

SOUTH AFRICA MULTI-PARTY NEGOTIATING PROCESS NEGOTIATING
COUNCIL TECHNICAL COMMITTEE: FUNDAMENTAL RIGHTS
VIOLENCE 1-5 1993



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TECHNICAL COMMITTEE

ON

VIOLENCE

**REPORT NUMBER ONE OF THE TECHNICAL COMMITTEE ON VIOLENCE
THURSDAY 13 MAY 1993**

- 1 This Technical Committee comprises the following members:
Mr W Felgate
Mr P Hatty
Mr S Mufamadi
Mr GB Myburgh
Mr V Ntsubane
Adv P Oosthuizen
Prof A Seegers
Prof HW Vilakazi
- 2 Mr P Hatty was appointed by the Committee to act as chairperson and would be responsible for co-ordinating the reports of this Committee.
- 3 The Committee examined the following background documents:
 - The report by Working Group 1 of Codesa
 - National Peace Accord
 - Submissions for the strengthening of the National Peace Accord
- 4 The Committee further familiarised itself with the structures and workings of the National Peace Accord.
- 5 As a result of discussion the Committee decided to familiarise itself with the "Goldstone Commission" recommendations.
- 6 The Committee has to date received the following submissions:
 - 6.1 Opening statement by Dr FT Mdlalose, National Chairperson of the IFP, to the Negotiating Council, 26 April 1993
 - 6.2 Resolution to ensure peaceful conditions for constitutional negotiations and free political activity in South Africa
 - 6.3 Solidarity Party
 - 6.4 Inyandza National Movement
 - 6.5 Venda Government
 - 6.6 Submission to the Negotiating Council: United Peoples Front
 - 6.7 South African Government proposals to the Technical Committee on Violence as to measures to be taken to curb violence, 13 May 1993

- 6.8 African National Congress Submissions to Technical Committee on Violence, 12 May 1993
 - 6.9 South African Government proposals for strengthening the National Peace Accord, 13 May 1993
 - 6.10 Office of the Military Council, Republic of Transkei: Recommendations on the formulation of a negotiations agenda, 28 April 1993
 - 6.11 Submission by the Democratic Party, 10 May 1993
 - 6.12 Government of the Republic of Bophuthatswana - Initial submission on violence
 - 6.13 Ciskei Government submission - Violence
7. The Committee had substantial discussions on the process to evaluate and consider these submissions and decided to first study the submissions before proceeding. During this process the Committee members will develop draft procedures for dealing with them and report back at the next Technical Committee meeting, when the submissions will be discussed in accordance with an agreed procedure.
8. The next meeting of this Committee will be at 09h15am, Tuesday 18 May 1993.



PR Hatty
(Chairperson)
13 May 1993

C

TECHNICAL COMMITTEE
ON
FUNDAMENTAL RIGHTS DURING THE TRANSITION

C O N F I D E N T I A L**MULTI-PARTY NEGOTIATING PROCESS****TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION****FIRST PROGRESS REPORT****1 Introductory remarks**

The Committee first met on 10 May 1993 at The World Trade Centre ('the first meeting') and thereafter on 13 May 1993 in Cape Town ('the second meeting'). It has also scheduled a meeting for 18-20 May 1993 at The World Trade Centre ('the third meeting'). Dates for further meetings will be determined at the third meeting. Meetings with other technical committees, such as the Committees on Constitutional Matters and the Repeal of Discriminatory Legislation, may also be necessary, since this Committee envisages that it will, from its particular perspective, somehow have to address concerns such as the mechanisms for the enforcement of fundamental rights and freedoms, and constitutional principles to be embodied in an interim constitution which will serve as guidelines for the eventual drafting of the final bill of rights by a constituent assembly.

2 Guiding considerations

At its first meeting the Committee, after having appointed Prof LM du Plessis as its Convener, agreed that the following considerations -- which could in due course still be amplified -- should guide it in its further deliberations:

- 2 1 The means and mechanisms for the entrenchment of fundamental rights and freedoms in the transitional period should enjoy legitimacy among the vast majority of the population so as to facilitate the legitimacy of similar means and mechanisms in a final dispensation.
- 2 2 Apart from identifying fundamental rights and freedoms which are to be protected in the transitional period, their enforceability and the enforcement mechanisms invoked to this end, are vital questions which will have to receive the Committee's serious attention. The said mechanisms should also be accessible and practicable.
- 2 3 The Committee should start off by exploring "common ground", i.e. areas of agreement on minimal or essential fundamental rights and freedoms which can simply not be excluded in the transitional period. To this end the Committee ought to start by comparing bill of rights proposals for South Africa which have already been published.

3 Methodology

As a guide to its deliberations, the Committee distinguishes the following three categories of rights and freedoms in the context of the entrenchment of fundamental rights and freedoms during the transitional period:

- 3 1 minimal or essential rights and freedoms which must be accommodated;
- 3 2 desirable rights and freedoms i.e. those which ought to be accommodated, and
- 3 3 debatable rights and freedoms, the inclusion of which is uncertain at this stage.

At its second meeting the Committee dealt with 3 1. This report therefore reflects the Committee's initial position on the accommodation of the first category of rights and freedoms in the transitional period. The Committee's position is, however, subject to change in view of the submissions only just received or which may still follow.

4 Rights and freedoms identified for purposes of category 3 1

- 1 The right to life.
- 2 The right to dignity.
- 3 Freedom of speech and expression which shall include freedom of the press and other media.
- 4 Freedom of conscience, religion, thought and belief.
- 5 The right to personal freedom, including the right not to be detained without trial.
- 6 The right to the security of the person.
- 7 The right to assemble and demonstrate with others, peacefully and unarmed, and to draw up and submit petitions.
- 8 The right to equal protection and equal benefit of the law which shall not prevent measures which have as their objective the improvement of the conditions of disadvantaged people.
- 9 Freedom from slavery, servitude and forced labour.
- 10 The right to form trade unions and employers' organisations and to engage in collective bargaining.
- 11 Freedom from physical, mental or emotional torture, or inhuman or degrading treatment or punishment.

