

£SOUTH AFRICA:
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SECURITY FORCE COMPLICITY IN TORTURE AND POLITICAL KILLINGS 1990-1992.

INTRODUCTION

Hundreds of armed men, among them police, sweep through a squatter camp outside Durban attacking and killing residents. The victims are apparently targeted because they support the African National Congress (ANC). In the middle of the night policemen in plain clothes with their faces disguised raid the home of Siphon Cele, a trade union official in northern Natal. They assault him and others in the house so severely that they require hospital treatment. Eight police officers in a van abduct Paulos Tshabalala, a resident of Khutsong township in the western Transvaal. He is beaten, subjected to electric shocks and shot at. Among the police is an officer who remains on duty despite an inquest three months earlier which found him criminally liable for killing a 17-year-old youth. A trade union activist, Jonas Kgosietsile, falls to his death from a second-floor window of Phokeng police station near Rustenburg where he was being interrogated. A former political prisoner, Tsepo Lengwati, dies from multiple gunshot wounds in the middle of the night while in police custody in Sharpeville. A day before his death his lawyer had pleaded in court that the detainee should be released on bail because he had been taken out of his cell the previous night by police and men wearing hoods and had been assaulted by his interrogators. S'khumbuzo Mbatha Ngwenya, a regional ANC official and human rights activist, is shot dead outside a restaurant in Pietermaritzburg. The police do not take statements from eye-witnesses and do not attempt to pursue the assassins. Six by-standers are injured when thousands of armed Inkatha Freedom Party (IFP) supporters march, under police escort, through central Johannesburg in defiance of new regulations prohibiting the carrying of weapons at political gatherings.

These incidents all happened in 1992, more than two years after President F. W. de Klerk announced that the police had to be taken out of the political arena to enforce the law neutrally. All occurred while the world's media was focused on the drama of political negotiations, preparations for the 17 March whites-only referendum on government reform policies, and the return of South Africa to international sports.

The current period of political transition away from white minority rule, beginning with the unbanning of the ANC, the Pan Africanist Congress of Azania (PAC) and other opposition organizations in February 1990, has provided dramatic contrasts. There have been many positive developments, indicating that the country's black majority will at last be able to exercise its basic civil and political rights. But there has also been horrific violence, suffering and fear.

The positive human rights developments since the beginning of 1990 have included the dismantling of much of the legal framework of *apartheid*, the reduction in the scope of certain security laws, a decline in the number of arbitrary and prolonged detentions without charge or trial, and a moratorium on carrying out death sentences imposed by the courts. Yet in the same period – from January 1990 to the end of March 1992 – more than 7,000 people have been killed, victims of large-scale attacks on whole communities, of targeted assassinations, of attacks by mysterious killers on commuter trains, of unprovoked shootings by the security forces, or of torture in police custody. Many others have been injured, made homeless, or forced to go

into hiding out of fear of assassination. More than 400 people died in March 1992 alone, during a surge in political violence particularly marked in the run-up to the 17 March referendum.

During these two years of intense violence, the victims have come from across the political spectrum. The overwhelming majority of them, however, have been members or perceived sympathizers of the ANC and other formerly banned organizations, members of trade unions and human rights and peace groups, as well as people of unknown affiliation who died during attacks on commuter trains.

In the face of this violence, residents of many of the country's black townships and squatter camps live in a constant state of fear, with ordinary daily life made intolerable. Moreover, the establishment of more open, active politics after the unbanning of opposition organizations has been rendered impossible in many areas. There seems to be little relation between the politics of negotiations about the "new South Africa" taking place at the national level and the cynicism, distrust and fear evident at the grassroots. People in the townships and squatter camps have been driven to desperate measures by an apparently complicitous or indifferent police force and the inability of their political leaders to provide protection.

This was the situation which confronted Amnesty International representatives when they visited townships and squatter camps in the Johannesburg area, the western Transvaal, Natal and Cape Town in December 1991. Amnesty International's representatives – Stephen Owen, President of the International Ombudsmen Institute and Ombudsman for British Columbia, Canada; Piet van Reenen, former Director of the Dutch Police Academy; and two members of the organization's research staff – visited South Africa to investigate allegations that the security forces were directly involved in politically motivated killings, as well as in the torture and killing of detainees. The Amnesty International team also wanted to assess the steps taken by the government to investigate and bring to justice members of the security forces involved in human rights violations, as well as assess the effectiveness of steps taken to halt the violence.

During their visit the Amnesty International team met residents of townships and squatter camps, human rights lawyers, members of organizations monitoring the conduct of the security forces and members of research organizations and institutes focusing on policing and criminal justice issues. They met researchers at the Inkatha Institute, Durban. They also met Richard Goldstone, a judge, and other members of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation (the Goldstone Commission); police officials in Pretoria, Durban and Ulundi (the administrative capital of the KwaZulu "homeland"); the Attorney-General for the Witwatersrand; the acting Attorneys-General of the Transvaal and Natal; and the Deputy Minister of Law and Order, Johan Scheepers.

The overwhelming message received by Amnesty International's representatives in the townships and squatter camps was one of enormous frustration, anger and fear. The residents felt unprotected from murderous attacks against them in their homes and while commuting to and from work. As one resident of the East Rand township of Thokoza expressed it, "The situation is very tense. You feel that you can die at any time." The residents saw the police as indifferent and unresponsive when they went to them for assistance. They felt helpless – that they had nowhere to go when they heard shooting during the night or when armed thugs turned up outside their homes. They saw the police, as of old, as hostile and biased. They viewed with bitterness and cynicism the failure of the police to catch killers or act against

mobs of heavily armed men moving about the streets with impunity. They compared the rarity with which the police searched and seized weapons from the black migrant workers' hostels, which in many areas had been taken over by IFP supporters, with the vigour, indeed brutality, with which the same police raided the homes of ANC supporters, especially where they were suspected of being members of self-defence units or the armed wing of the ANC. The anger at this lack of even-handedness by the police was compounded by the occasions when residents saw the police as actively colluding with their attackers.

Amnesty International's representatives were moved by the patience and courage of many community leaders who, despite highly provocative circumstances, were resisting the temptation to retaliate with violence. Instead, they were working through "dispute resolution committees", which were gradually being set up under the terms of the September 1991 National Peace Accord agreed between representatives of the government, ANC, IFP and other political parties. Despite government pronouncements on the need for neutral policing, township residents evidently feared and distrusted the police. They saw police conduct as a major force perpetuating the violence.

Confronting this dangerous and apparently intractable situation are human rights groups, lawyers, religious leaders, researchers and other monitoring and support groups. Amnesty International's representatives met a number of them and were struck by their dedication and courage. In quite different regional situations, all of them referred to instances over the past two years where the police had consistently failed to respond or intervene quickly to calls for help, even when human rights monitors had alerted them to an impending attack. In the wake of violent incidents, monitors described going to great lengths to encourage victims and witnesses to make sworn statements. These statements were handed to the police for investigation. Almost invariably, in the monitors' experience, nothing further had happened.

They saw the failure of effective follow-up and report-back by the police as most discouraging for the communities involved. This was especially so where the willingness of members of the community to participate in investigations had been followed by reprisals against them or pressure from the police to change their statements. The groups whom Amnesty International met also expressed frustration with what they saw as a lack of seriousness on the part of the prosecution system when charges were actually brought against suspected killers. The easy bail conditions often granted to suspects accused of multiple murder were seen as directly threatening the safety of potential witnesses. There were cases also where the accused failed to appear in court when trials began. For many of the groups interviewed, a telling contrast existed between the highly restrictive bail conditions imposed on anti-*apartheid* activists during the 1980s and the manner in which prosecutions are currently conducted against perpetrators of violence. In all the cases discussed, monitoring groups, lawyers and others had given details of their investigations to the highest authorities in the country but had received little acknowledgement of their concerns.

Lawyers and monitors noted the continuing surveillance being carried out by security police personnel despite the ostensible disbanding of the police Security Branch in April 1991. In some cases security police personnel have been linked to fatal shootings of activists they had once interrogated in detention. Members of the human rights community conveyed to Amnesty International's representatives a deep frustration with the appointment of former Security Branch personnel to "Special Investigation Units" charged with responsibility for investigating allegations of serious crimes by members of the security forces. This was seen as, at the very

least, a self-defeating exercise, if not a cynical and sinister step on the part of the authorities. These units had so far produced very few concrete results. Human rights activists also expressed a general frustration with the lack of follow-through on complaints of assaults and torture lodged against the police. Resort to civil actions seemed to be the only means to force the state to be accountable for the actions of individual members of the security forces.

Amnesty International's representatives heard from a number of different groups about the quality of the work by the police investigation team, under the leadership of Captain (now Major) Frank Dutton. The investigation resulted in the prosecution of seven police officers for the 1988 killing of 11 people in Trust Feed, Natal. It was cited as a rare example of professional police investigative work sorely needed to combat the sense of impunity amongst members of the security forces and, more broadly, the culture of violence and lawlessness engendered by the policing policies of successive *apartheid* governments. While acknowledging the difficulties inherent in transforming a police force which had become deeply partisan and implicated in covert activities against those defined as enemies of the government, human rights organizations stressed that the difficulties were compounded by a contradictory message from the government. On the one hand, officials speak about the need for neutral and professional policing. On the other hand, these pronouncements have been accompanied only very rarely by swift and credible investigations and actions against members of the force acting unlawfully or in a biased manner. This lack of action implies to the rank and file that official policies have not changed in reality. For a distrustful and alienated black population, the lack of action speaks louder than the assurances of politicians.

The unresponsiveness of the authorities has led human rights organizations and community representatives to look to the newly created Goldstone Commission to break the cycle of violence. They saw the Commission, whose appointments were made through multi-party consultations under the terms of the National Peace Accord, as being more independent than previous official commissions of inquiry. They were hopeful that the Commission would provide a desperately needed forum in which to present their evidence about security force conduct. They were encouraged, too, that the Commission had been asked to draw up recommendations on the basis of the evidence it received. Amnesty International's representatives, who met the Commissioners and attended part of the Commission's hearings on violence in the East Rand townships, were impressed by the seriousness with which the Commission had begun its work and by its willingness to be flexible about the way in which evidence could be heard or received. The possibility that witnesses would be too afraid to testify was of serious concern to the Commissioners. Despite their hopes about the Commission's work, human rights organizations and community representatives did not see that it relieved the government of an urgent obligation to ensure that the security forces and the criminal justice system worked for the benefit of everyone.

Amnesty International's representatives also met government and police officials during their December 1991 visit. The officials stated that the failure of the police to intervene in situations of political violence or to investigate and arrest those responsible for political murders reflected their lack of resources, not a lack of will. In addition, as a result of the intimidation of witnesses, there was a lack of evidence identifying those responsible for violence upon which to base prosecutions. The current level of political violence related to a power struggle between members of the ANC and the IFP, they said, and the police could not address its causes. They were having to deal with a huge influx of weaponry into the country and that they themselves were targets for attack while patrolling the streets. The

officials acknowledged that the police had acted in a biased manner in the past, a situation for which, they said, politicians bore the blame. Specifically on the issue of police funding and support of the IFP, they said that in the past "the government was at war with the ANC and not with Inkatha," and that people have the right to side against a common enemy. However, that was now part of history, the officials said.

They also told Amnesty International's representatives that the police force as such was never involved in committing violence with Inkatha, only certain individuals within the force, and that steps have been taken against those individuals. Now, all members of the security forces were expected to act in a politically neutral and professional manner, and to adhere to the code of conduct implemented under the terms of the National Peace Accord. "Our police have strict instructions not to distinguish between ANC, Inkatha and AWB [*Afrikaner Weerstandsbeweging*, the white right-wing paramilitary organization]. We will act against any police who get involved", said the Deputy Minister of Law and Order.

On the issue of disarming Inkatha supporters, officials told the Amnesty International team that the police had raided hostels and confiscated weapons on both sides of the conflict. There were, however, problems in raiding hostels, as residents "get annoyed with you". There were also technical and legal difficulties in prohibiting the carrying of "cultural" weapons. These arose from problems of definition and the need to apply such a prohibition across the board, which of necessity would require the government to ban the carrying of firearms. Officials referred to current "delicate" negotiations on this issue. Durban police officials argued that the police have to enforce the law and also maintain the peace. "Sometimes if you rigidly enforce the law, you may disturb the peace," one of the officials told the Amnesty International team. If police were to use automatic weapons to disarm men with traditional weapons, there would be an outcry, they felt. It was better to escort the armed men back to their hostels or homes.

The circumstances and views encountered by Amnesty International's representatives during their visit to South Africa in December 1991 left them with an impression of the enormity of the gap between the intentions and pronouncements by officials, on the one hand, and the conduct on the ground of the security forces, on the other. The following chapters in this report include evidence about security force conduct gathered by the Amnesty International team in December 1991, as well as information brought to the attention of Amnesty International before and after the visit. The report includes details of incidents which occurred between January 1990 and late March 1992. It begins with an assessment of the 1990 Harms Commission of Inquiry into allegations of police involvement in "death squads" (Chapter 1). The report includes evidence relating to police involvement in the torture and deaths of detainees and the killing of unarmed demonstrators in the nominally independent "homeland" of Bophuthatswana (Chapter 2); security force complicity in killings by IFP supporters in Natal and the Transvaal (Chapters 3 and 4); security force involvement in torture and political killings in the context of the Cape Town "taxi war" (Chapter 5); and an assessment of the effectiveness of the "Special Task Force" investigations into allegations of police involvement in torture and extrajudicial executions in the Carletonville area in the western Transvaal (Chapter 6). The report concludes with a summary of Amnesty International's concerns about the continuing involvement of members of the security forces in torture and extrajudicial executions, and recommendations for steps which could be taken by the authorities to make the security forces more accountable for their actions.

