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## **SOUTH AFRICA AND THE UN**

**NO. 2814**

**29 NOVEMBER 1991**

### **MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES ON THE VOLUNTARY REPATRIATION AND REINTEGRATION OF SOUTH AFRICAN RETURNEES**

The Government of the Republic of South Africa, hereinafter referred to as the Government, and the United Nations High Commissioner for Refugees, hereinafter referred to as UNHCR:

#### **Bearing in mind**

that significant and positive developments have taken place in South Africa since 1990 and that important steps have been taken in the pursuit of reconciliation and the search for a new and just dispensation in South Africa;

that the Government and other concerned parties are committed to creating conditions conducive to the promotion of the voluntary repatriation of South African returnees in complete safety and dignity;

that the Government has previously published its official guidelines to be applied in the processing of requests for repatriation as well as formalities, including those pertaining to the provision of indemnity and immunities, to be complied with by candidates for repatriation;

that the Government has already taken a series of measures which in fact constitute a general amnesty having been granted in respect of political offences, excluding only those offences involving serious common law crimes;

that the process of organized, large-scale and peaceful repatriation of returnees has an international humanitarian dimension;

that UNHCR, within the terms of the Statute of its Office, has been entrusted with the responsibility, *inter alia*, "to facilitate the voluntary repatriation of refugees";

that the Government has invited the UNHCR to establish and maintain a temporary UNHCR Office in South Africa in order to assist in facilitating the process of repatriation and reintegration of South African returnees who elect voluntarily to return home as civilians;

that in keeping with its Statute and Mandate, UNHCR shall perform its functions in this respect in a strictly humanitarian, neutral and non-partisan manner;

that nothing contained in this Memorandum shall derogate from, or in any way affect the right of, any South African to leave or return to his or her country, on his or her own or with the assistance of any other entity;

that nothing in this Memorandum of Understanding or carried out under its terms is to be construed as derogating from the sovereignty of the Republic of South Africa;

that nothing contained in this Memorandum of Understanding or which may be done on the basis thereof shall be construed as constituting recognition in any way, on the part of UNHCR, of an state of affairs not recognised by the United Nations or as constituting a derogation from any relevant United Nations' resolutions.

Hereby agree as follows:

## **1. DEFINITIONS**

For the purposes of this Memorandum of Understanding, its Annexures and any other supplementary agreements hereto, the following shall apply:

- (a) **UNHCR** means the United Nations High Commissioner for Refugees established pursuant to the General Assembly Resolution 319(IV) of 3 December 1949;
- (b) **High Commissioner** means the person for the time being appointed by the United Nations General Assembly to serve as the Chief Executive of the UNHCR or the officials to whom the High Commissioner has delegated authority to act on her behalf;
- (c) **UNHCR Mandate** means the international protection and assistance role of the Office *vis-à-vis* refugees and/or returnees;
- (d) **South Africa** means the Republic of South Africa;
- (e) **Government** means the Government of the Republic of South Africa as well as all competent local authorities;
- (f) **Convention** means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly

of the United Nations on 13 February 1946;

- (g) **Returnee** means any South African refugee and/or political exile who return(s) voluntarily to South Africa as an unarmed civilian under the terms and arrangements of this Memorandum;
- (h) **Memorandum** means the Memorandum of Understanding entered into between the Government and the UNHCR on 4th September 1991;
- (i) **Implementing Partner(s)** means a governmental, inter-governmental or non-governmental counterpart to which implementation is delegated by the UNHCR through a project agreement;
- (j) **Political offence** means any offence, excluding serious common law offences which, in the application of the relevant guidelines is regarded as a political offence. The guidelines for defining political offences for the purposes of this agreement appear in Annexure B.

Any voluntary repatriation operation carried out under the auspices of the UNHCR shall be open and available to all South African returnees, irrespective of their racial, religious, social or political affiliation, who wish to return to their country, and shall take place under conditions of complete safety, freedom and dignity and in accordance with the provisions of this agreement.

- (a) The Government is willing, in the interest of the process of reconciliation and in order to expedite the rate of repatriation, to grant amnesty to returnees in respect of political offences they may have committed before 12:00 on 8 October 1990 and which qualify for indemnity in terms of the guidelines published. However, cognisance is taken of the possibility that persons could have left South Africa after 8 October 1990 for political reasons without travel documents. Their position will be considered if and when information regarding such cases is submitted to the Government.
- (b) Accordingly, returnees, unless excluded for reasons of having committed an offence falling outside the ambit of the definition of a political offence, shall after clearance by the Government, peacefully return to South Africa without risk of arrest, detention, imprisonment or legal proceedings, whether civil or criminal, in respect of the political offences referred to in paragraph 3(a) above.

The parties hereto shall co-operate on the basis of the following principles and provisions:

- (a) The UNHCR shall, in the exercise of its mandate, enjoy free and unhindered access to the returnees wherever they may be located in South Africa.
- (b) The returnees will enjoy complete freedom of movement in South Africa and, in this context, will have the right to return to the areas where they lived immediately prior to leaving South Africa or to a comparable area of their choice.
- (c) The returnees whether South African nationals or not, shall, subject to the provisions of paragraph 3 above, be subject to the laws of South Africa. It is understood, however, that any persons who, under South African law may be considered as having lost their South African citizenship shall, upon return, be treated as South African citizens.
- (d) The UNHCR shall, in consultation with the Government, plan, organize and facilitate the implementation of all the phases of the repatriation operation and will, in this connection, seek the necessary funds and mobilize the required human, material and technical resources.
- (e) The UNHCR may, in consultation with the Government, enter into agreements with implementing partner(s) for the implementation of one or more sectors of the repatriation operation.
- (f) It is understood that, once indemnity has been granted, the tempo of repatriation will be determined by the returnees themselves.
- (g) The parties shall, by means of exchanges of Notes, establish the administrative, procedural and other mechanisms necessary for UNHCR to fulfil its mandate and discharge its functions in terms of this Memorandum of Understanding.
- (h) The procedures for readmission, reception and reintegration of returnees shall be in accordance with the Annexure A hereto.
- (i) The legal status, privileges and immunities of the UNHCR Office and its personnel in South Africa shall be determined in a separate Agreement between the parties hereto.

Annexures A and B to this Memorandum and any supplementary agreements between the parties hereto shall constitute integral parts of this Memorandum

of Understanding. Any relevant matter or question that is not provided for in this Memorandum of Understanding shall be resolved and/or agreed upon amicably and through consultation between the parties hereto.

This Memorandum of Understanding shall enter into force upon signature by the duly authorized *Representatives of the Government and the UNHCR* and shall remain in force for a period of twelve months, provided that this period may be extended or curtailed by agreement between the parties hereto.

Any dispute between the Government and the UNHCR arising out of this Memorandum of Understanding shall be resolved through consultations between them.

For the Government of  
the Republic of South Africa;

The United Nations  
High Commissioner for Refugees:

His Excellency, Mr. A.L. Manley  
Ambassador,  
Permanent Representative

Sadako Ogata

Signature : (A.L. Manley)

Signature : (Sadako Ogata)

Place : Geneva

Place : Geneva

Date : 4th September 1991

Date : 4th September 1991

## **ANNEXURE A**

### **Procedures for Readmission, Reception and Reintegration of South African Returnees who Apply to the UNHCR for Voluntary Repatriation to the Republic of South Africa**

To facilitate the readmission, reception and reintegration into South Africa of the returnees under the terms of the Memorandum of Understanding, the Government and the UNHCR hereby agree on the following procedures, which, by agreement, may be reviewed, revised, or elaborated upon by the parties here as required.

#### **1. Pre-departure Arrangements**

1. The UNHCR shall interview each applicant seeking to return to South Africa under the terms of the Memorandum of Understanding in order to ensure and certify the strictly voluntary character of the decision to repatriate, and ensure that each such applicant, or in the case of children below the age of 18, their parent(s), next of kin or guardian(s), duly completes the original and 4 copies of the Voluntary Repatriation Application Form (VRAF) Schedule A.
2. The UNHCR shall inform the potential returnees, in appropriate ways, of the conditions governing their return, their reception and integration and particularly the principles stipulated in the Memorandum of Understanding.
3. The VRAF, for the purposes of this repatriation operation, shall be completed by the applicants for purposes of being granted indemnity under the provisions of paragraph 3 of the Memorandum of Understanding.
4. The UNHCR will transmit the duly completed and verified VRAF(s) and within the terms of its mandate, may provide information available to it which may be of assistance in determining whether returnees qualify for indemnity to the Department of Justice of the Government in Pretoria (or to any other agency and place designated by the Government for that purpose) for clearance.

5. The Government shall ensure that each application is processed as soon as possible and that the UNHCR is notified promptly thereafter.
6. The Government will advise the UNHCR in writing whether a returnee has been granted indemnity. Where indemnity has been refused, the Government may furnish information as to why it has not been granted. The UNHCR shall advise such person accordingly.
7. Before finally refusing an application for indemnity, the Government will take into consideration the recommendation of existing advisory bodies established for that purpose and to which the UNHCR may make representations on behalf of returnees.
8. Travel documents will be issued by the South African authorities and delivered to the UNHCR for transmission to those persons cleared for return. The Government may, however, accept a duly authenticated VRAF as a valid travel document for the purposes of the returnees travelling back to South Africa under the terms of this Memorandum of Understanding.
9. The UNHCR, or its implementing partner(s) shall arrange for the returnees to travel to South Africa following the notification of clearance by the Government. The UNHCR, or its implementing partner(s) shall, in consultation with the Government, set the date of travel.
10. Medical clearance of the returnees for travel purposes, in accordance with the requirements of the World Health Organization, shall be accomplished in the country of departure and a certificate established for inspection by the Government on their arrival in South Africa.
11. Subject to the provisions of paragraph 4(c) of the Memorandum of Understanding, any dispute arising as to the citizenship or nationality of any returnee shall be resolved upon such person's arrival in South Africa. If he or she is not able to establish his or her claim to South African citizenship or nationality to the satisfaction of the Government, after having had every opportunity to provide all the relevant evidence, he or she shall be dealt with in accordance with the immigration laws of the Republic of South Africa.

