is vital that the sanctions imposed, whatever they may be, should be seen as consistent and equitable.

The IEC will also need to develop a body of sanctions that can be applied against non-participants -- individuals and entities other than registered political parties. It is worth noting that the range of sanctions realistically available against individuals and non-participants will be more limited, with principal reliance having to be placed on financial penalties. Further, non-participants, having no perceived stake in the election process, may well be more inclined to seek judicial review of the Commission's decisions rather than acquiesce in the imposition of sanctions.

Lastly, it must be emphasised that the imposition of sanctions serves to deter future misconduct in two ways: first, by specifically deterring the violator from repeating the violation; and second, by deterring others who, out of ignorance or wilfulness, might be tempted to break the law. This latter, essentially remedial purpose, can only be served if the IEC publicises its actions and the reasons for them.

6. Rumour Control

One of the most important functions that the IEC can perform is to serve as a rumour control centre. There is nothing more dangerous in the heat of an election than to have already highly emotional -- often fearful -- citizens exposed to unconfirmed rumours of violence, intimidation or fraud.

If, as we suggest above, the IEC creates an information gathering unit, that unit can also investigate rumours. It should be open twenty-four hours a day as election day grows closer to receive reports from NGO and IGO monitors, the Peace Committees, ordinary citizens, and government sources, and should be empowered to call on IEC representatives and police to determine the truth of the matter and expeditiously report the results of its inquiry as widely and publicly as may be necessary to quell the rumour.

C. Party Registration

Every party seeking seats in the constituent assembly should be required to register with the IEC. We recommend that the Commission establish a deadline for such registration no later than one month after it has become operational so that full administrative control over the parties can be implemented during the earliest stages of the campaign and so that voter education programmes can be developed with knowledge of which parties will appear on the ballot. The requirement of early registration presents some risk that a party may change its mind about participation and seek to register after the deadline, but the Panel believes

strongly that no participants should be able to delay submitting itself to the formal election control process.

The process of party registration is important in at least two respects. It serves not only as the formal prerequisite to participation in the election but as a means of securing the commitment of the party and its leadership to comply with the election laws and regulations and with the code of conduct governing the campaign. That code should, among other things, require the parties to forswear resort to violence, avoid the use of inflammatory rhetoric, accept the authority of the IEC to impose sanctions for violations of the code and the election law, and submit to the IEC's jurisdiction for purposes of dispute resolution. Even if only symbolic, this formal commitment will constitute the participants' acknowledgement of the primacy of the rule of law and evidence their willingness to abide by the outcome of the democratic process.

Those parties or organisations that choose not to register and thus not to subject themselves to the jurisdiction of the IEC should nonetheless be asked to declare publicly that they reject violence and intimidation in pursuit of their political goals. And, of course, the election law and the general criminal statutes will be fully enforceable against the non-participating parties and their leaders if they engage in prohibited conduct.

D. Voter Identification

The Panel thought it important to address the issue of voter identification and the related issue of

preventing multiple voting in light of the risk that failure of these controls may lead to disruption and claims of fraud on election day.

We began with the assumption that, in the vast majority of cases, voter eligibility would be established by displaying the national identity card. Obviously, the credibility of such a system depends on the government's ability to ensure the absolute maximum dissemination of such cards through a far-reaching, pro-active effort to locate those who do not have them and to make the process of obtaining the cards as convenient as possible. We understand that the Ministry of Home Affairs has improved the issuing procedure, but still further efforts are needed, not only by the Ministry but by civic organisations, churches and NGOs, to reach those who have not yet been registered and particularly those who may be reluctant to come forward.⁵ Once in place, the IEC should assume responsibility for the issuance of the cards as an integral part of its pre-election operations.

Despite whatever effort is made to reach the members of the voting population, there will be voters who arrive at the voting station without identity cards, either because they lost them or never received them. In such cases there are two alternate methods of determining eligibility: either the voter can produce a birth certificate or

⁵ We note here that, as difficult as it is to mount a voter registration campaign, substantial benefits flow from the effort in terms of voter education and securing the commitment of potential voters to participation in the democratic process.

naturalisation papers or another individual can vouch for the voter's eligibility. In either situation, the voter should be permitted to vote through the tendered ballot procedure described below.⁶ Challenges either to the legitimacy of the voter's identity card or to the sufficiency of the alternate identification can be made at the poll or, where there are allegations of some widespread fraud in the issuance of cards, by complaining to the IEC before election day.

The decision to rely on identification cards rather than a central registry places a special emphasis on the need to ensure against multiple voting, presumably through the use of some indelible marking on the hand of the voter after the ballot has been cast. We considered at some length the benefits and difficulties of visible ink rather than ink that would be visible only under ultra-violet light. We noted, for example, that the use of visible, indelible ink creates the risk that someone who chooses to vote in spite of pressure not to do so could be identified and be subject to retaliation by those urging a boycott, while reliance on ultra-violet technology would involve both substantial costs and the danger of a power failure or other technical problems that could cast doubt on the integrity of the voting process. In the end, although we favour the ultra-violet system which worked well in Cambodia, for example, the IEC must make the final decision based on its own assessment of the comparative risks and benefits.

⁶ Where one voter vouches for another, that voter's identification information should be recorded and submitted as part of the tendered ballot documentation.

Finally, the Panel considered how best to deal with the possibility that the IEC would find that voting at a particular site had been compromised and would order a re-vote. In the absence of a voter registry, identification of those who voted at that site would be possible only if the voter's identification document were stamped with the number of the voting place. That procedure would pose some risk that voters would perceive the marking as a violation of the secrecy rule, but we concluded that the importance of permitting a re-vote where necessary overrode whatever problem voter perceptions might create, particularly if the issue were dealt with adequately as part of the voter education process.

E. Voter Education

As is evident throughout this report, there is no element of election procedures more important than voter education. At almost every turn, our discussions turned to the need to ensure understanding of policies and procedures that might seem facially reasonable to those who are in the business of running elections but that, particularly against the background of South African history, could too readily be seen by the electorate as intended to violate their rights and the integrity of the democratic process.

Luckily, South Africa is blessed with an extraordinary collection of its own organisations (NGOs, churches and others), aided by foreign NGOs and by IGOs, that, for many months, have been devoting themselves to voter education. This process has involved the training of trainers, in an effort to achieve maximum impact for time and money, and

direct training of individual voters, as well as the development of educational materials, television programmes, and even theatre productions. It is vital that this broad-ranging effort continue -- indeed, expand -- and that donors of every sort be encouraged to support it. At the same time, however, the IEC, once in operation, must make the creation of its own voter education programmes the highest priority. The IEC must also be prepared to work with the private groups to ensure proper coordination of their efforts and to ensure that accurate and consistent messages are being conveyed.⁷

The voter education programmes must, of course, explain as clearly as possible the basics of the election process: the function of the national identity card and eligibility to vote, the role of the parties, the nature and purpose of the campaign (including voter canvassing, opinion polls, and political rhetoric), the structure of the ballot, the technical aspects of voting (including selection of the voting station, the roles played by those who will be present in and around the station, and marking and depositing the ballot), and how the votes will be counted and the results announced.

Equally important, however, are the less tangible lessons that must be conveyed. A few examples:

- * First and most importantly, there must be constant reassurance concerning the secrecy of

⁷ As we have noted previously, it is difficult for private or government programmes to operate at maximum efficiency until election rules and procedures are adopted and decisions made about such issues as the length of the election and the participation of the parties.

the vote, including explanations of specific elements of the process (e.g., the marking of the identity card) that might give rise to fear that the voter's choice would be revealed.

* Second, there must be continuing reminders, by political leaders and educators, that in a democratic system there are winners and losers and that, whichever side the voter was on, he or she must accept the result. These reminders should include the fact that there will be future elections in which the people will have a chance to decide whether their elected representatives have done a good job.

* Third, there must be regular exhortations, again by politicians and community leaders as well as trainers, against the use of violence, and the voters must be encouraged to report threats and other misconduct to the IEC.

* And fourth, voters must be encouraged to participate in the political process by attending meetings, going to rallies, listening to television and radio, and campaigning for the party of their choice.

F. Campaign Regulation

Much of what falls under the heading of campaign regulation will, of course, involve questions relating both to the basic management of the election and to the prevention of violence. Because the perceived fairness of the campaign process relates directly to the risk that citizens may lose faith in the prospect of a fair outcome and may resort to violence, the Panel offers the following observations:

1. Finance

The flow of funds will vary dramatically among the parties, but the Panel does not believe that, in this first national election, there should be any limitations placed either on the sources from which campaign contributions can be obtained or the amount of individual contributions. If no such restrictions are to be imposed, however, it becomes all the more important that the source and amount of each substantial contribution (the draft legislation has set the amount at R 10,000) be reported to the IEC and be made publicly available so that the voter will know what interest groups and individuals, whether foreign or domestic, are supporting particular parties.