CHAPTER ONE

"Up to now the police have been required to perform two types of functions. The one is to handle typical crime situations... But you also had other tasks to fulfil, and that was a control function connected to a specific political party... You will no longer be required to prevent people from gathering to canvass support for their views. This is the political arena and we want to take the police out of it. We don't want to use you any more as instruments to reach certain political goals. We as politicians must take full responsibility for politics... This is the direction we are taking and I want you to make peace with this new line."

(Address by State President F. W. de Klerk to 500 police officers at Pretoria Police College, 17 January 1990)

For decades the South African Police implemented *apartheid* laws and defended the interests of the white minority government with brutality. On the eve of the government's political reform initiative in 1990, the police possessed extraordinary powers under the law to enable them, for instance, to detain incommunicado and indefinitely suspected government opponents, or to use whatever force they deemed necessary to break up unlawful gatherings. At the same time they had immunity from prosecution for acts committed in "good faith" in the exercise of these powers. The security police, in particular, were allowed untrammelled discretion in their counter-insurgency war against the ANC and other "enemies" of the state. In addition, many members of the police force had tours of duty with the occupying forces in pre-independence Namibia, where they were exposed to the use of maximum force and brutal interrogation methods against captured guerrillas. The militarization of South African Police training and methods continued through the years of emergency rule in the 1980s. Despite compelling evidence of the systematic torture of detainees, resulting in scores of deaths, and the fatal shootings of hundreds of unarmed civilians, the police were rarely called to account for these human rights violations. Clearly, it required a concerted act of will on the part of the government to transform this highly politicized police force, which had been operating on the basis of violence and officially-sanctioned covert activities for many years. The message of the new neutrality and professionalism eloquently put forward by State President F. W. de Klerk in January 1990 had to be followed swiftly by concrete steps against any member of the force, of whatever rank, found to be acting in a biased and unlawful manner.

At the very time of proclaiming the new policy the government was faced with the immediate challenge of investigating the damaging claims made by former security police officers at the end of 1989. Former security police Captain, Dirk Coetzee, and others revealed to lawyers and journalists that they had taken part in officially-sanctioned killings of government opponents, while serving as members of a special security police unit based at Vlakplaas near Pretoria. These revelations were followed by others in January 1990, when the existence of a covert unit of the military Special Forces, the euphemistically named Civil Cooperation Bureau (CCB), came to light. The police officer in charge of the investigation into the May 1989 assassination of David Webster, a Johannesburg academic and human rights activist, stated during a court hearing that he believed that the CCB was responsible for the murder (see box). The CCB was also linked to the killing in September 1989 of Anton Lubowski, a Namibian lawyer and member of the South West Africa People's

Organization (SWAPO).

At least 50 government opponents had been assassinated in South Africa between August 1977 and November 1989. Only in the case of the murder of Eric Mntonga, a member of the Institute for a Democratic Alternative for South Africa (IDASA), had the killers – six senior Ciskei police officers – been brought to justice. In February 1990, under much public pressure, President De Klerk ordered a judicial commission of inquiry into the allegations that covert units of the security forces were responsible for these unresolved "hit squad" killings. This was potentially a key inquiry into security force misconduct. However, the Commission, chaired by a Supreme Court judge, Louis Harms, and the government officials responsible for acting on its recommendations, failed to accomplish the vital task of restoring a sense of accountability to the security forces and so curbing their extra-legal activities.

The Harms Commission

After holding hearings in South Africa and London, the Harms Commission published its report in November 1990. Human rights groups, the media and opposition political parties criticized the Commission for failing in a number of crucial respects to conduct a thorough investigation of security force involvement in "death squads". In its conclusions the Harms Commission Report dismissed allegations of police involvement in "death squads". At the same time, however, it reached damning conclusions about the role of the CCB, confirming its involvement in illegal activities, including assassinations of government opponents:

"[The] actions of the CCB have contaminated the whole security arm of the State. Their conduct before and during the Commission creates suspicions that they have been involved in more crimes of violence than the evidence shows. These suspicions are not necessarily unfounded. The Commission has been unable to achieve one of its main purposes, namely to restore public confidence in a part of the State administration."

Judge Harms found that:

"[T]he CCB arrogated to itself the power to try, to sentence and to punish people without the persons knowing of the allegations against them or having had the opportunity to defend themselves. In addition it appears that the information on which the verdict is based is inherently suspect and untested. The 'penalty' imposed is also out of proportion to what would have been imposed by a civil court."

Specifically, Judge Harms found that the CCB had behaved unlawfully in a number of cases, most importantly in the 1986 killing of Dr Fabian Ribeiro and Florence Ribeiro (see box). The CCB was found to have plotted to murder attorneys Dullah Omar and Kwenza Mhlaba, and journalist Gavin Evans. These and other cases were referred to the appropriate Attorneys-General for further investigation and prosecution. Yet, by April 1992 no prosecution proceedings had been instituted against any members of the CCB arising from the findings of the Harms Commission.

Evidence indicates that some former members of the CCB – it was formally disbanded in July 1990 – left South Africa after receiving large redundancy and pension payments from the government, and that other former CCB operatives are working for Military Intelligence or the Military's Special Forces.

The Harms Commission's conclusions on the CCB were a clear indictment of state responsibility for serious human rights violations. The Commission could have arrived at more far reaching conclusions if its methods of investigation had been more thorough and its terms of reference broader. The terms of reference precluded the Commission from hearing evidence about incidents which took place outside South Africa's borders (defined to also exclude incidents in the nominally independent "homelands".) This limitation effectively excluded the Commission from investigating a large number of assassinations – or attempted assassinations – in which there was evidence of South African police or military involvement. These incidents included the assassination of ANC representative Joe Gqabi in Zimbabwe in 1981; the parcel bomb killing of academic Ruth First in Mozambique in 1982; the killing of Jeanette Schoon and her six-year-old daughter in Botswana in 1984; the killing of Tsitsi Chiliza by a booby-trapped television in Harare in 1987; and the attempted killing by car bombs of writer Jeremy Brickhill in Zimbabwe in 1987 and lawyer Albie Sachs in Mozambique in 1988. All these individuals were associated with the ANC, but none was involved in its military activities.

In all cases there is evidence linking the attacks to the South African state – in some instances former members of the security forces have claimed individual responsibility. Perhaps most significantly, the Commission did not investigate strong evidence of CCB involvement in the killing of Anton Lubowski, although the Commission saw fit to hold an *in camera* hearing into the claim by the Minister of Defence that Anton Lubowski had been a paid informant of the South African military. It emerged in testimony before the Commission that the CCB operated in nine separate "regions", of which "Region Six" – South Africa itself – was only one. The failure to investigate human rights violations outside South Africa's borders not only excluded an important number of serious human rights abuses; it also denied the Commission the possibility of testing the credibility of witnesses in relation to a larger number of cases.

A key weakness of the Commission lay in the failure of its investigative team. Counsel to the Commission was Tim McNally, an advocate (barrister) and Attorney-General of the Orange Free State. In late 1989, at the request of the government, advocate McNally conducted an investigation into allegations by three former security police officers – Dirk Coetzee, Butana Almond Nofomela and David Tshikalanga – that they had been involved in a "death squad" based at Vlakplaas. At the time of his appointment, he had already completed this investigation. The McNally Report, which was not made public until November 1990, had concluded that there was no truth in these allegations. In light of this, it is difficult to see how the government could expect Mr McNally to conduct an impartial investigation into allegations of police "death squad" activity for the Harms Commission so soon after he had concluded in a previous investigation that such activity did not exist.

The investigative team, headed by a government law officer rather than an independent lawyer, was composed of police officers. They produced remarkably little

corroborative evidence for the Commission – most evidence was provided by other bodies representing the families of assassination victims, notably the Independent Board of Inquiry into Informal Repression (IBIIR). The long lead-in time before the Commission's investigators actually began their work provided opportunities for CCB and Vlakplaas-based police operatives to destroy evidence. However, the Commission took no action against witnesses and others alleged to have interfered with its investigations in this way. The Commission did identify some individual security force members as having committed perjury before the Commission, but no prosecutions resulted.

Judge Harms interpreted his terms of reference narrowly to exclude governmental responsibility for the activities under investigation. Thus, he failed to call either the then Minister of Law and Order or the then Minister of Defence to give evidence before the Commission – although he acknowledged in his report that the latter, General Magnus Malan, bore political responsibility for the actions of the CCB.

Judge Harms's conclusion that there was no evidence of police "death squads" was unsurprising, since Attorney-General McNally had already reached a similar finding. The testimony of Dirk Coetzee, Almond Nofomela and David Tshikalanga was crucial in establishing the nature of the security police operation at Vlakplaas. It was Almond Nofomela, awaiting execution for an unrelated murder, who prompted investigations into Vlakplaas police conduct by his confession that he had taken part in the 1981 killing of Griffiths Mxenge, a lawyer and political activist. The publicity surrounding Almond Nofomela's confession in turn prompted the former commander of Vlakplaas, Captain Dirk Coetzee, to reveal his role. Judge Harms concluded that Almond Nofomela had only made his statement to avoid execution and that Dirk Coetzee was unreliable and mentally disturbed – although he did not order a psychological examination of the witness. He was clearly intolerant of Dirk Coetzee's testimony, interjecting on one occasion that his evidence was "total crap".

The Kriegler judgment: a counterpoint

Despite the contemptuous attitude of the Harms Commission towards the claims of former security police Captain, Dirk Coetzee, the credibility of his evidence was soon dramatically underlined in a Rand Supreme Court judgment delivered by Judge Johan Kriegler in January 1991. The head of the police forensic division, General Lothar Neethling, had brought a libel action against two newspapers, the *Vrye Weekblad* and *Weekly Mail*, for having published Dirk Coetzee's allegations that General Neethling had supplied him with poison to kill political opponents of the government.

The court heard evidence about the killings in 1981 of Vusi Mavuso, Peter Dlamini and Sizwe Kondile, whose deaths or "disappearances" had already been the subject of investigation by the Harms Commission. Dirk Coetzee had alleged that General Neethling had supplied him with poison which he had administered to Vusi Mavuso, an ANC member who had been kidnapped during a South African Defence Force raid on Mozambique, and Peter Dlamini, a former ANC member who had acted as an informant for the Vlakplaas unit. However, the poison had failed to work and the two men had been shot dead by another member of the Vlakplaas unit and their bodies burned.

Judge Harms had rejected Dirk Coetzee's testimony as false. However, Judge Kriegler considered evidence overlooked by the police investigators working for the Harms Commission. The evidence tended to corroborate Dirk Coetzee's claims and cast serious doubt on police claims that Vusi Mavuso had been released from custody and had then apparently "disappeared". Similarly, Judge Kriegler was persuaded by corroborative evidence, including the contents of police files, to accept the truth of Dirk Coetzee's claims about the murder of Sizwe Kondile, an ANC activist who, according to the police version, had "disappeared" after he was released from custody in Port Elizabeth. The judge said that it struck him like a thunderclap that the three policemen whom Dirk Coetzee named as responsible for Sizwe Kondile's death were the same policemen named in the police files as the officers in charge of his interrogation in custody.

During the libel trial General Neethling categorically denied that he had ever met or spoken to or given poisons to Dirk Coetzee. However, Judge Kriegler concluded that General Neethling, the Chief Deputy Commissioner of the South African Police, had deliberately misled the court and also the Harms Commission in this regard. He found that, on the contrary, Dirk Coetzee had demonstrated a remarkable knowledge of General Neethling's house and office, and that no evidence had been produced during the trial which could plausibly explain the purpose of Dirk Coetzee's visits to General Neethling other than the reason given by Coetzee himself.

Judge Kriegler ruled in favour of the two newspapers. In reaching his conclusions about the truthfulness of the published allegations, the judge took into account the context of the "undeclared war" in the 1980s, a situation in which people were encouraged to do everything in their power to act against the "enemy". Although he approached Dirk Coetzee's evidence with the "greatest circumspection", the judge found that there was a remarkable consistency between the accounts of incidents given by the witness to different parties, including judicial officers, between 1984 and November 1990, when the case against the newspapers was heard. He also took into consideration proven facts independent of the witness's disclosures which corroborated aspects of his assertions. In addition to his finding that General Neethling had lied to the court, Judge Kriegler also noted the failure of General Neethling's lawyers to call as witnesses for his case three members of the Vlakplaas unit implicated by Dirk Coetzee in the murders of Vusi Mavuso and Peter Dlamini. He described as lacking in credibility the denials of one security police witness, a major by rank, whom Dirk Coetzee had linked to the murder of Sizwe Kondile. Finally, Judge Kriegler found that General Mike Geldenhuys, the former Commissioner of the South African Police, who testified on General Neethling's behalf, had displayed either ignorance of the true activities of his subordinates or a "remarkable lapse of memory" in relation to certain incidents.

Judge Kriegler's finding that, in all probability, Vusi Mavuso, Peter Dlamini and Sizwe Kondile had been murdered by the police in the circumstances described by Dirk Coetzee, vindicated long-standing claims of systematic police involvement in political assassinations. The ruling also implicated the third most senior South African police officer in political murders. However, the government refused to suspend General Neethling from duties until his appeal against the judgment had been heard. The date for the hearing had still not been set by early April 1992. Evidence indicates that the Vlakplaas unit was still continuing its surveillance and other covert operations in late 1991.

In summary, the official response to the Harms Commission and the Kriegler judgment underlined the impunity enjoyed by the covert units of the South African state. Judge Harms and Judge Kriegler between them uncovered evidence of murder, poisoning, kidnapping, arson, perjury and destruction of evidence by members of the South African Police and South African Defence Force. Yet not a single prosecution has resulted.

The killings continue

The failure to call human rights violators to account has led directly to continuing abuses. One of the first victims after the Harms Commission was a Johannesburg lawyer, Bheki Mlangeni, who had carried out much of the investigation which the Commission's own officials had failed to conduct. Bheki Mlangeni died on 16 February 1991, when a bomb hidden in a cassette tape player exploded at his home in Soweto. The device, which had been sent to him in the mail, was apparently intended for Dirk Coetzee. Bheki Mlangeni had been deeply involved in the investigation of alleged police and military "death squads" and circumstantial evidence suggests that it was they who were responsible for his killing.