12. In this connection, the UNHCR undertakes to arrange the return of any person whom it transported to South Africa under its auspices and who has failed to prove his or her citizenship, or to establish any right to remain in South Africa, to his or her country of nationality or habitual residence.
13. Spouses and children of returnees who are themselves citizens of other countries shall, in order to preserve family unity, be permitted to enter and remain in South Africa on the basis of Temporary Residence Permits. Similarly, surviving non-South African spouses and/or children of South African citizens who may have died while abroad shall, on a humanitarian basis, be permitted to enter and remain in South Africa in order to preserve their family links with that country.
14. Mechanisms for tracing of family members and for family reunification will be established. A Tracing Form (Schedule B) shall be completed at the time of registration by the prospective returnees requesting assistance in tracing family members or family reunification.

## **II. Reception, Transit and Movement to Final Destination in South Africa**

15. The Government shall permit the returnees to import into South Africa free of duty, charges or taxes, their personal property which is not prohibited for importation into South Africa.
16. Persons returning under the UNHCR auspices shall enter South Africa through entry points designated by the Government in consultation with the UNHCR. Reception centres may be provided by the Government or other local entities, free of charge, at agreed places for purposes of temporarily accommodating and assisting the returnees prior to their proceeding to final destinations.
17. The UNHCR may, whenever necessary and in consultation with the Government, establish field offices at or near entry points, reception centres or places of final destination. The Government shall have access to such entry points or reception centres and shall, in consultation with the UNHCR, provide the necessary security, provided that any security arrangements made shall not impinge on the freedom, security and dignity of the returnees.

18. The entry points and reception facilities established in accordance with the preceding paragraphs will be staffed (as appropriate), by the Government, and the UNHCR or its implementing partner(s) respectively.
19. The period of stay at the reception centres shall be kept to a minimum and, in principle, should not exceed five days.
20. In the case of unaccompanied minors under 18 years of age who return to South Africa under the present arrangements, the Government authorities or implementing partner(s) will notify the parent(s), next of kin or guardian(s) of their return, well in advance of the date of return. Parent(s), next of kin or guardian(s) shall be encouraged to take immediate custody of such minors. The UNHCR staff, or staff of its implementing partner(s) may, in consultation with the Government, speak to the parent(s), next of kin or guardian(s) of such minors in order, *inter alia*, to assess whether the family may be in need of humanitarian material assistance.
21. The Government, the UNHCR and implementing partner(s) shall consult on the situation of any returning minor or vulnerable person such as the aged and the sick, whose family fails, or is not in a position to take him or her back, with a view to finding an appropriate place of integration, bearing in mind the best interest of the returnee. The failure or inability to take him or her back by his or her family will not prejudice the readmission of the relevant person into South Africa under the arrangements established in this Memorandum of Understanding.

### **III. Installation and Reintegration**

22. The UNHCR activities to facilitate the installation and reintegration of returnees shall consist of:
  - (a) the extension of all its statutory responsibilities, within the terms of the Memorandum of Understanding, throughout the process;
  - (b) transportation to the returnee's final destination;

- (c) immediate assistance, which may take the form of a grant of or for food, basic domestic utensils and temporary shelter for each family, over a period to be agreed, and/or a one-time cash grant to cover essential needs. Arrangements may also be made to assist individual returnees considered to be destitute.
23. Reintegration assistance will address the needs of individuals upon assessment of their occupation and socio-economic background as well as their place of reintegration and aim at their productive employment.
  24. It is agreed that diplomas, certificates or degrees acquired by returnees while abroad may be considered as valid by the competent authorities for the purposes of admission to local institutions or for practising in the professions, subject to existing legislation and regulations in South Africa, without insistence on the principle of reciprocity. To facilitate the integration of any unskilled returnees, notably the youth, into the economy, on-the-job training and apprenticeships may be promoted by the UNHCR and implementing partner(s) in consultation with the appropriate competent authorities.
  25. Special measures may be taken by the parties to assure the social security and welfare of returnees considered as vulnerable such as the physically or mentally handicapped, unaccompanied minors, the seriously sick and elderly persons, orphans and single women without any other support.
  26. On the basis of the UNHCR data on the occupational and skills backgrounds of the returnees, the relevant authorities of the Government, the UNHCR, other relevant United Nations agencies, and implementing partner(s) will engage in concrete discussions to identify appropriate assistance projects having due regard for the need for community projects, provided such projects shall in no way accord preferential treatment to the returnees to the detriment of other South Africans having the same needs.
  27. The implementation of any such assistance projects shall be carried out after conclusion of project agreements between UNHCR and its implementing partners and after appropriate consultations with the Government. When feasible, such projects may be linked with on-going bilateral and multilateral programmes being carried out by the Government, or any other entities.

## **ANNEXURE B**

### **Guidelines for Defining Political Offences**

- ( i) The motive of the offender, i.e. whether the offence was committed for a political motive (eg. to further or oppose the aims of a political organization, institution or body) or for a personal motive.
- ( ii) The context in which the offence was committed; in particular whether it was committed in the course of or as part of a political uprising or disturbance, or in reaction thereto.
- (iii) The nature of the political objective (eg. whether to force a change in the policy of or to overthrow or destroy the political opponent).
- ( iv) The legal and factual nature of the offence, including gravity.
- ( v) The object and/or objective of the offence (eg. whether it was committed against the political opponent or his property, or directed primarily against private individuals or property; or was committed on the assumption that a particular cause, governmental or otherwise, was being served).
- ( vi) The relationship between the offence and the political objective being pursued, eg. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued.
- (vii) The question whether the act was committed in the execution of an order or with the approval of the organization, institution or body concerned.

## **AGREEMENT BETWEEN THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA GOVERNING THE LEGAL STATUS, PRIVILEGES AND IMMUNITIES OF THE UNHCR OFFICE AND ITS PERSONNEL IN SOUTH AFRICA**

### **PREAMBLE**

WHEREAS the Government of the Republic of South Africa (hereinafter referred to as "the Government") has invited the United Nations High Commissioner for Refugees (hereinafter referred to as "the UNHCR") to establish and maintain an office in South Africa in order to assist in facilitating the process of the voluntary repatriation and reintegration of South African

returnees who elect to return home as civilians;

WHEREAS the UNHCR has accepted the invitation to establish an office in South Africa for that purpose;

WHEREAS the parties hereto in a Memorandum of Understanding dated 4 September 1991 agreed to conclude these presents to govern the legal status, privileges and immunities of the UNHCR office and its personnel in South Africa;

WHEREAS the Government has agreed to extend to the UNHCR and its personnel in South Africa certain privileges and immunities embodied in the 1946 Convention on the Privileges and Immunities of the United Nations and such other privileges and immunities as are generally extended to diplomatic missions, their premises and personnel;

WHEREAS it is recognised by the parties hereto that nothing contained in this Agreement or which may be done on the basis thereof shall be construed as constituting recognition in any way, on the part of the UNHCR, of any state of affairs not recognised by the United Nations or as constituting a derogation from any relevant United Nations' resolutions.

Hereby agree as follows:

#### **ARTICLE I: DEFINITIONS**

**Section 1.** For the purpose of this Agreement, the following definitions shall apply:

- (a) **UNHCR** means the United Nations High Commissioner for Refugees established pursuant to the United Nations General Assembly Resolution 319(IV) of 3 December 1949.
- (b) **High Commissioner** means the person for the time being appointed by the United Nations General Assembly to serve as the Chief Executive of the UNHCR or the officials to whom the High Commissioner has delegated authority to act on her behalf.
- (c) **Convention** means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946;
- (d) **South Africa** means the Republic of South Africa.

- (e) **Government** means the Government of the Republic of South Africa as well as all competent local authorities.
- (f) **Memorandum** means the Memorandum of Understanding entered into between the Government and the UNHCR on 4 September 1991;
- (g) **Returnee** means any South African refugee and/or political exile who return(s) voluntarily to South Africa as an unarmed civilian under the terms and arrangements of the Memorandum of Understanding;
- (h) **Implementing partner(s)** means a governmental, intergovernmental or non-governmental counterpart to which implementation is delegated by the UNHCR through a project agreement;
- (i) **UNHCR premises** means all the offices, sub-offices, field offices, installations and facilities made available to or occupied, maintained or used by the UNHCR in South Africa and notified as such to the Government;
- (j) **Chief of Mission** means the UNHCR official in charge of the UNHCR office in South Africa;
- (k) **UNHCR officials** means all members of the staff of the UNHCR employed under the Staff Regulations of the United Nations, with the exception of those who are recruited locally and assigned to hourly rates;
- (l) **Persons performing services on behalf of the UNHCR** means natural and juridical persons and their employees, other than nationals of the host country, retained by the UNHCR to execute or assist in the carrying out of its programmes;
- (m) **Experts on mission** means individuals, other than UNHCR officials or persons performing services on behalf of the UNHCR, undertaking missions for the UNHCR;
- (n) **UNHCR personnel** means UNHCR officials, experts on mission and persons performing services on behalf of the UNHCR.

## **ARTICLE II. PURPOSE AND SCOPE OF THIS AGREEMENT**

**Section 2.** This Agreement embodies the basic conditions under which the UNHCR shall, within the terms of its mandate, and in co-operation with the Government, open office in South Africa, and carry out its mandated functions in favour of returnees in accordance with the provisions of the Memorandum.

## **ARTICLE III. APPLICATION OF THE CONVENTION**

**Section 3.** Pursuant to this Agreement, the Convention shall apply *mutatis mutandis* to the UNHCR premises and the UNHCR personnel in South Africa.

## **ARTICLE IV. STATUS OF UNHCR OFFICE**

### **Presence**

**Section 4.** The UNHCR shall establish and maintain an office in South Africa for the purpose of discharging its functions in terms of the Memorandum and of its mandate.

**Section 5.** UNHCR personnel, in keeping with the Statute and mandate of the Office, shall perform their functions in a strictly humanitarian, neutral and non-partisan manner.

**Section 6.** The Government undertakes to respect the exclusively international nature and humanitarian character of the UNHCR. The Government shall at all times grant UNHCR personnel unimpeded access to returnees in order to monitor their return to places of origin or choice, including their safety and physical well-being, and to the sites of the UNHCR-assisted projects in order to monitor all phases of their implementation.

**Section 7.** The UNHCR shall exercise its mandated functions, itself or through an implementing partner, including liaising with concerned governmental, inter-governmental and non-governmental organisations functioning in South Africa.

