The Goldstone Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation celebrated its second year of existence in October 1993. The Commission was established in terms of the Prevention of Public Violence and Intimidation Act, No 139 of 1991. The underlying assumption behind the establishment of an investigative body was that 'violence and intimidation declines when it is investigated and when the background for it is exposed and given media attention' (National Peace Accord, Ch6:22).

In brief, the functions of the Commission include to investigate the causes of violence and intimidation; to recommend measures capable of containing and/or preventing cycles of violence; and to initiate research programmes 'for the establishment of scientific empirical data on violence' (NPA:23).

The Commission may act on its own accord to investigate acts of violence or at the request of any individual. To date, the Commission has generated 28 reports and interim reports on a range of topics related to ongoing violence. These include investigations into (see database):

- taxi conflicts;
- the activities of the PAC's Azanian People's Liberation Army (APLA);
- alleged 'third force' activity;
- train and hostel violence;
- violence in Bruntville near Mooi River and Tokoza on the East Rand;
- the events around the SACP Chief Chris Hani's funeral;
- the Bisho (Ciskei) shootings on protest marchers;
- the conduct of the South African Police in the Vaal;
- the illegal importation and distribution of firearms;
- the peaceful conduct of mass marches and demonstrations; and,
- the undertaking of the first national elections of April 1994.

While there has been substantial media coverage of the activities of the Goldstone Commission, little work has been done in objectively assessing what has been achieved over the past two years. Has it contributed to the ending of violence? What impact has the Commission had on the policy-making process? Will it have a long-term influence beyond its intended three year lifespan? Recent criticisms levelled against the Commission make such an assessment both timely and important.

**Goldstone's Critics**

The work of Goldstone, however, has not been uncontroversial and critics have argued that the Commission has simply become a tool of the government. For instance, David Beresford, in a scathing review of John Kane-Berman's latest book on political violence, charges the Goldstone Commission with being 'little more than a dustbin for the government in dealing with matters of embarrassment to it' and accuses Kane-Berman of ignoring 'the palpable inadequacies' of the Commission (Weekly Mail, 1-7/10/93).

'If we care to remember', Joe Thloloe has argued in the same vein, 'we would have known that whenever the National Party is embarrassed by the excesses of its security forces and its policies, it has a standard response: appoint a commission of enquiry' (Sowetan, 10/7/93).

Critics from the other side of the political spectrum have been no kinder; the Conservative Party's spokesperson for Law and Order, Schalk Pienaar, has accused the Commission of being 'nothing but an instrument to give credibility to Whenever the National Party is embarrassed by the excesses of its security forces and its policies, it has a standard response: appoint a commission of enquiry' (Sowetan, 10/7/93).

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The Goldstone File
Reports of the Goldstone Commission (GC), 1992-1993

First interim report (report-back on diverse inquiries into violence)
24 January 1992 (GC1)

Interim report on the violence at Mooi River
19 February 1992 (GC2)

Violence at the President Steyn Gold Mine in Welkom during November 1991
28 February 1992 (GC3)

Second interim report (Commission procedures and causes of violence)
29 April 1992 (GC4)

Interim report on the conduct of members of 32 Battalion at Phola Park on 8 April 1992
10 June 1992 (GC5)

First interim report on the violence in the taxi industry
27 May 1992 (GC6)

Second interim report on the violence in the taxi industry
2 July 1992 (GC7)

Interim report into train violence
8 July 1992 (GC8)

Interim report on hostels
21 September 1992 (GC9)

Report of the inquiry into the Bisho Incident
29 September 1992 (GC10)

The planning or instigation of acts of violence by members of the SAP in the Vaal area
27 October 1992 (GC11)

Inquiry into the violence at Tokoza
17 November 1992 (GC12)

Third interim report on the violence in the taxi industry
4 December 1992 (GC13)

Investigation by the Commission's Natal Investigative Team into allegations of the presence of Renamo soldiers in KwaZulu
15 December 1992 (GC14)