- 12 Freedom of association.
- 13 The right to vote and stand for election to public office.
- 14 The right to form and join political parties and the freedom to make political choices.
- 15 The right to move freely and to reside and to pursue a livelihood at any place within South Africa.
- 16 The right to leave and to return to South Africa, including the right to a passport.
- 17 The right to language and culture.
- 18 The right of an accused person
 - to be brought before a Court within 48 hours of arrest;
 - to be informed immediately of the reason for the arrest, to remain silent and to have access to a lawyer;
 - to a lawyer provided by the State where the interests of justice so require;
 - upon good cause shown to a court of law to be released from detention with or without bail;
 - to a fair trial in public within a reasonable period.
- 19 The right of detained and convicted persons to be treated with dignity.
- 20 The right to be released when the reason for detention falls away.
- 21 The right to physical and mental integrity.
- 22 The right to privacy.
- 23 Freedom to participate in economic activity.
- 24 The right to have disputes settled by a court of law or other independent forum.

- 25 The right to reasonable, procedurally-proper and lawful administrative decision-making.
- 26 The right of access to that information which is necessary for the implementation of a person's rights.
- 27 The right to reasons for administrative action which affects a person's rights.
- 28 The right to an environment which is safe and not detrimental to health.
- 29 Freedom from eviction from a person's lawful home.
- 30 The right of children not to be subject to neglect, abuse or forced labour.
- 31 The right of equal access to State or State-aided educational institutions.

Almost all these rights will have to be subject to a limitations clause which will be provided for by this Committee in a later Report. The Committee will also attend to the circumstances in which these rights may be legitimately suspended.

Prof H Corder

Prof LM du Plessis (C)

Mr G Grove

Ms S Nene

Adv Z Yacoob

**REPORT NUMBER TWO OF THE TECHNICAL COMMITTEE ON
VIOLENCE: FRIDAY 21 MAY 1993**

1. Two of the members of this Technical Committee have been changed. Ms S Vos has replaced Mr W Felgate and Mr M Phillips has replaced Mr S Mufamadi.
2. This Committee has received submissions as listed in the Annexure to this report :
3. The Committee has taken careful note of its brief to consider the submissions and other documents in order to:
 - 3.1 Analyse the causes of violence; and
 - 3.2 Establish further steps and mechanisms to deal with these issues.
4. The Committee believes it is essential that recognition is taken of those institutions which are already in existence to deal with the problem of violence, and where these institutions are suitable, it is the intention of this Committee that the institution or institutions, should handle those matters pertaining to violence which are relevant and directed to it. If there are no known suitable institution, then this Committee may recommend a new institution be established to deal with the problem.
5. The Committee had decided to process the submissions on an "issue" basis, in that the Committee has examined all the submissions to identify issues. These may relate to the causes of violence, steps to be taken to prevent it or dealing with violence, once it has been done. So far over 90 issues have been identified. These issues have been collated into the major areas of resolution by the following groupings of institutions:
 1. Political parties
 2. South African Government
 3. Other Governments or Administrations
 4. Peace structures
 5. Armed formations
 6. Other
6. It must be remembered that this Committee does not see itself as an investigative body, which assesses the veracity of allegations that may be included in the submission before it. However, all issues will be tested against

existing processes such as the Goldstone Commission and the NPC sub-committee dealing with "Strengthening of the Peace Accord"

7. The common thread that runs through all the submissions is the conviction expressed by the parties that the current violence must be reduced and preferably ended, in order for the practical process of political negotiations between parties to go on without tension, rancour and, in extreme, without breaking down, as well as for the practical implementation of the agreements of negotiations to proceed successfully and flow through to free and fair elections uninhibited by violence and intimidation.

8. This Committee will attempt to make recommendations on each issue which has been identified in the submissions.

9. All parties at the Multi-Party Negotiating Process must sign the National Peace Accord.

This Committee supports the proposal that recommends all parties involved at the Multi-Party Negotiating Process should become signatories to the National Peace Accord. This must be the starting point of an indication to the country that all the parties are committed to a peaceful settlement for the future of our land. It is suggested that any party at the Multi-Party Negotiating Process which is not a signatory to the National Peace Accord should be persuaded to do so, recognising that this would be an important symbol to the country that all parties/ administrations/ organisations involved in negotiations are committed to peace and a peaceful outcome of the negotiating process.

10. Peace Corps

A submission has been made recommending a Peace Corps. Before this Committee can consider this fully it is requesting further proposals from the parties including the principles, functions and desirability of a Peace Corps and its role in reducing the level of violence present.

11. The following issues should be directed to the sub-committee of the National Peace Committee charged with the strengthening of the National Peace Accord:

- 11.1 Infringements of the National Peace Accord

A proposal has been made that there should be penalties for infringements of the Peace Accord.

11.2 Government proposals for the strengthening of the National Peace Accord

These proposals include both non-statutory mechanisms and statutory mechanisms to strengthen the Peace Accord. This whole proposal should be sent to the sub-committee for the strengthening of the Peace Accord for their consideration.

11.3 Peace Accord has no teeth

A submission has indicated that the Peace Accord appears to be a "dog with no teeth". This submission gives no indication of how the Peace Accord itself could be strengthened by giving it teeth.

11.4 Alleged transgressions of the Peace Accord

The Democratic Party has made some suggestions on mechanisms to deal with alleged transgressions of the Peace Accord and these also should be conveyed to the sub-committee for their attention.

12. Police Board

The Democratic Party has made recommendations for the Police Board to be given more functional autonomy. As the Police Board is a structure of the Peace Accord this should be submitted to the sub-committee dealing with the strengthening of the Peace Accord.