### **United Nations flag, emblem and markings**

**Section 8.** The UNHCR shall display the United Nations flag, and/or emblem at or on its office premises, official vehicles and otherwise as agreed to between the UNHCR and the Government. Vehicles, vessels and aircraft of the UNHCR shall carry a distinctive United Nations emblem or marking, which shall be

timeously notified to the Government.

## **ARTICLE V. FACILITIES FOR UNHCR**

**Section 9.** The Government, in agreement with the UNHCR, shall take such measures as may be appropriate to enable the UNHCR to discharge its functions in South Africa speedily and effectively. Such measures shall include the authorization to operate UNHCR radio and other telecommunications equipment which meets internationally accepted standards; and in respect of state-owned airports, the granting of air traffic rights and the exemption from airport charges (landing, parking and passenger fees) and royalties for all charter flights and cargo flights involved in the transportation of returnees and their personal or communal property, personnel of the UNHCR and its implementing partners, and goods required for the implementation of the repatriation operation.

**Section 10.** The UNHCR may use roads, bridges, canals and other waterways and port facilities without the payment of dues, tolls or charges other than charges for services rendered.

**Section 11.** It is understood, however, that where it is not feasible for the UNHCR to obtain direct exemptions from payment of fees, tolls, royalties and other forms of charges, arrangements may be made whereby the Government can reimburse the UNHCR for payments made in that regard.

**Section 12.** The Government undertakes to assist the UNHCR, as far as possible, in obtaining and making available where applicable, appropriate office premises, water, electricity and other facilities required at rates, dues or charges not less favourable than those charged to comparable consumers or users, and in the case of interruption or threatened interruption of service to give as far as is within its power the same priority to the needs of the UNHCR as to essential Government services. Any amounts due by the UNHCR in this regard shall be settled on a basis to be agreed with the Government. The UNHCR shall be responsible for the maintenance and upkeep of facilities so provided.

**Section 13.** The Government shall take all the necessary measures, as may be agreed, to ensure the security and protection of the UNHCR premises, the inviolability of its archives and the safety of UNHCR personnel.

**Section 14.** The Government shall facilitate the locating and provision of suitable housing accommodation for UNHCR personnel recruited internationally.

**Section 15.** The Government shall assist the UNHCR as far as possible in obtaining equipment, provisions, supplies and other goods and services from sources within South Africa, required for its operations and for the subsistence of its staff.

## **ARTICLE VI. FREEDOM OF MOVEMENT**

**Section 16.** The UNHCR and its personnel shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement within South Africa. The High Commissioner shall consult in advance with the Government with respect to large movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within South Africa. The Government undertakes to supply the UNHCR, where necessary, with maps and other information that may be useful in facilitating its movements.

## **ARTICLE VII. PRIVILEGES AND IMMUNITIES**

**Section 17.** The Government shall extend to the UNHCR, its premises, property, funds and assets, and to UNHCR personnel, the relevant privileges and immunities of the Convention, which are incorporated in Annexures A, B, C and D and which shall constitute integral parts of this Agreement. The Government also agrees to grant to the UNHCR and its personnel such additional privileges and immunities as may be necessary for the effective exercise of its mandated functions.

## **ARTICLE VIII. UNHCR PROPERTY, FUNDS, AND ASSETS**

**Section 18.** The UNHCR premises, property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the United Nations has expressly waived its immunity; it being understood, however, that this waiver shall not extend to any measure of execution.

**Section 19.** The UNHCR premises shall be inviolable. The property, funds and assets of the UNHCR, wherever situated and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

**Section 20.** The archives of the UNHCR, including all the papers, documents, correspondence, books, films, tapes, registers, databases and computerised

documentation belonging to or held by it, shall be inviolable.

**Section 21.** No restriction will be placed on the UNHCR introducing foreign currency into South Africa to fund the operations nor on the repatriation of any such funds to any countries abroad. The same privileges in regard to movement of funds related to their activities will be accorded to the UNHCR as are made available to all foreign embassy bank accounts in South Africa.

**Section 22.** The UNHCR shall buy and sell foreign exchange at the commercial rand rate of exchange as quoted by the authorized dealers in South Africa.

## **ARTICLE IX. EXEMPTION FROM TAXATION, CUSTOMS DUTIES, PROHIBITIONS OR RESTRICTIONS ON IMPORTS AND EXPORTS**

### **UNHCR Office**

**Section 23.** The UNHCR shall be exempted from all dues and taxes, direct or indirect, personal or real, national, regional or municipal, other than such as represent payment for specific services rendered. Thus the Government shall exempt the UNHCR from excise duties, sales tax and value added tax, and from taxes on the sale or purchase by the UNHCR of movable and immovable property in South Africa. The UNHCR and the Government will agree on the appropriate administrative arrangements for the disposal of movable and immovable property and for the remission or refund of the amount of duty, tax or levy where it is not feasible to make direct exemption.

**Section 24.** The UNHCR, its assets, income and other property shall be exempt from:

- (a) All direct and indirect taxes, provided that the UNHCR will not be entitled to exemptions for charges for public utility services;
- (b) Customs duties, prohibitions or restrictions on articles imported or exported by the UNHCR or its inter-governmental implementing partner(s) for their official use provided that the articles imported under such exemption will not be sold in South Africa except under conditions agreed upon with the Government;
- (c) Customs duties, prohibitions or restrictions in respect of the import and export of its publications.

**Section 25.** Any materials, articles or goods imported or purchased locally by

the UNHCR, on its own behalf or on the behalf of its implementing partner(s), in connection with the discharge of its functions in terms of the Memorandum, its mandate and of this Agreement, shall be exempt from all customs and excise duties, prohibitions or restrictions. To the end that importation, clearance and exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between the UNHCR and the Government.

### **UNHCR Officials**

**Section 26.** UNHCR officials, excluding those who are South African nationals and are recruited locally, shall be exempt from taxations on the pay and emoluments paid to them by the UNHCR, and, for the international staff, on any income received from outside South Africa.

**Section 27.** UNHCR officials, excluding those who are recruited locally, shall be accorded the same privileges in respect of exchange facilities as are accorded to diplomatic envoys in South Africa.

**Section 28.** UNHCR officials, excluding those who are recruited locally, shall be exempt from all other national, regional or municipal dues and taxes, whether direct or indirect, except:

- (a) dues and taxes on property that is privately owned and situated in South Africa;
- (b) dues and taxes on private income having its source in South Africa and capital taxes made on investments made in commercial undertakings in South Africa;
- (c) charges levied for specific services rendered;
- (d) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property which is privately held;
- (e) estate, succession or inheritance duties levied in respect of immovable property acquired in South Africa.

### **ARTICLE X. COMMUNICATION FACILITIES**

**Section 29.** The UNHCR shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any other

government including its diplomatic missions or to other inter-governmental/international organisations in matters of priorities, tariffs and charges on mail, cablegrams, telephotos, telephone, telegraph, telex and other communications, as well as rates for information to the press and radio.

**Section 30.** The Government shall secure the inviolability of the official communications and correspondence of the UNHCR and shall not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings.

**Section 31.** The UNHCR shall have the right to use codes and to dispatch and receive correspondence and other materials by courier or in sealed bags which shall have the same privileges and immunities as diplomatic couriers and bags.

**Section 32.** The UNHCR shall have the right to erect and operate radio and other telecommunications equipment, on UN registered frequencies which have been co-ordinated with the Government and on frequencies allocated by the Government, between its offices, within and outside South Africa, and in particular with the UNHCR Headquarters in Geneva; provided that this right shall not, without the consent of the Government, extend to point to point radio communication between fixed points in South Africa where a suitable terrestrial telephone infrastructure already exists.

## **ARTICLE XI. UNHCR PERSONNEL**

**Section 33.** The UNHCR may assign to its offices established in South Africa such officials, experts and other personnel as the UNHCR deems necessary for the effective discharge of its mandated humanitarian functions.

### **Chief of Mission**

**Section 34.** The Chief of Mission, the Deputy Chief of Mission and other senior officials as may be agreed between the UNHCR and the Government, shall enjoy, while in South Africa, in respect of themselves, their spouses and dependent relatives, the privileges and immunities, exemptions and facilities as are normally accorded to diplomatic envoys in terms of South African law, including, but not limited to, the privileges and immunities enumerated in **Annexure A** of this Agreement. For this purpose, the Ministry of Foreign Affairs shall include their names in the Diplomatic List.

## **Officials**

**Section 35.** UNHCR officials, other than the Chief of Mission, Deputy Chief of Mission and other senior officials, assigned to South Africa and whose names are for that purpose notified to the Government by the High Commissioner, shall be considered as officials within the meaning of section 17 of the Convention.

**Section 36.** UNHCR officials, other than the Chief of Mission, Deputy Chief of Mission and other senior officials, while in South Africa, shall enjoy such facilities, privileges and immunities necessary for the independent exercise of their functions, including, but not limited to, the privileges and immunities enumerated in **Annexure B** of this Agreement.

## **Experts on mission**

**Section 37.** Persons other than officials, assigned to South Africa and whose names for that purpose are notified to the Government by the High Commissioner, shall be considered as experts on mission within the meaning of section 22 of the Convention.

**Section 38.** All experts on mission, while in South Africa, shall enjoy such facilities, privileges and immunities necessary for the independent exercise of their functions, including, but not limited to the privileges and immunities enumerated in **Annexure C** of this Agreement.

## **Persons performing services on behalf of the UNHCR**

**Section 39.** Except as the parties may otherwise agree, the Government shall grant to all persons performing services on behalf of the UNHCR, other than South African nationals employed locally, such facilities, privileges and immunities necessary for the independent exercise of their functions, including, but not limited to, the privileges and immunities enumerated in **Annexure D** of this Agreement.

## **Locally recruited personnel**

**Section 40.** The UNHCR may recruit locally in South Africa such personnel as it requires. The Government undertakes, upon the request of the High Commissioner, to assist the UNHCR in the recruitment of such personnel. The terms and conditions of employment for locally recruited personnel shall be

prescribed by the UNHCR in accordance with UN Staff Rules, Regulations and Administrative Instructions.

**Section 41.** Persons required locally and assigned to hourly rates to perform services for the UNHCR shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity.