Third interim report (investigations into violence inter alia)
21 December 1992 (GC15)

Final report on the violence at Mooi River
21 December 1992 (GC16)

Organisation and conduct of mass demonstrations
15 January 1993 (GC17)

Fourth interim report on the violence in the taxi industry
23 February 1993 (GC18)

Interim Report into the activities of the Azanian People's Liberation Army (APLA)
15 March 1993 (GC19)

Final report on the regulation of gatherings
28 April 1993 (GC20)

Final report on train violence
6 May 1993 (GC21)

Report of the committee into the allegations of a third force
27 May 1993 (GC22)

Allegations concerning front companies of the SADF and the training by the SADF of Inkatha supporters in the Cape (Valpin) in 1986
1 June 1993 (GC23)

Report by the committee appointed to hold a workshop to consider events after the assassination and during the funeral of Chris Hani
29 June 1993 (GC24)

Report into the events at the World Trade Centre on 25 June 1993
13 July 1993 (GC25)

Fifth interim report on violence in the taxi industry
26 July 1993 (GC26)

Report of the multi-national panel regarding the curbing of violence and intimidation during the forthcoming election
11 August 1993 (GC27)

Report on the illegal importation, distribution and use of firearms, ammunition and explosives
5 October 1993 (GC28)

revolutionaries’, claiming in addition that the Commission had done nothing to halt the violence sweeping the country (The Citizen, 6/09/93). This begs the question, one observer has posited, if the Commission cannot halt violence, is it value for tax payers money? (Rapport, 15/08/93). In short, so the Inkatha Freedom Party have argued, ‘the Commission has failed to fulfill its brief and potential’ (IFP:14).

While some have argued that by steering a neutral course it was only natural that the Commission would have come in for criticism from all sides. Political analyst Eugene Nyati, has accused those defending the Commission - by arguing that things would have been worse without it - as ‘little more than dishonest attempts to rationalise failure’ (Sowetan, 6/08/92). There has also been frustration among people on the ground about the inability of the Commission to directly intervene to end violence. Tentative evidence suggests that the Commission is now generally perceived to be powerless and ineffectual in the townships.

The general critique outlined above - around the relationship of the Commission to the government and its perceived failure to end violence - however, translates itself into specific criticisms around the Commission’s form and function. Five central and overlapping critiques have surfaced during the Commissions two year period of operation:

1) The Commission has been accused of being dominated by members of the legal profession.

The question has been raised whether it is correct that a commission whose purpose is to enquire into endemic and widespread violence should be comprised solely of lawyers? This critique notwithstanding, the Commission has used numerous ‘outside experts’, including development specialists, sociologists and political scientists on its panels. Moreover, all interested parties have been requested to provide submissions on various subjects.

2) The Commission has been accused of having only a ‘sprinkling’ of lawyers acceptable to the African National Congress and other anti-apartheid forces.

‘Although there are lawyers who have been drawn from outside the NP and government circles’, a recent issue of the ANC mouthpiece Mayibuye argued, ‘there is still
a preponderance of those who can be perceived as pro-government or NP (September 1993). Moreover, the Commission has also been accused of being unrepresentative of the majority of South Africans; of the five permanent commissioners of the Commission, three are white, two are black, one is a woman.

(3) Reports generated by the Commission are regarded as being technically neutral; so much so that the real issues of the day - thought by many to be the root of violence - are not addressed.

In fairness, while reports often outline the complexity of conflict, they have been, in some cases, used selectively for political gain giving the impression that the Commission has come down in favour of one or the other side. The best example to date has been the way in which the government released the Commission’s second interim report where a clause attributing violence to a battle between the ANC and IFP was selectively used before full copies of the document had been distributed to all parties.

(4) The terms of reference of the Commission are regarded as too narrow: ‘The government appoints the commission and gives it terms of reference which sidestep the real issues’ (Sowetan, 10/07/93).