13. Proposals which relate to the strengthening of the Peace Accord only have been dealt with in this report.

PR Hatty
(Chairperson)
21 May 1993

SUBMISSIONS TO THE TECHNICAL COMMITTEE ON VIOLENCE

Submissions received and dealt with:

- 2.1 Opening statement by Dr FT Mdlalose, National Chairperson of the IFP, to the Negotiating Council, 26 April 1993
- 2.2 Resolution to ensure peaceful conditions for constitutional negotiations and free political activity in South Africa
- 2.3 Solidarity Party
- 2.4 Inyandza National Movement
- 2.5 Venda Government
- 2.6 Submission to the Negotiating Council: United Peoples Front
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- 2.8 African National Congress Submissions to Technical Committee on Violence, 12 May 1993
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- 2.11 Submission by the Democratic Party, 10 May 1993
- 2.12 Government of the Republic of Bophuthatswana - Initial submission on violence
- 2.13 Ciskei Government submission - Violence
- 2.14 Submission by the Afrikaner Volksunie
- 2.15 Venda Government position paper on violence
- 2.16 Input by Transkei Government
- 2.17 Comments on draft National Peace Accord: Republic of Ciskei
- 2.18 Violence and prospects for democracy in South Africa:
HW Vilakazi
- 2.19 Proposal for stopping violence among Africans: HW Vilakazi
- 2.20 Proposal for a march/ rally for end of violence among Africans:
HW Vilakazi
- 2.21 Submission by the Conservative Party to the Technical Committee on Violence
- 2.22 Position Paper on causes of violence which threaten the negotiation process and the effective implementation of the NPA: Cape Delegation of Traditional Leaders, 23 April 1993
- 2.23 Report of the Gender Advisory Committee to Codesa 2
- 2.24 Submission: Natal Indian Congress, 13 May 1993
- 2.25 Report of the directorate: Internal Peace Institutions, 1993

New submissions:

- 2.26 Submission to the Technical Committee on violence: Ximoko Progressive Party
16 May 1993
- 2.27 Violence: Second input by the Transkei Government
- 2.28 Press statement by the honourable Justice RJ Goldstone, 8 March 1993
- 2.29 Position paper on causes of violence which threaten the negotiating process and
the undermining of the effective implementation of the National Peace Accord:
Cape Delegation of Traditional Leaders
- 2.30 Submission to the Technical Committee on Violence: Intando Yesizwe
- 2.31 Submission: Transvaal/ Natal Indian Congress
- 2.32 Supplementary submission to violence: Ciskei Government
- 2.33 Submission on violence: United People's Front
- 2.34 Submission: Inyandza National Movement
- 2.35 First position paper of the Inkatha Freedom Party, 18 May 1993

EXECUTIVE SUMMARY

REPORT NUMBER THREE OF THE TECHNICAL COMMITTEE ON VIOLENCE: 27 MAY 1993

The Committee has started dealing with issues which relate to the responsibilities of political parties. This report covers three areas - political rivalry, negotiating process, and mass action.

A number of recommendations on political rivalry are made, all with the intent of getting political parties more committed to and working with acceptable forms of political rivalry in an effort to reduce politically motivated violence.

A number of issues relating to violence and the negotiation process are raised. The Committee believes these will need to be addressed by the Negotiating Council and its members, in order to attempt to reduce this potential for violence while the negotiating process is proceeding.

The Committee is proposing that the parties at the Negotiating Council consider alternative views regarding the introduction of a moratorium on mass action for a limited time during the negotiating process. However, the fundamental right to mass action is supported, but requesting parties which do exercise that right to observe some specific requirements when so doing.

The Committee has dealt with more areas but is not ready to include them in a report.

**REPORT NUMBER THREE OF THE TECHNICAL COMMITTEE ON
VIOLENCE: 27 MAY 1993**

1. INTRODUCTION

1.1 Based on the submissions to this Committee, we identified a number of violence "issues" which have been allocated into six major areas of resolution, being:

- 1.1.1 Political Parties
- 1.1.2 South African Government
- 1.1.3 Other Governments and Administrations
- 1.1.4 Armed formations
- 1.1.5 Peace Structures
- 1.1.6 Other

1.2 This report deals with the issues which pertain to Political Parties. Those "issues" cover the causes, potential causes, and manifestations of violence. The following are the issues identified:

- 1.2.1 "Killing" talk by political leaders/ inflammatory speech; speeches inciting violence;
- 1.2.2 Political parties creating a climate for violence/ tactics and strategies implemented either overtly or covertly;
- 1.2.3 Private political armies;
- 1.2.4 Mass action;
- 1.2.5 Hostels;
- 1.2.6 The threat of violence emanating from the Right-wing.
- 1.2.7 The need for political reconciliation between the ANC and the IFP and the inability of these parties to effectively spread joint messages of peace and political tolerance;
- 1.2.8 Concerted efforts to derail the negotiation process by political activists/ parties/ others;
- 1.2.9 Impatience with the pace of constitutional negotiations
- 1.2.10 Freedom of political participation/ association/ assembly;
- 1.2.11 Political intolerance;
- 1.2.12 Political intimidation;
- 1.2.13 Leaders of political parties not doing enough to promote political tolerance;
- 1.2.14 Some parties at the Multi-Party Negotiating Process have failed to sign the National Peace Accord;

- 1.2.15 Failure of signatories to the National Peace Accord to meet;
- 1.2.16 Certain parties have failed to suspend the armed struggle;
- 1.2.17 Parties have failed to accept responsibility and accountability for contraventions of the Peace Accord and political violence committed by their members/ supporters;
- 1.2.18 Failure of parties to co-operate with security forces;
- 1.2.19 Dangerous weapons;
- 1.2.20 Lack of constructive mobilisation of African leadership;
- 1.2.21 Covert and clandestine operations.
- 1.2.22 Political rivalry and fear of losing political support
- 1.2.23 Despondency that the negotiation process will not yield the desired party political results;
- 1.2.24 Lack of control by political formations of their rank and file members;
- 1.2.25 Deteriorating socio-economic conditions
- 1.2.26 Improper conduct by the police in the course of investigations
- 1.2.27 Lack of capacity by police to effectively investigate acts of political violence;
- 1.2.28 Fear of change on the part of people with vested interests in the constitutional status quo;
- 1.2.29 Unlawful and politically biased activities and actions of security forces and/ or individuals in such forces;
- 1.3 On further consideration of these issues, five areas of critical concern have been identified: political rivalry; political negotiations, weapons, mass action, covert and clandestine operations.
- 1.4 This report deals only with those issues on which the Committee has managed to make progress to date i.e. political rivalry, political negotiations and mass action.