## **ARTICLE XII. ENTRY, RESIDENCE, DEPARTURE AND TRAVEL DOCUMENTS**

**Section 42.** The Chief of Mission, Deputy Chief of Mission and other international personnel shall, whenever so required by the High Commissioner, have the right to enter into, reside in and depart from South Africa from agreed points of entry and exit. UN Laissez-Passers, held by the UNHCR staff, shall be accepted as valid travel/identification documents by the Government and holders of such documents shall be granted facilities for speedy travel to, through and from South Africa as promptly as possible free of charge.

## **ARTICLE XIII. NOTIFICATION**

**Section 43.** The High Commissioner shall notify the Government of the names and categories of UNHCR officials, experts on mission and persons performing services on behalf of the UNHCR, and of any change in the status of such personnel.

## **ARTICLE XIV. IDENTIFICATION**

**Section 44.** The Government shall, at the request of the High Commissioner, issue to each UNHCR official, as soon as possible after such official's assignment to South Africa, as well as to all locally recruited personnel, other than those who are locally recruited and are assigned to hourly rates, the appropriate certificates of identity.

**Section 45.** UNHCR personnel, including locally recruited personnel, shall be required to present, but not to surrender, their certificates of identity upon demand of an authorised official of the Government.

**Section 46.** The UNHCR shall, upon the termination of employment or reassignment from South Africa of UNHCR personnel, ensure that their certificates of identity are returned promptly to the Government.

## **ARTICLE XV. DECEASED STAFF MEMBERS**

**Section 47.** The High Commissioner shall have the right to take charge of and to remove the body of a member of international personnel of the UNHCR who dies in South Africa, in accordance with the applicable United Nations procedures; it is understood that in the exercise of this right due consideration shall be taken of the relevant judicial requirements in force in South Africa.

**Section 48.** The High Commissioner will also have the right to remove from South Africa the personal property of the deceased staff member. The Government shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which was due solely to the presence in South Africa of the deceased as a member of UNHCR personnel.

## **ARTICLE XVI. WAIVER OF IMMUNITY**

**Section 49.** Privileges and immunities are granted to UNHCR personnel in the interests of the United Nations and not for the personal benefit of the individuals concerned. Accordingly, the Secretary-General of the United Nations may waive the immunity of any of the UNHCR personnel where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

## **ARTICLE XVII. SETTLEMENT OF DISPUTES**

**Section 50.** Any dispute between the UNHCR and the Government arising out of or relating to this agreement shall be settled amicably by negotiation or other agreed mode of settlement, failing which such dispute shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the third arbitrator. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

**Section 51.** Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled through the relevant United Nations administrative procedures.

## **ARTICLE XVIII. GENERAL PROVISIONS**

**Section 52.** Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties through consultations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

**Section 53.** The UNHCR and the Government may conclude supplementary agreement(s) which shall constitute an integral part of this Agreement.

**Section 54.** Consultations with a view to amending this Agreement may be held at the request of either Party. Amendments shall be made by joint written agreement.

**Section 55.** This Agreement shall enter into force upon signature by the duly authorised Representatives of the Government and the UNHCR and shall remain in force for as long as the Memorandum remains in effect, except as regards the normal cessation of the activities of the UNHCR and the disposal of its property in South Africa.

IN WITNESS WHEREOF, the undersigned, being duly appointed representatives of the United Nations High Commissioner for Refugees and the Government of the Republic of South Africa, respectively, have on behalf of the Parties signed this Agreement, in the English language.

Done at Geneva this 2nd day of October 1991.

The United Nations High  
Commissioner for Refugees

Signed: (Sadako Ogata)

For the Government of the  
Republic of South Africa

Signed: (A.C. Manley)

## **ANNEXURE A: PRIVILEGES AND IMMUNITIES FOR CHIEF OF MISSION, DEPUTY CHIEF OF MISSION AND OTHER SENIOR OFFICIALS**

The Chief of Mission, the Deputy Chief of Mission and other senior officials of the UNHCR shall:

- (a) Be immune from personal arrest or detention;
- (b) Enjoy inviolability for all papers and documents, including computerized documentation;
- (c) Be permitted, for the purpose of their official communications, to use codes and to receive papers and correspondence by courier or sealed in bags;
- (d) Be accorded the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (e) Be accorded the same immunities and facilities, including immunity from inspection and seizure of their official baggage, as are accorded to diplomatic envoys;
- (f) Be immune from any military service obligations or any other obligatory services;
- (g) Be exempt, with respect to themselves, their spouses, their dependent relatives and other members of their households from immigration restrictions and alien registration;
- (h) Be exempt from taxation in respect of salaries and all other remuneration paid to them by the UNHCR;
- (i) Enjoy exemption from any form of taxation on income derived by them from sources outside South Africa;
- (j) Be accorded prompt clearance and issuances, without cost, of visas, licenses or permits, if required;
- (k) Be permitted free movement to, within or from South Africa to the extent necessary for the carrying out of UNHCR international protection and humanitarian assistance programmes;

- (l) Be permitted to hold or maintain within South Africa, foreign exchange, foreign currency accounts and moveable property and the right upon termination of employment with the UNHCR to take out of the host country their funds for the lawful possession of which they can show good cause;
- (m) Be accorded the same protection and repatriation facilities with respect to themselves, their spouses and dependent relatives and other members of their households as are accorded in time of international crises or national emergencies to diplomatic envoys;
- (n) Be permitted to import for personal use, free of duty and other levies, prohibitions or restrictions in imports:
  - (i) their furniture and personal effects in one or more shipments and thereafter to import necessary additions to the same, including automobiles, according to the regulations applicable in South Africa to diplomatic representatives accredited in South Africa and/or resident members of international organisations;
  - (ii) reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

**ANNEXURE B: PRIVILEGES AND IMMUNITIES OF UNHCR OFFICIALS OTHER THAN CHIEF OF MISSION, DEPUTY CHIEF OF MISSION AND OTHER SENIOR OFFICIALS**

Officials of the UNHCR, other than Chief of Mission, Deputy Chief of Mission and other senior officials, shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with the UNHCR;
- (b) Be accorded the same immunities and facilities, in respect of their official baggage, as are accorded to diplomatic envoys;
- (c) Be immune from any military service obligations or any other obligatory services;

- (d) Be exempt, with respect to themselves, their spouses, their dependent relatives and other members of their households, from immigration restrictions and alien registration;
- (e) Be exempt from taxation in respect of salaries and all other remuneration paid to them by the UNHCR;
- (f) Enjoy exemption from any form of taxation on income derived by them from sources outside South Africa;
- (g) Be accorded prompt clearance and issuances, without cost, of visas, licenses or permits, if required;
- (h) Be permitted free movement within, to or from the country to the extent necessary for the carrying out of UNHCR international protection and humanitarian assistance programmes;
- (i) Be permitted to hold or maintain within the country, foreign exchange, foreign currency accounts and moveable property and the right upon termination of employment with the UNHCR to take out of South Africa their funds for the lawful possession of which they can show good cause;
- (j) Be accorded the same protection and repatriation facilities with respect to themselves, their spouses and dependent relatives and other members of their households as are accorded in time of international crises or national emergencies to diplomatic envoys;
- (k) Be permitted to import for personal use, free of duty and other levies, prohibitions or restrictions in imports:
  - (i) their furniture and personal effects in one or more shipments and thereafter to import necessary additions to the same, including automobiles, according to the regulations applicable in South Africa to diplomatic representatives accredited in South Africa and/or resident members of international organisations;
  - (ii) reasonable quantities of certain articles for personal use or consumption and not for gift or sale.

## **ANNEXURE C: PRIVILEGES AND IMMUNITIES FOR EXPERTS ON MISSION**

Experts on mission for the UNHCR shall:

- (a) Be immune from personal arrest or detention;
- (b) Be immune from legal process in respect of words spoken or written and acts done by them in the course of the performance of their mission for the UNHCR;
- (c) Enjoy inviolability for all papers and documents, including computerized documentation;
- (d) Be permitted, for the purpose of their official communications, to use codes and to receive papers and correspondence by courier or sealed in bags;
- (e) Be accorded the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) Be accorded the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

## **ANNEXURE D: PRIVILEGES AND IMMUNITIES OF PERSONS PERFORMING SERVICES ON BEHALF OF THE UNHCR**

Persons performing services on behalf of the UNHCR shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity, such immunity to continue even after termination of employment with the UNHCR;
- (b) Be immune from any military obligations or any other obligatory services;
- (c) Be immune, with respect to themselves, their spouses, dependent relatives and other members of their households, from immigration restrictions and alien registration requirements;

- (d) Be exempt from taxation in respect of salaries and all other remuneration paid to them by the UNHCR;
- (e) Be accorded prompt clearance and issuance, without cost, of visas, licences or permits necessary for the effective exercise of their functions;
- (f) Be permitted free movement within, to or from the country, to the extent necessary for the implementation of the UNHCR humanitarian programmes;
- (g) Be accorded the same privileges in respect of exchange facilities as are accorded to the comparable persons of diplomatic missions in South Africa;
- (h) Be given the same protection and repatriation facilities with respect to themselves, their spouses, dependent relatives and other members of their households as are accorded in time of international crises or national emergencies to diplomatic envoys.