Bheki Mlangeni, aged 32, worked for the Johannesburg law firm of Cheadle, Thompson and Haysom and was the branch chairman of the ANC in Jabulani, Soweto. He was married with a young son. He had been detained without trial for political activity on three occasions in the early to mid-1980s. He was active in the IBIIR, which had presented much of the evidence of covert police assassinations to the Harms Commission. Bheki Mlangeni was particularly involved in investigating the activities of the Vlakplaas police unit and had visited the base. He was in regular contact with Dirk Coetzee, whom he had met in 1990 in Zambia and the United Kingdom at the time of the Harms Commission hearings.

The explosive device which killed Bheki Mlangeni was sent on 10 May 1990 from a Johannesburg post office to Dirk Coetzee in Lusaka, Zambia. The return address on the parcel was given as Cheadle, Thompson and Haysom and the sender's name was "Bheki". It appears, therefore, that the real sender was aware of the contact between Bheki Mlangeni and Dirk Coetzee, but apparently did not know Bheki Mlangeni's surname. A possible explanation would be that the contact was detected by the tapping of Dirk Coetzee's telephone.

The law firm had informed the Harms Commission that in April 1990 Bheki Mlangeni had received an anonymous phone call warning that Dirk Coetzee was to be the target of a "hit squad". The IBIIR commented after Bheki Mlangeni's death:

"It appears therefore that one month before the parcel was sent to Coetzee, unknown persons were aware that Bheki Mlangeni was in contact with Coetzee. The assassin clearly took advantage of the working relationship between Bheki Mlangeni and Dirk Coetzee and used his name to allay possible suspicions about the parcel."

The parcel only arrived in Lusaka three months after it was posted and Dirk Coetzee, who was staying outside the city, did not go to collect it until October 1990. He refused to accept the parcel, ostensibly because there was a large amount of import duty to be paid. Dirk Coetzee has subsequently stated that he warned the ANC in Lusaka that he was suspicious of the parcel.

At some stage the parcel was sent back to the apparent return address in Johannesburg, reaching the office of Cheadle, Thompson and Haysom on 16 February 1991. Bheki Mlangeni opened the package in his office, possibly under the impression that it was addressed to him, since both the addressee's name and the return address appeared prominently on the front of the parcel. The package contained a UNISEF SZ10 personal stereo player with headphones and two cassette tapes, one of which was labelled "Evidence of hit squads". Bheki Mlangeni took the contents of the package home with him. At about 9.30pm, according to the evidence of his wife Seipati, he took the tape player into a room on his own, put on the headphones and pressed the play button. Simultaneous explosions in both earpieces blew holes in his skull, killing him instantly.

According to the report of a forensic examination of the device, the tape player had been rewired so that the batteries sent a detonating charge into the earpieces when the play or fast forward button was pressed. It had also been wired to prevent the player being powered from an external source which would have given insufficient charge to detonate the explosive. The explosive was plastic, but it is not known of what type. Although the conclusion of the forensic examination was that the electronic skill required to rewire the device was relatively unsophisticated, the overall conception of the bomb indicates some degree of experience on the part of the maker. In 1987, Leslie Johannes Lesia, a self-confessed agent of South African Military Intelligence, gave ANC official Frank Chiliza a television set containing a bomb. This exploded in Harare, Zimbabwe, killing his wife Tsitsi Chiliza when she tried to make the television work. In May 1990 Michael Lapsley, an Anglican priest and ANC member living in Zimbabwe, received through the mail a bomb which was extremely well concealed in a church magazine. He suffered multiple injuries, including the loss of both hands and one eye. The device which killed Bheki Mlangeni had features in common with both of these – its installation in an electric appliance and its small size and expert concealment. A thorough investigation should include comparison of the forensic evidence in each of these cases. The television bomb is particularly relevant since Leslie Lesia has admitted that it was installed by Military Intelligence.

"Intelligence sources" quoted by the pro-government *Citizen* newspaper immediately after Bheki Mlangeni's death alleged that those responsible were probably the families of the victims of police "death squads" under Dirk Coetzee's command. Apart from providing an interesting – and probably unique – admission from the authorities that they did indeed run "death squads", the assertion begs the question as to where the families of "death squad" victims would acquire the necessary materials and technical expertise to construct a sophisticated booby trap bomb. On the other hand, the police themselves appear to have had both the expertise and the motive to kill Dirk Coetzee. The fact that the assassin apparently knew of the regular contact between Bheki Mlangeni and Dirk Coetzee suggests a level of surveillance of the intended victim which is unlikely to have been possible for a private individual

seeking revenge.

The then Minister of Law and Order, Adriaan Vlok, agreed to allow Cheadle, Thompson and Haysom access to the forensic evidence "to show his and the Police Commissioner's determination to solve this crime and find the culprit". The police completed their investigations into the murder and submitted a docket to the Attorney-General. In December 1991 the Attorney-General announced that no individual would be prosecuted for the murder of Bheki Mlangeni.

Since Bheki Mlangeni's death in February 1991, the list of new victims of surveillance, harassment and targeted assassinations has continued to grow. Members of the ANC and allied organizations, including local community activists and former political prisoners or exiles, have been killed or forced into hiding. One case involved Chechela Machitje, an ANC member who had successfully appealed against a five-year sentence for contraventions of the 1982 Internal Security Act. He went into hiding in mid-October 1991 to escape the surveillance of a group of armed men who regularly appeared in a vehicle outside his home in the East Rand township of Thokoza. The group included a man identified as one of the police officers who had arrested, interrogated and allegedly tortured Chechela Machitje in late 1989.

In another case, Siza Rani, the chairperson of the ANC branch in Sharpeville township, south of Johannesburg, and his family felt obliged to go into hiding following police raids and a hand-grenade attack on their home. In late December 1991 police forcibly entered Siza Rani's house and searched it. In the process they virtually ransacked the house and defaced a picture of the ANC President, Nelson Mandela, with the words "Dead in 1992" and other abusive graffiti. Siza Rani reported the matter and laid charges of housebreaking, theft and damage to property against the police at Sharpeville police station. Despite being under investigation, the police returned to search Siza Rani's house again on 31 December. On 11 January 1992 unidentified attackers threw a grenade at the house. By April 1992 there was no evidence of progress in the investigations into the charges laid by Siza Rani against the police and no one had been arrested in connection with the attack on his home.

On the night of 19 May 1991 police shot dead ANC member Samuel Padi and his companion Nocozi Ncalo. Three months earlier Samuel Padi's father, Isaac Padi, had been arrested and taken to Protea police station, Soweto, where, according to his sworn testimony, he was assaulted and subjected to electric shocks, while being interrogated about the whereabouts of his son. The police allegedly told him that they would kill his son when they found him. After the deaths of Samuel Padi and Nocozi Ncalo, the police said that they had shot the couple in self-defence when they came to arrest Samuel Padi at the room where he was staying in Soweto. However, independent post-mortem evidence and the location of bullet marks in the wall indicate that the young man was shot while lying in a horizontal position. Nocozi Ncalo appeared to have been in a crouching position when she was shot. The occupants of the two adjoining rooms apparently could hear men arriving, someone shouting "*skiet hom*" (shoot him) as the door to Samuel Padi's room opened, and the sound of someone screaming. One of these witnesses was killed a week later when unknown gunmen came up to him on the street and shot him. The second witness went into hiding and sought legal assistance as a consequence of police harassment. An inquest hearing was due in late April 1992.

A member of the ANC-aligned Namakgale Civic Association and a local organizer for the South African Democratic Teachers' Union (SADTU), Solly Mogashoa, died in police custody soon after he was arrested on 13 October 1991. Eye-witnesses saw the police assault Solly Mogashoa brutally, kicking him and pulling his genitals, before taking him to Namakgale police station, near Phalaborwa in northeastern Transvaal, where the assaults apparently continued. He died some time during the night of 13 October. He apparently received no medical treatment before his death. According to an independent post-mortem report, Solly Mogashoa died as a result of a fractured skull, with epidural haemorrhage and shock.

Former Robben Island prisoner and ANC member, Tsepo Lengwati, was shot dead in the early hours of 28 January 1992 while in the custody of the Vanderbijlpark police. On the previous day he had appeared in the magistrate's court accused of the murder of a police officer. The police investigating officer had opposed an application for bail brought on Tsepo Lengwati's behalf on the grounds that he, the investigating officer, had information that Tsepo Lengwati would be in danger of assassination if released. The court rejected the bail application. However, at the end of the hearing Lengwati's lawyer requested to place on court record that on the night of 26 January her client had been taken out of his cell by police officers and men wearing hoods, who had kept him out all night. The lawyer added that the detainee had been then taken to the Vanderbijlpark police station where he had been assaulted. Before his death, Tsepo Lengwati had laid formal charges of assault against the police investigating officer. According to a police statement issued after Tsepo Lengwati was shot dead, the police, including the investigating officer, took him out of the police station early on the morning of 28 January so that he could point out suspects to them, and he was then shot dead by an unknown gunman as he sat in a police vehicle outside a house in Sharpeville township, south of Johannesburg. The police said that they returned fire, but the gunman escaped. According to the report of an independent pathologist, Tsepo Lengwati died from "multiple gunshot wounds, some from the front and some from the back". No one else in the police vehicle, which reportedly bore false registration plates, appeared to have sustained any injuries.

In a startling case which illustrates a frightening degree of casualness and sense of impunity amongst the security forces, police officers stationed at Schweizer-Reneke in the western Transvaal issued instructions in November 1991 for the abduction and murder of certain community leaders in Ipelegeng township. In the early hours of 30 November 1991 Jerry Maine, a high school teacher and chairperson of the ANC-aligned Ipelegeng Civic Association, was abducted from his home by three men who told his mother they were police. Jerry Maine's family already knew he was at risk: a month earlier he had received a letter containing death threats against himself and two other community leaders because of their involvement in community protests about local housing problems.

Despite his abduction on 30 November, Jerry Maine escaped death with the connivance of his intended assassins. He told journalists a week after his ordeal that his kidnappers had undertaken to abduct and kill him at the behest of white police officers stationed at the Schweizer-Reneke police station. It is alleged that one of the kidnappers, while in custody and awaiting trial for an ordinary criminal

offence, was recruited by the police to carry out the assassinations of Jerry Maine and other community leaders in exchange for a guarantee of bail and a lighter sentence. After his release the would-be assassin, mistrustful of the police who had recruited him, secretly taped subsequent conversations with the police. On the tapes police officers can be heard discussing arrangements for the kidnapping and murder of Jerry Maine and another community leader. In the end the kidnappers did not go through with the assignment and instead revealed to Jerry Maine how they had come to abduct him.

The details of this case and the recorded conversations with the police were brought to the attention of the Goldstone Commission. On 19 December 1991 the Commission conducted an *in camera* hearing of the evidence on the alleged conspiracy to murder the activists. The Commission found that there was *prima facie* evidence implicating the police officers and referred the matter to the office of the Transvaal Attorney-General for further investigation. The results of this investigation had not been made public by early April 1992.

The swift intervention of the Goldstone Commission in the Jerry Maine case showed, as did the Kriegler judgment, the importance of independent, judicial investigation of serious allegations against the police. Too often allegations of continuing security force involvement in the surveillance, harassment, torture and murder of suspected government opponents, notably members of the ANC and other formerly banned organizations, do not become the subject of independent investigations. In most cases, to find redress, the victims of these abuses or their relatives have had to resort to bringing civil proceedings against the state as their only recourse. Even where independent judicial investigations occur, they need to be followed rapidly by appropriate state action against members of the security forces alleged to have been involved in torture or extrajudicial executions. Without this, President De Klerk's policy, articulated in January 1990, of transforming the politicized state security forces into professional and accountable bodies is unlikely to succeed. On the contrary, the slowness with which the authorities and the prosecutorial system have responded during the past two or more years to compelling *prima facie* evidence against members of the security forces can only have served to strengthen the sense of impunity that they developed during the years which Judge Kriegler described as the period of "undeclared war".

BOX1 = The killing of David Webster

David Webster, a 44-year-old anthropologist and human rights activist, was shot dead by gunmen firing from a moving vehicle outside his Johannesburg home on 1 May 1989. Shortly before his death David Webster had published a paper on the development of "death squads" and other forms of informal repression in South Africa.

The police investigation led towards the hitherto unknown Civil Cooperation Bureau (CCB), a unit falling under the responsibility of the Directorate of Military Intelligence. Three CCB operatives were detained for questioning and the police officer in charge of the investigation stated that he believed the CCB was responsible for David Webster's death.

The case was one of the matters before the Harms Commission, which reviewed important evidence. For example, a membership list of the Five Freedoms Forum, retrieved from the CCB headquarters, contained the name of David Webster with an arrow next to it. The diary of "Christo Brits" the pseudonymous coordinator of the CCB inside South Africa, had the page for 1 May 1989 torn out, along with the pages for the days when SWAPO activist Anton Lubowski was assassinated and the Athlone Early Learning Centre in Cape Town was bombed. On 28 April 1989 there was a diary entry that live ammunition should be obtained; there were similar entries shortly before the other two attacks.

Evidence uncovered by a Commission of Inquiry chaired by a judge, Victor Hiemstra, into the activities of the security department of Johannesburg City Council showed that the department had monitored David Webster, assigning one of its informants to befriend him and report back on his movements. This information was passed on to military intelligence. One witness before the Hiemstra Commission even named the military intelligence official alleged to have killed David Webster.