2. POLITICAL RIVALRY

- 2.1 Robust yet peaceful political rivalry is a healthy and necessary feature of democracy. However the democratisation process has been accompanied by forms of political rivalry and methods of mobilisation which go well beyond what is politically acceptable.
- 2.2 It is well known that violence has increased substantially since February 2nd, 1990, when a more competitive and open political process was initiated. Considerably increased political rivalry has become a trigger of violence. It is

useful to quote from one of the submissions before us: "political rivalry is a major trigger of violence". (Goldstone Commission report)

2.3 Unacceptable forms of conduct include:

- inflammatory rhetoric;
- creating a climate for and inciting violence either overtly or covertly;
- political intolerance; and
- political intimidation.

2.4 Experience has shown that legislation alone can not put an end to violence. Consequently it is recommended that:

2.4.1 All parties which are signatories to the National Peace Accord report to the Multi-Party Negotiating Process on steps taken by them to commit themselves to the Code of Conduct for Political Parties as contained in the National Peace Accord.

2.4.2 Non-signatories to the National Peace Accord should sign it and commit themselves to its Code of Conduct for Political Parties.

2.4.3 Parties should accept responsibility and accountability for any contravention in the Code of Conduct for Political Parties of the National Peace Accord by members/supporters.

2.4.4 political parties should promote peaceful politics to their members and the public at large. In this regard this Technical Committee suggests that the Negotiating Council consider the following:

- 2.4.4.1 re-emphasising the importance of bilateral discussions between rival organisations;
- 2.4.4.2 re-emphasising the importance of leadership meetings between rival organisations;
- 2.4.4.3 re-emphasising the importance of joint public meetings as a mechanism to demonstrate the commitment of rival political leaderships and organisations to peace;
- 2.4.4.4 re-emphasising the importance of meetings of grassroots supporters of rival organisations; and
- 2.4.4.5 the importance of public education programmes.

- 2.4.5 all parties should establish mechanisms, within their own organisations, for dealing with transgressions of the National Peace Accord by their party members.
- 2.4.6 those parties to the MPNP who are not signatories of the Peace Accord should report to the Negotiating Council on steps taken by them to deal with unlawful, violent and unacceptable conduct on the part of their members and supporters
- 2.4.7 all parties which have not yet suspended violence should do so immediately.
- 2.4.8 political leaders and supporters of political parties/organisations must refrain from making speeches inciting violence.
- 2.4.9 all parties should co-operate with the police in solving violent crimes.

3. VIOLENCE AND THE NEGOTIATION PROCESS

- 3.1 The Committee recognises that there is a direct relation between the lack of a political agreement regarding the future South Africa and the phenomenon of violence. Different Parties/Organisations/Administrations have differing perceptions, hopes, fears and expectations regarding the negotiating process. Equally there are differing perceptions, hopes, fears and expectations regarding the process amongst the general public. These differences have led to confusion, tension, division, despondency and anger and are playing a significant role in the proliferation of political violence.
- 3.2 The Committee has identified the following issues which it recommends should be addressed by the Negotiating Council:
 - 3.2.1 Widespread concern regarding the pace and urgency of negotiations;
 - 3.2.2 Fears that the negotiating process will not deliver sufficiently to meet the expectations of the organisations in the MPNP, their constituencies and the wider public.
 - 3.2.3 Covert and overt actions to derail the negotiating process;
 - 3.2.4 Fear of change among people with vested interests the constitutional status quo;

- 3.2.5 Lack of confidence and trust between political leadership;
 - 3.2.6 A lack of confidence and trust in political leadership;
 - 3.2.7 The flow of information about the negotiation process has not led to an adequate and constructive public comprehension thereof;
 - 3.2.8 The retention of the armed struggle as an official policy by political organisations
 - 3.2.9 Parties to the MPNP send out conflicting signals regarding their commitment to the negotiating process and keep armed options open;
 - 3.2.10 The potential for even higher levels of violence if the negotiations reach deadlock.
- 3.3 The Committee believes that with the exception of 3.2.7 all of the issues which have been identified are fundamentally political in nature and require resolution by those represented at the Negotiating Council themselves.
- 3.4 As far as 3.2.7 is concerned the Committee proposes that the Negotiating Council consider authorising a body of the Multi-Party Negotiating Process to speak to the Media on behalf of the Multi-Party Negotiating Process itself. This means that in addition to the variety of party-political and other Press conferences which already occur, there will be an opportunity for the Multi-Party Negotiating Process to regularly address the South African public with one voice.

4. MASS ACTION

- 4.1 Mass action is taken to cover all acts of mass protest gatherings, marches, boycotts etc.
- 4.2 Recently, as the various institutions involved in mass action and its regulation have worked together in accordance with guidelines formulated through structures of the Peace Accord, there has been a number of mass actions, particularly marches and rallies, which have proceeded without violent

incidents. However a number of unregulated and ill disciplined mass actions also have occurred, which have led to violence and loss of life.