The only limitation that we recommend in this regard is that all parties be prohibited from using government funds and government property for political purposes. We recognise that it will sometimes be difficult, for example, to distinguish between official and political travel by government personnel, but this should not mean that a party

or an individual should be permitted to expend government funds or use government vehicles or facilities purely for political purposes.

2. Media Access

Although, as we noted above, it will not be feasible to ensure comparable funding for all political parties, it is important to level the political playing field to the extent possible. One way to accomplish this is to provide all parties at least some minimum access to television and radio. The Independent Media Commission "(IMC)" should require the broadcast media to allocate a fixed amount of free air time (including so-called "prime" time) to all registered parties⁸ and to make available to them on equal terms the opportunity to purchase time. In addition, the media should be required to provide the IEC with time for public service announcements and such other messages as may be necessary during the campaign and should be encouraged to create or provide free time for non-partisan voter education programming.

The issue of media fairness encompasses not only the right of the parties to fair and reasonable access to radio and television for purposes of conveying their messages to the voters, but the right of all parties to insist that the state-controlled media meet certain minimal standards of fairness in their coverage of the election. Although there

⁸ Whether such free time should be allocated to the parties based on estimated membership is an issue that should be resolved either in the Multiparty Forum or by the IEC and the IMC.

are no bright-line standards by which such reporting can be judged, the capacity of biased coverage to exacerbate tensions and to skew particularly the first-time voter's perception of the process cannot be ignored. We assume that the danger of media bias has been substantially diminished by the reorganisation of the SABC Board. Nonetheless, the IMC should monitor news broadcasts and other election coverage and, where it finds bias, should direct management, first, to correct any errors in the earlier report and, second, to take steps to ensure more fair and accurate coverage in the future. The IMC should also issue a public report of its findings and the action it has taken.

3. Rallies and Demonstrations

Much of the foundation for dealing with the risk of violence that arises from campaign rallies and demonstrations has been laid by our predecessor panel.⁹ The experience in the year since that panel issued its report has been encouraging insofar as the South African Police ("SAP") and the political parties, with the help of the National Peace Accord structure and the NGOs, have shown a willingness to negotiate solutions to problems in situations where previously there had been confrontation and, too often, violence. Nonetheless, not enough progress has been made. The violence during the Hani funeral and other incidents widely reported by the press and the various monitoring organisations are evidence that more must be done.

⁹ See, Testimony of Multinational Panel Regarding Lawful Control of Demonstrations in the Republic of South Africa, presented on July 9, 1992.

Most importantly, legislation embodying the principles agreed upon last July must be enacted immediately on the convening of Parliament in September.

Responsibility for control of violence during campaign rallies rests with all involved -- the party holding the rally, the opposition parties, the police and other government officials, and the independent groups helping to negotiate solutions and monitoring both official and party conduct. The process must begin with the political parties, on whom the burden falls, first, to preach non-violence as an essential element of their campaign and, second, to select a time and a place for their campaign events that does not needlessly antagonise the opposition or risk physical confrontation. This is not to say that legitimate political activity (giving that term the broadest possible interpretation) should be constrained because it will make others angry or intrude on territory believed to be the political turf of another party; that sort of artificial limitation is itself inconsistent with the democratic process. It is to say, however, that the leaders of every party have an obligation to speak and act in a manner that does not unnecessarily increase the risk of violence.

On that same premise, the opposition has an overriding obligation to permit political campaigning to occur even though the message being conveyed is not to its liking and is directed at a constituency it claims as its own. The democratic process cannot countenance "no go" or "no speak" areas. The opposition is obliged not to permit or encourage

its members to use confrontation and intimidation to prevent legitimate campaign activity; indeed, if anything, they must err on the side of avoiding such confrontation. But forbearance from provocation and conflict can only be expected of one party if it has some confidence that the other will forbear when its turn comes; even one violation of this basic principle risks a spiral of ever more violent responses.

On the other side of the equation, the SAP has made substantial progress during the last year in lowering the level of confrontation with demonstrators through pre-demonstration negotiation and the exercise of restraint in the use of force once a demonstration is under way.¹⁰ Much more remains to be done, however, particularly in the development of gradated responses to various levels of threat. The option of choosing between inaction and armed response is not enough, particularly in the highly charged atmosphere of a political campaign. If a peacekeeping service is established as we recommend (see Part III, below), it should call on, and the international community should provide, experts in these matters to provide intensive training in crowd control tactics and the equipment necessary to carry them out. Although one might argue, in hindsight, about who was responsible for a particular incident of violence, where the choice is between

¹⁰ Responsibility for the problems that have arisen during particular demonstrations cannot be laid entirely at the feet of any one element. There have been incidents in which the police overreacted, using levels of armed response not called for by the circumstances, and there have been incidents in which the demonstrators failed to abide by the terms their leaders had negotiated or there were wholly inadequate numbers of marshalls.

citizens exercising their democratic rights or armed government forces, it will most often be the latter on whom public opinion places the blame.

The idea of shared management (cooperation among demonstrators, local authorities and the police) espoused by the Demonstrations Panel becomes even more critical as South Africa moves into the active stages of the election campaign. The parties must assume a greater obligation to train and deploy their own marshals as the first line of crowd control; the local authorities must recognise that political campaigning, however inconvenient, should take precedence over all but the most important municipal affairs; and the police must be prepared to accept the need for even more measured response to highly provocative conduct. Equally importantly, there must be a structure that permits all three to find peaceful solutions to problems, and there must be sufficient oversight by independent observers to promote public confidence in the roles of all participants.¹¹

Not surprisingly, the manner in which negotiations between demonstrators and the SAP are conducted appears to have developed along different lines depending on geography, the mutual confidence between the parties, and the extent to which existing dispute resolution mechanisms have been involved. It would not be useful to create a formal system for managing these negotiations if the only result were to interfere with a process that was already adequate to the

¹¹ We discuss at length the role of monitors and observers later in this report.

task, but the Panel is concerned that what has worked acceptably on an ad hoc basis may not meet the larger needs of a heated, nationwide campaign. We have, therefore, set out in some detail below (at Part III(B)) a proposal for a new approach to the problem.

4. Limits On Campaigning Before Election Day

Many of the submissions received by the Panel suggested a ban on certain forms of political activity in the period leading up to election day itself. The Panel agrees that such a limitation is appropriate, and recommends that there be a ban on rallies, marches and demonstrations, as well as television and radio campaigning or commercials, for a designated period before election day. We recognise that the imposition of such a ban has serious implications for the parties who will be seeking to solidify or increase their support in the closing days of the campaign, but we have concluded that whatever problems the ban may cause in this regard are outweighed by the salutary effect it will have in reducing tensions and, thus, the risk of violent confrontation during the period of greatest political fervour. Balancing these competing concerns, we believe that the ban should extend for at least a few days and no longer than a week.

We also recommend, however, that, during the period in which the ban is in effect, one or more non-partisan organisations, or the SABC itself, hold debates or similar forums in various locales throughout the country in which national and regional representatives of all registered parties are invited to speak and that these events be

televised and broadcast on radio. The availability of these forums should make the ban on other campaigning more palatable while also providing an outlet through which the parties can convey their messages in a more controlled setting.

It was also suggested in some submissions that there be a ban on opinion polls for one or two weeks before the election. The theory of such a ban is that polls could, intentionally or unintentionally, lead a first-time electorate to believe that the outcome was already certain and thus create a greater risk of violent reaction or discourage voters from participating in the democratic process. While we recognise the argument that reliable polls can serve the useful function of deflating the artificially high expectations of a party's adherents and thus mitigate the effects of an election day surprise, we believe that the better course is to prohibit both the conducting and the publication of opinion polls¹² for a period of three weeks up to and including election day.

G. Balloting

1. Voting: One Day or More?

Whether the election should be held on one day or several days raises issues that go beyond the prevention of violence and intimidation. In this first exercise in democracy for the vast majority of South Africa's citizens, it is critically important that all have the opportunity to

¹² We mean to distinguish ordinary canvassing of voters from organised efforts, by sampling voter preferences, to determine what percentage of the voting population intends to support or oppose a particular party.

cast their votes for the party of their choice. It will undermine confidence in the electoral process if voters feel that they have been artificially prevented from participating. Nonetheless, the Panel strongly recommends that the election be held on one day.

Since the draft IEC act would permit a voter to vote at his or her place of employment or residence, most South Africans should be able to get to a voting place without undue difficulty during a one-day election, assuming that there are an adequate number of voting stations situated so that no one need travel an unreasonable distance. Indeed, experience with multiple-day elections in other countries indicates that the enthusiasm of first-time voters brings the vast majority to the polls on the first day of the election.¹³ As difficult as it may be to deal with the logistics of a one-day election, the problems posed by a multi-day election are daunting.

