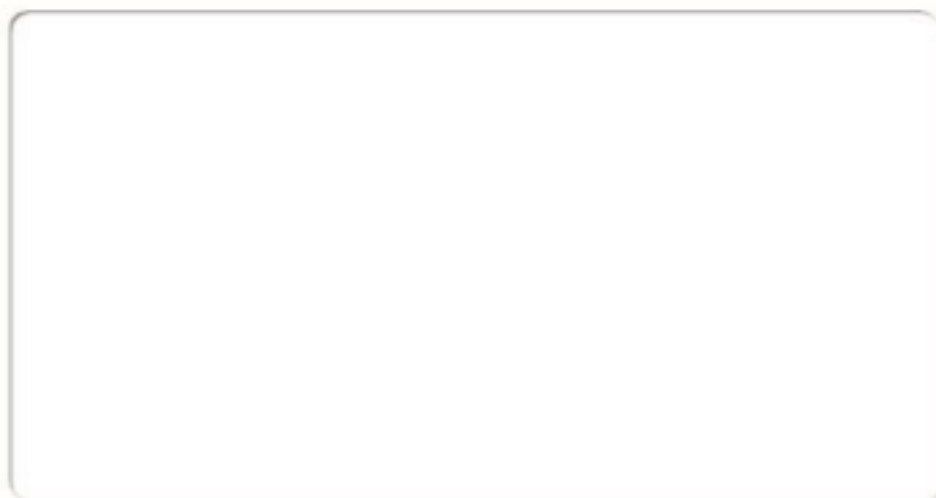




**KOMMISSIE VAN ONDERSOEK INSAKE
DIE VOORKOMING VAN OPENBARE
GEWELD EN INTIMIDASIE**

**COMMISSION OF INQUIRY REGARDING
THE PREVENTION OF PUBLIC VIOLENCE
AND INTIMIDATION**



HUMAN RIGHTS INSTITUTE
OF SOUTH AFRICA
P.O. BOX 31267
BRAAMFONTEIN 2017

REFERENCE LIBRARY
"NOT FOR LOAN"

REPORT ON THE BISHO INCIDENT

The State President

The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation has the honour to present a report on the Bisho incident on 7 September 1992.

R J GOLDSTONE

CHAIRMAN OF THE COMMISSION

29 SEPTEMBER 1992

PRETORIA

1. INTRODUCTION

- 1.1 On 7 September 1992 a large protest march on Bisho, the capital of Ciskei, was organized by an alliance of the African National Congress, the Congress of South African Trade Unions and the South African Communist Party. For convenience we shall refer to these parties collectively as "the Alliance".
- 1.2 In the vicinity of the Bisho Stadium, which is close to the South African Border, members of the Ciskei Defence Force (CDF) shot at a group of the marchers. In consequence 29 people were killed and hundreds were injured. According to the CDF some 425 rounds of ammunition were fired by their members.
- 1.3 On 11 September 1992, the State President referred the incident to the Commission for enquiry in terms of section 7(1)(b) of the Prevention of Public Violence and Intimidation Act, 139 of 1991.
- 1.4 The Commission decided that it was in the public interest that it should furnish a report to the State President at the earliest possible time. Having regard to the existence of video material of the events and the presence there of independent observers, it was decided further that findings and recommendations could properly be made on facts which were not in issue and facts which were beyond dispute.
- 1.5 The legal representatives and the interested parties were accordingly requested to address argument to the Commission on 23 September 1992 on the following questions:
 - 1.5.1 What facts relating to the events at Bisho were not in dispute or were indisputable;
 - 1.5.2 What findings and recommendations can and should be made by the Commission on the basis of these facts;
 - 1.5.3 Whether there are other issues in respect of which oral evidence should be heard.
- 1.6 On 23 September 1992 the Commission met for the above-mentioned purpose. One of its members, Mr G Steyn, was present at the events in Bisho and for that reason it was considered inappropriate that he should participate in the hearing. The other four members of the Commission were present.
- 1.7 The following parties were represented by legal teams:
 - 1.7.1 The CDF;
 - 1.7.2 The Ciskei Police Force;
 - 1.7.3 The Alliance;

1.7.4 The South African Police.

1.8 The Attorney-General of Ciskei was present at the hearing but he addressed no submission to the Commission.

2. THE ISSUES ADDRESSED IN THIS REPORT

2.1 Only two main issues will be addressed in this report. They are:

2.1.1 The nature and organisation of the march and the events immediately preceding the shooting;

2.1.2 The shooting itself.

2.2 The shooting and the loss of life and injuries it caused clearly overshadows the organisation of the march and the conduct of the marchers. For that reason it was considered that it might be appropriate first to consider the shooting. However, the report will be easier to follow and its conclusions will more logically be drawn if the events are dealt with chronologically.