- 4.3 The Goldstone Commission has investigated mass action and has produced two reports on the regulation of gatherings which cover many aspects of mass action. These reports have proposed *modus operandi* for the regulation of gatherings and a Bill to consolidate legislation pertaining to public gatherings, to provide for general measures setting out procedures, requirements, powers, and responsibilities of local and state authorities, the police and organisers of gatherings, and to provide for matters incidental thereto.
- 4.4 Although the Committee supports the general thrust of the Bill, it believes that certain amendments are required in order to ensure that all parties support the provisions of the Bill. The Committee proposes that the National Peace Committee should be requested to submit the necessary amendments.
- 4.5 As is stated in the preamble to the Bill, every person has the right to express their view on any matter freely in public and enjoy the protection of the state while doing so. Mindful that all persons have this right but mindful also of the tense and violent political environment in our country, the following views have been expressed in this Committee:
 - 4.5.1 The right to demonstrate is fundamental and cannot be taken away. Nevertheless, in the current climate mass action leads to unnecessary deaths and a moratorium should be placed on it.
 - 4.5.2 The right to demonstrate is fundamental and cannot be taken away. A moratorium on mass action could in fact increase political pressure and would be counter productive in the search for peace.
 - 4.5.3 All members of the committee agree that if and when the right to demonstrate publicly is exercised every party doing so must:
 - 4.5.3.1 Give priority to the need to promote peace;
 - 4.5.3.2 Avoid deliberate provocation of opponents;
 - 4.5.3.3 Ensure that the structures of the Peace Accord are kept fully informed and are utilized to maximum effect;

- 4.5.3.4 Commit themselves to negotiate in good faith with all relevant parties regarding demonstrations;
- 4.5.3.5 Bind themselves to comply with all agreements reached regarding demonstrations;
- 4.5.3.6 Comply with provisions of the Goldstone Bill once agreement has been reached on amendments to it, and once it has been enacted.

**REPORT NUMBER FOUR OF THE TECHNICAL COMMITTEE ON
VIOLENCE:
2 JUNE 1993**

EXECUTIVE SUMMARY

This Committee has addressed the resolution of the Negotiating Council adopted on 28 May 1993 instructing the Technical Committee to report to the next meeting of the Negotiating Council on the conditions that should be created to eliminate violence in accordance with the resolution on the "Declaration of Intent on the Negotiating Process" adopted by the Negotiating Council on 7 May 1993. The Committee has taken into account the submissions received together with the inputs made by the Committee members themselves.

The Committee has decided to recommend to the Negotiating Council proposals in the following areas which would contribute to the elimination of violence.

1. National Peace Accord
2. Armed Formations
3. Mass Action
4. An Election
5. A Peace Corps/Youth Services Corps
6. Socio-Economic Reconstruction and Development
7. Criminal Violence

The submission concludes with thirteen proposals which the Negotiating Council should adopt to eliminate violence. These proposals should be read in conjunction with the views and proposals of the previous reports.

**REPORT NUMBER FOUR OF THE TECHNICAL COMMITTEE ON
VIOLENCE:
2 JUNE 1993**

1. This report is submitted to the Negotiating Council in terms of the resolution of the Negotiating Council adopted on 28 May 1993 instructing the Technical Committee to report to the next meeting of the Negotiating Council on the conditions that should be created to eliminate violence in accordance with the resolution on the "Declaration of Intent on the Negotiating Process" adopted by the Negotiating Council on 7 May 1993. The Committee is of the view that this report complements previous reports of the Committee and should be read in conjunction with them.
2. The Committee received additional submissions from the ANC, IFP and SA Government in terms of the resolution of 28 May 1993. Having considered these submissions, together with proposals made by Committee members themselves, the Committee recommends to the Negotiating Council a set of seven conditions which should be created. These conditions relate to:
 - 2.1 The National Peace Accord
 - 2.2 Armed Formations
 - 2.3 Mass Action
 - 2.4 An Election
 - 2.5 A Peace Corps
 - 2.6 Socio-Economic Reconstruction and Development
 - 2.7 Criminal Violence
3. This report concludes with thirteen proposals which the Negotiating Council should adopt to eliminate violence.
4. **THE NATIONAL PEACE ACCORD**
 - 4.1 **Introduction**

The Committee believes that the primary set of conditions which should be created to eliminate violence relate to the structures and implementation of the National Peace Accord, which has been created as the primary mechanism to combat violence. The efficacy of the Peace Accord and its structures must be addressed and these must be made more effective.

The Committee has isolated three issues related to the Peace Accord and proposes as follows:

4.2 Strengthening the Peace Accord

4.2.1 The Accord needs to be amended to make it more effective. All relevant constituencies to whom decisions of Peace Committees will apply should be meaningfully represented in the structures of the Accord.

4.2.2 Chapter 9 of the Accord should be re-drafted to provide for more effective enforcement mechanisms so as to ensure that Parties to the Accord abide by their commitments. A sub-committee of the National Peace Committee has been established to finalise proposals in this regard. This sub-committee is due to meet on Saturday 5 June 1993 and the Committee recommends to the Negotiating Council to urge it to finalise its proposals as quickly as possible. Detailed proposals have been submitted to the sub-committee by political parties and by the Technical Committee on Violence. These include proposed steps which an arbitrator may order to be taken in terms of clause 9.5.4 of the Accord if a Party is found to have breached the Accord. The proposals include:

- 4.2.2.1 Ordering the organisation to publicly repudiate the breach/breachor;
- 4.2.2.2 Ordering the organisation to apologise to those adversely affected by the breach;
- 4.2.2.3 Ordering the organisation to suspend those guilty of the breach for a specified period of time;
- 4.2.2.4 Ordering the organisation to expel persons responsible for serious or repeated breaches;
- 4.2.2.5 Prohibiting persons guilty of breaches from appearing on public platforms of the organisation concerned for a specified period of time;
- 4.2.2.6 Any other appropriate order.

4.3 Meeting of Signatories

- 4.3.1 The signatories to the Peace Accord should meet as a matter of urgency to reconfirm their commitment to the Peace Accord and to approve the amendments to the Peace Accord proposed by the National Peace Committee.

4.4 Non-Signatories

- 4.4.1 A number of parties/administrations/organisations in the MPNP have still not signed the National Peace Accord. The Committee recommends to the Negotiating Council to take a decision that these parties/ administrations/ organisations should sign the Peace Accord and abide by it as a matter of urgency. If these parties refuse to sign and commit themselves to the Accord, serious questions will arise regarding their commitment to the MPNP and to the holding of free, fair and peaceful elections. Those parties who have not signed the Peace Accord should bear in mind that they will not be able to avail themselves of the voluntary adjudication procedures which the Accord provides for and the only avenue for dealing with transgressions of the Code of Conduct by members of these organisations will then be statutory and compulsory sanctions imposed by the Independent Electoral Commission or the Criminal Courts. Those parties which have nevertheless failed to sign the Peace Accord should be invited to the meeting of signatories to explain their positions. (A view expressed by one member of the Committee, but not supported by the other members, was that parties who do not sign the Accord should withdraw from the MPNP).