It also appears that in the course of anthropological research in northern Natal, David Webster may have stumbled upon evidence of continuing South African military assistance to RENAMO, a Mozambican opposition group. This would have provided a clear motive for the CCB or a similar military body to have wanted to kill David Webster. However, the Harms Commission's findings on David Webster's death were inconclusive. It reported that although David Webster could have been killed by the CCB, there was no compelling evidence to that effect. There appears to have been no further progress in investigating the case since then, although his case has been under investigation by the offices of the Attorney-General in Johannesburg and in Cape Town, with no announcement by early April 1992 of any results.

The shooting of the Ribeiros

The Harms Commission did resolve one case of political killing by the security forces: the 1986 shooting of Mamelodi physician Fabian Ribeiro and his wife Florence. Dr Ribeiro had been detained on security grounds in 1979 and was later charged and acquitted. During the mid-1980s he examined people who had been assaulted by the police, prepared medical reports on their cases and gave expert testimony in court. He received several death threats and on one occasion the Ribeiros' home was fire-bombed while they were out. They arrived home to see military personnel watching the house burn.

On 1 December 1986 Fabian and Florence Ribeiro were shot dead by two men wearing balaclavas. Their son, Chris, who was present, identified one of the attackers as being white and other witnesses said that they spoke Afrikaans. Their vehicle was traced and found to belong to a white former member of an elite unit of the Rhodesian security forces. However, at that stage there was no further evidence linking this individual to the killing.

The Harms Commission's investigations, however, uncovered that the individual was a member of the CCB, that his legal costs had been paid by the military and that he had shaved off his beard to avoid identification by witnesses to the Ribeiro murders.

The CCB member left South Africa when the Commission began its investigations. Rand30,000 (US\$10,489) was found to have been deposited in his bank account shortly before he left. It also emerged that police dossiers on the case had been stolen.

The Commission's report concluded: "There are grounds for believing that [the named member of the CCB] might have been involved, in an official capacity, in the murder of Ribeiro, and that there are sufficient grounds for the Attorney- General to look into the matter again and to call for further investigation." However, no prosecution had been initiated by early April 1992.

1

Police 'death squads' and the ANC as permanent 'enemy'

CHAPTER TWO

The pattern of repression during the past two years in the nominally independent "homeland" of Bophuthatswana has contrasted markedly with that in most other parts of South Africa. The authorities have continued to rely on their powers under security legislation to silence their opponents. Violent coercion has occurred through the harassment, detention and torture of activists and the use of excessive force against demonstrators. The pattern was set in the wake of the release of ANC President Nelson Mandela and the unbanning of the ANC in February 1990. The Bophuthatswana authorities used the powers provided by Bophuthatswana's security legislation to suppress popular demands for greater political freedom, and to prevent opposition organizations from establishing effective structures in the "homeland".

In an effort to contain these demands, on 7 March 1990 the Bophuthatswana authorities introduced new state of emergency provisions under the terms of the Bophuthatswana Internal Security Act (No. 32 of 1979 and subsequent amendments). These remained in force throughout Bophuthatswana until March 1991.

The emergency regulations gave members of the security forces broad powers of arrest, allowing them to detain people for up to five months without charge and without automatic right of access to a lawyer, doctor or relatives. Although the emergency provisions were not renewed in March 1991, similarly broad detention powers exist under the Bophuthatswana Internal Security Act. Both the state of emergency and Internal Security Act detention provisions create conditions in which torture can easily occur; they deny detainees right of access to their lawyer and others and provide immunity to police officers for acts committed "in good faith" while carrying out their duties.

After lifting the state of emergency in March 1991, the "homeland" authorities promptly introduced amendments to the Internal Security Act on 28 March 1991 to tighten already stringent controls on the holding of public meetings and peaceful demonstrations. Under the terms of the amended act, any gathering is declared unlawful unless prior official permission has been granted in writing and various other administrative stipulations have been met. This legislation has been used repeatedly to prevent political activists from meeting as well as to hamper events such as demonstrations, marches and funeral processions.

During 1990 and 1991 at least 860 people were detained without charge or trial in Bophuthatswana. The ANC, while not formally banned, is regarded by the "homeland" authorities as their main opponent and they have used repressive legislation and direct force to prevent communities from setting up ANC structures. At times the police have arrested entire meetings of newly formed ANC branches, and activists have often reported that when they sought official permission for meetings they received no response from the authorities. In April 1991 over 60 people were arrested at a meeting held near Kudumane to launch a new ANC branch, and more than 60 ANC members were arrested at a workshop in Itsoseng. In an earlier incident, at least eight ANC members were detained in August 1990 in a pre-dawn police raid on their homes after the launch of ANC branches in Klipgat and Mabopane and hours before the planned launch of another branch in nearby GaRankuwa. Many other similar incidents have been reported. Those arrested have frequently been charged with infringing the terms of the Internal Security Act by participating in illegal gatherings.

While members and supporters of the ANC have been the prime targets for harassment, detention, torture and other human rights violations aimed at curbing their activities, the Bophuthatswana authorities have targeted other activists too. They include human rights workers, trade union activists, and communities opposing the continuation of *apartheid* policies such as forced removals. Amnesty International has also received reports that several political prisoners released following a wave of hunger-strikes in the second half of 1991 have been rearrested for short periods, interrogated and assaulted in police custody, and then kept under surveillance after their release. In addition, ordinary members of the public, who by their support for demonstrations or boycotts could broadly be identified as opposed to the policies of the current Bophuthatswana government, have also been victims of repression.

Repression of demonstrations

Officially-sanctioned repression has been directed blatantly and brutally against people taking part in marches or protests to demonstrate publicly their support for the ANC or their opposition to the policies of the "homeland" authorities. The police – sometimes assisted by soldiers of the Bophuthatswana Defence Force – have repeatedly used such means as tear-gas, baton charges, water cannon, and at times live ammunition to disperse crowds of demonstrators or protesters. Furthermore, demonstrators have frequently been arrested and assaulted or tortured. Hundreds of people have been injured by police action and at least 26 have been killed since February 1990. On many occasions the police have used a seemingly unnecessary and unlawful degree of force against predominantly peaceful crowds demonstrating in opposition to the policies of the Bophuthatswana authorities.

In the explosion of popular jubilation throughout South Africa following the release of Nelson Mandela and the unbanning of the ANC, numerous marches took place in Bophuthatswana in February and March 1990. At one such march in Tlhabane on 25 February 1990, police used tear-gas and live ammunition to disperse part of a crowd moving towards a stadium. The group was intending to join an estimated 8,000 people gathering to protest about local grievances and calling for the political reincorporation of the Bophuthatswana "homeland" into South Africa. At least one person, Paul Molefe, an onlooker to the march, was killed by police when they were dispersing demonstrators with gunfire. Seventeen people required hospital treatment for bullet wounds inflicted by the police.

More recently, security force action in Phokeng on 21 March 1991 caused the death of Johannes Mafatshe, a young student teacher who was an unarmed participant in a peaceful protest. He was shot dead when, with other members of Phokeng's Bafokeng community, he took part in a march to commemorate "Sharpeville Day". The protest was also organized to petition the Bophuthatswana authorities to reverse their decision to expel from Bophuthatswana the chieftainess of the Bafokeng, Mrs Molotlegi. As the groups of unarmed and peaceful supporters neared Mrs Molotlegi's home, the Bophuthatswana security forces barred their way with roadblocks. The police stopped one vehicle and assaulted the occupants. Then, suddenly and without giving prior warning, the security forces fired tear-gas, water cannon and rifle shots at the marchers, who scattered and fled towards nearby houses. Johannes Mafatshe was hit in the forehead as he ran for cover. He was rushed to hospital, but when he reached there he was already dead. Approximately eight other marchers were injured in this incident.

The Bophuthatswana police initially said in a radio statement that Johannes Mafatshe

had died from a stab wound, but this was immediately disputed by eye-witnesses. The local community tried to arrange an independent post-mortem, but the police reportedly refused at first to give Johannes Mafatshe's family access to his body. A few days later the police themselves carried out a post-mortem examination which established that his death was caused by a gunshot wound to his head and severe bleeding. The police apparently then admitted responsibility for his death and announced that an investigation would be carried out. However, no details of any investigation have yet been made available to relatives or others and no police officers have been suspended or charged in connection with the death. Thus, as has generally been the case in Bophuthatswana, no steps have been taken to bring to justice those responsible for Johannes Mafatshe's death.

Amnesty International continues to receive reports of the use of potentially-lethal force against people broadly perceived as opponents of the Bophuthatswana authorities. On 11 January 1992 police violently dispersed mourners attending the funeral of an ANC member in Tiger River, near Thaba Nchu. Police reportedly attacked the mourners with tear-gas, water-cannon, sjamboks (whips), police dogs and gun butts.

Torture

When police have used force to disperse marches and demonstrations, they have frequently arrested those taking part and assaulted them in custody. Following the march in Tlhabane in February 1990 during which Paul Molefe was shot and killed, approximately 120 people were arrested the same day and a further 40 during the following week. Those detained alleged that they were tortured in local police cells by having electric shocks applied to their genitals, and by having sacks placed over their heads and tied tightly around their necks. Some were hit on their toes with building bricks, or beaten with truncheons and sjamboks, or kicked. Many were coerced into signing statements implicating themselves and others in stone-throwing or arson incidents. Prisoners and their relatives complained that those tortured or wounded were denied proper access to medical treatment. Although in some cases victims of these assaults laid charges against security force officers, there has been no public acknowledgement of disciplinary steps taken against those security force members involved in the assaults.

Reports of torture of political prisoners, whether held under the state of emergency powers or the Internal Security Act, were persistent from early 1990 through 1991, and new cases continue to be brought to Amnesty International's attention. Criminal suspects are also routinely assaulted and are sometimes subjected to vicious and prolonged periods of torture, indicating that these practices are endemic among the police force. Bophuthatswana's police spokesman, Colonel David George, reportedly told the City Press newspaper in November 1991 that "it was not the policy of the Bophuthatswana police to torture detainees". But the evidence belies this claim. Indeed, in one case in November 1990 a police constable disclosed in court that he had been taught at police college to assault prisoners "if a person does not want to tell the truth".

In one politically-related case in March 1990, the Mafikeng police arrested a number of high school students, apparently in connection with a meeting organized to discuss education problems, and held them under the terms of the state of emergency regulations. They were beaten, partially suffocated, and subjected to electric shock torture. One later described how the police gave him electric shocks with a cattle prod while he was subjected to a form of torture known as the "helicopter":

"They tied me to a bar. My legs and hands were tied together and the bar was put underneath my knees... Then they started spinning me around for about 15 minutes without stopping and at the same time [electric] shocking me all over my body. While they were spinning me, I was screaming that they must stop, that I didn't know anything."

In a more recent case in late 1991, Lesedi Kgaladi, chairman of the Mosenthal branch of the ANC, was arrested after having been in hiding for some weeks. His arrest was a sequel to the arrest of some 30 other mourners following the funeral on 15 September 1991 near Mosenthal of a local ANC member. After a confrontation with police officers, mourners were tear-gassed and assaulted by police and 30 were arrested and taken to Phokeng police station where most, reportedly, were assaulted or tortured. Some said they had their heads forced into plastic bags full of water and were given electric shocks through wires pushed into the plastic bags. All were released on bail after about 14 days in custody under the Bophuthatswana Internal Security Act. Following their release some went into hiding fearing further police repression.

On at least one occasion during the following weeks the police visited Lesedi Kgaladi's home at night and threatened his wife, who was then six months pregnant. They told her they would kill her two young sons if Lesedi Kgaladi did not give himself up. They eventually arrested him at his home in late October or early November 1991.

Lesedi Kgaladi told journalists that the police had tied his hands and feet to a pick-handle, held him upside-down, and repeatedly beat his buttocks with a baton until they were blue. He said the police also subjected him to electric shocks to his genitals, neck and behind his ears. Furthermore, "they tied my hands and feet with twine and repeatedly dipped me into a bath full of water. Every time I thought I would drown they would pull me out and demand I tell them the truth". A friend who went to Phokeng police station in search of Lesedi Kgaladi, and who by chance saw him being taken to a police vehicle for transfer to Mogwase Prison, said that he could not walk without support, and could not talk because of his injuries. The police apparently did not want him to appear in court until he had recovered. However, after a lawyer was instructed to act on his behalf he was charged with the common law offence of public violence and on 13 November 1991 was released on bail.

Another group of activists who have been victims of torture by the Bophuthatswana police are trade union organizers, most recently those working with the over 40,000-strong workforce at the Impala complex of platinum mines near Rustenburg. The mines are a major source of income and prestige for the "homeland" authorities. There is a long history of dismissals, arrests and harassment of miners taking industrial action over wages and other workplace issues. Boputhatswana's laws prohibit South African-based unions such as the ANC-aligned National Union of Mineworkers (NUM) from operating in the "homeland". Since 30,000 workers were dismissed in 1986 for striking over the management's refusal to recognize the NUM, worker activists have had to operate clandestinely.

The second half of 1991 was a period of intensified struggle between the mine's management and the black workforce over issues of pay, working conditions and the right to organize within the workplace. Following a series of strikes in mid-1991, workers made significant gains, winning higher wages, the right to be represented by an elected workers' committee assisted by NUM representatives, and other

concessions from the management. But from October 1991 onwards the mine management clamped down on worker activists in an apparent effort to regain lost ground and undermine the new-found solidarity amongst the workforce. Trade union activists were harassed and dismissed from their jobs, or beaten, detained and tortured. In addition, some 30 mineworkers were killed between August and December 1991 in clashes at the mines between mineworkers and armed men, some apparently brought in from outside the mines. Further deaths were reported in March 1992 when armed men, some from outside the mines, attacked mineworkers on mine premises, allegedly with the active involvement of mine security personnel.