3. THE MARCH

3.1 THE PURPOSE OF THE MARCH

3.1.1 The avowed purpose of the march was to convey as peacefully as possible a political statement aimed at the leadership of Ciskei and particularly the head of its Council of State, Brigadier Gqozo. Counsel for the Alliance addressed submissions to the Commission with regard to the reasons which induced the Alliance to embark upon this form of what has loosely been called "mass action". It is not necessary in this report to analyse those reasons or to discuss their merits. Suffice it to say that the Commission unreservedly recognises the right of the Alliance to hold those views and to make them public in whatever non-violent manner it may choose.

3.1.2 With regard to the immediate purpose of the march, the following submissions were made in a written argument by Counsel for the Alliance at the hearing of the Commission:

"11. The alliance decided that in the circumstances a major protest, with a national focus, should be organised in the Ciskei to draw national and international attention to its demand for the creation of a climate of free political activity and an end to violence in the Ciskei. This was to be a march into Bisho.

12. The principal demand of the alliance which was to be highlighted by the march was for free political activity and an end to violence in the Ciskei. Political repression and violence in the Ciskei were associated with the Gqozo regime and so the call for free political activity and an end to violence was linked to a demand for his removal.

13. The march was to be peaceful and conducted as far as possible in accordance with the guidelines set out in the peace accord. Its goal was not insurrection. It was to send a clear message that repression of free political activity in the Ciskei would not be tolerated. The message would be directed not only to Brigadier Gqozo, but also to the South African

Government which was propping up the Gqozo regime. A demand would be made for Brigadier Gqozo to resign and for an interim administration acceptable to all representative bodies in the Ciskei to be installed which would permit free political activity to take place, and create a climate in which this would be possible. A demand would be made to the South African Government to support these measures, and to use its *de facto* control of the Ciskei, to help achieve them.

14. The intention was to march to an open space on the southern side of the central business district in Bisho, and to hold an assembly there for a minimum of 24 hours. The assembly would demonstrate the strength of feelings of the people participating in the march, and the substantial support which they had."

3.1.3 These submissions do not take account of the logistical problems which would face those in charge of maintaining order in any city or town by over 30 000 people occupying a public place for an unspecified period in excess of 24 hours. The ablution and toilet facilities alone would constitute substantial organisation. Then, too, a crowd of that magnitude may well act as a shield for criminal elements and steps would have to be taken to protect life and property in the surrounding areas.

3.1.4 It was submitted on behalf of the CDF that the purpose of the march was to "overthrow" the Ciskei Government. It was submitted further that evidence could be addressed concerning information received by the CDF that violence was being planned in parts of Ciskei aimed at fomenting insurrection and that the march was part of a general policy aimed at the overthrow of the Government. It was made plain, therefore, that the Ciskei authorities would on no account permit any Alliance supporters to march on Ciskei soil. The potential for violence in this situation was obvious and pleas to the Alliance to call off the march was made up to the last minute by a number of bodies including the South African Government, the Democratic Party and the National Peace Secretariat. The State President made personal appeals to the President of the ANC for him to intervene and call off the march. These appeals went unheeded and the organization continued.

3.2 THE ORGANIZATION OF THE MARCH

3.2.1 On 31 August 1992, the Alliance notified the relevant authorities of its intention to gather at Victoria Sports Ground in King Williams Town and from there to march to Bisho. Meetings were held by the organizers with the SAP and the Chairman of the National Peace Secretariat (NPS). The South African Government, the SAP and the NPS held meetings and made representations with the Ciskei authorities in order to induce them to allow a peaceful march to Bisho on 7 September 1992. The Ciskei authorities would not agree.

3.2.2 An application to the Municipality of King Williams Town was made on behalf of the ANC for permission to march from the Victoria Sports Ground to Bisho. The Town Clerk was informed that the gathering would start at 9:00 on 7 September 1992 and that approximately 100 000 people were expected to participate in it. The Town Council was requested to supply water, toilets and first aid facilities at the expense of the organizers. The Municipality of King Williams Town approved the march and so informed the ANC by letter dated 4

September 1992.

3.2.3 It would appear that the Alliance, the SAP and the Municipality of King Williams Town abided by the terms of the interim agreement concerning mass demonstrations announced by the Commission in Cape Town during July 1992.

3.2.4 According to undisputed submissions by the Alliance, marshals were given special training and instructions to ensure the orderly behaviour of the marchers. On the day of the march there were approximately 1 200 marshals. Members of the executive committees of over 200 branches of the Alliance were also present and they, too, were responsible for maintaining crowd control. Security searches were made of people entering the Victoria Sports Ground. Ten walkie-talkies were used for communication between the different sections of the march.