With the need to store the ballot boxes over one or more nights, the voting station or central counting stations will present inviting targets for those seeking to disrupt the process. Even if the effort to guard the ballots is, in fact, successful, the level of suspicion that tampering has occurred will inevitably rise as time passes. Equally troubling is the prospect that reports of voting trends, accurate or inaccurate, will emerge during the early stages

¹³ This assumes that anyone who is in line before the designated closing hour is permitted to vote. The difficult problem of ensuring that rural voters are able to reach the polls is addressed elsewhere in this Report.

of voting and encourage efforts to intimidate voters during the latter stages. Further, speculation and rumours of multiple voting or ballot box stuffing may lead to demonstrations and violence. The problems posed by delay in the issuing of election results, already difficult where the tallying of only one day's voting is involved, will be exacerbated if the voting extends over two or three days.

Lastly, the manpower demands, logistical burdens, and costs of safeguarding the voting stations, protecting the ballot boxes, and maintaining general security will increase substantially. Security forces, already stretched thin to cover the expected 7,500 or more voting sites, will have to be on station for three days, and generally on alert to deal with the increased risk of violence. IEC staff will have to work long hours, with the consequent danger of errors in management of the voting process and the vote count.

For these reasons, the Panel recommends that the election be held on one day, which is declared a public holiday, and that the polls be open from 6:00 a.m. to 9:00 p.m.¹⁴ The funds and manpower that would have to be devoted to a multiple-day election should, instead, be invested in ensuring maximum access to the voting stations.

¹⁴ This represents a compromise between the desire to ensure the maximum available time for voting, on the one hand, and concerns about travel and security after dark and the burdens on IEC staff, on the other.

2. Location and Structure of Voting Stations

It is impossible to set down absolute rules for the location and structure of voting stations. Those decisions will be made largely in response to the realities confronting the IEC -- concentration of eligible voters, available buildings or space, assessment of existing violence potential, and access to transportation -- and after consultation with appropriate local organisations and security officials. The Panel can only offer suggested guidelines to be adopted where it is feasible to do so.

Optimally, the voting area¹⁵ should be large enough to facilitate control over those waiting to vote and avoid the overcrowding that carries with it the risk of physical confrontation between members of rival parties.¹⁶ The area should be clearly marked off and preferably fenced or otherwise protected, and the entrance and exit should be as far apart as possible to prevent conflict and intimidation or "campaigning" by the voter who has cast his or her ballot. The space around the voting booth itself should be large enough to accommodate the election officials, the party observers, and the expected monitors.

¹⁵ By "voting area" we mean the area surrounding the actual building or other structure containing the voting booth itself.

¹⁶ The Panel notes that there is, of course, a trade-off between the logistical difficulties that come with an increased number of voting stations and the crowd-control problems at individual stations if that number is limited.

a. Hostels and Mines

Given the special dangers posed by requiring hostel residents to enter the surrounding community to vote, we recommend that one or more voting booths, depending on the number of residents, be located immediately outside each major hostel site. Alternatively, where circumstances warrant, the IEC may choose to utilise mobile voting units. Comparable arrangements should be made for the mines and similar settings.

b. The Army and the Police

The Panel was concerned about the arrangements for voting by the police and the army. We concluded that, because of the risk of perceived intimidation, neither police nor army personnel should be permitted to vote in uniform; nor, of course, should they be permitted to carry their weapons to the voting area. The Panel considered whether special voting booths should be established for police and army personnel but concluded that, except in extraordinary situations they should be treated as ordinary citizens. Special efforts will have to be made to manage shifts and schedules and voting hours to permit police officers to vote without undermining the security measures necessary on election day. Where circumstances require, arrangements can be made for officials from the nearest voting station to collect the ballots from the police station by means of a mobile ballot box.¹⁷

¹⁷ Security and election officials on duty at a voting station should vote at that station when it closes.

It has also been suggested that the SADF be confined to barracks on election day. The Panel does not believe that it would be feasible or desirable to enforce such a rule.

c. Rural Voters

Finally, the Panel discussed at length how best to ensure that residents of rural areas -- farm workers and others -- be able to reach the voting area.¹⁸ We considered whether some effort should be made to provide special official transportation but concluded that that was inadvisable, not only because of the logistical difficulties involved but because any failure in the transportation system might well result in charges of official subversion of the voting process. Ultimately, we concluded that the IEC's energy should be devoted instead to establishing a sufficient number of voting places to minimise the distance that has to be travelled.¹⁹ Where those distances are too great, mobile polls should be utilised.

The Panel recognises that the logistics will be difficult and that strenuous and carefully focused voter education efforts will be needed to make sure that rural voters know what their rights are (including their right to leave their place of employment in order to vote) and where

¹⁸ This issue is obviously related to the question whether the election should be held on more than one day to facilitate access by all voters.

¹⁹ We recognise that the parties may choose to provide transportation to the polls. It must be made clear through voter education that voters who accept such transport are not required to vote for the party providing it.

and when they will be able to cast their ballots. Employers will also have to understand that they must give their employees time off to vote. Given the special relationships between rural employers and their employees, the IEC will have to devote substantial resources to this educational effort and, equally importantly, will have to be alert to the need to deploy whatever forces are necessary to protect voters against intimidation.

3. Transportation to the Polls

The issue of transportation to and from the polls is one which has serious implications for electoral violence. Even in urban areas where polls are relatively easily accessible, voters will go not only on foot, but by public transportation and private cars, trucks etc. Parties which have their own or rented vehicles will actively seek to transport their supporters to the polls, particularly in rural areas where, because of greater distances involved, there will be an increased dependency on transportation.

The sight of groups of voters evidently on their way to or from the polls, and in some cases clearly identifiable partisan groups, creates the potential for violent confrontation anywhere along the way or at the poll itself.

The dilemma which arises is to balance the basic objective of facilitating the ability of every elector to get to a poll in order to vote, and the need to ensure that the transportation used to meet this objective does not foster violent incidents on election day. With this in mind, the IEC

might consider some or all of the following options: making existing public transportation available free of charge on certain designated routes where polls are distant or access is difficult; prohibiting any party identification on any vehicle transporting electors to the poll; including in the IEC Code of Conduct an undertaking to actively discourage any partisan activity such as singing of party songs, flag waving etc. during the transporting of electors to the polls; and restricting vehicles, especially those carrying large groups of voters, from parking within (e.g. 500 metres) of the voting station, etc.

4. Ballots

Ballots must be designed in a way to ensure that all voters will be able to vote in secrecy without the need for assistance. Ballots should not be numbered or marked in any way that would lead voters to believe that their votes will be disclosed to anyone. Although they may have to be marked in some manner to enable auditors to determine which were cast at a particular voting place, efforts should be made through the voter education process to emphasise that any such markings have nothing to do with the individual voter.

5. Control of Electioneering

There should be an absolute ban on any electioneering within a specified distance (i.e., 100 metres) from the voting area. This ban should include not only the obvious prohibition on overt campaigning (handing out leaflets, use of loudspeakers, placing of posters, etc.) but

the wearing or carrying of party symbols (on clothing or elsewhere).

6. Weapons

No one should be permitted to carry modern or traditional weapons into the voting area, and this rule must be widely and forcefully conveyed during the voter education process in order to minimise problems on election day.

The security detachment at the entry to the voting area should require each prospective voter to surrender any weapon in his or her possession and be prepared to search the voter if necessary. Weapons should be stored in an appropriately secure facility, receipts issued, and the weapons returned to voters after they leave the voting area.²⁰

7. Tendered Ballots

There should be a "tendered ballots" procedure for dealing with ballots submitted by voters whose right to vote is challenged or who, for example, may have lost or failed to bring with them their identity documents.²¹ If there is no voter registry in this election, it will be impossible to resolve such challenges or identification issues on the spot, and the challenge process itself would have the potential for leading both the voter and the party representative to believe that the voting process has been corrupted. If, however, the voter's ballot is accepted,

²⁰ This procedure should not be used as a device for confiscation of unlicensed weapons.

²¹ The ballot and the necessary identifying information are placed in double-sealed envelopes for later verification.

together with whatever information is needed to resolve the challenge at some central location, the voter is less likely to believe that he or she is being improperly deprived of the chance to vote and thus less likely to complain to his or her neighbours or to disrupt the proceedings.

8. Voters with Special Needs

The goal should be to have election procedures in place that will enable all voters to vote without assistance. However, the IEC should develop procedures, and train voting station officials, to provide assistance to those voters who are unable to cast their ballots by themselves. The giving of such assistance must be accomplished in such a way as to ensure that it is not a subterfuge for controlling how the vote is cast, but those concerns should be defused by appropriate neutral observation of the process.