Steps by the management to discipline a member of the workers' committee sparked an underground sit-in on 16 October 1991 by over 7,000 workers. The management responded by temporarily closing the mine. For the remainder of October the mines opened only briefly and the atmosphere between employers and employees was very tense. In the last week of October, workers' representatives were arrested and detained, workers were tear-gassed without provocation, and rioting ensued. NUM representatives brought in to help negotiate a return to work were detained for some hours. Violence erupted again on 30 October when the workers' committee member who had faced disciplinary proceedings was dismissed.

On 5 and 7 November 1991, 18 workers' committee members were seized from their hostels by mine security officers and handed to the Bophuthatswana police, in whose custody they were assaulted and tortured. At least 10 suffered torture by electric shocks and partial drowning similar to that experienced by Isaac Mayoyo, chairperson of the Bafokeng North workers' committee, who described what happened to him on 8 November at Phokeng police station.

"Eight security men beat me with batons. My head was covered with a bag and was pushed into a bath full of water. An electric shock instrument was pushed into my anus. It was so painful. My whole body started to shake as if I had fits. In that dazed and painful state, they asked me to work for them and demanded information as to how I organized workers to join NUM."

He stated that prior to this, he was taken to the office of Bophuthatswana's President, Lucas Mangope, where the President reportedly questioned him about his union activities at the Impala Mines and allegedly offered him money to become a police informant. He refused. He was released on 21 November after lawyers challenged his detention and that of the other workers' committee members in court. He faces charges of "terrorism", as defined in the Internal Security Act, and has been dismissed from his work at the platinum mines. "Those were the most traumatic days of my life," he has said of his detention. "I never thought that I would get out of detention alive."

This detainee's fears were well-founded for, although he escaped with his life, another workers' committee member subsequently died in suspicious circumstances in custody at the same police station. Jonas Kgosietsile was detained and tortured along with other workers' committee members in November 1991. He was released but rearrested on 18 January 1992 by mine security officials and handed into the custody of the Bophuthatswana police at Phokeng police station under the terms of Bophuthatswana's Internal Security Act. On 20 January 1992 he apparently died in their custody by falling from a second-floor window at the police station.

According to reports, when news of Jonas Kgosietsile's death first emerged the police acknowledged that he had been in their custody but said that they had released him,

and then had found his body in the street. However, the police later told lawyers acting on behalf of Jonas Kgosietsile's relatives that he had tried to escape by jumping out of a second-floor window at the police station and had died as a result of the fall. An official post-mortem examination on behalf of the police concluded that Jonas Kgosietsile died as a result of a broken neck and internal bleeding. The police were reportedly reluctant to make the body available for a private post-mortem, but this was subsequently done. While Amnesty International is not aware of the findings of this second post-mortem examination, the organization remains concerned that the circumstances surrounding the death of this activist – a workers' leader and previously a victim of detention and torture at Phokeng police station – should be thoroughly and impartially investigated.

There is little evidence that the authorities investigate claims of assault or torture or take steps to bring to justice police officers alleged to be involved. Even though, on occasion, lawyers have attempted to protect detainees by seeking the intervention of the courts when assaults or torture have come to light, police officers involved have not been suspended from duty or brought to justice. In one such case, on 18 June 1990 the Bophuthatswana Supreme Court granted interim orders restraining the police from further assaulting three state of emergency detainees, Chere Kukama, Aaron Mokeng and Olebogeng Mono. The three had been detained on 15 June 1990, apparently because of their involvement in preparations for church services to commemorate the anniversary of the student protests in South Africa which began in Soweto on 16 June 1976. Under the court order the lawyers and medical doctors gained access to the detainees. Both Aaron Mokeng and Chere Kukama had multiple injuries as a consequence of police assaults. All three detainees were released on 25 June 1990. At least three security police officers were named as having been involved in the assaults, but no steps appear to have been taken against the officers named. Whether or not a "policy" to allow torture exists, the failure to bring to justice police officers allegedly involved in torture suggests strongly that the authorities condone its use.

2

Repression in Bophuthatswana

CHAPTER THREE

Since 1986 intense and seemingly endemic political violence between supporters of Inkatha and the ANC or pro-ANC organizations has gripped the province of Natal. From August 1990, sparked by a horrific wave of killings, the same pattern of violence took hold in black residential areas near Johannesburg, in the Vaal Triangle and on the East Rand. Whole communities have been torn apart by the violence, resulting in an estimated 11,000 deaths between 1986 and the end of 1991. Thousands more have been injured and made homeless. Countless others have been psychologically devastated by repeated personal tragedies and prolonged exposure to a climate of fear and brutality.

There are undoubtedly a variety of causes which ignite and perpetuate the violence. Among them is the tension created by the deprivation in which many residents of the townships, squatter camps and hostels are compelled to live. Of concern to Amnesty International is the consistent pattern, throughout this period, of allegations and evidence of state complicity in killings and other acts of violence.

Prior to the unbanning of the ANC and other opposition organizations in 1990, and while the violence was confined to Natal, there was overwhelming evidence of police bias towards Inkatha in its conflict with the pro-ANC United Democratic Front (UDF). The bias reflected a policy articulated at the highest level of government. Cabinet Ministers approved security police funding of the activities of Inkatha and its trade union wing, the United Workers Union of South Africa (UWUSA), from 1986. The Directorate of Military Intelligence provided military training and funding, from at least 1986 until 1989, for several hundred Inkatha members from Natal. The military training took place initially in the Caprivi Strip in what was then South African-occupied Namibia. The then Minister of Law and Order in February 1988 publicly absolved Inkatha of any responsibility for the violence in Natal and declared "Radicals ...will not be tolerated. We will fight them. We have put our foot in that direction, and will eventually win in the Pietermaritzburg area." In April 1989 the minister announced that the solution to the violence lay in an "iron fist" approach towards the UDF and its trade union allies. UDF supporters were the repeated targets of arbitrary detentions and banning orders. The organization was apparently seen by the authorities as indistinguishable from the ANC, the official "enemy".

Inevitably, the police, trained to regard the ANC and the UDF as "enemies", approached the violence in a biased state of mind. In some instances they directly participated in Inkatha attacks on pro-UDF communities or provided weapons and other logistical support for the Inkatha forces. A Roman Catholic priest, Fr Tim Smith SJ, based in a predominantly Inkatha area of the Natal Midlands, observed the pattern as it unfolded locally. At the end of 1987 Fr Smith and other members of his mission attempted to get the police to intervene to disperse about 100 armed Inkatha supporters who were threatening to move against the community of Songozima. However, the police ended up conducting a raid jointly with the Inkatha forces on Songozima where they harassed young UDF supporters. Before leaving the area, the police arrested and handed over to the Inkatha forces a 14-year-old boy, Makhithiza Ndlovu. The boy's blood-stained body was found dumped on a road the next morning. Reflecting on the situation, Fr Smith later wrote:

"We were faced with two facts which were inescapable – we had witnessed the beginning of an Inkatha offensive which was extremely vicious and the police were clearly not going to be neutral in the encounter....On Thursday [31 December 1987] the police had arrested 115 [UDF-supporting] youths who were largely unarmed...because they were going to a funeral. On Friday [1 January 1988] the police had not only refrained from breaking up an impi [armed detachment] of over 100 men and boys heavily armed, but actually assisted them in their attack, even to the point of handing over a 'captive' to the impi. Clearly there were two ways of handling the violence, depending on whether the perpetrators were Inkatha or UDF. This second deduction had a chilling consequence – the police could not henceforth be relied upon to defend the people living in Songozima from attacks launched on them...The people of Songozima were defenceless."

(from Fr Tim Smith SJ, *They have killed my children. One community in conflict 1983-1990*, PACSA)

The pattern described by Fr Smith was being replicated in many other areas of Natal at the time. In general, however, police conduct was characterized by crucial acts of omission: failing to provide adequate or any protection for UDF or non-Inkatha communities under attack, and not investigating complaints or violent crimes where UDF supporters were the victims. As a consequence of the latter failing and because South African state prosecutors lack independent investigatory powers, very few suspects, including men accused of multiple killings, were ever brought to trial during this period. This failure of the criminal justice system was apparent even in cases where an inquest court had identified individuals responsible for deaths. In one such case involving the abduction and murder of three trade unionists in the Midlands township of Mpophomeni in December 1986, a magistrate's court 15 months later ruled that nine named members of Inkatha were responsible for the murders. The court referred its findings to the Attorney-General's office. However, no prosecution has ever taken place. In early April 1992, one of the nine named men appeared in a Natal Midlands magistrate's court charged with the murder of two men in February 1992. It appears, also, from the list of names handed to the Goldstone Commission in 1992, that this same man was one of the group of Inkatha members trained by Military Intelligence in the Caprivi Strip in 1986.

In 1991 the government conceded, in the face of evidence published in the Johannesburg Weekly Mail, that the police had funded Inkatha's activities as far back as 1986 and that the military had trained Inkatha members in "security and VIP protection". However, the government emphatically denied that members of the South African Police or the Defence Force were "involved in the instigation, promotion or permission of violence". In Amnesty International's view there continues to be compelling evidence to the contrary. From the case studies outlined below it would appear that President De Klerk's January 1990 message – neutrality and professionalism is now required of the police – has yet to filter through to the members of the police force on the ground.

The "Seven Days War"

"The perception is created and enforced that virtually all blacks 'and many whites, Indians and coloureds' support the ANC/MDM [Mass Democratic Movement]/UDF alliance....This slanted image of support is then used abroad to put pressure on the RSA [Republic of South Africa] (and Inkatha) during negotiations.

"...As a counter measure to this one-sided propaganda, [Chief] Buthelezi is currently

busy planning a mass Inkatha gathering at King's Park, Durban, on March 25, 1990....The subject of the meeting will be anti-violence, anti-sanctions...and carry a message to South Africa and abroad that there is within South Africa a great mass who do not support the ANC/MDM/UDF....This aspect holds tremendous advantages for the Government and Inkatha (Buthelezi) during any negotiations.

"...This [police] region feels that it is vitally important that we make a financial contribution to such a gathering. It is of cardinal importance that enough people be at King's Park to support Buthelezi and show everyone that he does have a strong base.

"...It is suggested that a clandestine donation of at least Rand120,000 [US\$41,668] be made for this purpose....Inkatha does not have the finances to undertake such a project on its own. The consequences of a failure of such a meeting will have far-reaching implications for Buthelezi and the RSA."

(Memorandum to the Chief of the Security Police, Pretoria, from Major Louis Botha, Security Branch, Durban Police Headquarters, 13 February 1990, translated version of Afrikaans original, published in *Natal Witness*, 20 July 1991)

With security police funding, the Inkatha rally took place on 25 March 1990 in King's Park Stadium in Durban. Of disappointment to the organizers was the relatively low attendance figure of 10,000 supporters, a tally which contrasted unfavourably with the size of the gathering in the same stadium a month earlier to welcome Nelson Mandela. As the rally dispersed, the police escorted buses carrying Inkatha supporters back to the Pietermaritzburg townships. Sporadic incidents of violence had occurred that morning when the Inkatha buses, on their way to the rally, had passed through ANC-supporting communities in the area. Conflicting allegations were made later that the buses had been stoned by the residents, who alleged in turn that they had been attacked by Inkatha supporters. Later in the day, according to eye-witness reports, police vehicles were in the vicinity when at least three people were killed by the returning Inkatha supporters. The witnesses also identified two police officers among the attackers who opened fire on ANC supporters in KwaMnyandu, killing two of them, including 17-year-old Brian Sihle Zondi.

During the following week Inkatha forces launched a series of massive attacks on ANC-supporting areas of Pietermaritzburg. By the end of what came to be known as the Seven Days War, 80 people had been killed, 200 homes destroyed and 11,500 people forced to seek refuge in church halls and emergency camps.

The following account of this violent upheaval is based on nearly 200 statements which were taken from eye-witnesses who had fled to these refugee centres. The statements were recorded by volunteers who had been briefed by lawyers, but were subsequently not sworn to because of the logistical problems created by emergency circumstances at the time. Nevertheless, eye-witness accounts contain detailed and consistent allegations which raise very disturbing questions about the role of the police in the conflict.

During the week of the attacks, heavily-armed groups, ranging in size from 200 to 3,000 men at any one time and moving about in buses, lorries and other vehicles, or on foot, invaded non-Inkatha areas in the Vulindlela and Edendale Valleys and the townships of Mpophomeni, Imbali and Slangspruit. They attacked houses, looting and burning them, and assaulted and killed many residents who were unable to flee to safety or defend themselves. The attacks appeared to be highly co-ordinated,

under the leadership particularly of two Inkatha Central Committee members. In one case, for instance, the community of KwaMnyandu was effectively encircled by hundreds of attackers advancing on foot or in vehicles from different directions on the morning of 28 March. They carried spears, shields, knobkerries (short stick with a knobbed head), handguns, R1 rifles and shotguns. During the attack over 120 houses were looted and burned, and at least 11 people murdered. Among the victims was 75-year-old Rose Mtofo who had refused to leave her home when her family fled from the attackers.

Almost without exception those who died during this week were the victims of Inkatha attacks. Of the thousands displaced and made homeless, all but some 100 were from non-Inkatha supporting communities. The attacks were launched blatantly, in full daylight and often in the presence of the police, and in some cases with their active participation.

Among eye-witness accounts of the human and physical devastation wrought by the attackers there are a few reports that the police took steps in individual cases to prevent or end attacks. In the overwhelming majority of cases, however, the police failed to protect people's lives, either because they arrived several hours after receiving requests for assistance, or neglected to intervene when present during attacks. Many eye-witnesses reported that the police disarmed residents attempting to defend themselves against their attackers, yet failed to disarm the Inkatha forces. During the attack on KwaShange on 28 March, for instance, residents sought police assistance after one man, Dinci Shange, was wounded. Arriving an hour and a half later, the police questioned residents, who were trying to help the wounded man, about their political affiliation. When the residents showed a reluctance to respond, the police searched them and confiscated their weapons. Although the police did, as requested, escort a vehicle taking the wounded man through Inkatha lines to the main road, they went back to the Inkatha forces and neither dispersed them nor arrested the men responsible for wounding Dinci Shange.