3.2.5 According to the submissions on behalf of the Alliance:

"It was made clear to all persons participating in the march that it should be peaceful and that there should under no circumstances be violence from the side of the marchers. It was the stated intention of the organizers that no marchers should be armed and they attempted to ensure that this policy was adhered to through instructions to members, media releases and arrangements made to search persons entering the Victoria Stadium at King Williams Town."

Even if these precautions were taken efficiently it would clearly not have been possible to search persons who might join the marchers after they left the Victoria Sports Ground.

3.3 THE REACTIONS OF THE CISKEI AUTHORITIES

3.3.1 As already mentioned, the Ciskei authorities at all times were unwilling to grant permission for any demonstration on Ciskei soil notwithstanding attempts to obtain an agreement which was initiated by the South African Government, the SAP and non-governmental organizations.

3.3.2 On the evening of 6 September 1992 an application was brought in the Ciskei Supreme Court for an order prohibiting the march. The ANC brought a counter-application for an order directing the Chief Magistrate to make a decision on an application made to him some days before for permission for the march and gathering to be held. The Chief Justice of Ciskei granted an order, *inter alia*, declaring that it would be unlawful for the march to be held without the consent of the Chief Magistrate. He prohibited the march and gathering without the permission of the Chief Magistrate. On the counter application, the Chief Justice ordered the Chief Magistrate to rule on the application by the ANC for permission to march and to hold the gathering.

3.3.3 In the early hours of 7 September 1992 the Chief Magistrate made the following order:

"In terms of section 43 of the National Security Act No 13 of 1982 authority is hereby granted to the above-mentioned applicants for the holding of a gathering at Bisho where people would be addressed from 12:00 to 16:30 on demands for free political activity. The gathering is

to take place at the Bisho stadium. The participants at the protest march - meeting are prohibited from carrying or being in possession of any dangerous weapons."

3.3.4 In response to a query from a member of the Commission, counsel for the Alliance stated that the Alliance decided that it would not comply with the order of the Chief Magistrate. That decision, he said, was conveyed on the morning of the march to representatives of the NPS and a statement to that effect was issued to SAPA between 09:00 and 10:00 on the same morning. In their written submissions, counsel for the Alliance state that:

"By the time the Magistrate's decision was received, the alliance had firmly committed itself to a march into Bisho. It regarded this as a fundamental right and the Ciskei regime's attempts to curtail it as invalid."

3.3.5 The decision taken by the Alliance leaders in King Williams Town on the morning of 7 September 1992 was that the march would proceed along the main Bisho-King Williams Town Road up to its intersection with Jongilanga Avenue, and from there proceed to an open space south of the Ciskei Peoples Development Bank Building where the assembly would be held. It was also decided that it was important for the Alliance leaders to negotiate with the NPS especially if unexpected circumstances developed. According to counsel for the Alliance:

"Although it was appreciated that the Ciskei security forces might attempt to prevent the assembly taking place, it was never contemplated that they would use lethal force to do so."

3.4 THE MARCH

3.4.1 After the commencement of the march some Alliance leaders went ahead "to reconnoitre" the situation at the border. On arrival at the border they noticed that the road had been blocked by rolls of razor wire to prevent the marchers from proceeding along the road to Bisho. There was also razor wire placed strategically to channel the marchers to their left and into the Bisho Stadium on the southern side. That stadium is situated very close to the border.

3.4.2 The leaders met with the Chairman of the National Peace Committee, Mr J Hall, the Chairman of the NPS, Dr A Gildenhuys and other observers who were present in order to assist in keeping the proceedings peaceful. Mr Hall and Dr Gildenhuys informed the Alliance leaders who included Messrs C Ramaphosa, C Hani and R Kasrils that the Ciskei authorities were determined that the Alliance supporters would not be allowed into any part of Ciskei other than the Bisho Stadium.

The Alliance leaders indicated that if they were prevented from entering Bisho they would have to consider their options. They did not accept that the Ciskei security forces had any right to frustrate their plans. Representatives of the NPS offered their services as go-betweens and it was agreed that there would be discussions between them and the leaders of the march when it arrived at the razor wire barrier.

3.5 THE GAP IN THE FENCE AND THE POSITION OF THE CISKEI SOLDIERS.

3.5.1 Ciskei soldiers were visibly guarding buildings adjoining the road on the Ciskei side of the border as well as the road on the Ciskei side of the razor wire barrier. Alliance organizers went into the Bisho Stadium where they noticed that a section of the outer fence of the stadium on the northern side had been flattened for a distance of about 10 metres. The gap provided an unobstructed route out of the grounds of the stadium.