5. ARMED FORMATIONS

- 5.1 The Committee believes that all proposals regarding armed formations in the country should be considered in the light of a single, overriding objective: To establish impartial, accountable, effective and legitimate security forces for a democratic South Africa. The Committee proposes to the Negotiating Council that the parties to the MPNP adopt a series of

phased confidence-building measures within a common framework in order to achieve this objective. The framework should be agreed to in terms of the Declaration of Intent on the Negotiating Process adopted on 7 May, 1993.

- 5.2 The Committee further proposes that steps be taken in three broad phases:

5.2.1 The immediate period

All parties/administrations/organisations with arms or armed formations must establish proper control over these, conduct an audit of all existing weapons and personnel and establish mechanisms for bringing all weapons and personnel under the supervision of a joint multi-party agency. All parties and organisations should simultaneously take every possible step to ensure that their members and supporters do not use weapons for any unlawful purposes.

5.2.2 Phase Two

There should be a joint multi-party agency to formulate policy and oversee all armed formations. The agency will need to make a distinction between statutory and non-statutory armies on the one hand and police forces on the other hand. This distinction is consistent with the Committee's view that policing functions should be clearly distinguished from military functions, and with proposals made to the Committee that various armies play no role in the election process, unlike the various police forces which will be required to fulfil ongoing law and order functions. The multi-party agency must ensure effective supervision, including clear identification of personnel, weapons and locations and the circumstances and manner in which any armed formation or members of any armed formation may be deployed in peace-keeping functions. The agency should also give consideration to assisting any personnel who wish to leave an armed formation with constructive programmes for their integration into society.

5.2.3 Phase Three

In the third phase it will be the responsibility of an elected Government constituted on an agreed basis in terms of the Declaration of Intent adopted on 7 May 1993 to integrate, disband and rationalise the various armed formations and introduce comprehensive measures for the integration of their personnel into a democratic society, so as to achieve the objective of impartial, accountable, legitimate and effective security forces for South Africa.

- 5.3 The precise mechanisms required to implement this framework should be determined by the Technical Committee on the TEC and its Sub-Councils, in terms of the mandate of that Technical Committee.
- 5.4 Those weapons which do not fall under the control of any armed formation or for which no armed formation is responsible, or which are used contrary to the agreements outlined in this framework, should be dealt with in terms of the ordinary criminal process.
- 5.5 The Committee proposes the establishment of an independent peacekeeping force with a multi-party composition to function as the primary peacekeeping force for the election. Its functions thereafter should be determined by the elected Government in consultation with relevant parties. The force should be specially trained, should be constituted in such a way as to have legitimacy across the political spectrum and should fall under the control of either the Independent Electoral Commission or under multi-party executive control.

6. MASS ACTION

- 6.1 The Committee supports the recommendations of the Goldstone Commission that the right to demonstrate is fundamental to the democratic process and cannot be taken away. Two views have been expressed in the Committee regarding the appropriateness of mass action in the present climate:
 - 6.1.1 One view is that mass action leads to violence and a moratorium should therefore be placed on it;

- 6.1.2 Another view is that an absolute moratorium on public demonstrations and other forms of mass action would be counter-productive, as it may increase political pressure and frustration.
- 6.2 The Committee recommends to the Negotiating Council that if and when any party to the MPNP holds a demonstration, protest or any other form of mass action, it should ensure that:
 - 6.2.1 It has given priority to the need to promote peace;
 - 6.2.2 The action will avoid deliberate provocation of opponents and damage to property;
 - 6.2.3 The structures of the Peace Accord are kept fully informed and are utilised to maximum effect;
 - 6.2.4 Good faith negotiations occur with all relevant parties and the security forces regarding the proposed action;
 - 6.2.5 All agreements reached regarding the proposed action will be binding and that it will comply with them;
 - 6.2.6 The provisions of the Goldstone Bill regarding gatherings will be complied with once agreement has been reached on amendments to it and it has been passed as proposed in the Third Report of this Technical Committee;
 - 6.2.7 Sufficient marshalls will be provided to ensure that the action is peaceful and disciplined. In this regard the Committee supports the proposals made by the Peace Committee that there should be one marshall for every 50 demonstrators;
 - 6.2.8 All reasonable steps have been taken to make sure that no weapons are carried with unlawful intent;
 - 6.2.9 In making its decision as to whether the demonstration or any other mass action should be embarked upon, each party should also give due cognisance to the political

climate prevailing at the time and the appropriateness of the proposed action;

- 6.2.10 Parties must plan the route of any demonstration so as to provide for a specific place where it is to start, the route which is to be followed and a place where the march should end and where marchers should disperse.

7. AN ELECTION

- 7.1 The thrust of this whole report is to identify the conditions to eliminate violence which will allow the Declaration of Intent to be achieved and enable the electorate, the leaders and candidates of political parties to conduct their election campaigns and other political activities freely, without being intimidated or obstructed and without fear of being killed. The Committee recommends that every party to the MPNP adopts these principles immediately and without reservation.
- 7.2 The Declaration of Intent refers specifically to the need to determine a date for an election and to hold an election. The Committee believes that an election is the most important moment in the democratic process and its role in eliminating the conditions causing violence cannot be over-estimated.

8. PEACE CORPS/YOUTH SERVICES CORPS

There is an urgent need to constructively channel the energies and anger of the youth, particularly the unemployed and marginalised youth, during the transition and thereafter. The Committee proposes that all parties/organisations/administrations submit their views on the desirability of the establishment of a Peace Corps/ Youth Services Corps as a matter of urgency. It further recommends that the Technical Committee on Violence should be mandated to prepare a detailed proposal within a specified period of time regarding the establishment of such a Corps, with due regard to the experiences of other countries and the need to ensure full participation by both young men and women.