These indications of bias are strengthened by other reports which describe white police moving about in unregistered or private vehicles. They were seen apparently consulting with Inkatha leaders while an attack was under way, or, on another occasion, joining up with a large convoy of trucks ferrying attackers after which shooting reportedly intensified. Other eye-witnesses described seeing members of the South African Police handing over ammunition and guns from police vehicles to armed Inkatha supporters. Many witnesses also described seeing police vehicles escorting or even leading attacking forces moving from one target area to another.

In stark contrast to the attitude exhibited towards armed Inkatha supporters, the police moved swiftly against 500 women who demonstrated on 29 March outside Plessislaer police station in protest against the police's failure to protect their communities against attack. The police ordered the marchers to disperse and said they would use force if they disobeyed the command. A number of women were arrested.

Some eye-witnesses said that police, from both the South African Police and KwaZulu Police forces, fired on residents who were under attack from the Inkatha forces, or participated in looting houses. A number of witnesses reported that one of the apparently three separate groups of heavily armed men advancing on KwaShange on 28 March included 15 police Special Constables (kitskonstabels) carrying shotguns and what was described as a machine-gun. They identified a number of these police officers who were seen shooting. Later, in the face of resistance from younger residents, the Inkatha attackers sought reinforcements. Men arrived in six trucks and other smaller vehicles. A helicopter appeared and landed near by. About seven

white uniformed police got out and joined the Inkatha forces shooting at residents.

In Caluza, on the second of two days of sustained onslaught by Inkatha forces, uniformed police arrived with the attackers and took no action against them while they looted and burned homes. When residents attempted to fight back, the police opened fire and wounded three of them. According to one eye-witness, when some women went to help one of the wounded youths, a white police officer intervened and asked him to open his mouth. The police officer then allegedly put a gun in the boy's mouth and fired.

During this week of horrific violence which the police were patently unable or unwilling to control, South African Defence Force units watched on the sidelines. There is one report that soldiers on 27 March briefly appeared during an assault on Caluza, causing the Inkatha attackers to run away. For the most part, however, they waited in vain for police orders to intervene.

The government's response to the crisis was to send the then Minister of Law and Order, Adriaan Vlok, to meet Chief Buthelezi on 31 March 1990. Shortly after, the minister announced that the Defence Force members accused by Chief Buthelezi of taking sides against Inkatha in the conflict would be removed.

No one has been prosecuted for the scores of deaths, injuries and destruction of property which occurred as a result of the Inkatha attacks on Pietermaritzburg's townships during the week of 25 to 31 March 1990.

Attacks on Phola Park squatter camp

In the spread of political violence to black residential areas in the Transvaal from July 1990, among the worst affected areas were the townships and squatter camps in the East Rand. Phola Park squatter camp, near Thokoza township, was at the time under threat of forced removal by local council authorities. Scores of people died in mid-August 1990 when violence erupted between camp residents and residents of nearby hostels. In the following month more than 80 people died during a series of attacks on the camp over a two-day period. According to affidavits subsequently taken from more than 100 witnesses, armed Inkatha supporters from the hostels, led by white men with blackened faces or wearing balaclavas, attacked the settlement with guns, grenades, incendiary devices and a variety of "traditional" weapons. The attacks were particularly intense on the evenings of 11 and 12 September, causing many hundreds of residents to flee their burning shacks and take refuge in the grounds of hospitals and churches in Thokoza, Eden Park and elsewhere.

One eye-witness to the events of 11 September described her efforts to obtain police assistance when hundreds of people fleeing the violence streamed into the grounds of Eden Park Catholic Church. Hilary Wiles, a social worker employed by the Catholic Church, had contacted police headquarters in Pretoria after local police had refused to respond to calls for help. A police official assured her that the riot police had gone into the area and that everything was under control. The only sign she saw of the police, however, was at midnight when an unmarked police van, with white men inside, appeared briefly outside the church grounds. On the following evening, when flames from burning shacks and flares lit the sky, she could see four or five police casspirs (armoured police personnel carriers) in a line alongside Phola Park. A helicopter with a bright searchlight circled the area for a long time. White police officers in a casspir came to the church and demanded to know if the more than 1,500 people sheltering in the grounds had permission to be there.

During several visits to Phola Park in the aftermath of the attacks, Hilary Wiles and other church workers were told by the residents that among the attackers were white men who had used incendiary devices to burn shacks. In sworn statements made later to lawyers, many eye-witnesses described the activities of these men who appeared to be directing or leading the attacks. One Phola Park resident describing the attack on his home on 12 September stated that he saw "six whites with Inkatha members" coming over from the direction of Thokoza. They began shooting.

"I was in the shack with my wife," he stated. "I told [her] to try and flee with my child of four months. I started to throw stones at the hostile crowd and got involved in the fighting. My shack and others were set alight, petrol bombs were thrown at the shacks and one of the whites, dressed in ordinary civilian clothing, threw what seemed to be an explosive device at my shack. The result was that my shack exploded and was completely destroyed."

Other witnesses recalled hearing whites, speaking in English and Afrikaans, urging the men who were attacking the shacks to kill the occupants. One Phola Park resident stated that he saw eight white men, some wearing balaclavas, moving towards the squatter camp with a large group of black men wearing headbands. In the light of the burning shacks he could see that the white men "had a sort of gun which they held in front which shot out something like a battery [and] when it landed it exploded into flames". While they were firing these devices, their black companions looted the shacks.

Throughout the worst of the violence the police appeared to have taken no serious steps to halt the attacks or to apprehend the attackers.

According to one eye-witness to the attack on Phola Park on the evening of 11 September, "it was only after the shooting and burning that the South African Police told Inkatha to move out of Phola Park". Another stated emphatically that the "police did absolutely nothing before and while the attack lasted". He added, however, as other witnesses confirmed, that "after the fighting had ended they escorted the Inkatha members away".

In contrast to police reluctance to disarm the Inkatha forces, during the day of 12 September a large number of police raided Phola Park and confiscated weapons.

Eye-witnesses described police in armoured vehicles on the evening of 12 September attempting to prevent residents of the squatter camp from fleeing the burning shacks towards Eden Park. One witness recounted: "On the tar road I saw a Hippo [armoured vehicle] with the police inside. They attempted to prevent us from running away. They said to us to go back and sleep. We said we could not go back, everything is burning. They kept saying we must go back."

A 20-year-old member of one group prevented from reaching Eden Park by the police hid temporarily inside a deserted hostel. Looking out through a hole in the wall he saw "Hippos lighting up the building...[and] the people who had fled from Phola Park trying to reach Thokoza". One of the police vehicles stopped near these people and he then heard the "voice of a white man asking in the Xhosa language 'Where are you coming from?'" He heard the people start to complain that they were being shot by other members of the police. He then saw the police from the Hippo fire tear-gas at them. A group of men with headbands began to chase them towards the hostel. The witness managed to leave the hostel undetected and fled out into the

veld (open fields). There he encountered other fugitives from Phola Park, but soon was forced to flee again "as the police were lighting up the area with flares and then shots were fired in our direction".

Police not only failed to protect the residents of the squatter camp from attack but, as the above testimony indicates, actively joined in attacking the targeted community. A number of eye-witnesses stated that they saw police officers, with attackers in red headbands, shooting at residents.

No one has been prosecuted for the deaths, injuries and destruction of property resulting from these attacks between 10 and 12 September 1990. There was no announcement of any official inquiry into the allegations of security force complicity in the attacks.

The attack on Swanieville squatter camp

"I looked through my door and saw about 500 people with red headbands coming down the street. Behind them were two armoured cars. They were firing shots, smashing windows and burning huts as they passed by....They came into my yard and smashed all the windows of the shop. They were screaming: 'Where's the dog who sleeps here? He's run away'."

So described Elijah Maoba, a storekeeper in Swanieville squatter camp, 25 miles west of Johannesburg. The camp was attacked by possibly as many as 1,000 men armed with guns, spears and other weapons at about 5.30am on 12 May 1991. Woken by the sound of gunfire, terrified residents attempted to flee the invaders who set fire to and looted shacks and, in the words of one survivor, "killed everything they could see". Twenty-nine people died, 30 others were injured and over 80 shacks destroyed during the onslaught.

In the aftermath of the killings eye-witnesses reported that they had seen white men in camouflage uniform among the attackers. They were shooting at the residents, while black men in red headbands were looting and burning the shacks. Many of the witnesses also stated that they had seen police or military armoured vehicles either unloading groups of black men or moving alongside the armed men as the shooting began. One 48-year-old woman said she saw white police officers shooting from a Hippo, while men with red headbands came out of the vehicle and started burning shacks and stabbing men with spears. "At the same time," she said, "I saw the policemen in the Hippos shooting at people who were attempting to escape from the shacks." A 17-year-old youth, still wearing a blood-soaked shirt and with his face bruised and swollen, told a journalist how his mother was killed when she had followed him out of their shack at about 6am.

"We saw this man getting out of a yellow police van and he stood in front of our shack and just shot my mother. When my mother dropped on the ground, I went to her side and this man started kicking and swearing at me and calling me a kaffir. The man also pointed his gun at me. I ran. I later came back to find my mother was dead."

The killer was white and in camouflage uniform.

Some frightened residents running away from the violence sought assistance from police driving around outside Swanieville. One witness stated that three police officers he encountered in a "private vehicle" told him that they knew nothing of what was going on and could not intervene as they were not members of the Riot Squad.

Another witness, who had fled towards the nearby township of Azaadville, stated that she saw about three police vans parked in a field near some trees. She and the others with her went over to the vans. "There were two policemen in each van. They refused to speak to us," she said. "They did not even open the windows."

Representatives of Inkatha acknowledged, on the day following the killings, that their organization was responsible for the attack which, they said, was a response to the kidnapping of two hostel residents.

The attack on Swanieville raised in acute form the issue of the conduct of the security forces. The day before the attack the Minister of Law and Order had imposed a curfew on Swanieville and had granted the security forces operating in the area emergency powers under the terms of the officially published "Unrest Regulations". In a press conference several days after the attack, the police acknowledged that there was no sign of violence in the area at the time emergency rule had been imposed by the Minister. The police, however, enforced the curfew, warning residents they encountered on the streets during the evening of 11 May to remain indoors after 9pm. Reportedly they also threatened to arrest anyone who broke the curfew. Swanieville residents later told journalists that "there was no sign of violence before the curfew was declared. It completely took us by surprise....Police came to tell us not to move around the streets after 9pm. We were not aware that they were inviting Inkatha to kill us."

Equally baffling, in the circumstances of the enforcement of this curfew, was the police's failure to apprehend a large group of armed men who travelled some 10 kilometres across the open *veld*, from their hostel in Kagiso to Swanieville. Police representatives denied to the press that the police had allowed the attack to proceed. The attack "took us completely by surprise". The Inkatha groups must have crossed the terrain between their hostel and the camp "in dribs and drabs", while it was dark, they said. The initial attack, the police believed, had taken place sometime between 5.15am and 5.30am when the riot squad was changing shifts. They did not receive any indications of the violence until 6.30am. When they went to the camp at 7am, they encountered about 800 Inkatha followers, whom they escorted back to the Kagiso hostels to ensure that there were no further possible incidents. When challenged by journalists and others as to why they didn't arrest and disarm the men, the police replied that they had attempted to arrest one of the group who was carrying an automatic firearm, but he managed to evade them.

According to an official statement released late on 12 May, the police arrested six people and seized guns and ammunition during a search of the Kagiso hostels. Within a week three of the men had been released from custody because "they could not be linked to the case". The remaining three men appeared in court on charges of "public violence". Later they too were discharged. In June seven other men from the hostel were arrested and charged in court with 29 counts of murder. They were initially denied bail, but were released on Rand500 (US\$175) bail after a court appearance on 29 July. In the same month the police were reported to have arrested three other people in connection with the massacre. In September, 12 accused appeared in court. They were not asked to plead and the case was remanded for a later hearing. On 6 December 1991, 13 accused, one of whom failed to appear in court, entered pleas of not guilty on 29 charges of murder and the case was remanded until 7 January 1992. The trial was still continuing in April 1992.

A week after the massacre the police announced that they had begun an "internal inquiry" in response to allegations by survivors that white police officers had

led the men who had carried out the attack on Swanieville. Major-General Ronnie van der Westhuizen, head of a Special Investigation Unit charged with the responsibility of inquiring into allegations against the police, was reported to be leading the investigation. Amnesty International's representatives were informed by the Attorney-General's office in Johannesburg on 6 December 1991 that a joint decision had been taken by government and police officials to order the Special Investigation Team to investigate the Swanieville allegations. In late March 1992 the Minister of Law and Order, in response to a question in Parliament, announced that senior police officials had found no evidence of police involvement in the attack of 12 May 1991 and no evidence of criminal negligence. He gave no further details on the nature of this internal police inquiry.

The attacks on Bruntville township, Natal Midlands

In the early hours of 4 December 1991 at least 15 people were killed during a massive armed attack by Inkatha supporters on Bruntville township, near Mooi River in the Natal Midlands. Mali Maphalala, a trade union organizer and resident of the township, described the terrifying opening moments of the attack. At about 4.30am he saw what seemed to him as many as a thousand men:

"carrying spears, pangas, guns and knobkerries coming out from the hostel gates. These men were running very quickly into the township...They seemed to split into two groups, with the larger group coming straight up the hill toward White City section [of Bruntville], and another smaller group moving out towards Vezunyano section, in a sort of flanking manoeuvre. This had all the makings of a very well thought out and planned attack. I quickly woke the others, and told everyone to run. I could hear people outside whistling and screaming warnings. Less than five minutes later, the first of this large group of hostel dwellers had reached the front of our house. I observed a woman just across the street being attacked by a group of these armed men. She was crying out for help, but I could not help her because there were too many of them. I heard later that she had been stabbed several times...and that she died from her wounds."