# **THE QUESTION OF SOUTH AFRICA**

## **REPORT OF THE SECRETARY-GENERAL**

### **I. INTRODUCTION**

1. The Security Council considered the question of South Africa at its 3095th and 3096th meetings held on 15 and 16 July 1992, unanimously adopting resolution 765 (1992) at the latter meeting. The full text of that resolution reads as follows:

**"The Security Council,**

**Recalling** its resolutions 392 (1976), 473 (1980), 554 (1984) and 556 (1984),

**Gravely concerned** by the escalating violence in South Africa, which is causing a heavy loss of human life and by its consequences for the peaceful negotiations aimed at creating a democratic, non-racial and united South Africa,

**Concerned** that the continuation of this situation would seriously jeopardize peace and security in the region,

**Recalling** the consensus Declaration on Apartheid and its Destructive Consequences in Southern Africa adopted by the General Assembly at its sixteenth Special Session on 14 December 1989 which called for negotiations in South Africa to take place in a climate free of violence,

**Emphasizing** the responsibility of the South African authorities to take all necessary measures to stop immediately the violence and protect the life and property of all South Africans,

**Emphasizing also** the need for all parties to cooperate in combating violence and to exercise restraint,

**Concerned** at the break in the negotiating process and determined to help the people of South Africa in their legitimate struggle for a non-racial, democratic society,

1. **Condemns** the escalating violence in South Africa and in particular the massacre in Boipatong township on 17 June 1992, as well as subsequent incidents of violence including the shooting of unarmed protestors;
  2. **Strongly urges** the South African authorities to take immediate measures to bring an effective end to the ongoing violence and to bring those responsible to justice;
  3. **Calls upon** all the parties to cooperate in combating violence and to ensure the effective implementation of the National Peace Accord;
  4. **Invites** the Secretary-General to appoint, as a matter of urgency, a Special Representative in order to recommend, after, *inter alia*, discussion with the parties, measures which would assist in bringing an effective end to the violence and in creating conditions for negotiations leading towards a peaceful transition to a democratic, non-racial and united South Africa, and to submit a report to the Security Council as early as possible;
  5. **Urges** all parties to cooperate with the Special Representative of the Secretary-General in carrying out his mandate; and to remove the obstacles to the resumption of negotiations;
  6. **Underlines**, in this regard, the importance of all parties cooperating in the resumption of the negotiating process as speedily as possible;
  7. **Urges** the international community to maintain the existing measures imposed by the Security Council for the purpose of bringing an early end to apartheid in South Africa;
  8. **Decides** to remain seized of the matter until a democratic, non-racial and united South Africa is established."
2. Immediately after the adoption of resolution 765 (1992), I appointed Mr. Cyrus R. Vance as my Special Representative under the terms of paragraph 4 of the resolution and announced that he would be visiting South Africa as a matter of urgency. I also requested Mr. Virendra Dayal, the former Chef de Cabinet, to accompany Mr. Vance on the mission. Assisted by a small team from the Secretariat, the delegation visited South Africa from 21 to 31 July 1992. This report is being issued pursuant to paragraph 4 of resolution 765 (1992).

## **II PROGRAMME OF THE MISSION IN SOUTH AFRICA**

3. Given the complexity of the situation in South Africa, the mission endeavoured to hold discussions with the widest range of parties in the country.
4. The programme opened with meetings with President F.W. de Klerk and members of his cabinet on 22 July 1992 and was followed by a further round of talks between the Special Representative and President de Klerk on 30 July 1992. In addition, meetings were separately arranged with Foreign Minister R.F. Botha on 26 July 1992 and with Justice Minister H.J. Coetzee on 31 July 1992.
5. Individual meetings were likewise held, in the following sequence, with delegations of the major political parties. On 23 July 1992, these included the Inkatha Freedom Party (IFP) led by Chief Mangosuthu Buthelezi; the Pan Africanist Congress of Azania (PAC) led by Mr. Clarence Makwetu; the African National Congress (ANC) led by its Vice President Mr. Walter Sisulu and comprising among others its Secretary-General, Mr. Cyril Ramaphosa, and the Director of its International Affairs Department, Mr. Thabo Mbeki. A further meeting was especially arranged on 29 July 1992 between the Special Representative and the President of the ANC, Mr. Nelson Mandela, upon the latter's return to South Africa from a mission abroad. Also seen by the United Nations team on 23 July 1992 was a delegation from the Azanian People's Organization (AZAPO), led by Mr. Phandelani Nefolovhdodwa. On 24 July, the United Nations team met with a delegation from the Democratic Party comprising Dr. Zach de Beer and Mr. Colin Eglin. On 25 July, a meeting was held with a delegation of the South African Communist Party, led by its Chairman, Mr. Joe Slovo.
6. On the same day, 25 July 1992, discussions were, in addition, held with delegations from Bophuthatswana, led by Dr. L.M. Mangope; from Venda, led by Brigadier Ramushwana; from Transkei, led by Major-General Bantu Holomisa; and from Ciskei, led by Brigadier Oupa Gqozo.
7. Discussions with political parties were resumed on 27 July 1992, when the mission met a delegation from the Patriotic Front Parties participating in the Convention for a Democratic South Africa (the Labour Party, led by Mr. Eddie Samuels, and the Transvaal Indian Congress, led by Mr. Cassim Saloojee). On 28 July 1992, the mission received a delegation of the Conservative Party led by Mr. A.P. Treurnicht. This was followed by a meeting on the same day with the National People's Party, led by Mr. A. Rajbansi. On 30 July 1992, the mission received a delegation

from the Boerestaat Party, led by Mr. Robert van Tonder. On 31 July 1992, it met with representatives of the Solidarity Party led by Dr. J.N. Reddy, and, subsequently, with a delegation from the Natal Indian Congress comprising Dr. F.M. Meer, Mr. Zac Yacoob and Mr. P. Gordhan.

8. As a remarkable contribution is being made to the political and social evolution of South Africa by prominent individuals and civic groups, the United Nations mission welcomed the opportunity to meet with a wide range of such persons and to seek their advice. They included, in particular, Justice Richard Goldstone, Chairman of the Commission of Enquiry into Public Violence and Intimidation; Mr. John Hall and Mr. Antonie Gildenhuys of the National Peace Committee and its Secretariat, and also representatives of regional and local peace committees. The mission met with Archbishop Desmond Tutu, and, on more than one occasion, with the most senior leaders of the South African Council of Churches. It also received the Chairman of the Afrikaner Freedom Foundation; the head of an Independent Board of Inquiry; representatives of Lawyers for Human Rights and of the Legal Resources Centre. Meetings were held with individual members of Parliament and outstanding legal and constitutional scholars. The mission met with the trade union movement as represented by the Congress of South African Trade Unions (COSATU); and with leaders of the business community, including those representing the National Federation of the Chamber of Commerce (NAFCOC), the South African Chamber of Business (SACOB) and the South African Employers' Consultative Committee on Labour Affairs (SACCOLA). An exchange of views was also held with editors of major South African newspapers.
9. In order to focus discussions on the principal purposes of the mission, as set out in Security Council resolution 765 (1992), the Special Representative encouraged his interlocutors, as far as possible, to record their views in writing as well. The mission also had the benefit of written submissions from a wide range of groups and persons, some of whom, for reasons of time or scheduling, it was not possible to meet with personally.
10. The Special Representative would like to express his deep gratitude to all those who presented the mission with the benefit of their advice and experience. In order to add to his understanding of the situation on the ground, the Special Representative, accompanied by Mr. Dayal, travelled with Justice Goldstone to Boipatong and Crossroads, the scenes of recent tragedies, on 29 July 1992. He also met with representatives of the International Committee of the Red Cross and the International

Federation of National Red Cross and Red Crescent Societies to learn of their endeavours in the country. In addition, the Special Representative held meetings, at their request, with representatives of the United Kingdom and the United States of America, and the representatives of States that are members of the European Community.

11. An outline of the programme of the mission is attached to this report, together with a list of each of the delegations received by the mission (annex I). The titles following the names in the annex are those provided by the respective participants in the meetings. In regard to certain of the participants, the position of the United Nations remains as expressed by the President of the Security Council at its 3096th meeting, in which, in giving the floor to certain speakers under rule 39 of the Council's Provisional Rules of Procedure, he states: "This does not in any way entail the recognition by the Council or any of its members of the organization or entity he claims to represent." (S/PV.3096)
12. Given the extensive nature of the discussions held by the mission, and the many detailed written submissions presented to it, the following section of this report seeks to summarise the main points expressed by the parties to the mission.

### **III SUMMARY OF VIEWS EXPRESSED TO THE MISSION**

#### **A. DISCUSSIONS WITH THE GOVERNMENT**

13. On the subject of violence, the Government was of the view that it retained the primary responsibility for the maintenance of order, although this did not mean that the other parties of the National Peace Accord were absolved of their responsibilities. It was emphasized that President de Klerk had taken numerous initiatives to combat the violence. These had resulted, for example, in the National Peace Accord coming into being on 14 September 1991, and in the appointment of the Goldstone Commission. Further, the State President had repeatedly invited Mr. Mandela and Chief Buthelezi to a joint meeting in order to demonstrate that the leaders of these parties which were, in the Government's view, the three main parties, would act together to end violence. The Government added that in view of Mr. Mandela's initial refusal, the State President had now extended the invitation to include a delegation from the National Peace Committee.
14. Continuing, the Government indicated that it had increased the strength of the police force and almost doubled its budget. It stated that it had

adopted legislation to combat intimidation, violence and the illegal possession of arms.

15. Further, while observing that the origins of violence were complex, the Government stated that the Goldstone Commission had identified the main causes of political violence as the struggle for power between the ANC and Inkatha. Other factors, in its view, were the role of "radicals", the high crime rate due in large measure to growing unemployment, and the availability of weapons, 1,617 of which had been confiscated in 1991, including some 1,000 AK47s.
16. The Government stated that in response to recommendations of the Goldstone Commission, regulations had been drafted to prohibit the carrying of dangerous weapons in public places within "unrest areas", and that urgent attention was being given to the carrying of traditional weapons and the accommodation of single migrant workers' hostels. The Government added that 32 Battalion was being disbanded and absorbed into other units, while *Koevoet* was similarly being disbanded and that its former members would be deployed to prevent the theft of livestock.
17. Referring to the mass mobilization programme of the ANC alliance, the Government expressed the view that it would provoke violence, delay the search for democratic solutions and disrupt the economy and social services. Further, in its view, jobs would be lost and international market opinion would turn against South Africa just when development required urgent foreign investment.
18. On the subject of negotiations, the Government indicated that only through such a process could South Africa be transformed into a united, non-racial and democratic state; however, the ANC alliance had shown little flexibility. The Government added that it wanted to ensure a system whereby any government that is formed would be with the consent of the vast majority of the governed, that it would be accountable through free and fair elections in a multi-party system, on the basis of one-person, one-vote; and that it would be brought closer to the people through the devolution of power to regions. Human rights would be entrenched in the constitution and protected by an independent judiciary. The Government added that if a transitional constitution had not been replaced by a final version within three years, a general election can be held to elect a new transitional parliament.
19. The Government stated that there was substantial agreement between it and the ANC alliance when the latter withdrew from the second plenary session of the Convention for a Democratic South Africa (CODESA II).

However, regional devolution remained a major difference, with the Government strongly supporting a regional government system where powers, functions and boundaries would be agreed to prior to the adoption of the transitional constitution. The Government denied these proposals implied a veto power for the "white" segment of the population. The Government added that it had offered flexible time-tables with respect to a transitional constitution and that draft legislation had been prepared and should have been submitted to Parliament had CODESA not been delayed. It was the view of the Government that both the transitional and final constitution should provide for a Bill of Rights, maximum devolution of power, various checks and balances, including a bi-cameral parliament, and proportional representation.