3.5.2 According to the Alliance version, CDF members could be seen approximately 250 metres away on the eastern side of the area in front of the gap in the fence. On the western side there appeared to be soldiers. In fact they were there hidden in a trench and behind shrubs. It was suggested by counsel for the CDF that those soldiers also must have been visible to the Alliance organizers. The conduct of the group which ran through the fence, as clearly seen on the video films, is such that there is a strong probability that they were unaware of the presence of soldiers in the direction in which they ran. Why else would all of them have run in that direction? On this issue counsel for the CDF did not suggest that there were witnesses who could testify that there were soldiers visible in the direction in which the demonstrators ran.

3.5.3 The Alliance leaders who found the gap in the fence reported on it to their colleagues who were with the marchers. They also reported on their discussions with the representatives of the NPS. To quote again from the Alliance counsel's submissions:

"It was decided that certain of the leaders would attempt to meet representatives of the National Peace Secretariat and ask them to use their influence with the Ciskei security forces to permit the march to proceed into Bisho. Other leaders would lead the marchers into the stadium. Some of them would attempt to go through the gap and assemble on open ground to the north east of the stadium to await the negotiations between the leadership and the National Peace Secretariat."

3.6 THE ARRIVAL OF THE MARCH AT THE RAZOR WIRE

3.6.1 At about 13:30 the front of the march reached the razor wire barrier. It was approximately 20 metres from the border between the Republic and Ciskei. One sees from the video that the crowd was spread over a wide area on both sides of the road. Before the middle and right flanks of the marchers moved towards the path to the stadium, those on the left under the active leadership and with the encouragement of Mr Kasrils began running with him into the stadium grounds. The NPS representatives were not informed of the intention to lead demonstrators out of the stadium grounds.

4. THE SHOOTING

4.1 The group led by Kasrils moved out of the stadium and ran to the left in the direction of Jongilanga Crescent. It appears from the videos that a substantial number of people who had already entered the stadium saw the group moving out of the stadium grounds and went to follow them.

- 4.2 The soldiers towards whom the demonstrators were running then stood up and opened fire on them. One sees from the video that the moment the firing began every one of the demonstrators turned around in unison and ran back in the direction of the stadium. At the time the shooting began the demonstrators were approximately 100 to 150 metres from the soldiers. These soldiers fired 185 rounds of ammunition and four grenades.
- 4.3 According to the Alliance the demonstrators were peaceful and unarmed - they posed no threat to the soldiers or the buildings in their vicinity.
- 4.4 On the other hand, according to the CDF, the first shots fired were from the group of demonstrators running at them. That their senior officer reported over his radio. The overall commanding officer of the CDF was standing on the roof of the Parliament Building when he received the message that the soldiers were under fire. He asked for confirmation and it was given to him. He then gave the order that the soldiers in the Jongilanga Crescent area could open fire on the demonstrators.
- 4.5 Almost at the same time as the soldiers near Jongilanga Crescent opened fire, so too did those who were in front of the Fort Hare University campus which is on the southern side of the stadium and these who were at the National Assembly. In the case of that shooting no order was given. However, it is alleged by the CDF that three shots were fired at them from the crowd. One of the soldiers at the Fort Hare campus was shot and fell. Those soldiers who were with him took shelter behind the buildings. There is also an allegation that hand grenades were thrown in their direction. They then opened fire on demonstrators who were nearest to them. They did so for a prolonged period and quite indiscriminately. They shot people who in compliance with the order of the Chief Magistrate were in the stadium.
- 4.6 Two hundred and forty rounds of ammunition were fired by the soldiers near the Fort Hare campus. It is not known how many rounds were fired from the National Assembly area.

5. DISCUSSION CONCERNING THE ALLEGATION OF SHOTS FIRED BY DEMONSTRATORS

- 5.1 There is only one material dispute, viz whether shots were fired at the soldiers. The following evidence is relevant in deciding this issue:
- 5.1.1 It appears from one of the videos that a Stechin pistol was found on the ground in the vicinity where the demonstrators had been. However, forensic tests proved that no bullet had been fired from it. Another video shows a revolver on the scene. Yet another video shows one of the demonstrators carrying what could be a fire-arm hidden under his jacket.
- 5.1.2 The ballistic report of Colonel J D du Plessis, of the South African Police, indicates that only one spent cartridge was found in the vicinity of where the demonstrators had been.
- 5.1.3 The manner in which the crowd who was fired on from Jongilanga Crescent turned in unison makes it improbable that any of these persons were firing at the soldiers. Furthermore, to have done so would have been suicidal and inviting the return of fire on the demonstrators.
- 5.1.4 From the same forensic report it appears that the CDF member who was shot and killed at the Fort Hare campus was hit on the left side of the back of his head.

The disintegration of the bullet was typical of that fired from a R4 rifle. The high probability is therefore that he was shot by one of his fellow soldiers.