9. Sale of Liquor

The sale of liquor on election day (and the day before) should be prohibited. We recognise that home-made liquor will continue to be available and cannot realistically be controlled but believe that is insufficient reason why the flow of intoxicating beverages should not be limited as much as possible.

H. Tabulating the Ballots

The counting of the votes once they are cast gives rise to a number of issues, some of which relate directly to the control of violence.

1. Where to Count the Votes

Whether to count the votes at the voting stations or at a number of central counting stations is a question that has both logistical and security aspects. To carry out the count at the voting station, assuming proper supervision and observation by party representatives and independent monitors, is simpler and faster, but speed at this level is not necessarily desirable. Announcement of results, whether formally or informally, at each voting station creates the risk that particular areas will be identified with particular parties, that immediate reaction to the results in one area will be more difficult to control, and that extrapolation from those results to a nationwide pattern may be misleading.

As to security, counting at the voting station does eliminate the risk associated with transporting the ballot boxes to a central location. If the ballot boxes are to be transported to a counting station, certain precautions must be taken. First, voters must be made to understand, through pre-election education and on the day of the voting, that the ballots are being protected and are being removed solely for purposes of centralised tabulation. Second, the boxes must be transported under secure conditions and must be accompanied in the same vehicle by selected party representatives, observers and monitors. And third, there must not be any gap in secure custody between the transporting authority and the receiving authority that would permit accusations of tampering.

If the count occurs at the voting stations, there arises the arguably more serious problem of protecting against efforts to disrupt the counting process at several thousand locations. This problem is still further exacerbated, of course, if there is to be a multiple-day election; in that case, security considerations militate even more strongly in favour of central counting stations.

2. Parallel Counts

There have developed in recent years quite sophisticated methods of parallel counting of votes -- that is, a count conducted by independent persons or organisations in addition to the official count by election personnel. The purpose of the parallel count is to assure both South African and international observers that the official count is accurate and legitimate. Both international NGOs and IGOs can readily train volunteers, as well as provide personnel to conduct these counts.

The Panel strongly recommends that arrangements be made for such parallel counts as an additional means for eliminating doubt about the legitimacy of the election.²²

3. Exit Polling

Parallel counting is to be distinguished from exit voting polling by the media, the parties or others. The risk that voters will believe that secrecy has been violated or will feel intimidated, as well as the risk posed by

²² We note that the conducting of parallel counts would be substantially less burdensome where tabulation is done at central stations.

premature or inaccurate reporting of voting trends, leads the Panel to conclude that all exit polling should be banned.

I. Certifying the Results

1. Reporting the Results.

There is an unavoidable tension between, on the one hand, the desire to have voting results reported as quickly as possible to minimise the natural frustration and suspicion of tampering that come with delay and, on the other, the concern that reporting by voting station or even somewhat wider areas may itself create security problems. The Panel recommends that the official tally be announced (and the official tally sheet be released) at each central station as soon as it has been completed rather than await the compilation of a nationwide tally.

It is difficult to fix a time period within which the IEC should strive to announce the final, nationwide tally and the resulting make-up of the constituent assembly, but it is important that sufficient personnel be assigned to the task to permit a preliminary announcement as soon as possible after the election.

2. Certification

Final certification of the results of the election will not be possible until the IEC has resolved any complaints about the voting or counting process. The IEC must be prepared to implement a complaint intake and investigation process and to rule on the validity of any challenge to the validity of the voting process -- local, regional or national -- on an expedited basis. Presumably, the elements of the IEC

that have dealt with complaints during the campaign will be able to perform this task as well.

Resolution of these complaints and acceptance of the results from particular areas is a process separate from the IEC's broader mandate to certify the election as having been "substantially free and fair." There is no readily definable standard by which the IEC can make this ultimate judgment. We presume that the South African election, as is true of elections in any country, will not be perfect -- that there will be incidents of violence, intimidation and fraud and violations of the electoral law. Nonetheless, the Commission must assess the electoral process as a whole and determine whether it has permitted the people to express themselves in a way that legitimises the new government structure. Recognizing that there may well be disagreement within the IEC and among the voters themselves on this issue, the credibility of the Commission's decision may be enhanced if a super-majority of the Commission members is required in order to certify the results.²³

J. The Post-Election Period

One clear lesson emerging from recent experience in other elections is the importance of continuing to be alert to security issues during the post-election period.

²³ It should be understood also that the views of many observers of the election may differ -- both from that of the IEC and among themselves. There is no way to ensure uniformity in these verdicts, and the IEC must simply reach its own independent judgement.

There has been a tendency elsewhere to have both international representatives and unofficial observers leave within days after the election. Yet, it is during this period that the risk of violence may be at its height. Reaction by the losing parties (or, for that matter, by the victors) may result in problems immediately following the election -- violence by the losers out of frustration or a last-ditch effort to subvert the process; violence by winners out of over-enthusiasm or retribution against communities who voted for another party. Voter education programmes during the campaign will have emphasised the importance of accepting adverse results and, presumably, of translating a favourable result into a peaceful and democratic transition, but the presence of independent monitors will be necessary to ensure that those lessons are implemented. Similarly, monitors and observers will be needed to continue their surveillance of police response to post-election demonstrations and, more broadly, to what may be a change in their leadership and command structure.

The risk of violence is not limited to the immediate post-election period. The country will be going through a dramatic transition to a new form of government, with many new leaders, and there may be those -- individuals or organisations -- who seek to subvert that process by attempting to prevent the convening of the constituent assembly or by launching attacks on individual political leaders and government officials. If they see the international community departing after the announcement of

the election results, they will be encouraged to believe that they are free to resort to violence.

It is difficult to determine how long it will be necessary to maintain special security precautions, but the Panel believes that there should be a substantial international presence at least until the constituent assembly has convened and the new governmental structure has been established.

II. MONITORS AND OBSERVERS

Experience in South Africa and in other countries where transitional elections have been held in recent years demonstrates the importance of monitors and observers not only to the control of violence but to the credibility of the electoral process.²⁴ South Africa is unusual in the extent to which domestic non-governmental organisations (NGOs) have been active in the area of violence monitoring and in the extent to which foreign NGOs, foreign governments, and international government organisations (IGOs) have been involved in South Africa's political process. Coordinating the efforts of these organisations and the hundreds, even thousands, of individuals who can be expected to come to South Africa over the next several months is a task

²⁴ The distinction between the terms "monitor" and "observer" frequently blurs. We do not attempt to draw any fine lines between the two groups in this report, but we do note the difference between the role played by observers/monitors of election activity and voting, who typically are non-interventionist, and the role played by observers/monitors whose principal concern is violence and police response to it, where there is often more active involvement in problem solving.

that is critical to the successful management of the forthcoming election.

A. The Role of Monitors and Observers.

Representatives of South African NGOs (including church-affiliated groups), as well as individuals affiliated with international NGOs, IGOs, and governments, have played an important role in helping South Africa deal with the problem of violence associated with demonstrations. Their presence has, without a doubt, served as a deterrent to misconduct by both police and demonstrators, and they have been able to provide independent reports concerning the management of demonstrations and incidents of violence. Their role will expand substantially during the coming months and, particularly as the date for voting approaches, will focus more intently on election-related activity.

Representatives of the observer missions of the European Community, the United Nations, and the Commonwealth have played an important role in monitoring, and to some extent guiding, the conduct of the SAP in responding to public demonstrations and rallies. There is an inevitable tension in the relationship between those who monitor and those who are monitored, particularly because police may view themselves as professionals doing a dangerous job in a setting they understand far better than their overseers. Nonetheless, the presence of official monitors, acting under the aegis of international organisations, provides an element of deterrence that is valuable to both the demonstrators and, despite their scepticism, to the police themselves.

We note particularly in this regard that diplomatic and other constraints have severely limited the ability of the IGO representatives to provide training to the SAP. It is hoped that those constraints will be removed in the very near future and that international resources will then be available to assist in meeting the expanded need for specialised instruction in election-related policing. The police, let it be said, may not be enthusiastic about the prospect of foreign police experts providing such training, but the need is so great as to overcome any institutional objections.

1. The Role of the NGOs

Both South African and international NGOs have for some time been actively engaged in the monitoring of demonstrations and in various forms of dispute resolution, and in recent months have begun to conduct voter education programmes, designed to train community leaders and others who will, in turn, train the voters themselves. The NGOs' efforts can provide the IEC with a critical head-start as it assumes responsibility for many of the functions they have been performing, and they will remain an invaluable source of personnel and expertise to supplement the work of the IEC once it is in full operation.

The question, therefore, is how best to make use of these dedicated individuals and organisations.