9. SOCIO-ECONOMIC RECONSTRUCTION AND DEVELOPMENT

Priority should be given to the socio-economic reconstruction and development of South Africa in order to address the material disparities which have contributed to violence. Special attention should be paid to development programmes in communities most affected by violence. Those involved in community development should be sensitive to the possibility of violent resistance to such development from within the community and should devise suitable ways to deal with this possibility. All parties should actively promote support for such programmes and ensure that the contractors are not in any way hampered in the execution thereof. Furthermore, the Committee recommends that, in addition to the achievement of sufficient consensus on the process of transition to democracy, including the setting of an election date and the establishment of agreed multi-party structures to level the playing field for elections, as stipulated in the Declaration of Intent, all sanctions, financial and economic restrictions should be lifted and every effort should be made to achieve a positive and sustainable economic growth rate.

10. CRIMINAL VIOLENCE

The Committee believes that the increase in criminal violence in recent years is perhaps the issue which is of the greatest concern to ordinary people. The Committee has proposed a phased approach within a common framework to the issue of armed formations which is intended, *inter alia*, to remove unlicensed firearms from society and to improve the legitimacy and effectiveness of policing. The Committee has also proposed that every effort be made to achieve economic growth so as to create new jobs.

11. CONCRETE PROPOSALS

- 11.1 The National Peace Committee should finalise proposed amendments to the Peace Accord as a matter of urgency so as to strengthen the Accord and increase its effectiveness;
- 11.2 The signatories to the Peace Accord should meet as a matter of urgency to reaffirm their commitment to the Accord and to approve the proposed amendments to it;

- 11.3 Non-signatories should sign the Peace Accord immediately;
- 11.4 Appropriate compulsory sanctions should be developed by the Technical Committee on the Independent Electoral Commission for dealing with parties/administrations/organisations which transgress the Code of Conduct for Political Parties, but refuse to sign the Peace Accord;
- 11.5 Any party organising a public demonstration or any other form of mass action must comply with the guidelines set out in this submission;
- 11.6 The National Peace Committee should submit proposed amendments to the Regulation of Gatherings Bill as a matter of urgency;
- 11.7 A series of phased confidence-building measures should be adopted leading to the creation of impartial, legitimate and effective security forces. A distinction should be drawn between statutory and non-statutory armies on the one hand and police forces on the other hand. The Technical Committee on the TEC and its Sub-Councils should propose the precise mechanisms to be adopted;
- 11.8 Parties between whom conflicts exist, which have contributed to violence, should, in addition to participating in the MPNP, meet bi-laterally to seek joint solutions to the conflicts between them;
- 11.9 An independent peacekeeping force with a multi-party composition should be established and placed under the control of the Independent Electoral Commission or under multi-party executive control;
- 11.10 Every party to the MPNP must commit itself without reservation to the holding of a free and fair election and to do everything possible to ensure that the electorate and the leaders and candidates of political parties are able to conduct their election campaigns and other political activities freely without being intimidated or obstructed and without fear of being killed;

- 11.11 An election date should be set and an election should be held in terms of the framework set out in the Declaration of Intent;
- 11.12 The Technical Committee on Violence should prepare detailed proposals on the desirability, financing, establishment and composition of a Peace/Youth Services Corps;
- 11.13 In addition to the achievement of sufficient consensus on the process of transition to democracy and the taking of steps to implement this agreement, it is essential that sanctions, trade and financial restrictions be lifted.

DISSENTING VIEW
(By one member)
ARMED FORMATIONS

1. The existence of armed formations belonging to political parties or organisations has no justification in the country during this period of multi-party negotiations to bring about a peaceful constitutional transition for a new and extended democracy for South Africa. However, and whilst recognising the historical reality that such armed formations had in fact been established, it is recommended:
 - 1.1 That any such existing armed formation of such parties and/or organisations should be phased out in terms of a phased approach dealing with, for example, the pre-TEC stage, the TEC stage and the stage after the election of a transitional government;
 - 1.2 As the whole matter of armed formations is clearly related to the question of the establishment of the TEC, its functions and powers, this matter be referred to the Technical Committee on the TEC for further consideration;
 - 1.3 As the availability of particularly unlicensed automatic assault rifles have contributed to a large extent to the increasing number of people being killed with such weapons, political parties and organisations and members of such organisations who possess unlicensed firearms in their capacity as members of such organisations should immediately place such weapons under credible impartial control;
 - 1.4 That all such parties and organisations should immediately cease recruiting for and training of recruits for such formations;
 - 1.5 That any person found in possession of an unlicensed firearm should be dealt with in terms of the provision of the relevant law and that all parties/organisations should make a clear statement that such persons shall not be eligible for any indemnity.

EMBARGOED UNTIL TABLED IN THE NEGOTIATING COUNCIL

REPORT NUMBER FIVE OF THE TECHNICAL COMMITTEE ON VIOLENCE 26 JULY 1993

1. RESPONSE TO ISSUES RAISED AT THE PREVIOUS MEETING WITH THE NEGOTIATING COUNCIL

1.1. The minutes of the Negotiating Council meeting of 22 June reflect various issues which were raised by members of the Negotiating Council and which required the attention of the Technical Committee on Violence. The following are the responses of the Committee:

1.1.1 The Technical Committee was requested to give serious consideration to multi-party control over private armies and security forces. This is covered by chapter five of Report Four of the Committee which set out the Committee's proposals on armed formations. The proposals resulted in point seven of the Resolution adopted by the Negotiating Council meeting on 22 June 1993.