- 5.2 The expedited procedure adopted by the Commission excluded the hearing of oral evidence. In order to decide whether the demonstrators fired at the CDF members, findings would have to be made concerning the credibility of the witnesses who might testify to the conflicting versions. It would be quite unacceptable to make such findings only on the basis of probabilities. It must be stated, however, that the probability remains that there was no shooting from the demonstrators and that the version of the CDF is false or at best for it, highly exaggerated. Not one of the many independent observers present reported having seen or been aware of any shot fired from the crowd at a CDF member.
- 5.3 The Commission, however, decided that in the present proceedings it cannot make a positive finding that a shot or shots were or were not fired at the CDF members as alleged by the CDF. We shall therefore proceed to make general findings and recommendations on the assumption that the CDF members were fired at by demonstrators.

6. THE POLICY OF THE CISKEI AUTHORITIES

- 6.1 It is not in dispute that the Ciskei authorities were resolute in their refusal to allow any public demonstrators in Bisho or, indeed, in Ciskei.
- 6.2 Public protest has become the order of the day and co-operation between local authorities and the South African Police, on the one hand, and the organizers of mass demonstrations, on the other, have almost invariably led to peaceful and disciplined marches and meetings - some of them involving tens of thousands of people.
- 6.3 We would emphasise that this type of mass demonstration is still the only form of peaceful political activity open to the vast majority of South Africans who still remain disenfranchised.
- 6.4 The Commission is of the view that had the Ciskei authorities acceded to the pleas of the South African Government, the SAP and the NPS, to allow a peaceful and negotiated mass demonstration to take place, the violence which occurred on 7 September could have been averted.

7. THE CONDUCT OF THE CISKEI SECURITY FORCES BEFORE THE MARCH

- 7.1 On previous occasions the Commission has pointed out that unpredictable behaviour in situations of mass action is dangerous and conducive to violence. When large crowds or security forces do not know what to expect of each other there is always a high potential for violence. It is for this reason, above all others, that the Commission's guidelines call for adequate and full notice of mass demonstrations to be given to the authorities. The attitude of the Ciskei authorities precluded such notice from being given to it and it disabled itself from taking sensible precautions to contain or control the demonstrations.
- 7.2 According to counsel for the CDF until 11:00 on 7 September 1992, its orders were to use whatever force was necessary to prevent any demonstration on Ciskei soil from taking place. The acceptance by the Ciskei authorities to allow the marchers into the Bisho Stadium was only then conveyed to the Ciskei army. By then the razor wire barricade had been erected and some security forces were obviously deployed at the border. It is difficult to accept or believe that an inspection of the Bisho Stadium had not been

carried out. Barricades were erected with razor wire on the western side of the stadium. To have left the gap in the fence on the northern side is attributable only to gross negligence or design. That the gap was left as a deliberate trap is difficult to accept. For such a deliberate trap to have been designed prior to the early hours of the morning of 7 September 1992 account would have to have been taken of the ANC's counter-application to the Bisho Supreme Court; the order on the Chief Magistrate and his decision to allow the marchers to enter the stadium; the reconnoitre of the stadium by the Alliance leaders and the use of the gap to run out of the stadium. To have designed such a plan after the magistrate had given his order is also improbable. It cannot be discounted but the probabilities are very much against it. That such a diabolical plan was implemented was not pressed by the counsel for the Alliance and no finding against the Ciskei authorities can be made by the Commission in this regard.

- 7.3 However, we agree fully with the submissions made by counsel for the Alliance that if the instructions to the CDF and Ciskei Police Force were to prevent any demonstrators from leaving the stadium there should have been a visible and strong show of force in the immediate vicinity of the stadium. Again, for the CDF commanders to have been unaware of the gap in the fence, which is their case, can at best for them, be described as highly negligent and unprofessional to a startling degree.

8. THE CONDUCT OF THE ALLIANCE ORGANIZERS

- 8.1 At all times the Alliance leaders must have been aware that the Ciskei authorities were in earnest in their refusal to allow the demonstrators into the Ciskei. That was made absolutely clear in public statements. It was reinforced by the order obtained from the Ciskei Supreme Court. It was conveyed in unequivocal terms by the National Peace Secretariat and National Peace Committee. It was conveyed by the State President to the President of the ANC.
- 8.2 In particular, the Alliance created even more confusion by at first seeking an order from the Chief Magistrate, even to the extent of obtaining a mandamus from the Supreme Court. Having obtained an order the Alliance chose to ignore it, fully realising that the Ciskei authorities were bound by it. By all accounts the notice by the Alliance that they would not follow the terms of the court order was inadequate.
- 8.3 The threatening statements reportedly made by some Alliance leaders in the days preceding the march could only have been calculated to harden the attitude of the Ciskei authorities. The threat made by these leaders was that the "occupation" of Bisho would continue until Brigadier Gqozo gave up his control of the Ciskei.
- 8.4 In these circumstances for the Alliance leaders to have approved of their followers running through the gap in the fence, in the direction of Bisho, was irresponsible and deliberately placed such people in imminent danger which resulted in death and injury. In the present climate of negotiation in South Africa and the policy with regard thereto by all the major political parties, the decision to have risked the lives of their followers by advancing out of the stadium was unfortunate and unjustified. If their intention was to draw public attention to the policies of the Ciskei authorities they could have achieved that by more appropriate mass action on the South African side of the border and even in the Bisho Stadium. To have deliberately withheld that intention from the NPS was disingenuous and rendered useless the role which was played by it.