NGO representatives serve two related but different functions: witnessing and fact-finding. In the pre-election period the mere presence of observers at rallies and

marches may deter potential misconduct, and the IEC should encourage their deployment as broadly as possible from the very beginning of the campaign. At a more sophisticated level, experience has shown that private citizens can, with adequate training, be effective gatherers of evidence -- indeed, sometimes more effective than official investigators. Again, the IEC should encourage this form of fact-finding and should be prepared to receive reports from observers in addition to whatever process is established for responding to more formal complaints by election participants.

The IEC should also understand that these same observers will be commenting on the adequacy of its own management of the election and its responsiveness to reports of misconduct. Indeed, as difficult as it may be for any bureaucracy to do so, the IEC should encourage and respond to such constructive criticism by both NGO and IGO personnel.

Lastly, the Panel wishes to emphasise -- although perhaps it is not necessary to do so -- the importance of treating this election as an event rooted in South African sovereignty. The assistance of international observers, both private and official, will be invaluable. It is on South African citizens and organisations, however, that the process should principally rely, and it is important that representatives from every part of the political spectrum, from the churches, and from all communities be encouraged to participate.

2. Coordination of the NGOs

Anyone acting under the aegis of an NGO who wishes to serve as an observer during campaign events or at a voting booth should be required to obtain IEC accreditation, which should be granted only after the applicant participates in a training programme and agrees to adhere to a code of conduct. The Panel believes, however, that it is neither possible nor desirable for the IEC to control or even to supervise the NGOs. The domestic NGOs' long tradition of independence and the special status of the international NGOs will lend credibility to the election process, inside and outside South Africa, that would be diminished if they were seen as but another arm of the government.

How then can the work of election observers be coordinated so as to extract the maximum benefit from their efforts? The Panel struggled with this issue without arriving at a conclusion with which we felt absolutely comfortable, other than our unanimous belief that some entity must have that responsibility.

In accordance with our strong presumption in favour of using existing structures rather than attempting to create new ones in the short time available, we considered whether to place the coordinating function in the National Peace Committee and Secretariat. We were concerned, however, that the Secretariat is substantially understaffed and underfunded and that many of the political parties do not participate in or acknowledge the legitimacy of the National Peace Accord. We were also concerned that the effectiveness

of local and regional committees varies markedly from area to area.

While the Panel feels strongly that the National Peace structure must not be abandoned -- that it must be funded and staffed at a level sufficient to serve its principal function of dispute resolution, we concluded that the non-governmental character of the election observation process must be preserved and that could best be accomplished by having the NGOs create their own coordinating body.²⁵ We recognise that the NGOs have been working toward that goal but suggest, in order to advance that effort, that the chairman of the Goldstone Commission invite representatives of the NGOs, both South African and international, to convene within the next month in order to select an executive committee that would be given responsibility for drafting a plan for coordination, for implementing that plan during the coming months, and for providing liaison with the IEC and the IGOs.²⁶

3. The Role of the IGOs

The Panel assumes that the United Nations and other IGOs will not establish a peacekeeping force in South Africa and will not have sufficient personnel on the ground to themselves assume responsibility for policing or security

²⁵ We would hope that governments and others seeking to make effective use of their funds would view such a coordinating body as a worthy recipient of support.

²⁶ We do not suggest that the chairman play any role in this process other than that of host, but we believe that, if someone does not encourage the process, the critical first step may not be taken in time.

functions.²⁷ Nor does the Panel believe that it is either necessary or desirable for the IGOs to play such a role.

Not only is South Africa an independent, sovereign nation, but it has established institutions of government, including police and security forces. Whatever criticisms can legitimately be leveled at the performance of these institutions now and in the past, there is a political process under way working to bring about peaceful change and to permit participation by formerly excluded citizens in the management of government during the transition period. Moreover, given the size of the country and of the population, it is difficult to believe that the IGOs would be able to organise and put in place a force of sufficient size to play the role they played in the Namibian or Cambodian elections.

As of the date of this report, none of the IGOs has a substantial presence in South Africa, although the UN Mission is by far the largest, and the nature and extent of the commitment by the IGOs must be clarified at the earliest possible dates. Admittedly, serious questions of inter-governmental relations must be resolved and substantial funds must be found, but every day that these decisions are delayed undermines the ability of the IGOs to play a truly effective role.

With the proper coordination of their operations, and cooperation with the NGOs, the IGOs should

²⁷ Thus, we assumed that there would not be in South Africa the equivalent of the UNTAG monitoring operation that sought, with varying degrees of success, to shadow the operations of the police in Namibia.

undertake to perform at least the following critical functions during the coming months:

- * Provide logistical and funding support for South African NGOs' voter education programmes and technical assistance to the IEC in the management of the election.
- * During and after the election period, continue to monitor demonstrations and other campaign activity and provide accurate, non-partisan reports concerning the conduct of the police and the parties; and
- * Provide sufficient experienced personnel to monitor the voting stations and counting centres on election day, with at least one IGO representative present at every station that is believed to pose a special risk of fraud, violence or disruption;
- * Provide experts to assist in the training of police and party marshals.

III. POLICING AND LAW ENFORCEMENT

The Panel encountered no more difficult question than how to address the role of the South African Police in ensuring public security over the next nine months and beyond. The election period will bring with it special tensions and the accompanying risk of increased violence, as well as new responsibilities for the safeguarding of campaign activity and the voting process itself. Yet, it is not at all clear that there exists in the SAP and affiliated organisations -- or anywhere else in South Africa -- the capacity to deal with these responsibilities in a manner that is both objectively effective and credible in the eyes of the public and the political parties.

In its present form, the SAP, however effective one believes it has been in maintaining order, cannot hope to gain the confidence of those who see it only as the enforcer of apartheid.²⁸ Moreover, the skills the SAP has developed in performing that function are not readily transferable to the special demands of policing in the context of the country's first democratic election.²⁹ In an effort to address this problem, the Panel has formulated a proposal for

²⁸ This reality was recognised by the SAP itself in its submission to the Panel.

²⁹ The SAP has begun to explore the development of a community policing operation. The existing experimental units are understaffed, however, and it is not at all clear that they are capable of engaging in the sort of intensive community involvement or of establishing the physical presence in the townships that lies at the heart of modern community policing theory.

restructuring the policing function to promote effective "public order policing"³⁰ during the election period and provide a basis for transition to a new policing structure after the election.

A. A Multiparty Peacekeeping Service

A number of the submissions received by the Panel proposed the creation of a multiparty peacekeeping force to be composed of members of the SAP and/or SADF and members of the various party-affiliated armed forces. All who proposed or commented on the idea of a peacekeeping force recognised the extraordinary difficulties that would have to be overcome in recruiting, organizing and training such a force in time for it to serve a useful role during the election process. Under any circumstances, the creation of an entirely new government organisation is fraught with difficulties. To create an armed enforcement organisation in a matter of a few months while South Africa prepares for transition to a new form of government is, at best, a daunting prospect.

Nor was it entirely clear what role its advocates contemplated for the new force -- a question that would have to be answered before one could begin to discuss issues such as recruitment, training, integration and deployment. Indeed, the very fact that its basic structure

³⁰ We include in this term the responsibility to deal with rallies, marches and demonstrations, and the attendant risk of violence, as well as the broader goal of violence prevention and the establishment of at least the beginning of a more productive relationship between the police and the communities they serve.

and role remained uncertain despite the attention that its proponents had devoted to the idea gave the Panel some pause as it considered whether it was feasible to pursue it. In the end, however, we determined that the values inherent in a multiparty peacekeeping structure, if there was any reasonable prospect that one could be established, outweighed the very real difficulties that would be encountered in attempting to create it. We concluded that opening up the process to participation by members of the new political parties would lend an element of credibility and legitimacy to what is now a highly suspect process; would assist in defusing some of the tension in dealings between the parties and the police during the campaign; and would begin paving the way for creation of a fully integrated police force in the post-election period.

We began by asking among whom would the new force "keep the peace." The Panel did not believe that it was feasible to replace the SAP in the carrying out of day-to-day policing functions -- responding to citizen complaints, investigation of routine, or even serious, crimes and the like. Whatever public scepticism there may be about the SAP's performance in that role, the Panel did not believe that it was of such a magnitude as to warrant major restructuring in the short time available before the election. Moreover, the members of the party-affiliated forces have had no training in carrying out basic police functions, and the training of new recruits, up to even a minimally acceptable level, would require substantial staffing and funds and would realistically take several months.

It appeared to us, therefore, that the extraordinary commitment of time, money and energy necessary to bring about any significant change in the policing structure in the near term should be focused on those parts of the system that pose the greatest concerns during the election period. To that end, we propose that there be established a Peacekeeping Service ("PKS") that would have broad responsibility for coordinating and managing the police role in election activity and election day security, including police response to election-related violence. In advancing this proposal, however, we want to make it absolutely clear that we are not suggesting merely the transfer of Internal Security Unit ("ISU") functions to a new organisation. If that were all that could be accomplished, it would not be worth the effort.