Mali Maphalala returned to the township at about 6am to find burned houses and to see police officers and soldiers taking away the dead and injured residents.

The Inkatha onslaught at dawn on 4 December was in fact the third such attack on the township within 24 hours, in which a total of 18 residents were killed.

The attacks followed months of growing tension between the generally ANC-supporting residents of Bruntville and Inkatha supporters living in the hostels. The previously peaceful community had become increasingly, from late 1990 onwards, a flash point after Inkatha and its trade union wing UWUSA began a recruitment drive in the township and at Mooi River Textiles, the major employer in the area. In subsequent hearings before the Goldstone Commission in January 1992, both sides in the conflict alleged that their opponents were responsible for scores of violent attacks against them during the preceding year. The Commission did not give priority during its brief session in Natal to reaching conclusions about the conflicting claims on alleged incidents prior to the attacks of 3 and 4 December 1991. In Amnesty International's view, however, the crucial factor behind the deterioration in the Bruntville area was the consistent failure of the police stationed in the Mooi River area to intervene effectively and impartially in the escalating violence. Numerous sworn statements by residents seen by Amnesty International reveal chronic negligence by the police amounting to complicity in killings and other acts of violence by Inkatha

supporters.

Prior to June 1991 some three-quarters of the workforce at the textile factory were paid-up members of the Congress of South African Trade Unions (COSATU)-affiliated union, the South African Clothing and Textile Workers' Union (SACTWU) which, since the early 1980s, had been recognized by Mooi River Textiles as the collective bargaining representative of its employees. Despite this long-established situation, it appears that in 1991 the company gave Inkatha supporters increasingly free rein to recruit members for UWUSA. The recruitment practices were highly coercive and often accompanied by violence. By June 1991, for example, Inkatha supporters living in the hostels had begun carrying weapons to work and onto the factory grounds.

SACTWU officials, either directly or through their lawyers, repeatedly raised with company officials and the police the problem of the threats against their members by armed Inkatha supporters. At a meeting on 14 June 1991 with company representatives and the Station Commander of Mooi River police station, SACTWU requested that workers be prevented from carrying dangerous weapons onto the factory grounds and in public situations generally. The Station Commander reportedly said that he could not stop Zulu people from carrying these "cultural weapons". When challenged, he conceded that there were no Zulu cultural activities occurring at the factory or in the town of Mooi River to which they might be lawfully carrying these weapons.

Apparently emboldened by the lack of action from the authorities against them, armed Inkatha supporters at the factory became increasingly blatant in their threats against other workers. At the same time township residents, many of them Mooi River Textiles employees, came under attack in their homes. For instance, violence erupted after an Inkatha meeting in Bruntville on 9 June 1991. Gladys Zaca, a SACTWU shop steward, along with other residents, had been forced to spend the night sheltering in a restaurant outside the township. The following morning panic spread when they heard that Inkatha supporters were coming to attack them. According to Gladys Zaca, "there was a scene of chaos and terror as people scattered, trying to get into vehicles to escape. An Inkatha supporter was standing on the hill across the freeway shouting that people no longer had the army to defend them and that they would now have to deal with Inkatha." She managed to escape and found refuge in a church hall, along with about 250 others.

Mvusi David Mthethwa had received threats against him at the Mooi River Textiles factory several weeks before arsonists set fire to his car and home on the night of 23 July 1991. The police responded to his first telephone call, just before midnight, when he found that his car was on fire. Four hours later he was awoken by the sound of explosions, gunfire and breaking glass. Arsonists were setting fire to his house. He again telephoned the police. This time, however, although he saw a police van drive past his house soon after his call, the police knocked on his door only four hours later. After the attack he had to move home and on 1 October he was forced to abandon his job, which he had held for nearly 20 years, after an anonymous caller threatened to kill him if he continued working at the factory. On 19 August his son, Siphso, was shot dead, apparently by railway security guards outside the railway workers' hostel.

Many of the victims of these threats and attacks complained that the police failed either to protect people from attack or to investigate and arrest the perpetrators after incidents had occurred. In one case, Bongiwwe Nondaba, a 31-year-old teacher, and a colleague were attacked on 29 October 1991 by men she described as hostel

dwellers. Her friend collapsed on the ground after being struck on the back with a knobkerrie. As one of the attackers came towards Bongiwe Nondaba with his spear raised, she screamed and the attackers ran away. According to Bongiwe Nondaba, a white, plainclothes police officer was standing nearby, apparently watching, but made no attempt to apprehend the men as they ran off.

In other cases where people were victims of political violence, the police failed to take statements or investigate the crime in other ways. On 19 September 1991 Patricia Dladla reported to the police station that her husband, Mzinthini, had failed to return from his shift at Mooi River Textiles the previous night. The police informed her that his body had been found under the freeway bridge. According to Patricia Dladla, her husband had been frequently threatened by hostel dwellers, apparently because he lived and worked as a herbalist in Bruntville, which they regarded as an ANC stronghold. They accused him of supplying the "comrades" with medicines and weapons. An eye-witness to his murder identified three assailants, including a prominent representative of UWUSA at Mooi River Textiles. Patricia Dladla understood that the police had spoken to the witness, but she was not aware of any arrests having been made in her husband's case.

Samuel Mabhida, a 64-year-old Bruntville resident, was attacked by a number of men with assegais (short spears) when he was delivering firewood to an address near the hostels on 30 August 1991. He had entered a store where he had seen about 15 men with assegais in the company of a member of the Municipal Police whom he recognized. Feeling intimidated, he left the store and started to drive away in his truck. Suddenly, the door was jerked open and he was stabbed in the side with a spear by a man he could identify. Two other men, whom he had seen in the store, began to climb into the truck from the other side. Samuel Mabhida managed to break away, only to be chased by the three men, who stabbed him in the chest, back and leg. They left him for dead. While he was still lying on the ground, his son called the police. They failed to arrive. More than a month later Samuel Mabhida stopped a police van near his house and asked the two white officers what was being done about his case. In an affidavit made to lawyers subsequently, he stated that the police officers said they would not take his statement. He added, "they further told me that their instructions from the government were that they were not to participate in comrades' cases; only in Inkatha cases were the police to participate."

By late 1991 an explosive situation had developed in the Bruntville/Mooi River area. Scores of township residents were being killed or injured during months of violent attacks by Inkatha supporters while the police stood back, unwilling to use its powers to provide protection against such attacks. On a number of occasions lawyers representing the Bruntville community wrote to government ministers and senior police officials, urging them to take effective action, including ensuring that the police enforce the law by disarming and arresting men carrying dangerous weapons in public. They were assured by these officials that the police would protect the interests of all residents and that the police were considering taking additional measures in order to control the situation. However, no effective steps were taken. In early November 1991 the Durban-based Legal Resources Centre, acting on behalf of the Bruntville Peace Committee, made a detailed submission to the Goldstone Commission, requesting its urgent intervention in the situation. The Commission was not then in a position to conduct an inquiry. On 1 December 1991 Bruntville residents marched to Mooi River where they presented a petition to the local police and government authorities. Their demands included that the police enforce the law prohibiting the carrying of dangerous weapons in public.

On the evening of 3 December several hundred Inkatha supporters marched out of the hostels, armed with assegais, sticks and knobkerries. They clashed with residents, who were attempting to prevent their entry into the township. Eye-witnesses saw police and military vehicles in the vicinity, but the security forces did not attempt to stop the fighting. Four residents were stabbed to death and several houses and vehicles were burned during Inkatha attacks on homes in the township. Those killed included 73-year-old Doris Ziqubu and her 77-year-old husband, Jonathan Ziqubu. At about 8.30pm the Inkatha forces retreated back to the hostels.

Despite the deaths and injuries sustained by the township residents, the police conducted a perfunctory search of only one of the 19 bungalows in the hostel complex and did not seize any weapons. Instead, they gave priority to searching the homes of residents for automatic weapons. Nineteen-year-old Mxolisi Mthembu later described in an affidavit how four white police officers arrived at about 8pm on 3 December at the house of his friend and demanded entry to search for weapons. When the occupants of the house denied knowledge of any weapons, one of the police officers, according to Mxolisi Mthembu, struck his friend in the face. Another police officer pulled out his gun, placed the barrel against Mxolisi Mthembu's neck and pushed him against the wall. The police eventually left having found no weapons.

At approximately 4.30am on 4 December hundreds of Inkatha supporters armed with spears, knobkerries and other weapons poured out of the hostel gates. They split into several groups and effectively encircled the township, cutting off escape routes for many residents. The security forces again failed to intervene while, for about 90 minutes, the mob went on the rampage, stoning and burning houses and attacking residents as they tried to flee. Fifteen township residents were stabbed to death in the attack. Among those killed was a 10-year-old boy, Sibusiso Mnculwane, who was later found on the freeway with stab wounds in his chest and left arm. Another victim, Moses Ntombela, an elderly man, was stabbed in the face, stomach and chest as he lay on the floor of his home pleading for mercy. The killer was apprehended by relatives as he ran out of the front door, but three police officers appeared suddenly and took him away.

An opposition member of the South African Parliament, visiting the township in the aftermath of the 4 December attack, bluntly stated that it was:

"beyond comprehension that attacks of this nature could be launched in Bruntville in daylight, as were both the Tuesday evening and Wednesday morning attacks, and that the security forces were unable to contain them. Bruntville is totally visible from each of at least three different vantage points; it is a relatively small township and the hostel from which the [final] attack came is approximately one kilometre from the...area where the assault was mainly aimed."

On 12 December police officials in Durban told Amnesty International's representatives that the police had been keeping the entrance of the hostel complex under surveillance, but that the Inkatha supporters had apparently moved out in small numbers through a perimeter fence at the back of the buildings. Police witnesses, however, later told the Goldstone Commission that they had lacked sufficient manpower to guard the entrance of the hostel continuously. According to this version, therefore, it is inexplicable that police reinforcements called in from Pietermaritzburg on the evening of 3 December were sent back during the night. Police witnesses were unable to give a consistent account to the Commission of who ordered the reinforcements to return to Pietermaritzburg and at what time. The police

officer in command when the morning attack was launched testified that all of the security personnel in the area were busy searching houses in a section of the township and were not in a position to apprehend the attackers. The failure of the police to provide any protection to the residents, while focusing their apparently scarce resources upon weapons searches in the township, raises the suspicion that the police were intent on disarming the residents prior to the major attack at dawn.

In their interim report to the State President, the Goldstone Commission criticized the police authorities for not responding to the developing crisis in the Mooi River area by ensuring that properly trained personnel in sufficient numbers were available to police the violence. The Commission noted that it had received reliable evidence which "strongly suggested a bias on the part of the South African Police in favour of the IFP". The report urged the authorities to clarify the situation regarding the laws on dangerous weapons. The Commissioners found it unacceptable that men could freely walk the streets, and indeed had attended the hearings, carrying spears, without the police confiscating their weapons and preferring charges against them. The report reserved its strongest criticism for the "practice of [the police] of forcefully raiding houses without search warrants in the middle of the night...in plain clothes". The Commission argued that:

"the injudicious use of strong arm tactics on the part of the police feeds a perception among both the public and members of the police that they are a law unto themselves. In the case in point at Mooi River, this perception may already be a conviction. Not only are search warrants never applied for when raids are to be carried out, but a vehicle that had been declared forfeit to the state was used for patrolling and searches, without the requisite permission, and with false number plates. The [Commission] can find no justification for this procedure."

In the aftermath of the killings the police arrested 172 hostel dwellers, who were brought to court and charged with the common law offence of public violence. They were granted bail. The Commissioners expressed concern in their report that the manner in which the police carried out the arrests and the confiscation of the hostel dwellers' weapons meant that vital evidence was lost. The Commission foresaw that the possible failure to convict any or only a small number of those arrested would strengthen "the existing negative perception of the system of justice and particularly the perception that the police (and in the minds of the people of Bruntville therefore the Government) are partial to the IFP".

On 19 December 1991 two human rights lawyers and a court official, acting under the terms of a Supreme Court order, entered the Mooi River police station and took possession of electrical devices, a hood and other items allegedly used by the police during interrogation sessions. In early March 1992 two young Bruntville residents attended an identification parade and pointed out four police officers who, they alleged, had assaulted and tortured them with electric shocks at the police station in mid-December 1991. The police were demanding to know the location of weapons in the township. One of those identified by the former detainees in March was the same police officer whom the Goldstone Commission had castigated for having driven around in an unmarked confiscated vehicle while carrying out raids on the homes of residents hours before Inkatha launched its dawn attack on 4 December 1991.

There may be some source of hope for the people of Bruntville, as well as other victims of officially-inspired violence, in the judgment delivered by the Supreme Court on 23 April 1992 against five police officers. The Court found all five responsible for the 1988 murder of 11 people in Trust Feed, Natal. The presiding

judge concluded that the main accused, a police captain then in charge of New Hanover police station, had ordered the killings at the behest of certain Inkatha officials. The police officer had perceived himself as conducting a war against "the enemies of the state", in this case against UDF supporters in Trust Feed, an area perceived to be a stronghold of the organization. The judge found that the police officer had taken four *kitskonstabels* to a house on the night of 3 December 1988 and ordered them to open fire on the occupants, and had himself shot two of the victims. Possibly through mistaken intelligence, some of the victims, who included two children aged under 10, were Inkatha supporters.

The court's judgment gave considerable attention to the ensuing cover-up involving South African and KwaZulu Police officials in Natal and senior police officials in Pretoria. The judge described the conduct of senior police officials as "totally unacceptable". He noted, among other things, the "extreme irregularity" of the interventions of one of these police officials, Major-General Ronnie van der Westhuizen, who in 1990 and 1991 was responsible for investigating political killings and allegations of police misconduct. The judge noted the investigative work of Captain Frank Dutton and his assistant, Warrant-Officer Wilson Magadla, who took over the case in July 1991 and battled against the police hierarchy to ensure that the police officers involved in the killings were brought to justice.