9. THE SHOOTING BY THE CISKEI FORCES

9.1 According to the submissions on behalf of the CDF, the Ciskei Police were deployed south-east of the stadium - not far from where the main King Williams Town - Bisho Road was barricaded. Presumably they were there in the event of the barricade proving ineffective in preventing the march to Bisho. They were equipped with tear gas, rubber bullets and birdshot. Behind and to the north of them were Ciskei soldiers who were deployed as "the line of last defence". Members of the Ciskei Army are not equipped with non-lethal weapons - only guns with live ammunition.

9.2 In effect, by running through the gap in the fence, the demonstrators by-passed or out flanked the members of the Police Force and ran directly at the soldiers.

9.3 The manner in which the Ciskei Forces fired at the demonstrators can only be condemned in the strongest terms. Anyone who has watched the videos of the shooting will have experienced a feeling of disbelief that the shooting could have continued for what appeared to be an interminable time. Indeed, it appears clearly that the soldiers in the vicinity of Jongilanga Crescent continued to fire at the fleeing crowd virtually until the last of them disappeared from sight. The firing was indiscriminate and even if there had been isolated firing from the demonstrators, the reaction of the Ciskei soldiers was completely disproportionate. Not one Ciskei soldier in that area was injured and, as already indicated, the high probability is that the only soldier who was injured in the Fort Hare vicinity was shot by one of his fellow soldiers. When the crowd in that area turned to flee, on the CDF version, the continued and prolonged firing was quite unjustified and unlawful.

9.4 It must be emphasized that even if the CDF commander and members believed that they were under some kind of attack; even if they believed that the crowd was intent upon overrunning them and going to Bisho; even if they believed that one of their members had been shot by a demonstrator, their indiscriminate and prolonged shooting at innocent demonstrators was morally and legally indefensible and is deserving of the strongest censure. Their own standing orders were ignored. They provide in clear terms for "minimum force" to be used. That is defined as:

"no more force than is absolutely necessary to achieve the immediate aim.".
(General Rule 7).

Rule 8 reads as follows:

"8. The test of whether any action taken satisfies the principle of minimum force is: would, in the same circumstances, a reasonable person have used the same degree of force or have considered it essential to have taken the same actions? If the answer is 'no' the principle of minimum force has been violated whereas, if the answer is 'yes', then the soldier or soldiers who have taken such action are absolved of liability in terms of the law of Ciskei."

9.5 If one adds to the foregoing the firing of four grenades one can only conclude that the conduct of the Ciskei soldiers was deliberately aimed at causing as many deaths and injuries as possible. This was not remotely a situation of war or an attack by an army. It is hardly surprising that counsel for the CDF did not attempt to justify the number of rounds fired, let alone the firing of grenades.

9.6 We have made all due allowance for the fact that the soldiers were under orders to prevent the crowd from leaving the stadium; we have attempted not to be guilty of "arm-chair" judgment; and we have guarded against unfairly using hindsight. Having said that, we have no doubt that any fair and reasonable person would condemn the conduct of the

Ciskei soldiers in the terms we have expressed.

10. RECOMMENDATIONS

10.1 POLITICAL TOLERANCE

10.1.1 The history of South Africa has not been conducive to the growth of a political climate of tolerance. The sudden and unexpected lifting of restrictions on free political activity by Black political parties has resulted in serious competition for political support. It is hardly necessary for this Commission to detail the violence which that competition has unleashed. To add to the problem of containing that violence, South Africa's security establishment was not prepared for the sudden change in being called upon to protect the civic and political rights of leaders and organizations who were literally the day before regarded by official policy as the enemy of the State.

10.1.2 If South Africa is to survive the present period of change and if it is to succeed in establishing a democratic form of government in which the individual rights of all are protected, the level of political tolerance will have to rise radically and quickly.

10.1.3 In the first place there has to be freedom to compete openly and safely in the market-place of ideas and policies. If we are to have referenda or elections there must be complete access by political parties to the media and the halls and public places throughout the land. "No-go areas" anywhere are quite unacceptable and a barrier to any free or fair election.