We recommend that the PKS be created by and report to the TEC, through an appropriate committee. It would be led by a multiparty, civilian command structure, and its operating arm would consist of (1) selected senior and mid-level SAP staff with both operational and community relations experience; (2) all existing ISU personnel; and (3) specially recruited members of the party-affiliated forces. Because of the extraordinary problems posed by having to recruit, screen, train and integrate the new members of the Force, we recommend that the process proceed in two phases. In the first phase, the TEC would establish and appoint the members of the PKS command structure, giving them authority to develop policies

and procedures for, and assume control over, the operations of the Service and the ISU and SAP personnel who would then be transferred to it. In the second phase, the PKS command would recruit and train the new members and integrate them into the Service.³¹

We propose this two-phase approach because we are concerned that there be as little delay as possible in deploying the sort of credible and responsive policing force that is critical to the effective management of the election process. We fear that it is simply not realistic to contemplate that an entirely new organisation will come into being -- full-grown and mature -- on the day that the TEC and the IEC go into operation. The process of recruiting, training and integrating the new members of the PKS will take months,³² and South Africa cannot afford to wait that long. A bridge between the old order and the new is needed, and we believe that the most efficient way to do this is immediately

³¹ It is difficult to predict how many new recruits could reasonably be absorbed in the months before the election or, indeed, how many will prove suitable for duty in the PKS. We anticipate, however, that as many as two thousand may be selected initially.

³² The Panel is sensitive to the fact that the members of the party-affiliated forces and the ISU have, for all intents and purposes, been at war for many years, and the purely human barriers to integration will not be easy to surmount in the short time available. We recognise also that, given the political origins of the new recruits, it will not be a simple matter to convince the public that the PKF is a credible and neutral organisation. Nonetheless, we are of the view that the effort must be made.

to bring the existing ISU resources under the control of a new arm of government and a new command structure.

We cannot emphasize too strongly the extraordinary time pressures under which the entire electoral process, and the creation of this new Peacekeeping Service in particular, must operate. The first phase of the Panel's proposal -- the transfer of personnel from existing units, the formulation of new policies and procedures, the establishment of new command structures, and the retraining and reorientation of the new PKS personnel -- will take months. And the second and more difficult phase could not be expected to be preliminarily operational, even if it began immediately, until early 1994. If there is any hope of pursuing the creation of this new policing organisation, the foundations must be laid today. We recommend, therefore, that the Multiparty Forum create a special committee of experts³³ to develop a detailed plan for the organisation and operation of the PKS, including its jurisdiction, its command structure, and the training of its personnel. The committee should be convened as quickly as possible and should be prepared to report to the TEC on the day on which it comes into operation.

B. The Role of the PKS

The principal function of the PKS is to bring to the process of public order policing, in its broadest

³³ The committee should be made up of senior representatives from the SAP and ISU, civilian members of the Police Board, and experts in police operations drawn from South African sources and from the international community. The chair should be a civilian.

sense, a newly coordinated approach that has both the credibility and the capacity to cope with all aspects of the election process. As we noted above, we do not propose that it supplant the SAP in the performance of its day-to-day policing responsibilities, but we do expect the Service to assume responsibility for many of the functions performed by the SAP -- and all those performed by the ISU -- in dealing with marches, rallies, and demonstrations and in responding to incidents of violence wherever they occur. To that end, in addition to the ISU personnel whose training has been in responding to the threat or reality of violence, it is important that the PKS be staffed with specially selected, senior members of the SAP whose training and experience has encompassed both crisis management and the negotiating and community-relations skills that will be needed to deal with the full range of election activity.

As a means of fleshing out this description of the PKS' role, we offer the following model for dealing with rallies, marches and demonstrations:

Under the direction of the TEC, the PKS will create a national Joint Planning Committee ("JPC"), chaired by the senior officer of the Service and consisting of senior officials of the IEC, the SAP, and the SADF. In addition, representatives of the National Peace Accord, the NGO coordinating body, and the IGOs will be invited to

participate. This committee structure will be replicated in each region.³⁴

A party intending to hold a march, demonstration or rally will notify the SAP District Commissioner (or town clerk) of the time, place, and circumstances of the event. The District Commissioner, in turn, will notify the regional JPC and advise them what, if any, guidelines have been negotiated and whether any serious problems are anticipated. Although there will be a presumption in favour of resolving matters at the local level wherever possible, the JPC, after consultation with the relevant parties, will have the authority, where matters of broader concern are at stake or where special security issues are likely to arise, to establish different procedures.³⁵

The JPC will then determine, with the PKS officer having the ultimate authority in the event of disagreement, who should have command responsibility on the scene. Where there does not appear to be any need to deploy armed PKS forces, the decision may well be to leave the management of the negotiations and the handling of the demonstration in the hands of the appropriate SAP official. Where, however, there appears to be a risk of serious violence and, thus, the need for a PKS presence, the PKS will assume operational control, including the deployment and response of

³⁴ Although we have not dealt specially with police forces in other areas of the country, we contemplate that the PKS will deal with them as they would the SAP.

³⁵ Where necessary, either the requesting party or any other participant in the JPC process may seek review of the regional decision by the national JPC.

SAP officers and the decision when and how to use its own personnel.

We propose this revision of the process developed by the Demonstrations Panel -- that is, the shifting of command responsibility from the SAP to a new organisation with some of the functions of the old ISU -- recognizing that it appears, at first blush, to be inconsistent with the philosophy underlying our predecessor's recommendation. We believe, however, that there is, in fact, no conflict between the two proposals. The Demonstrations Panel sought to develop a mechanism that would place initial responsibility for demonstration management in the hands of a policing organisation (the SAP) other than that which had the duty of armed confrontation with the demonstrators (the ISU). The earlier panel recognised that its solution was not perfect -- that the SAP itself carried the substantial baggage of community suspicion -- but concluded that, nonetheless, it was far better equipped to achieve peaceful resolutions than was the ISU.

In approaching the same problem in the different context of the election, this Panel assessed the extent to which distrust of the SAP would undermine public confidence in a process designed to maximise freedom of political expression. We concluded that, given the special forces at work in the election period, the desirability of multiparty participation in this most critical aspect of law enforcement, and the need to create a process that was, and appeared to the public to be, responsive to the new national

political structure mandated a different solution. We felt strongly also that it was important to create a structure that could be used as the foundation for a new policing system under the post-election government.

C. Election Day Security

The Panel anticipates that on election day the PKS, assisted by the SAP and the SADF as necessary, and acting for this purpose under the direction of the IEC, will have responsibility for security of the voting areas, the ballot boxes (including transportation where necessary) and the counting stations. Because the number of available PKS and SAP personnel will not be sufficient to staff all voting areas, we recommend the formation of units of "IEC marshals", recruited from the general public, who will be assigned to assist the PKS in providing security for the voting areas. These marshals will require specialised training in the control of the voting area and the management of those seeking to vote, training that will certainly require the assistance of experts from the IGOs.

Lastly, the security of the voting areas will not be possible without an effective radio communications system that permits the IEC and PKS officials at the voting station to be in immediate contact with the appropriate local command centre, and thence with the regional or, if necessary, the national IEC command centre, should an emergency arise. Steps should be taken immediately to ensure that the necessary equipment is available when needed.

D. Training

As is obvious from the brief description of the steps necessary to bring the PKS into existence, the one critical ingredient will be the availability of skilled and intensive training at all levels. It must include training not only in police operations and the implementation of new policies and procedures but, equally importantly, in the demands of the election process, the unique tensions and risks it creates and the special protection that must be afforded those who are exercising their political rights. Moreover, the training must begin almost immediately -- first with the senior commanders in both the ISU (soon to be an element of the PKS) and the SAP, and then with the middle-level officers. Further, every member of the rank-and-file must be required to attend basic training seminar designed to reorient them to the philosophy and procedures of the new organisation. Indeed, the civilians who are to assume command over the PKS must themselves be trained in responsibilities that will be new to them. And finally, of course, there must be a massive investment of time and energy in the training of the PKS recruits.

This training mission -- unlike any with which the Panel is familiar -- can only be accomplished by drawing on resources outside of South Africa, and that call for assistance must go out now.³⁶

³⁶ The Panel has been advised, for example, that the member states of the European Community and the Commonwealth are prepared to provide substantial numbers of such experts for training, monitoring and similar duties.

E. Prosecutions Arising Out of Election Activity

Prosecutors have broad discretion in deciding whether to prosecute. Given the wide range of conduct that is arguably covered by the Intimidation Act and similar statutes, as well as by the election laws and regulations, there is a danger that legitimate political conduct or speech could be treated as criminal conduct. This is not to say that acts of violence or other criminal activity should not be prosecuted simply because they are alleged to have been committed out of political motivation, but prosecution of low-level violations and particularly speech-based offenses arising out of campaign activity should not be treated routinely.