Socio-economic factors which are defined as key causes of the violence by some ‘lie outside the terms of reference of the committee’ (Third Interim Report). Despite this, Commission reports often refer to socio-economic factors as being indirectly responsible for violence. The Commission’s mandate relates to events which took place after 17 July 1991 (the date of the commencement of the statute which established the Commission), ‘only to the extent that prior events are relevant to the post-July 1991 acts’ (Goldstone, 4/10/93:10). Moreover, according to the ANC, ‘the Commission has ... narrowed the issue of state culpability to direct complicity in or planning of the violence’. This misses the point. ‘Culpability extends to acts of commission and omission’ (Business Day, 7/07/92).

(5) More generally, the Commission has been accused of not making full use of the large amount of material submitted to it.

Indeed, this is a criticism which has been levelled against commissions of inquiry in the past; parties often feel aggrieved when no reference to their submission is to be found in the report of the Commission.

Comparative View

Whatever the merits of the above arguments might be, more fundamental questions, however, need to be asked. From the beginning there has been an overestimation of the ability of the Commission to actively intervene and end violence. The real drawbacks of the Commission may lie not so much in these specific weaknesses (whether correct or incorrect) but in the nature of commissions of inquiry the world over. Indeed, this analysis will suggest, that the Goldstone Commission, because it operates in a period of political transition, may function from a position of greater strength than its counterparts elsewhere.

A fair amount of literature has examined commissions of inquiry into public disturbances. This is particularly so in relation to inner city riots in Britain and the United States. The classic study of Riot Commissions in the United States by Anthony Platt points out that there are a number of pertinent features common to commissions of inquiry investigating incidents of public violence. For instance, riot commissions by their nature are ‘inherently conservative, protective of existing institutions and not disposed to propose radical changes which will diminish the power of established groups’ (1971:20).

In addition, persons appointed to Commissions are seldom intimately concerned with or affected by the violence they are investigating (Benyon, 1985). And, although commissions of enquiry are often sensitive to socio-economic conditions, they nevertheless maintain that the restoration of public order is the first priority (Benyon and Solomos, 1988).

This is reflected by many of the recommendations made by commissions of enquiry into public disturbances. Riot Commissions do not advocate purely repressive measures of control. Rather, the literature argues, they adopt a seemingly moderate position aimed at reducing underlying tensions with the development of technical means of controlling riots.

Platt found that while they had only minimal success in achieving the implementation of their reform recommendations they had much greater

According to the ANC, the Commission has narrowed the issue of state culpability to direct complicity in or planning of the violence

Socio-economic factors which are defined as key causes of the violence by some lie outside the terms of reference of the committee
At the same time, it has become the most powerful South African commission of inquiry to date. One of the greatest disadvantages of the Commission’s operation has been that it has become identified with the current government.

Importantly, riot commissions tend to work under a great deal of pressure. This and other factors discourage the use of extensive research by commissions of inquiry. Generally, this is reinforced by an attitude still found in many official circles, namely that the social sciences contribute little of value to the practical realities of policy making (Chapman, 1983). As a result, commissions of inquiry are generally centered around legalistic findings and in most cases involve members of the legal profession (Platt 14).

The motives for the appointment of riot commissions, the literature suggests, often lies in the need of governments to be seen to be doing something in response to violence. Often, by the time the Commission has delivered its report, the crisis has passed. Commissions of enquiry then are in the main retrospective in nature and carried out after the event. Thus, they have little if any power to influence the course of the public disturbance itself and may only cause a mild political disturbance or promote debate once the findings are published. Having said this, commissions of inquiry retain significant influence in determining whether or not issues surrounding the public disturbance remain on the political agenda (Benyon, 1985).

Arguably, this has been the case with South African commissions of inquiry into public disturbances. Among others, these have covered the Witwatersrand disturbances (1913), the 1914 rebellion (1916), the disturbances at Moroka, Johannesburg (1948), the Durban riots (1949), Sharpeville (1960), the Paarl riots (1963) and the Soweto riots of 1976 (1980) (See Kahn, 1980).