RECOMMENDATION 1

THOSE IN CONTROL OF ANY REGION, CITY OR TOWN ANYWHERE IN SOUTH AFRICA, INCLUDING THE TBVC HOMELANDS, SHOULD TOLERATE AND ALLOW COMPLETE FREEDOM OF EXPRESSION AND OF PEACEFUL ASSEMBLY

10.2 RESPONSIBLE MASS ACTION

10.2.1 Again, as the Commission has previously stressed, mass action must be organized in such a manner that all reasonable steps are taken to avoid violence. At the cost of repetition, that can only be achieved by removing, as far as possible, the risks created by unpredictable conduct.

10.2.2 With commendable speed mass action organizers and the SAP have learnt how to cope. The recent march on the Union Buildings in Pretoria and the impressive SAP protection of ANC marchers in Despatch in the Eastern Cape are good illustrations of co-operation and tolerance which would have been unthinkable only a short while ago. The same point is illustrated by the behaviour of all the parties during the very march from King Williams Town to the Ciskei border.

10.2.3 The organizations which embark on mass demonstrations must clearly distinguish between action which is designed to make a political statement or convey political ideas, on the one hand, and mass demonstrations which are designed to cause physical coercion with or without the use of force in order to obtain a desired result.

10.2.4 It is one thing to demonstrate in order to convey the wish of the demonstrators

that one or other leader be replaced or that the political system in an area be changed. It is quite another to physically occupy and take over public buildings or to occupy a town or area of a town and create a semi-permanent public disruption as a means of coercing one or other political change. The Commission's guidelines and the agreed procedures for mass demonstrations were not designed or intended to apply to this last-mentioned type of action.

10.2.5 In the view of the Commission, activity of the first kind, including the symbolic and negotiated occupation of public places and buildings, should be accepted and even encouraged by the authorities responsible for maintaining law and order. The second is unacceptable especially at a time when the vast majority of South Africans believe that no effort shall be spared to move to a democratic government by peaceful means.

10.2.6 It is calculated to cause confusion to refer to both kinds of mass demonstrations and conduct as "mass action". Some forms of mass action are acceptable as non-violent forms of political conduct and expression. Others are unacceptable when they interfere with the rights of others to the extent that violence in one form or another is the likely if not inevitable consequence - violence on the side of the authorities who consider it their duty to stop or remove the threat to public order or by other citizens who take the law into their own hands.

10.2.7 In the firm view of the Commission, the threats made by some leaders of the Alliance to embark on "mass action" with the intention of intimidation and directly causing the change of existing power structures is against the letter and spirit of the National Peace Accord. It is also likely to increase the already volatile climate of violence in South Africa.

RECOMMENDATION 2

THE LEADERS OF ALL ORGANIZATIONS WHICH USE FORMS OF MASS PUBLIC DEMONSTRATIONS SHOULD DO SO ONLY AS A PEACEFUL MEANS TO POPULARISE POLITICAL POLICIES AND PROPAGATE POLITICAL CHANGES. THEY SHOULD IMMEDIATELY AND PUBLICLY ABANDON ANY POLITICAL ACTION CALCULATED TO RESULT IN CONFLICT AND VIOLENCE

RECOMMENDATION 3

IN ORDER TO AVOID PHYSICAL CONFLICT AND VIOLENCE, MASS DEMONSTRATIONS SHOULD NOT BE USED AS A MEANS OF CAUSING SERIOUS AND NON-TEMPORARY DISTURBANCE OR AS A MEANS OF DIRECT POLITICAL INTIMIDATION

10.3 REACTION TO MASS DEMONSTRATIONS

10.3.1 No political leader and no security force enjoys or welcomes mass public demonstrations especially when it is aimed at the very institutions they control and through which they exercise power.

10.3.2 The essence of a democratic order is that such activity is not only tolerated but facilitated. Any leader who is confident of his or her popular support should, for selfish reasons, welcome such public demonstration of opposition. It is a

safety-valve and an insurance against secret and violent attempts to overthrow the system.

- 10.3.3 The bellicose and highly emotional response to threats of mass action is calculated to make it more difficult for the Alliance to adopt more moderate policies. The challenges issued and the references to civil war made by leaders of other groups are also not in accordance with the letter and spirit of the National Peace Accord.

RECOMMENDATION 4

THE LEADERSHIP OF THE TBVC HOMELANDS AND OF THE SELF-GOVERNING TERRITORIES SHOULD FORTHWITH PUBLICLY DECLARE THEMSELVES WILLING TO TOLERATE AND FACILITATE REASONABLE AND NEGOTIATED PUBLIC MASS DEMONSTRATIONS IN THE AREAS UNDER THEIR CONTROL

10.4 RUNNING THROUGH THE GAP IN THE FENCE

- 10.4.1 The decision that Mr Kasrils should lead a substantial group of demonstrators through the gap in the fence is a regrettable one. As stated earlier in this report, it was irresponsible. It was the immediate cause of what followed. We accept that the leaders responsible for that decision could not have anticipated the almost unbelievable response of the Ciskei Army. However, a violent response was foreseen for days before the action. Appropriate warnings were issued.