The Panel recommends, therefore, that all prosecutions for violations of the election law and for any other non-violent offenses arising out of rallies, demonstrations and similar campaign or election activities should be approved by the Attorney General for the area involved. The Attorneys General should also issue guidelines for the handling of such cases.

F. Treatment of Arrestees

It is important to the credibility of the law enforcement process that those who are taken into custody and their families know that prisoners will not be mistreated. We urge, therefore, that the existing "Accredited visitors" programme³⁷ be expanded, and the necessary funds provided, to cover as many facilities as possible. Special effort should be made to put the programme into operation where there have been mass arrests arising out of demonstrations.

IV. THE ROLE OF THE GOLDSTONE COMMISSION

The Goldstone Commission has a unique role in the current South African political structure and its unique powers can prove immensely useful during the election period. Its strength stems in large measure from its non-political character and its willingness to conduct independent investigations and to offer praise or place blame as the merits of the matter dictate. The Commission was not designed, however, to meet the special demands of the election period, speedy resolution of controversy is critical.

It is difficult to imagine that it would be possible, in the short time remaining before the election, to create another entity imbued with the credibility enjoyed by the Commission. Over the past two years, the very fact of the

³⁷ Under this programme, persons having no connection to or vested interest in individual prisoners (e.g., Ministers or Peace Committee members) visit detention facilities and issue public reports of their findings.

Commission's existence and its availability to accept referrals of the most difficult and sensitive matters has provided an outlet for political tensions. The investigation and hearing process itself has given the public some assurance that serious misconduct, even by the State, would be pursued. Those values, however, may not serve as well during the election period, when the public and the participants will demand -- and be entitled to -- not only inquiry but judgement. It will not be enough that serious allegations of violence and intimidation in the political arena are being investigated; the voting public will want to know who was responsible and what sanctions will be imposed.

It is possible, in theory, to construct an investigative arm of the IEC that would be able to deal with these ultra-sensitive matters -- an office that would have the powers of the Goldstone Commission and, perhaps eventually, some of its credibility. Yet, in continuing reliance on the principle that South Africa should look first to existing institutions, it seems the more sensible course to take whatever steps may be necessary to enable the Commission to expand its role and to act with the expedition required in the election setting.

To this end, the Panel recommends that the Commission staff be expanded substantially and that it be authorised to accept assignments from either the TEC or the IEC to inquire into particularly serious incidents of political misconduct (violence, intimidation and fraud) that are beyond the ordinary investigative capability of the IEC.

The Commission would be asked to conduct an expedited investigation and hearing, issue a public report of its findings, and refer the matter either to the IEC for administrative action or to the appropriate Attorney General for prosecution.³⁸

We recognize that this proposal would place an additional burden on the Commission, but there is no existing organ of government capable of dealing with the crises that are certain to arise during the election. As we noted earlier, speedy and credible response to claims of impropriety lies at the heart of the IEC's ability to manage the election. The vast majority of such claims can be resolved relatively routinely by the enforcement process described earlier, but there will inevitably be problems of such scope and sensitivity that they can be dealt with only by an independent entity with no other responsibilities. We believe that the Goldstone Commission, given the necessary enhanced investigative capacity, can best perform that function.

In this regard, we note that the Commission has recently established an institute that is charged with the collection and documentation of accurate information about incidents of violence -- a role that will prove invaluable in combatting ill-founded rumours and accusations that too often lead to violent overreaction. It would seem only reasonable to make use of this existing, independent and credible control

³⁸ The statute creating the Commission would not now authorise a report to the IEC.

mechanism rather than attempt to replicate its functions within the IEC.

CONCLUSION

However great the challenges it faces, this country is blessed with an abundance of talented and dedicated individuals and organisations striving to achieve one goal: to enable all of South Africa's people to participate in the creation of a new democratic society free from fear and free from violence.

Our purpose was to offer what modest assistance we could in achieving that goal. We have not provided easy answers to difficult questions, for there are none. We have, instead, sought to provide a framework to assist those who will have to make the hard decisions to identify potential sources of violence and determine how best to deal with them. Where the solutions seemed to us, if not certain, at least reasonably clear, we have made recommendations with some confidence that they represent the correct choice among the available options. Where the solutions seemed less clear (indeed, often frustratingly murky), we have at least attempted to describe the competing considerations and to offer our best judgement on the course that should be followed.

But beyond the specific issues identified and recommendations offered, a few broader conclusions have emerged from our discussions :

First, time is the enemy. Perhaps the most valuable function the Goldstone Commission can serve, in our view, is to make it clear to everyone concerned that there is literally not a moment to waste if the election is to be held on April 27, 1994. Decisions about the details of the election process and the role of the international community and the reshaping of the policing function cannot await the convening of Parliament. The process must begin immediately, and the Commission should use its good offices to see that it does.

Second, South Africa must ask for assistance: assistance from within to undertake the multitude of daunting, and sometimes thankless, planning and organisational tasks without which the electoral system will be unable to function when it does come into being; and assistance from abroad to provide the money and expertise and manpower without which the system will be unable to offer the voters any assurance that their election will be free and fair.

Third, the international community must provide the assistance South Africa needs -- openhandedly, with the recognition that a free and fair election here is important to people everywhere.

Lastly, but in many ways most importantly, all political, religious, and community leaders, no matter of what party, must make it clear that they reject violence in all its forms -- not by decrying violence committed by "others" but by announcing from every podium and pulpit at every

opportunity that violence by anyone undermines the rights and endangers the future of all South Africans.

4 August 1993

MR. CHARLES F.C. RUFF, Chair
PROFESSOR JORGEN ELKLIT
PROFESSOR TERTIUS GELDENHUYS
MR. RONALD GOULD
PROFESSOR WALTER KAMBA
MR. IGNA KLYNSMITH
MS. DREN NUPEN
PROFESSOR OTTY NXUMALO
DOCTOR JOHAN OLIVIER
PROFESSOR CLIFFORD SHEARING
AMBASSADOR THERESE STRIGGER SCOTT

APPENDIX I

Jørgen Elklit

Jørgen Elklit is a senior lecturer at the Department of Political Science at the University of Aarhus, Denmark. He holds a doctorate in political science, which was based on research on the political consequences of the transformation from open to secret voting in Denmark. Dr. Elklit's actual research interests are electoral systems, local electoral behaviour and campaigning, political parties, and the measurement of democratization. His publications are mainly within these fields.

Since 1990, Dr. Elklit has also been engaged as an electoral law consultant and election observer in a number of countries. His assignments include assistance to the Election Committee in Nepal (October/November 1990) and participation in several election law consultancy, fact-finding, training, or appraisal missions in, i.a., Latvia (1992), Nepal (1990 and 1991), Mongolia (1992), and Kenya (1992). He has been an election observer in Nepal (1991), Kenya (1992), Eritrea (1993), and Latvia (1993).

Tertius Geldenhuys

B.A. LL.B. (University of South Africa). Associate professor in the Department of Criminal and Procedural Law, University of South Africa. Advocate of the Supreme Court of South Africa. Author of the book "Introduction to Security Law" (1992).

Ronald A. Gould

Educated at the University of Toronto 1955; Laval University 1977. Experience : Elections Canada, Assistant Chief Electoral officer 1981 to present; Registrar of Canadian Citizenship and Director General of Citizen's Participation 1977-1981; Deputy Director of Quebec Parks 1975-1977; Various Federal Government Departments 1955-1977. International Electoral activities include over 20 missions in Mongolia, Cambodia, Zambia, Kenya, South Africa, the Ukraine, Bulgaria, Albania and six Central and South American countries, representing the Canadian Government, the United Nations, the Commonwealth, the Organisation of American States and several non-governmental organisations.

Walter Joseph Kamba

Zimbabwean, B.A. LL.B. (Cape Town), LL.M. (Yale) Hon. LL.D. (Dundee/Scotland) Hon. Dr. Humane Letters (University of Rhode Island); Professor of Law and Former Vice-Chancellor (University of Zimbabwe); President, International Association of Universities; Chairman, Electoral Supervisory Commission of Zimbabwe (Since 1984); Former Dean, Faculty of Law and University Orator (University of Dundee, Scotland); UNESCO Professor of African Studies Utrecht University, the Netherlands - September 1993 -); Inaugural Distinguished R G & E M Knight Professor of Law and Education (University of Manitoba, Canada 1992); Chairman, United Nations University Council (1985 - 86); Special Adviser, United Nations Conference on Environment and Development (1991-92); Chairman, Zimbabwe Broadcasting Corporation (1987 - 90); Trustee, African-American Institute (New York); Trustee, Zimbabwe Mass Media Trust (1980 -).