If commissions of inquiry suffer from inherent weaknesses - and given some of the earlier critiques which suggest that the Goldstone Commission may not be dissimilar - should the Goldstone Commission also be dismissed in this way? Alternatively, while suffering from the weaknesses of other commissions of inquiry into public order disturbances, do certain factors exist which have strengthened the position of the Commission rather than weakened it? If so, what are the implications for any assessment of what the Commission has achieved?

**Commission in Transition**

As we have seen, one of the greatest disadvantages of the Commission’s operation during the period of transition has been that the body has become identified with the current government. While this has certainly limited the degree to which the Commission can appeal for wider legitimacy, the transition itself, and the events around it, have provided new scope for the operation of the Commission. Why is this so?

The nature of the political transition in South Africa has enabled a greater scope for groups not previously tied into the policy formulation process to influence policy (Shubane and Shaw, 1993). This is even more so given the extent to which violence and its effects have captured the political psyche of the nation. Even if the state had ulterior motives in establishing a commission of inquiry into current violence, the transition into which the Goldstone Commission was introduced has created a window of opportunity through which this Commission has been able to manoeuvre. This may have ensured that it has become the most powerful South African commission of inquiry to date.

At the same time, the Goldstone Commission has been subject to the same limitations as its predecessors. But there have been important differences; not least of which is the ongoing investigative capability of the Commission and the number and speed with which the Commission has generated reports. Recommendations have thus been made public not after, but during the ongoing conflict. This of course has its disadvantages; from the beginning the power of the Commission has been limited, subject to the political contingencies of the day. And, in many instances, it seemed as though the Commission had become the victim of the very politics and conditions which it was investigating.

The reports produced by the Goldstone Commission can be divided into three types:

- first, those which examine specific past events, for example, the Bisho massacre;
- second, those that examine a past event but draw recommendations which will
enabled parties to develop their own ideas

if parties disagree with recommendations

In turn, the findings of the Commission

requests then the Commission has been

forced to exclude others.

Given these factors, how can the role of the Commission be assessed? More directly, has the Commission had an impact on the policy making process as suggested earlier?

The Commission has played an important educational role informing and eliciting information about violence. For instance, violence at Bruntville near Mooi River captured the attention of the country largely because of Goldstone investigations into the conflict. If the Commission had chosen to conduct an investigation into violence, at say, Wembezi near Estcourt, this area may also have reached national prominence. The point being that the choice of investigation may almost be as important as the investigation itself.

Indeed, the Commission has had an interesting interactive role with the media; on one hand, the Commission has served as a conduit for information about various incidents, particularly the evidence given by various parties which is subsequently published. On the other hand, the Commission has investigated reports in the media, particularly about alleged third force activity contained in the Weekly Mail and Vrye Weekblad, finding in both cases that the newspaper reports were inaccurate.

In turn, the findings of the Commission may have stimulated debate around the causes of the violence. Primarily, this has enabled parties to develop their own ideas around the subject, particularly if they are opposed to the finding of the Commission; if parties disagree with recommendations they need to propose other alternatives.

In a sense though, the appointment of the Goldstone Commission of Inquiry constitutes a negation of government’s role of formulating its own policies. Why, for instance, could the police or the relevant authorities not institute an inquiry into violence on trains through their own experts? The answer lies in the nature of the transition, since the state remains illegitimate. It is unlikely that internal investigations would have satisfied all parties or been sufficiently within the public domain. For example, it is unlikely that an SADF enquiry would have recommended the disbanding of 32 Battalion. The downside, of course, is that while internal investigations may not make widespread and path-breaking recommendations and are often technical in nature, they may be taken more seriously within the organisations concerned.

At the same time, the findings of the Commission may act as a catalyst or justification for certain decisions that have become politically necessary. In other words, 32 Battalion would not have been disbanded simply because the ANC had demanded it; rather the Goldstone recommendations provided a neutral basis for justifying the disbanding.