## **B. DISCUSSIONS WITH THE POLITICAL PARTIES**

20. These are summarized, as far as possible, in the sequence in which the discussions took place with the United Nations team.
21. *The Inkatha Freedom Party (IFP)*, led by Chief Mangosuthu Buthelezi, expressed deep concern that the process of CODESA had been disrupted by the withdrawal of the ANC. The IFP considered that the structures of CODESA were weak, and that its list of participants was seriously incomplete not least because of the exclusion of KwaZulu. Further, CODESA lacked a dispute resolving machinery at the level of head of party. The IFP, accordingly, felt that there was a need for the convening of a Multi-party Conference of Review to look into the entire situation and to serve as a permanent structure for deadlock resolution. The IFP also believed that only a federal constitutional model could reconcile the disparate sectors of South African society and that powers should be devolved from regional governments to the central government. Without such a concept being adopted, the IFP feared the continuation of violence. It deplored what it described as serious violations of the code of conduct for political parties, as laid out in the National Peace Accord, by the ANC and its allies. While condemning the Boipatong massacre, the IFP also deplored the comparative indifference of the international community to the slaying of its supporters at Crossroads.
22. Led by its President, Mr. Clarence Makwetu, the delegation of the *Pan Africanist Congress of Azania (PAC)*, stated that the CODESA process lacked credibility and should be replaced by a conference chaired by the United Nations and convened in a neutral venue. In the absence of a truly democratic process in South Africa, the PAC called on the international community to establish an independent commission to examine the

structures of the South African Government so as to ensure free and fair elections in the country. Regarding violence, the PAC held the Government of South Africa and its security forces responsible for much of the current violence. It called for a United Nations commission to investigate, monitor and adjudicate matters relating to violence and for the expulsion from South Africa of mercenary forces, such as *Koevoet* and 32 Battalion, under United Nations supervision. The PAC also favoured the holding of elections, under United Nations supervision, for a constituent assembly which should draw up a constitution for a unitary state.

23. The delegation of the *African National Congress (ANC)* which met with the United Nations team on 23 July 1992, was led by its Vice President, Mr. Walter Sisulu. After reiterating in general terms the conditions of the ANC for the resumption of talks, as communicated to President de Klerk by Mr. Mandela, the delegation emphasized in particular the need for the full and speedy implementation of the recommendations of the Goldstone Commission, especially those relating to the fencing of hostels, the disarming of their residents and the prevention of weapons leaving or entering those premises. The ANC also stressed the early implementation, by legislation, of the Goldstone Commission recommendation that the carrying of all dangerous weapons in public be prohibited - not only in "unrest areas". Further, the ANC called for the disarming and confining to barracks of all special force counter-insurgency units, including *Koevoet*, Battalions 31 and 32, CCB, certain reconnaissance battalions and the Askaris, and an end to all covert operations. Continuing, the ANC urged the strengthening of the mechanisms for the implementation of the National Peace Accord, *inter alia*, by the providing of United Nations monitors, consultants and advisers. The release of all remaining political prisoners was stressed by the ANC, as was the repeal of all oppressive legislation including some that, in their view, had been rushed through the last session of Parliament.
24. Referring specifically to the role of the United Nations in furthering the political process, the ANC envisaged United Nations monitors in the following sectors: military - to monitor the disbanding and confinement to barracks of special force counter-insurgency units; security - to monitor the South African police; civilian - to monitor the implementation of the National Peace Accord, including the code of conduct for political parties and organizations. In the concept of the ANC, the United Nations monitors would maintain "early warning offices" to receive information from the public relating to possible or impending violence.

25. In a working paper handed to the United Nations mission subsequently, the ANC stressed the need for an adequate and not merely a symbolic number of United Nations monitors, having freedom of movement and the independence resources needed to act as the "eyes" of the international community. A size of some 400-450 persons was suggested for this purpose, with the monitors having a background, preferably, in policing.
26. A special meeting was arranged between Mr. Vance and Mr. Nelson Mandela on 29 July 1992, soon after the latter's return from a mission abroad. In that meeting, after emphasizing that he wished to return to the negotiations, Mr. Mandela turned to certain of his present conditions. These included, *inter alia*, the need to release all political prisoners, and problems that he had encountered on constitutional matters. Mr. Mandela recounted the status of President de Klerk's discussions with him regarding the percentage of votes required on delicate constitutional issues and reviewed the negotiations that had been held to date. He also explained the current status of negotiations with respect to the creation and powers of a senate, which posed serious problems for him. The continuance of violence remained a grave concern of Mr. Mandela and, in this connection, he reiterated the great importance that he and his Party attached to the full implementation of the recommendations of the Goldstone Commission.
27. The delegation of the *Azanian People's Organization (AZAPO)*, led by its President, Mr. Phandelani Nefolovhdodwe, reverted to the idea that the negotiations under way in the country should be chaired by an impartial personality, nominated by the international community. AZAPO also urged the creation of a transitional authority, under international auspices, to supervise the transition to democracy, and a United Nations peace-keeping force to assume control of the security of the nation during the transitional period. Without such arrangements, AZAPO could not see a peaceful transition to a democratic South Africa.
28. The delegation of the *South African Communist Party (SACP)*, led by its Chairman, Mr. Joe Slovo, asserted that the security forces resorted to strategically planned violence and large-scale covert operations. They therefore requested comprehensive international monitoring of the security forces, of their deployment, operations, personnel and documentation. The delegation further requested that international monitoring should extend to the activities of the major political players and, indeed, to the state-owned South African Broadcasting Corporation (SABC). As regards the negotiating process, the SACP had considered it essential to withdraw from CODESA as the latter had lost its

credibility. It was stressed that those participating in CODESA had not been elected by the people and the Government itself was involved in violence. For the process to resume, the issue of violence and the Government's commitment to democracy had first to be resolved to their satisfaction.

30. The delegation from *Bophuthatswana*, led by Dr. L.M. Mangope, informed the mission that a way had to be found to "force" the parties back to the CODESA process. He stated that violence in South Africa was the result of one party trying to eliminate the other parties. There was need for liberation movements to convert themselves into political parties; they must cease to have private armies or recourse to intimidation. President Mangope added that any involvement of the United Nations in South Africa must be impartial and totally independent.
31. The delegation from *Ciskei*, led by Brigadier Oupa Gqozo, stated that CODESA was sabotaged by radicals. His delegation was of the view that only a federal structure, with primary powers vested in the regional governments, could be suitable for South Africa and for Ciskei. He urged a return to negotiations while condemning what he described as repeated acts of violence and destabilization by the ANC >
32. Brigadier Remushwana, leading the delegation from *Venda*, urged the involvement of the international community in the negotiating process. He stressed the need for an impartial chairperson or convenor as, at present, the South African Government was involved both as a player and as the referee.
33. The delegation from *Transkei*, led by Major General Bantu Holomisa, suggested that an international monitoring group should be sent to South Africa to attend to matters to which he had referred in detail when addressing the Security Council on 16 July 1992. Before negotiations could be resumed, state-sponsored violence had to end, as also the repression of political activity, specifically in some of the homelands. It was added that the use of mercenary formations should be ended in the townships and that such units should be disbanded and repatriated to their countries of origin. There was need to release all political prisoners and to repeal certain security legislation that inhibited legitimate political activity.
34. The *Labour Party* of South Africa, led by Mr. Eddie Samuels, urged a United Nations peace-keeping presence in South Africa to monitor violence. Observing that the recommendations of the Goldstone Commission had not been acted upon fully, the Labour Party also urged

the strengthening of the mechanisms of the National Peace Accord and a more active role by the international community in dealing with the situation in South Africa.

35. *The Transvaal Indian Congress*, led by Mr. Cassim Saloojee, urged the establishment of an international monitoring commission to end the violence and to clear the way for an interim government of national unity that would precede the holding of free and fair elections for a constituent assembly. The international monitoring group would complement the mechanisms set up under the National Peace Accord and oversee the demobilization of special forces such as *Koevoet* and Battalions 31 and 32.
36. A delegation of the *Conservative Party*, led by Dr. A.P. Treurnicht, informed the mission that the party was opposed to and rejected any foreign involvement in the South African situation in contravention of article 2, paragraph 7, of the Charter of the United Nations. The Conservative Party also rejected the concept of a "united South Africa". Instead, it proposed a Southern Africa consisting of states independent of each other but economically interdependent. It preferred a confederal or commonwealth arrangement for the various peoples or nations of *Southern Africa*, based on their voluntary participation and on a politically independent basis. The Party observed that ethnicity was a world-wide reality and could not be ignored in Southern Africa.
37. *The National People's Party*, led by Mr. A. Rajbansi, stated that the National Peace Accord should be implemented fully. It recommended a strong United Nations monitoring presence as a means of reducing violence and urged the re-convening of CODESA.
38. A delegation of the *Boerestaat Party*, led by Mr. Robert van Tonder, stressed that South Africa was not a country but a sub-continent comprising some 14 different peoples, who should be allowed to form their individual nation states. He urged that the Government of South Africa should create a negotiating forum based on a recognition of the existence of different peoples, as well as of their right to restore their statehood. He observed, in this connection, that the Boer Republic of Transvaal and the Free State had been independent and internationally recognized until the Boer War of 1899-1902.
39. The delegation of the *Solidarity Party*, led by Mr. J.N. Reddy, informed the mission that just as the South African Government had a legal responsibility to end violence, the people had a moral responsibility to do so. The Party advocated a moratorium on mass actions and called on the

signatories to the National Peace Accord to respect and adhere to all of its provisions in order to create a climate conducive to negotiations. The Party favoured an international group, under the auspices of the United Nations, to monitor the violence and to evaluate the process of negotiations.

40. A delegation of the *Natal Indian Congress* recounted the history of the Indian community in South Africa and of the more recent acts of violence and intimidation against its members. The delegation urged a strong United Nations monitoring presence in South Africa as a way of curbing violence. The monitoring, in the view of the delegation, needed to be comprehensive and "supervisory" and a number of specific suggestions in this regard were communicated to the mission.