Married to Angeline Saziso (nee Dube) who is a member of the Public Service Commission (Zimbabwe).

Two sons : Mark (born 18th October 1982); Julian (born 22nd August 1966).

Igna Klynsmith

Igna Klynsmith is the President of the Transvaal Law Society. He is a practising attorney at Van Velden-Duffey, Rustenburg. He studied law at the Potchefstroom University (B.Jur. et. Comm. 1971 and LL.B. 1973). He serves inter alia on the following committees relating to the legal profession in South Africa. He is the Chairman of the Court Practice Committee of the Transvaal (Magistrates Court and Supreme Court) and he is a member of the Standing Committee on Magistrates Court in South Africa, He is a member of the South African Rules Board for Courts and a member of the Executive Council for the Association of Law Societies of South Africa.

He serves on the Fidelity Fund for Attorneys in South Africa and is a member of the Board of the Law Faculty at the Potchefstroom University. He is the presenter of the weekly radio programme "Wat sê die Reg" on Afrikaans Stereo and the regular legal programme on Radio Jacaranda.

Dren Nupen

BA Hons. Industrial Sociology - University of Cape Town
Founder member of the INDEPENDENT MEDIATION SERVICE OF SOUTH AFRICA in 1984.

She is extensively involved in conducting elections for trade unions and community organisations. Some of the community elections include civic association elections e.g. an election conducted in Kwa Ndebele, an election in the Northern Transvaal for 50,000 people, Lethlabile township for 17,000, Soweto and Mamelodi. The number of voters range from 2,500 to 50,000 per election. Trade Union elections include verifications and membership exercises, national strike ballots and election of shop and shaft stewards. One particular shaft steward election involved 49,000 illiterate and innumerate workers. Organisations have also approached her to conduct their elections of office bearers e.g. SANCO Southern Transvaal, NECC, ANC National and regional elections, SACP and other. She has also conducted referenda for communities of up to 30,000 people who have sought to establish the opinion of the community regarding, for example, town councillors. Not only has she conducted elections but has also developed a voter education training programme, based on her practical experiences of elections, to educate primarily illiterate and innumerate voters on voting procedures and in general terms, principles of democracy, in an attempt to prepare voters for the first democratic national election.

Otty Ezrom Howard Mandla Nxumalo

Otty Nxumalo holds the following qualifications : B.A. Hons. M.A. (Unisa), B. Ed. (University of Zululand), Ed.M., M.P.A., Ed.D. (Harvard).

His work experience includes being Circuit Inspector of Schools, in the Department of Education and Culture. Lecturer, and Professor of Sociology of Education at the University of Zululand. Professor Nxumalo is an Adjunct Professor at Monmouth College, New Jersey, where he teaches an Ethnic and Cultural Pluralism Course every July. Some of the activities in which Professor Nxumalo has participated are - Organising Secretary, Edendale Lay Ecumenical Centre; Deputy Chief Scout in South Africa; Leader for the Multiparty Zambian Election Monitoring Group from South Africa which was set up by the Institute of Multiparty Democracy, a trustee of the Institute of Multiparty Democracy; a participant in the Workshop on elections in Namibia.

Johan L. Olivier

Johan Olivier is head of the Centre for Conflict Analysis at the Human Sciences Research Council (HRSC) in South Africa. He holds a Ph.D. Degree in Sociology from Cornell University in the United States.

He is involved in extensive research into civil unrest and political violence in South Africa, and is busy with a comparative USA-RSA study of racial and ethnic conflict with a colleague at Stanford University in the United States. He was a member of the multi-national panel which advised the Goldstone Commission on the procedures for mass demonstrations during 1992. He is a member of the Board of Directors of the Goldstone Institute.

Charles F.C. Ruff

Charles Ruff is a partner in the Washington D.C. law firm of Covington & Burling. He served as United States Attorney for the District of Columbia from 1979 to 1982 and before that as the Acting Deputy Attorney General, United States Department of Justice, and Special Prosecutor of the Watergate Special Prosecution Force. He was also an Associate Professor at the Georgetown University Law Center from 1973 to 1979 and taught at the Louis Arthur Grimes School of Law, Monrovia, Liberia, from 1963 to 1965.

Therese Eppie Striggner Scott

Therese Striggner Scott is Ghana's Ambassador to France with concurrent accreditation to Spain, Portugal, Greece, the Vatican and the permanent Delegate to Unesco.

She is a Barrister-At-Law and started her legal career, first as a State Attorney, later going on the Bench initially as a District Magistrate, then Circuit Court Judge and becoming a Judge of the High Court in Ghana and in Zimbabwe.

As a member of the Advisory Committee of the International Academy of Trial Lawyers her committee was engaged in studying ways and means of taking private suits to the International Court of Justice. Served on the Ghana Judicial Council and the Ghana Medical School Council.

An Elected Member of the Executive Board of Unesco, she also serves on the Board's subsidiary body on Human Rights [i.e. Committee on Conventions and Recommendations], and is the current Chairperson of the Africa Group of Ambassadors at Unesco.

Clifford Shearing

Clifford Shearing is Professor of Criminology and Sociology at the University of Toronto and Director of its Centre of Criminology. He is a Visiting Research Professor at the Community Law Centre at the University of the Western Cape and Director of its Community Peace Foundation; a Visiting Professor and Research Associate at the Institute of Criminology at the University of Cape Town; a member of the Police Board established under the provisions of the National Peace Accord.

1. The Commission is to hold an inquiry into ways and means of curbing the potential for public violence and intimidation in and in relation to a national election.

2. In order to assist and advise the Commission with regard to the inquiry, it will appoint a panel of South African experts. Appropriate international experts will also be consulted and will be requested to act with the local panel.

3. All interested parties are requested to furnish written submissions to the Commission by 31 May 1993 on any relevant matter relating to the above terms of reference and in particular:

- (a) the rules of conduct and procedure (including policing and security) which should apply in order to curb public violence and intimidation in relation to public meetings held and any other activity relating to an election conducted in the period prior to such an election by political parties and organisations;
- (b) the relevance to public violence and intimidation of the time period during which voting should take place;

L070393 (PR15/93)

EMBARGO: 12:00: MONDAY, 8 MARCH 1993

PRESS STATEMENT BY THE HONOURABLE MR JUSTICE R J GOLDSTONE, CHAIRMAN OF THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION

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 - (b) the relevance to public violence and intimidation of the time period during which voting should take place;

- (c) the location of polling stations;
- (d) the security and policing of polling stations;
- (e) the conduct and procedures relating to the counting votes;
- (f) relevant measures during the period following the conclusion of the election;
- (g) with regard to the foregoing matters:
 - (i) the role of relevant Government Departments;
 - (ii) the role of the South African Police;
 - (iii) The role of the international community.

4. The Commission requests submissions to be furnished to it in particular by:

- (a) relevant Government Departments;
- (b) the South African Police;
- (c) political parties and organisations;
- (d) international organisations which have an interest and a role to play;
- (e) church organisations;
- (f) welfare organisations;
- (g) relevant university departments and institutes.

5. The Commission hopes that this enquiry, apart from any other purpose, will in effect be a consultation with all the people of South Africa in order to:

- (a) ascertain their fears, concerns and wishes with regard to possible public violence and intimidation in a forthcoming national election;

- (b) educate the public of South Africa with regard to political tolerance which is essential for a free and fair election and one unaccompanied by violence or intimidation.

6. In order to achieve the aforesaid goals, the Commission appeals to non-governmental organisations, churches and welfare organisations to actively consult with their constituents and members with regard to the inquiry and so involve all of the people of South African in a matter which is primarily their concern.

7. Submissions should be furnished to the Secretary of the Commission, Private Bag X858, Pretoria, 0001.

PRETORIA
8 MARCH 1993

APPENDIX III

Parties which have made written submissions

1. The European Community
2. The South African Council for Child and Family Welfare
3. The Department of Home Affairs
4. The Democratic Society
5. The South African Federation for Mental Health
6. The South African National Council for the Deaf
7. The Institute for Defence Policy
8. The Commonwealth Observer Mission to South Africa
9. The Human Sciences Research Council
10. Lawyers for Human Rights
11. Lt-Col B.G. Robinson
12. The institute for Democratic Alternative for South Africa
13. The Independent Mediation Service of South Africa
14. The African National Congress
15. The Cape Chamber of Industries
16. The Family and Marriage Society of South Africa
17. The South African Police
18. The Policing Research Project
19. The National Council for the Physically Disabled in S.A.
20. EFSTOP
21. The Western Cape Peace Committee
22. The National Party
23. The National Democratic Institute for International Affairs
24. The United Nations Observer Mission in South Africa (UNOMSA)