1.1.2 The Technical Committee was requested to review paragraph 6.2 of the Fourth Report on the requirements which should be met when any party to the MPNP holds a demonstration, protest or any other form of mass action. The Committee recommends that the following paragraph replace paragraph 6.2 in the Fourth Report:

"6.2 The Committee recommends to the Negotiating Council that if and when any party to the MPNP holds a demonstration, protest or any other form of mass action, it should ensure that in addition to complying with existing laws:

6.2.1 It has given priority to the need to promote peace;

- 6.2.2 In making its decision as to whether the demonstration or any other mass action should be embarked upon, it should give due cognisance to the political climate prevailing at the time and the appropriateness of the size, venue, route and nature of the proposed action;
- 6.2.3 The action will avoid deliberate provocation of opponents, injury to persons and damage to property;
- 6.2.4 The structures of the Peace Accord are kept fully and timeously informed by the convenor(s) of the action and are utilized to maximum effect in assisting with planning arrangements, monitoring of the action and mediating any disputes that may arise;
- 6.2.5 Good faith negotiations occur with all relevant parties and the security forces regarding the proposed action;
- 6.2.6 All agreements reached regarding the proposed action will be binding and that it will comply with them and ensure that all participants are aware of such agreements;
- 6.2.7 Sufficient trained and identifiable marshalls will be provided to ensure that the action is peaceful and disciplined. As a guideline there should be at least one, but preferably more, marshall for every 50 demonstrators. Marshalls should be deployed throughout the action undertaken and should maintain discipline within the group of demonstrators;

6.2.8 All reasonable steps should be taken by the convenors and marshalls to make sure that no participants in the action are in the possession of incendiaries or any other unlawful weapons and no weapons are carried with unlawful intent, displayed in a provocative manner or used to inflict injury to persons or damage to property.

6.2.9 The route of any demonstration is planned so as to best implement the provisions of this paragraph. It must provide for a specific place where it is to start, the route which is to be followed and a place where the march should end and where and how marchers should disperse. This planning should include consultation with Peace Committee structures and local authority representatives.

6.2.10 Provision should be made for adequate means of communication between the convenor(s) of the action, marshalls, Peace Committee members and the police during the action."

1.1.3 The Technical Committee was requested to look at the probability of a contradiction in terms of the paragraph referring to the carrying of weapons (paragraph 6.2.8 above) and the wording of the Goldstone Bill. The Committee is in contact with the drafters of the Goldstone Bill on this issue, and will report back to the Negotiating Council in due course.

1.1.4 The Committee was instructed to consider a moratorium on mass action prior to the election. Views on mass action were expressed in the Report. However any moratorium on mass action relating to the election in the period immediately before the election should be addressed by the Technical Committee on the Independent Electoral Commission.

1.1.5 The Committee was requested to define mass action. The Committee believes that mass action should most appropriately be defined in legislation

and the Goldstone Bill is the best vehicle to do this. As mentioned above the Committee is in contact with the drafters of the Bill. It will report to the Negotiating Council in due course.

1.1.6 The Goldstone Commission has investigated the whole issue of firearms and automatic weapons, and its proposals are being awaited by the Committee. This matter is still being addressed by the Committee.

1.1.7 The Technical Committee has re-examined point 11.13 of its Fourth Report, and has decided to retain the proposal as set out in that report.

1.1.8 The Committee was requested to look into women being victims of political violence and to make recommendations to the Negotiating Council. The Committee has investigated the issue but has not been able to locate it appropriately within the transitional process. Furthermore, the Committee has not received submissions from any of the parties at the MPNP to guide it in this issue.

1.1.9 Other outstanding issues will be addressed in the Sixth Report.

2. Peacekeeping Force

2.1 The Committee has met with the Technical Committee on the TEC and another meeting will take place shortly. A report will be presented in due course.

3. Peace Corps/Youth Services Corps

3.1 Point 11.1 of the Resolution of the Negotiating Council of 22 June 1993 requested the Technical Committee to prepare detailed proposals on the desirability, financing, establishment and composition of a Peace/Youth Services Corps.

3.2 The Committee has received submissions from a number of parties to the MPNP on this point. It is also requesting submissions from youth organisations which have not yet presented proposals on the issue. The Committee is liaising closely with the National Youth Development Coordinating Committee in the preparation of detailed proposals, and will present a report to the Negotiating Council.

4. Free Flow of Information from MPNP (Mark to find out)

4.1 The Technical Committee is concerned about the prevailing ignorance in rural and urban areas among people of all ranks and status about the process and decisions taken at the MPNP. It is clear that the flow of information about the negotiation process has not so far led to an adequate and constructive public comprehension. The ordinary people know more about violence and structures that are perceived to perpetrate this violence than those that are intended to counter violence. For example very little is known about this Technical Committee which is designed to address violence related issues and the decisions that are taken by the MPNP in order to stem the tide of violence. In the rural areas very little, if anything, is known about the National Peace Accord and its structures.

4.2 The fact that information that flows from MPNP is by the courtesy of the media, sometimes does not reflect the true situation and content of the decisions taken. Another obstacle is the fact that the majority of the people in our country do not have access to TV and radio. The majority of them are illiterate or semi-literate and cannot read and do not understand English.

4.3 Recommendations

4.3.1 In order to address the situation the Committee recommends the following:

4.3.1.1 Establishment of a Publicity Desk at the MPNP

4.3.1.2 A Publicity Officer be appointed to personally appear on TV to convey important decisions reached by MPNP on a regular basis.

4.3.1.3 Translate decisions/ resolutions into various African languages and have these broadcasted on SABC radio stations

4.3.1.4 Furnish copies of the translated version to newspapers that use African languages.

4.3.1.5 Send these articles to all tribal authority structures and hostels throughout the country to ensure that rural communities are aware of what is going on at the MPNP.

- 4.3.1.6 Some vigorous attempts to popularise MPNP should be made, to correct the negative impression created by those opposed to the process.
- 4.3.2 The Committee believes that such information could go a long way towards changing peoples attitudes and misgivings. It could restore hopes and confidence and could therefore contribute in creating conditions that reduce the level of violence. Such information will enable the members of the public to predict the future and reduce uncertainty.
- 4.3.3 The Committee has noted with great concern the negative reporting of news by SABC TV. Almost everyday the headlines are on violence. Sometimes statements are made which suggest that a particular political party is either responsible or likely to be responsible for particular acts of violence. The right of the public to know through the media is accepted , but the media needs to be more wary about giving judgments without facts and thereby pre-empting investigations or creating potential conflict situations. This is a matter the MPNP should handle with the authorities of the SABC.
- 4.3.4 This matter should be drawn to the attention of the Technical Committee on the Independent Media Commission.



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