### **C. DISCUSSIONS WITH LEADING INDIVIDUALS, CHURCH GROUPS, BUSINESS AND TRADE UNION ORGANIZATIONS**

41. The mission had extensive discussions, throughout its stay in South Africa, with Justice Richard Goldstone, Chairman of the Commission of Enquiry into Public Violence and Intimidation. Two interim reports of the Commission have already been made public, as well as a report on train violence and on a code of conduct of mass demonstrations. Likewise, a "Report of the Enquiry into the Police Response to, and Investigation of, Events in Boipatong on 17 June 1992", prepared by Dr. Waddington of Reading University, for the Commission, has also been made public. A number of other significant enquiries are under way.
42. In these circumstances, it would either be repetitive or premature to elaborate in this report on the details of the work being done by the Goldstone Commission. But certain observations, arising from the discussions with Justice Goldstone, need to be made. First, the terms of reference of the Commission are unusually wide and are currently viewed by Justice Goldstone as adequate. Second, its reports once written are first submitted to the State President, and, only after study by the Government, are they distributed more widely. Third, the Commission has unusual powers; witnesses are required to answer all questions, even those that may be considered self-incriminating (although statements made before the Commission cannot be used for prosecution). Fourth, the Commission has unlimited powers of search and seizure of documents.
43. These points relating to the Commission are being made because of the exceptional scope of its work and the high expectations generated by its recommendations.

44. From conversations with Justice Goldstone and others, however, it appears that certain important recommendations have not so far been fully implemented and that this is exacerbating an already volatile situation. Notable among these has been the inability so far to effect a total ban on the public display of dangerous weapons - not only in "unrest areas", and a failure to act sufficiently in regard to the hostels. There is also the perception that none of the major political parties has taken sufficiently firm steps to stop their supporters from participating in situations or acts of violence.
45. Indeed, the capacity for political violence is so central to the core of the problems creating a lack of trust in the political life of South Africa that Justice Goldstone, and others with whom the mission discussed this issue, believed that this entire matter should be the subject of a series of further investigations.
46. In undertaking his expanding tasks, Justice Goldstone has already been able to draw upon experience and assistance from abroad. Justice Bhagwati of India serves as an assessor to the Commission. Mr. Waddington of the United Kingdom has already assisted with the report on the police response to the Boipatong tragedy. Justice Goldstone indicated his readiness to keep in touch with the United Nations should he need its assistance in arranging further international support for his Commission. Further, Justice Goldstone urged the United Nations mission to do all that it could to strengthen the mechanisms created by the National Peace Accord. He was of the view that existing South African structures should be used as the instruments through which the international community plays a role in seeking to curb the violence.
47. The roles of the *National Peace Committee and of the National Peace Secretariat*, which were established under the National Peace Accord of 14 September 1991, were thoroughly discussed by the mission with Mr. John Hall and Mr. Antonie Gildenhuys, the chairpersons of these two bodies. They explained that the Accord provided a comprehensive framework for ending violence in the country, having been signed, among others, by all of the major political parties, the trade unions, and religious and civic organizations. The Accord, apart from envisaging mechanisms at the central and regional and local levels, also elaborated a code of conduct for political parties and organizations which if followed, would end violence and promote peace and reconstruction.
48. The mission was informed that, at the grass-roots level, the National Peace Secretariat had established eleven regional dispute resolution committees covering all parts of the country. However, despite the

avowed intention of all concerned to implement the National Peace Accord, violations had been frequent and the Secretariat itself still lacked the necessary infrastructure, logistic support as well as sufficient full-time personnel to discharge its duties effectively.

49. Most of my Special Representative's interlocutors, as well as the chairpersons of the regional dispute resolution committees with whom he met, urged the United Nations to strengthen the capacity of the National Peace Secretariat through the posting of an adequate number of United Nations observers to South Africa; these observers would work in full consultation with the National Peace Committee.
50. The mission greatly valued the exchange of views it had with *Archbishop Desmond Tutu* and, subsequently, with a very senior and widely-based delegation of the *South African Council of Churches*. The discussions took place against the backdrop of the failure of efforts to stave-off mass demonstrations planned to commence on 3 August 1992 and the fear that this aroused of widespread violence.
51. The leaders of the Church expressed their pain and anguish at the legacy of apartheid, the deadlock at CODESA II, the threat of mass action and the danger of violent response, the rising unemployment in a society without socio-economic balance, and the failure of the SACCOLA-COSATU attempt to agree upon a charter for peace, democracy and reconstruction.
52. Faced with a breakdown in constitutional negotiations which, in their view, resulted from a demand on the part of the Government to build into any constitution a minority veto, the Church leaders urged the establishment of an internal peace-keeping force, composed of an entirely newly created unit. They added that an international monitoring team, with investigative powers, should work closely with such an internal peace-keeping force, and called - as had others - for the disarming and confinement to base of special forces that had engaged in covert operations. The Church leaders stressed, not least, that the recommendations of the Goldstone Commission should be fully implemented.
53. As the mission progressed, and as the day for the mass demonstrations grew closer, the Church leaders kept in touch with the Special Representative, keeping him informed of their conversations with the State President, the leaders of COSATU and SACCOLA, and of their efforts to restrain violence.

54. The mission also had the benefit of exchanging views with the *Lawyers for Human Rights*, who also called for a commission to study the feasibility of creating a South African peace-keeping force that would be trusted by all parties. The group also urged the strengthening, through a variety of practical measures, of the machinery created by the National Peace Accord and of the Goldstone Commission.
55. A detailed discussion was held between the mission and the leadership of the *Congress of South African Trade Unions (COSATU)*. The latter attributed the breakdown in the political process to the unwillingness of the Government to commit itself irrevocably to majority rule and to universal norms of democracy, and its inability to control violence. The COSATU delegation explained its efforts to agree with SACCOLA to a charter and programme for peace, democracy and economic reconstruction and gave its reasons for the failure of this undertaking. In the circumstances prevailing in South Africa, COSATU urged the establishment of an international monitoring mission by the United Nations, independent of the National Peace Accord structures, but complementary to them. As for the mass action, COSATU considered it essential to proceed, as planned, in order to make the Government accede to majority rule and to act against violence. COSATU indicated it would welcome the presence of United Nations monitors to observe the mass action.
56. Amongst the other distinguished individuals received by the mission were Professor C. Boshoff, Chairman of the Afrikaner Freedom Foundation, seeking self-determination through peaceful means for the Afrikaner people, and Mr. J.H. van der Merwe, an Independent Member of Parliament, who expressed his views on the future constitutional arrangements and the need for maximum devolution to the component states.
57. The mission also benefitted from gaining the views of Professor John Dugard, of the Independent Board of Inquiry; Mr. Arthur Chaskalson, of the Legal Resources Centre; Judge Pierre Olivier; and Mr. Van Zyl Slabbert and Dr. Alex Boraine of the Institute for a Democratic Alternative for South Africa (IDASA). A special insight was gained of the economic situation in the country through conversations with representatives of the South African Chamber of Business (SACOB) and the National Federation of the Chamber of Commerce (NAFCOC).

#### D. INTERIM MEASURES TAKEN WHILE IN SOUTH AFRICA

58. While the purpose of the mission remained focused, at all times, on the twin objectives set by paragraph 4 of resolution 765 (1992), namely, "to recommend after, *inter alia*, discussion with the parties, measures which would assist in bringing an effective end to the violence and in creating conditions for negotiations leading towards a peaceful transition to a democratic, non-racial and united South Africa", it was necessary - even during the mission - to ensure that the mass actions scheduled for 3 August did not erupt into uncontrollable violence despite the wishes of all parties concerned.
59. It was therefore necessary for my Special Representative and me to take certain exceptional interim measures aimed at preventing, if possible, such a catastrophic possibility.
60. Accordingly, upon the advice of my Special Representative, and following discussions which he had held with the Government, the ANC and Inkatha at the highest levels, I wrote to President de Klerk, Mr. Mandela and Chief Buthelezi on 27 July 1992 expressing my concern that the mass demonstrations planned for 3 August 1992 could take a turn toward violence, contrary to the wishes of all the parties in South Africa. I noted that such violence could readily be sparked by provocateurs and that this must, by all means, be avoided. I emphasized that it would be tragic and ironical in the extreme if the Vance mission were to be followed by an eruption of violence - a development that would be wholly inconsistent with the purposes of the Security Council's resolution. I therefore urged my addressees to do all in their power, in association with the leaders of the principal political parties, to stave off such an eventuality.
61. My letters received an immediate response. In a telephone conversation with me on 29 July 1992, Mr. Mandela, who had met Mr. Vance earlier in the day, assured me that the ANC would do all in its power to avoid violence. He requested that I consider sending some ten observers to witness the demonstrations across the country. Mr. Vance discussed this idea, amongst others, with President de Klerk and members of his Cabinet on 30 July 1992. There was ready acceptance of the concept, the State President indicating that he had no objection to the presence of impartial and objective observers, representing the Secretary-General, for the purpose of observing the proposed mass campaign. The State President urged that these observers, if sent, should act in coordination with the National Peace Secretariat and have full freedom of movement to observe the demonstrations and mass actions as they chose. In light of

these reactions, seven observers were immediately dispatched from New York to supplement three who were present in South Africa. They are, as of the time of writing this report, observing the mass action in eleven different regions of South Africa.

62. Another major issue on which my Special Representative considered it essential to take immediate steps related to political prisoners who remain under detention and whose fate is of great concern. The matter was raised with him by the ANC on 23 July and, again, by Mr. Mandela, on 29 July, shortly after the latter's return to South Africa from abroad. Mr. Vance, accordingly, discussed this question with President de Klerk on 30 July 1992, as he had earlier with Foreign Minister Botha on 26 July 1992. On 31 July 1992, Mr. Vance arranged a meeting on this subject between the Justice Minister, Mr. Coetsee, and the Director of the ANC's International Affairs Department, Mr. Mbeki. It is essential that this painful problem should be expeditiously resolved. If so handled, it would, in a bold and humane gesture, do much to bury the past and to clean the slate of distrust.

#### IV. OBSERVATIONS

63. From my discussions with Mr. Vance and Mr. Dayal since their return from South Africa, I have been struck by the range and depth of the talks that the United Nations delegation held while in that country. I have also been profoundly impressed by the open and responsive manner in which they were received by all sectors of society. I view this as further evidence of a transformation taking place in that country as its leaders and peoples strive to create a democratic, non-racial and united South Africa.
64. The path to the attainment of this objective will not be easy to traverse. Violence in whatever form must be brought under control and conditions established to ensure the success of the negotiating process. Decades of apartheid have left a painful legacy of distrust and anguish, and these persist despite the resilience and courage of those who wish to see their country on an irreversible new course.
65. The unanimous adoption of resolution 765 (1992) by the Security Council strengthened the hands of those so motivated. It also heightened expectations that the continuous involvement of the Security Council in this new phase of South Africa's evolution will be marked by understanding and a readiness to contribute constructively to the process

of peaceful change.