- 10.4.2 This action by the Alliance was made without any notice to the leaders of the NPS and was a serious breach of faith.

RECOMMENDATION 5

THE LEADERSHIP OF THE ALLIANCE SHOULD PUBLICLY CENSURE MR KASRILS AND OTHER PERSONS WHO WERE RESPONSIBLE FOR THE DECISION TO LEAD DEMONSTRATORS THROUGH THE GAP IN THE FENCE AND THEREBY KNOWINGLY OR NEGLIGENTLY EXPOSE THEM TO THE DANGER OF DEATH AND INJURY

10.5 THE SHOOTING BY THE CISKEI DEFENCE FORCE

- 10.5.1 We have already expressed our strongest censure for the indiscriminate and unnecessary reaction of the CDF.
- 10.5.2 How so many members of the CDF came to react as they did in firing into a fleeing crowd for almost two minutes, calls imperatively for its leaders to question the training and discipline of their forces. To arm such men with lethal weapons is unacceptable.

RECOMMENDATION 6

THE OFFICERS COMMANDING THE CDF SHOULD IMMEDIATELY CONDUCT A FULL ENQUIRY INTO THE TRAINING AND DISCIPLINE OF THEIR MEMBERS WITH THE INTENTION OF TAKING SUCH STEPS AS MAY BE NECESSARY TO ENSURE THAT A RECURRENCE OF THE UNDISCIPLINED, UNPROFESSIONAL AND

WHOLLY UNACCEPTABLE CONDUCT OF WHICH THEY WERE GUILTY ON 7 SEPTEMBER 1992 CANNOT RECUR. THE RESULTS OF SUCH ENQUIRY AND THE STEPS TAKEN PURSUANT THERETO SHOULD BE MADE PUBLIC

- 10.6 The Commission is of the view that it should not hear evidence on the issue as to whether CDF members were shot at by any demonstrators. That issue would more properly be determined by a court of law which is called upon to decide the guilt or innocence of the soldiers who fired on the demonstrators or the liability of the Ciskei authorities to compensate the families of the deceased or the victims. If no such proceedings are to be launched this question will have to be reconsidered by the Commission.

RECOMMENDATION 7

THE ATTORNEY-GENERAL OF CISKEI SHOULD INVESTIGATE CRIMINAL CHARGES AGAINST ANY PERSON RESPONSIBLE FOR DEATH OR INJURY OF ANY PERSON SHOT IN OR IN THE VICINITY OF THE BISHO STADIUM ON 7 SEPTEMBER 1992

RECOMMENDATION 8

THE CISKEI COUNCIL OF STATE SHOULD PUBLICLY ACKNOWLEDGE THAT MEMBERS OF THE CDF ACTED REPREHENSIBLY AND UNACCEPTABLY IN REACTING IN A WHOLLY DISPROPORTIONATE MANNER AND CAUSING THE UNNECESSARY DEATHS AND INJURIES TO PEOPLE WHO WERE FLEEING FROM THEM.

11. CONCLUSION

- 11.1 The Commission would like to record its gratitude to Advocates J J du Toit and T Pretorius who worked hard and efficiently to enable the Commission to hold the enquiry so promptly. For the same reason the Commission is grateful to the parties and their legal teams.
- 11.2 The Chief Justice of Ciskei, Mr Justice B de V Pickard, generously and graciously assisted the Commission by furnishing it with videos and documentary evidence in his possession. His prompt decision to cease a simultaneous investigation was welcomed by the Commission and gratefully accepted in the spirit of comity in which it was made.
- 11.3 We earnestly wish to avoid any misunderstanding or misrepresentation of this report. Whatever criticism may be levelled at the organization of the demonstration and whatever criticism there may be of the decision to lead the demonstrators through the gap in the fence, they cannot in any way justify or excuse the conduct of the Ciskei soldiers. That conduct was so disproportionate and deliberate that, on the CDF's own version, any mitigating factors there may have been, are completely overwhelmed by the disregard for human life shown by the soldiers.
- 11.4 The Commission ends this report with the hope that this highly regrettable incident with the unnecessary and tragic loss of life and injury will mark a turning point and induce all political leaders and their supporters to co-operate with each other and with the National Peace Accord structures and to take such steps as may be necessary to bring peace and tranquillity to our country.

R J GOLDSTONE
CHAIRMAN

D J ROSSOUW
VICE-CHAIRMAN

M N S SITHOLE
MEMBER

L BAQWA
MEMBER

PRETORIA
29 SEPTEMBER 1992