Importantly, as has been suggested, the nature of the transition gives direct scope for immediate input into the policy-making process. The most concrete example of this has been the Commission’s investigation into the holding of mass marches and demonstrations; this led directly to an agreement between a number of the principle parties and resulted in a draft bill. In essence, the Commission has assisted in creating not only the procedures around which mass marches should be conducted in the election period, but also for procedures in the future. Recommendations then may constitute a basis for future work of fundamental importance.

The introduction of the Commission’s investigative units (consisting of handpicked policemen who report directly to the Commission) to investigate the causes of current or anticipated violence as well as a range of other activities, is an unprecedented move among South African commissions of inquiry. More so that the Commission itself consulted all the relevant parties to seek approval for the plan. In short, the establishment of the investigative units was only possible in a period of political flux when the activities of the standing police force have, over time, been discredited.
Goldstone's Proposals

Despite its increased investigative power, the Goldstone Commission may be as hamstrung as other commissions in ensuring that its proposals are followed up. Indeed, the Commission may rely as much on the combined pressure of the political parties to ensure that recommendations are adhered to as anything else. Thus, the findings of the Commission are used by political interest groups to highlight the wrongdoings of others. Of course, this works all ways and therein seems to lie some of the power of the Commission.

The majority of the recommendations of the Commission have pointed to the internal reform of many bodies, both private, public and political. In any event, bureaucratic inertia may slow the process of implementation of recommendations. Notwithstanding this, it may be sorely resented if an outside party oversees the internal reforms on somebody else’s turf. If this was the case, the Commission, operating in the hurly burly of South Africa’s politics would long since ceased to have been operationally effective.

Of course, to assume that all the recommendations of the commission are always the best ones under the circumstances is to assume - and it is perhaps, a rather large assumption - that a Judge would perform these tasks better than most people (McInerney, 1978). The original recommendation to fence the hostels is a case in point.

Tentative investigations suggest that the more specific and technical a recommendation the more likely it is to be implemented by the parties concerned. Thus, the final report on train violence notes that the South African Rail Commuters Corporation had accepted the Commission’s interim recommendations which were mainly specific and technical in nature: for instance, moving access and control points from the platforms to the outside of stations and improving the existing facilities for the SAP on railway stations.

It seems clear, however, that the fortunes of the Commission have fluctuated in the political and public eye. Initially, it has been claimed, the Goldstone Commission did not immediately enjoy credibility with those aligned to the liberation movements given the distorted investigations carried out by previously appointed government commissions of inquiry (Maiyibuye, September 1993). The Commission’s credibility was bolstered over time, particularly with the raiding of a front company closely allied to Military Intelligence which led to the dismissal of 13 senior SADF officers and an investigation under General Pierre Steyn.

What the status of the Commission at the moment is in the broader public eye is difficult to discern. The Commission came under some heavy criticism over its conclusions that no evidence had been brought before it which could lead it to believe that a ‘third force’ was instigating violence. ‘As a lawyer and a judge’, Goldstone has argued, ‘some of the political violence is the work of agents provocateurs. But by applying the same logic and reasoning to known facts I do not know who is responsible for it ... Without evidence, without proof, no judicial commission has the power to pronounce judgement’ (4/10/93).

Given these changing perceptions of the Commission, what is the future of the body? More immediately, what role will the Commission play during any forthcoming election? The importance of an independent investigative arm during elections has been emphasised from observers of the Namibian experience (Diehl and Jurado, 1993). While the Independent Electoral Commission (IEC) will have an investigative arm, the Multinational Panel Report has recommended that the Goldstone Commission be authorised to accept assignments from the IEC in regard to particularly serious acts of violence (Multinational Panel:46-48).

It is clear that while the Commission has suffered from the same weaknesses as some of its predecessors both here and abroad, certain factors within the South African transition have allowed a greater expansion of its powers than any other previous commission of inquiry in South African history. This will be particularly so if the powers of the Commission are expanded during the election period. Has this set a precedent for the role of future commissions of enquiry, or are the expanded powers of the Commission simply creatures of the transition?