66. It is with this in mind, and in this spirit, that I recommend the measures that follow to bring an effective end to the violence and to create the conditions for the resumption of negotiations envisaged in resolution 765 (1992).
67. It is neither necessary nor possible here to recount the far-reaching work being undertaken by Justice Richard Goldstone, Chairman of the Commission of Enquiry into Public Violence and Intimidation. Suffice it to say that it commands wide-spread respect in South Africa and abroad. I believe that the efforts of the Goldstone Commission should be supported by the international community and that the recommendations of the Commission should be fully and speedily implemented by the Government and, when so required, by the parties in South Africa.
68. Without wishing to select arbitrarily from amongst the many recommendations of the Goldstone Commission, I believe that those relating to a total ban on the public display of dangerous weapons and the security of hostels need to be acted upon with utmost urgency, as recent events have sadly proven necessary. Further, I believe that the Commission's code of conduct for mass demonstrations can do much to control violence. It is also necessary, in my view, that the leaders of the major political parties should, as the Goldstone Commission recommends, take firm steps to stop their supporters from participating in acts of violence.
69. The long-standing capacity for violence by the various political groups in South Africa is so central to the lack of trust in the political life of the country that I feel it must be remedied. Accordingly, I recommend that the Goldstone Commission undertake a series of investigations into the functioning and operations of certain agencies, *inter alia*, the army and police, the Umkhonto we Sizwe (MK), the Azanian People's Liberation Army (APLA), the KwaZulu police, and, more generally, certain private "security firms". My Special Representative has discussed this proposal with Justice Goldstone and certain of the parties who are of the view that such investigations could indeed serve to curb violence and be of benefit to the country as a whole. While such investigations would widen the scope of the work of the Goldstone Commission, they could be undertaken within its present terms of reference. Should the Commission need further financing for its expanded work, I would urge the Government to be forthcoming.

70. The Commission has welcomed suitable international assistance. Certainly the Waddington Report and the assessorship of Justice Bhagwati have been very positive developments. It may well be useful in the future to have senior personnel seconded to the Commission, in addition to a pool of jurists, to sit on the committees of enquiry. The choice of properly qualified, suitable and compatible persons will need to be adequately and sufficiently addressed. Should Justice Goldstone feel the need, at any stage, for assistance from the international community and the United Nations in this regard, I recommend that the Organization respond positively and appropriately.
71. The reports of the Goldstone Commission when written are, at present, submitted first to the State President and only after being reviewed by the Government are they made public more widely. I believe political and public opinion in South Africa would welcome the reports being made available to all signatories of the National Peace Accord within twenty-four hours of submission to the State President. I recommend this course of action which would enhance the impact and credibility of the reports.
72. Finally, as far as the Goldstone Commission is concerned, I believe it is essential that any further investigations and prosecutions that are required pursuant to its reports, should be undertaken promptly by the competent departments of Government. Such action would enhance the credibility of the law enforcement machinery of the country.
73. The National Peace Accord of 14 September 1991 establishes a comprehensive framework, agreed upon by all the major parties, organizations and groups of South Africa, to end violence and to facilitate socio-economic development and reconstruction. The mechanisms foreseen under the Accord, however, lack teeth and need to be greatly strengthened. This was the unanimous view of all those who discussed this matter with the United Nations delegation, including those who are associated with the existing structures of the National Peace Secretariat.
74. Both the National Peace Committee and the National Peace Secretariat need to be more consistently and substantially supported from the highest political levels, as do the eleven Regional Dispute Resolution Committees covering all parts of the country. Most importantly, they require financing and full-time staff of the requisite calibre. Further, there is desperate need for efficient, functioning offices or operations centres at the major "flashpoints"; these should be staffed on a 24-hour basis and fully funded and equipped. For each of such offices there should be a standing group composed of representatives of the Government, ANC, Inkatha and other concerned parties. Such offices should be capable at all

times of acting immediately to defuse incipient problems; they should have prompt and direct access to law enforcement agencies. I recommend the earliest establishment of such offices.

75. I have reflected deeply on the many serious requests made to the United Nations to dispatch monitors to South Africa for the various purposes referred to earlier in this report. I understand the concerns expressed and the anxieties they reflect. I am most appreciative of the many bold and constructive ideas conveyed to my Special Representative in the course of his discussions and I have weighed these most carefully.
76. Given the mechanisms already established by the National Peace Accord, to which all parties have agreed, I have concluded that, at this stage, the wisest course of action would be to strengthen and reinforce those mechanisms. Such action would, in my view, contribute tangibly to enhancing the capacity of indigenous structures that can play a major role in the building of peace, both in the present and in the future. I recommend, accordingly, that the United Nations make available some 30 observers, to serve in South Africa, in close association with the National Peace Secretariat, in order to further the purposes of the Accord. The observers would be stationed in agreed upon locations, in various parts of South Africa. As necessary, their number could be supplemented by other appropriate international organizations, such as the Commonwealth, the European Community and the Organization of African Unity (OAU). I am of the view that the practical arrangements stemming from this recommendation should be the subject of early and detailed discussions between the United Nations, the Government and the parties concerned. I believe, in this connection, that the experience gained by the dispatch of 10 United Nations observers to cover the present mass demonstrations could serve a valuable purpose in defining the tasks and methods of functioning of the larger group that I am recommending.
77. I would also urge that the Government act expeditiously to ensure the early appointment of the Justices of Peace and the establishment of the Special Criminal Courts envisaged in the National Peace Accord.
78. The reasons for the violence in South Africa are, of course, complex and deep. But the special desperation that apartheid brought to the country can, in the long run, only be remedied by rapid progress towards the creation of the democratic, non-racial and united South Africa that is the goal of the negotiations and the objective not only of the CODESA process but of the international community as a whole.

79. The task of conducting these negotiations is uniquely the responsibility of South Africans themselves and I was heartened by statements made to my Special Representative of the determination of the major parties to return, as early as possible, to the negotiating table. I urge such a course of action, for the time otherwise lost is precious and even more so are the lives. I am strongly of the view that actions such as the immediate release of all remaining political prisoners could contribute greatly to improving the political climate, creating trust and burying the unhappy past. In this connection, it is also important that reporting on state-owned radio and television be, and be seen to be, fair and objective.
80. For all of its shortcomings, the CODESA process must be pursued, and improved. I believe it needs to encourage others, who have not yet joined, to do so, in the interests of the country and of peace. I am convinced that its processes must be better coordinated and made much more transparent. Considerable progress has been accomplished in the Working Groups, but too few know of this, or of the precise issues that need to be resolved. There is a manifest need to establish a deadlock resolving machinery at the highest political level. In addition, there may well be the need for CODESA to consider the appointment of an eminent and impartial person, who need not be a foreigner, to draw the strings together and to provide the impetus and cohesion that CODESA needs to accomplish its tasks. I recommend that these ideas be considered further by all concerned in South Africa.
81. In a time such as this, crucial to South Africa and the world alike, it is most important that the Security Council should have decided, in its resolution 765 (1992), to "remain seized of the matter until a democratic, non-racial and united South Africa is established".
82. To discharge its function, I believe that the Security Council should have before it information that is regular, impartial and objective. To this end, I would propose that missions such as that just completed, should be undertaken on a quarterly basis, or more frequently, if the situation so warrants and that reports be provided to the Council.
83. The role of the international community and of the United Nations in particular can, at this moment, be profound and beneficial. It can facilitate a great and peaceful transition of historic proportion in a part of the world that has suffered too long.

## **RESOLUTION 772 (1992)**

**Adopted by the Security Council at its 3107th meeting,  
on 17 August 1992**

**The Security Council,**

**Reaffirming** its resolution 765 (1992 of 16 July 1992,

**Having considered** the report of the Secretary-General on the question of South Africa (S/24389),

**Determined** to help the people of South Africa in their legitimate struggle for a non-racial, democratic society,

**Cognizant** of the expectations of the people of South Africa that the United Nations will assist with regard to the removal of all obstacles to the resumption of the process of negotiations,

**Bearing in mind** the areas of concern relevant to the question of violence in South Africa, including the issues of the hostels, dangerous weapons, the role of the security forces and other armed formations, the investigation and prosecution of criminal conduct, mass demonstrations and the conduct of political parties,

**Further bearing in mind** the need to strengthen and reinforce the indigenous mechanisms set up under the National Peace Accord, so as to enhance their capacity in the building of peace, both in the present and in the future,

**Determined** to assist the people of South Africa to end violence, the continuation of which would seriously jeopardize peace and security in the region,

**Underlining**, in this regard, the importance of all parties cooperating in the resumption of the negotiating process as speedily as possible,

**1. Welcomes** with appreciation the report of the Secretary-General of 7 August 1992 (S/24389);

**2. Expresses** its appreciation to all relevant parties in South Africa for the cooperation they extended to the Special Representative of the Secretary-General;

**3. Calls upon** the South African Government and all parties in South Africa to implement urgently the relevant recommendations of the Secretary-General contained in this report;

**4. Authorizes** the Secretary-General to deploy, as a matter of urgency, United Nations observers in South Africa, in such a manner and in such numbers as he determines necessary to address effectively the areas of concern noted in his report, in coordination with the structures set up under the National Peace Accord;

**5. Invites** the Secretary-General to assist in the strengthening of the structures set up under the National Peace Accord in consultation with the relevant parties;

**6. Requests** the Secretary-General to report to the Security Council quarterly, or more frequently if necessary, on the implementation of the present resolution;

**7. Calls on** the Government of South Africa, parties and organizations, and the structures set up under the National Peace Accord, to extend their full cooperation to the United Nations observers to enable them to carry out their tasks effectively;

**8. Invites** international organizations such as the Organization of African Unity, the Commonwealth and the European Community to consider deploying their own observers in South Africa in coordination with the United Nations and the structures set up under the National Peace Accord;

**9. Decides** to remain seized of the matter until a democratic, non-racial and united South Africa is established.

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