

COMMISSION OF INQUIRY REGARDING
THE PREVENTION OF PUBLIC VIOLENCE
AND INTIMIDATION

INTERIM REPORT ON THE CONDUCT OF MEMBERS OF
32 BATTALION AT PIOLA PARK ON 8 APRIL 1992

GOLDSTONE REPORT; GK - 6

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NOT TO BE ISSUED

The State President

On 13 April 1992 the Commission was requested by the Minister of Defence to inquire urgently into allegations concerning the conduct of members of 32 Battalion at Phola Park on the night of 8 April 1992.

The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation has the honour to present an interim report on the conduct of members of 32 Battalion at Phola Park on 8 April 1992

R.J. Goldstone

R.J. GOLDSTONE
CHAIRMAN OF THE COMMISSION

10 JUNE 1992
PRETORIA

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1. On 13 April 1992 the Commission was requested by the Minister of Defence to inquire urgently into allegations concerning the conduct of members of 32 Battalion at Phola Park on the night of 8 April 1992.

2. Since a committee of the Commission under the Chairmanship of Mr S. Sithole was at that stage hearing evidence on the Thokoza area in which Phola Park is situated, the Commission requested that committee to inquire into the incident involving 32 Battalion as a matter of urgency.

3. At a preliminary inquiry held by the Commission a very high number of residents of Phola Park alleged that violent acts had been committed against them by members of 32 Battalion. It was apparent that if a committee of the Commission was to investigate all their allegations it would in effect be usurping the functions of the South African Police and the Attorney-General. In any event such investigations would take months if not years to complete. In these circumstances the Commission decided to refer the following issues to the Thokoza Committee:

3.1 Why members of 32 Battalion entered Phola Park on the night in question;

3.2 whether members of the battalion were guilty of misconduct.

4. The committee has reported to the Commission. Its report is attached hereto. The Commission has considered the report and fully accepts and endorses the conclusion and recommendations contained therein. It would also draw attention to the fact that evidence was given to the Commission of serious complaints against members of 32 Battalion who were involved at Imbali, Pietermaritzburg. There was a public protest by people living at Imbali during the period 7 - 9 May 1992 that was directed at having that battalion removed from the area. The battalion was involved over a lengthy period in fighting against SWAPO in Namibia (then South-West Africa). It is perceived by many members and supporters of the ANC as being biased against the ANC as an ally of SWAPO. That perception is heightened by the inability of many of the members of the battalion to speak a language understood by township residents. The Commission was happy to hear that on 4 June 1992 32 Battalion was taken out of Imbali.

5. For convenience the Commission lists the recommendations made by the committee and the Commission:

- (a) That the South African Police and the Attorney-General of the Witwatersrand urgently complete investigations into acts of violence, including murder and rape, allegedly committed by members of 32 Battalion against residents of Phola Park and that, where appropriate, the offenders be brought to trial;

(b) that 32 Battalion should not again be used for peace-keeping duties anywhere in South Africa; and

(c) that the Defence Force give urgent consideration to any steps that may be necessary to ensure that especially senior officers are made aware of their special role in peace-keeping duties and that the attitude of the captain referred to in paragraph 8 of the committee's report is not one generally found in the officer corps.

H.N.S. SITNOLU
CHAIRMAN OF THE COMMITTEE

L.G.S. BAWA
MEMBER OF THE COMMITTEE

R.S.K. TUCKER
MEMBER OF THE COMMITTEE

PRATOIA
3 JUNE 1992

TO THE COMMISSION

REPORT TO THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF
PUBLIC VIOLENCE AND INTIMIDATION FROM THE COMMITTEE ESTABLISHED TO
INQUIRE INTO THE INVOLVEMENT OF 32 BATTALION AT PHOLA PARK

M.N.S. SITHOLE
CHAIRMAN OF THE COMMITTEE

L.G.S. BAQWA
MEMBER OF THE COMMITTEE

R.S.K. TUCKER
MEMBER OF THE COMMITTEE

PRETORIA
3 JUNE 1992

1. This is an interim report.

2. Without anticipating the report that the committee will be making on the phenomenon and causes of violence in the Thokoza area, the events of the night of 8 April 1992 must be seen in the context of high levels of violence in the area, and in particular at Phola Park itself. In recent months there has been a sustained and high level of violence in and around Phola Park and a number of people, including policemen, have been abducted and assassinated. The committee arranged to hold an on-the-spot inspection and was then advised by all the parties (including the legal advisers to the Phola Park community) to cancel this because of the high level of violence.

3. On the evening of 8 April 1992 shooting was heard from Phola Park. A platoon of 32 Battalion (some on foot and others in a Casspir) was dispatched to investigate the shooting and on arrival at Phola Park came under fire. One member of 32 Battalion was wounded by a bullet fired from Phola Park as he disembarked from a Casspir. Two further platoons were then ordered to go to the assistance of the first platoon. The committee is satisfied on the evidence which it heard that at least some members of the Phola Park self-defence unit were involved in a gun battle with 32 Battalion, and that AK 47s were used in that battle. During the battle a substantial number of shots were fired by both sides and more than 200 rounds were fired by members of 32 Battalion. A number of bullets penetrated the shacks of Phola Park residents, and at least two residents were injured in their shacks by bullets

and subsequently died. In both instances there were bullet holes in the shacks in which the two people in question were fatally injured.

4. When the gun battle stopped the captain (who was located at the Steunpunt) gave an order to Lieutenant Ras, who was in command of the three platoons at Phola Park, to conduct a sweep of a section of Phola Park. Evidence was given that the reason for giving the command was to look for people who might have been injured or killed because they had been caught in the cross-fire of the gun battle and to look for firearms. It was acknowledged that a secondary purpose of the sweep was to pick up any people who had actually been involved in the gun battle. Evidence was led that in conducting the sweep all the soldiers were disciplined, under reasonably direct control and that they looked at shacks for signs of bullet holes and that if there were bullet holes they made a point of ensuring that no-one in the shack was injured. In at least one instance a person who was injured or killed by a bullet, and where there was a bullet hole in the side of the shack, was not found until four days later. In another instance there is evidence that a soldier or soldiers actually entered a shack and nevertheless left an injured person lying in the shack who died the following morning. In either event the reason that was given for entering Phola Park in the first place was not communicated to the soldiers or alternatively was communicated to the soldiers and was then carried out in a totally ineffectual manner by the soldiers.

5. In the process of conducting the sweep, a number of members of 32 Battalion entered shacks of the residents of Phola Park and, as acknowledged by the legal representatives of 32 Battalion on behalf of 32 Battalion, committed unspecified "acts of violence" against "a resident or residents" of Phola Park. Generic evidence of the circumstances under which these acts of violence were committed was led by the legal representatives of 32 Battalion as suggested justification therefor. The committee cannot however find any grounds of justification for acts of violence having been committed against innocent residents of Phola Park. These acts of violence constituted unlawful acts of assault. It was not in the committee's mandate nor was evidence led on which the committee could come to any specific findings of rape, murder or other specified assault. The committee recommends however that as a matter of the utmost urgency the alleged acts of assault, rape and murder should be investigated and where appropriate the offenders brought to trial.

6. In the light of the failure of 32 Battalion to carry out the function for which it was alleged that it entered into Phola Park in the first place (mainly to look for injured people and remove them for treatment), and in the light of members of 32 Battalion having committed acts of violence against innocent members of Phola Park in the course of conducting that sweep, the committee finds that the entry into Phola Park was unjustified, and that in certain unspecified incidents members of 32 Battalion acted in a manner completely inconsistent with the function of a peace-keeping force and in fact became perpetrators of violence.

7. The committee heard evidence from a number of people that 32 Battalion has played a positive peace-keeping role in the Thokoza area. However, in relation to Phola Park itself, because members of 32 Battalion acted unlawfully and in a manner inconsistent with a peace-keeping force on the night of 8 April 1992, and because the use of Portuguese-speaking soldiers has become a controversial issue, the committee recommends that 32 Battalion should be withdrawn from Phola Park itself and should not be used other than in the most extraordinary and emergency circumstances either in or around Phola Park.

8. The committee heard evidence from the captain in command of 32 Battalion on the night in question. He justified the use of what would normally be regarded as excessive force by soldiers on the grounds that they were involved in what amounted to a war. His evidence caused the committee considerable concern, and raises the distinction between soldiers fighting a war as opposed to a peace-keeping force maintaining law and order. The committee can envisage circumstances in which a war is being fought and in which, as a follow-up to a gun battle, soldiers might be excused for using what would normally be regarded as excessive force not only against the soldiers against whom they were fighting but also against the civilians of the opposing nation. There is however a vast distinction between those circumstances and the circumstances on the night of 8 April when members of 32 Battalion found themselves in what amounted to a gun battle with a group of individuals, but in which their responsibility as a peace-keeping force for the maintenance of law and order in relation to the civilian

population of Phola Park was in no way affected. Under those circumstances the use of excessive force cannot be justified and the committee is most concerned that the attitude of the captain in question might prevail elsewhere in the Defence Force. This being the case the committee recommends as a matter of the utmost urgency that all Defence Force units involved in the maintenance of law and order should have this critical distinction drawn for them, and should be trained concerning the role of a peace-keeping force and its responsibility towards the population for whose benefit it is maintaining law and order.