Following this example of effective and independent-minded investigative work, police officials have ordered the dissolution of Captain Dutton's unit and the transference of his cases to other officers.

3

Police and military collusion with Inkatha against the ANC

CHAPTER FOUR

"Not only are we not being protected by the KwaZulu Police, but it is often they who are the very cause of our fear."

(Eden Mngadi, businessman, statement to the Supreme Court, June 1990)

"We [the KwaZulu Police] support the lawful authorities, which is the KwaZulu Government. To the extent that Inkatha is part of the government I suppose you could say we support Inkatha."

(Brigadier Jac Buchner, reported in the *Daily News*, Durban, 17 May 1990)

In the early hours of 13 March 1992 hundreds of armed Inkatha supporters and KwaZulu Police force members invaded a squatter camp 20 kilometres south of Durban and massacred 18 people, most of them women and children. The victims were residents of an ANC-supporting squatter settlement, known as "Uganda", near the township of Umlazi.

The attack was launched at 5am from the Inkatha-controlled Unit 17 hostel. Although most of Uganda's residents were still asleep when the attack began, some did try to defend themselves. But they were overwhelmed by men armed with rifles, axes and spears. Women and children were slaughtered in their homes as the attackers rampaged through the camp killing at random. Hundreds of residents fled the area. The KwaZulu Police later issued a statement to the press denying that they had participated in the attack. They had been in the area, they said, to maintain law and order.

The KwaZulu Police force was formed in February 1981 under the terms of the KwaZulu Police Act. Initially under the control of the KwaZulu "homeland" Department of Justice, the force later fell under the authority of a newly-created Department of Police. The "homeland's" Chief Minister, Mangosuthu Gatsha Buthelezi, who is also President of the IFP, became the new Minister of Police.

The KwaZulu Police is funded by the South African Government Department of Development Aid and its most senior officer is appointed by the South African Government's Minister of Law and Order. In 1989 the Minister appointed as Commissioner, Brigadier (later Major-General) Jac Buchner, the former head of the Security Branch of the South African Police in Pietermaritzburg. He had previously been based at the security police headquarters in Pretoria, where, as a counter-intelligence officer, he was responsible for interrogating captured ANC and PAC guerrillas. By 1991, under the control of Major-General Buchner, the KwaZulu Police force had doubled in size to 4,500 men.

There is overwhelming evidence that the KwaZulu Police, from its inception, has acted to further the interests of Inkatha in Natal. A chorus of complaints quickly arose from residents in areas which had fallen under the jurisdiction of the new police force. The intensity and seriousness of the allegations increased when the KwaZulu Police assumed control of police stations in important Durban townships, such as KwaMakhutha, Umlazi and KwaMashu. These townships fell within the "homeland" boundaries but were more exposed to the influence of the ANC and other opposition organizations than other parts of KwaZulu. The KwaZulu Police have been accused,

among other things, of:

direct involvement in murder, attempted murder, arson, threats and intimidation of residents perceived as supporters of the ANC and allied organizations;

colluding with Inkatha vigilantes in intimidating and attacking individuals seen as not supporting Inkatha;

supplying arms and ammunition to members of criminal gangs involved in attacks on ANC supporters;

failing to protect people attacked in their presence;

failing to accept complaints, respond to calls for assistance or to investigate unlawful shootings and other crimes.

On at least a dozen occasions during the past four years, the Supreme Court in Natal has issued orders restraining members of the KwaZulu Police from assaulting or carrying out other unlawful acts against township residents. In September 1989 a judge in the Durban Supreme Court called for an investigation into the claim made by a KwaZulu police officer on trial for murder that he and other recruits were specifically instructed at KwaZulu Police College to join Inkatha. As a result of these instructions, the accused told the court, he placed his allegiance to Inkatha above his duties as a police officer. The officer in charge of training denied that he had told recruits to join Inkatha. However, he believed that if an order was given to members of the KwaZulu Police force by Inkatha officials who were not officers in the force, the instruction should still be obeyed if it was in the interests of the KwaZulu Government.

In February 1992 the Deputy Commissioner of the KwaZulu Police, Brigadier Siphon Mathe, admitted to the Goldstone Commission that a certain number of the Inkatha members trained by Military Intelligence in the Caprivi Strip were later appointed as aides to Chief Minister Buthelezi. Others had been sent to Inkatha regional offices before being absorbed into the KwaZulu Police and issued with police ID cards. Although the Brigadier denied that any trainees had been involved in unlawful activities, there is compelling evidence linking several of them to "hit-squad"-style killings and other acts of violence against ANC members and trade unionists in Natal. In one case, four KwaZulu Police officers were charged in court with the murder of pro-ANC community leader Raphael Mkhize and his wife Winnie Mkhize in KwaMakhutha township on the night of 9 March 1990. The accused included a police officer named on the list of Inkatha members trained by Military Intelligence in the Caprivi Strip. He disappeared after the accused were granted bail.

KwaMakhutha township: a case study

"The KwaZulu Police in KwaMakhutha have shown themselves to be a completely partial force who seem to be incapable of maintaining law and order in the area. Time and time again they have been seen to be actively supporting one group in their actions against township residents. Through their conduct in attacking and shooting residents at random and for no apparent reason, they have shown themselves to be highly reckless and are a real danger to the livelihood and well-being of local residents."

(Joseph Kabanyane, KwaMakhutha resident and Detective-Sergeant in the South African

Police Force, in affidavit to the Supreme Court, April 1990)

KwaMakhutha police station came under the control of the KwaZulu Police in 1988. Within a year residents of the township, situated south of Durban, were appealing to senior police officials for action to be taken against locally-stationed members of the KwaZulu Police force. Since then, KwaMakhutha residents and human rights lawyers have repeatedly informed the authorities about KwaZulu Police involvement in unlawful shootings, assaults and threats against people perceived as ANC supporters, and in attacks on residents carried out in collusion with Inkatha supporters. They have also repeatedly complained of the failure of the KwaZulu Police to respond to calls for help, or to investigate cases or accept complaints lodged at the police station. These and other serious allegations have been raised frequently with the KwaZulu "homeland" authorities who, despite verbal or written commitments to investigate them, have rarely, if ever, taken any steps against the police stationed in KwaMakhutha.

Five days after the murder of Raphael Mkhize and his wife Winnie on 9 March 1990, an estimated 6,000 women from the township marched to the nearest South African Police post and handed in a petition to the station commander requesting the withdrawal of the KwaZulu Police from the area. On the same day thousands of residents gave the same petition to the commander of the KwaMakhutha police station. The petition was also forwarded by the community's legal representatives to the Minister of Law and Order in Pretoria and the Commissioner of the KwaZulu Police. In the memorandum the residents noted:

"We are aware that two groups are engaged in conflict but we wish it to be known that policing in our area is highly unsatisfactory and we view it as a source of the escalating conflict."

Among other issues, they cited the failure of the KwaZulu Police to respond to emergency calls, their threats and assaults against residents, the frequency with which they opened fire on residents without provocation or warning, their failure to apprehend attackers and their active and public assistance to attackers. In their view, this collusion reflected the political bias of the police. "Houses of UDF members have been raided constantly," they stated, "whereas attackers freely carry their weapons during broad daylight. We wish to state in no uncertain terms that heavily armed people operate in full view of the police."

Despite an apparent undertaking to the residents from the South African Police representative that the South African Police and the Defence Force would provide protection, their brief and sporadic appearances in the township only temporarily stemmed the violence. In fact, the KwaZulu Police stepped up their attacks on the community and, in early April 1990, went on the rampage, indiscriminately beating and shooting at residents. One of the women involved in presenting the petition to the police on 14 March, Thembi Nzuza, described in an affidavit how she was woken at about 6:30am on Sunday 8 April.

"I heard a knock on the door and somebody called 'The KwaZulu Police are attacking'. Shortly thereafter somebody shouted 'Come out, we are here to give the reply to your memorandum'. This was said loudly and aggressively. I looked through the window and I saw members of the KwaZulu Police who were armed and one of whom was holding a gun pointing into the air and he started firing the gun without apparent reason. I was terrified. I could see outside my home three KwaZulu Police vans parked and I heard somebody say 'Warrant Officer Makathini come and give the directions'. I

then looked out of my window again and I saw these KwaZulu Police and also the vans. After a while the vans drove off. I received a phone call that Mrs Khanyase's son Kenneth had been shot."

Despairing at the lack of any protection from these attacks, Thembi Nzuza and several hundred other women and children fled from the township to Durban where they were given refuge in various church halls. On 12 April 1990, with the assistance of human rights lawyers, Thembi Nzuza and five other residents of KwaMakhutha brought an urgent application in the Durban Supreme Court for an interdict restraining the KwaZulu Police from further attacks against them.

On the basis of the sworn evidence before it, the Supreme Court issued an order restraining the KwaZulu Police from assaulting, threatening and harassing the applicants and any other resident of KwaMakhutha. The court also directed the Commissioner of the KwaZulu Police to take all necessary steps within his powers to prevent any member of the force from committing unlawful acts against the applicants or any resident of KwaMakhutha.

In an affidavit lodged with the application, Joseph Kabanyane, a member of the Criminal Investigation Department of the South African Police since 1963, stated that he had witnessed members of the KwaZulu Police shooting at children who were running past his KwaMakhutha home on the afternoon of 9 April 1990. He had heard shooting from other parts of the township since early in the morning. Seeing two South African Police vans on the road, he stopped one of them and, climbing into the van, asked them to restrain the KwaZulu Police from further indiscriminate shooting. The police officers in the van, however, were in fact members of the KwaZulu Police who began to slap and punch him as the van moved along the road. When the van stopped, the police officers pulled him out and across the road to where about 20 members of the KwaZulu Police were lined up, shooting with rifles down into the valley at houses in another section of the township. Joseph Kabanyane noticed that a police captain, whom he could describe but did not know, appeared to be directing operations. The officer did not intervene when the police officers who had dragged Joseph Kabanyane into his presence began to assault him again. He was punched and slapped until his nose was bleeding profusely and his clothes had become bloody. They only stopped beating him when a local church leader intervened, giving Joseph Kabanyane the opportunity to run away. The following morning he lodged a complaint at the Amanzimtoti police station, where he was employed, and received medical treatment for his injuries.

Joseph Kabanyane's testimony was corroborated by that of another long-term member of the South African Police resident in KwaMakhutha, Detective Warrant Officer Mkhanyaselwa Gerald Mbatha. As a member of the Isipingo police station, to the north of KwaMakhutha, he became aware of the level of residents' grievances in 1989, "when numerous reports were given to the Isipingo police station of KwaZulu Police abuse of power". Despite their seriousness, the reports had to be referred back to the KwaZulu Police themselves because they, and not the South African Police, had jurisdiction in KwaMakhutha. Warrant Officer Mbatha believed that the situation in the area was intolerable and requested the court's urgent intervention. On 7 April 1990 he himself witnessed the KwaZulu Police moving through the area shooting "wildly" at people. "In my view," he stated, "they were behaving like gangsters. Whenever the ZP [KwaZulu Police] saw children they would shoot." His own son had been shot at by the police, apparently without provocation, several weeks earlier.

In one of a number of supporting affidavits submitted with the applicant's testimony,

a 19-year-old taxi driver, Wiseman Cele, described being shot at by a man with a hand-gun when he was driving his taxi past the KwaMakhutha town hall at 6.30am on 7 April. The young man saw his assailant, whom he could not identify, raise his hand and fire at least two shots at his vehicle. As a result of the shooting Wiseman Cele's vehicle collided with another one, injuring Cele and his passenger. As they struggled to free themselves from the vehicles, a KwaZulu Police van arrived. The occupants did not get out or ask any questions, but drove off towards the town hall. Wiseman Cele believed that his assailant, along with other armed men, lived in the community hall with members of the KwaZulu Police. Another taxi driver, Bernard Sithole, whose vehicle was shot at and stoned earlier on the same morning, stated that "on numerous occasions [he had] seen armed Inkatha members in the vicinity of the community hall in the company of KwaZulu Police". They had occupied the hall for the past three months. "It is common knowledge amongst residents of KwaMakhutha," Wiseman Cele stated, "that Inkatha forces based in the community hall launch attacks with the KwaZulu Police on various residents of the township."

The police did not investigate the attack on Wiseman Cele, despite being on the scene. Bernard Sithole decided not to report his own case to the KwaZulu Police, as he had been chased out of the police station on the last occasion he had tried to lodge a complaint. To explain their refusal to deal with his complaint, the police accused him of being a UDF supporter and said that he should consequently not bring his problems to them.

Despite the publicity surrounding the court order and subsequent pressure on both the Pretoria and KwaZulu authorities to take steps against members of the KwaZulu Police acting unlawfully, violent incidents involving the police continued to occur in the township.

In June 1990 KwaMakhutha residents petitioned the Supreme Court to extend its order to protect the entire community. In an affidavit submitted with the application, Eden Mngadi described assaults and shootings of school children and other residents by members of the KwaZulu Police. In some of the attacks on residents the police allegedly colluded with Inkatha supporters operating out of the community hall. In an attempt to stop such attacks delegations of community representatives met police officials, and their lawyers sent numerous letters to the police and higher authorities. Yet despite these initiatives and the April court injunction, the police continued to harass them.

The Commissioner of the KwaZulu Police opposed the application for an extension of the scope of the court order. He argued that members of his police force had been targeted for political attack and that the applicants were merely seeking publicity. The judge rejected these arguments and, in an unprecedented ruling, amended and renewed the order restraining the KwaZulu Police from assaulting, harassing or engaging in any unlawful attacks on the applicants and anyone else in KwaMakhutha. During the following months legal representatives for the community and the police met to discuss setting up structures for systematically monitoring the KwaZulu Police in KwaMakhutha. In late March 1991 the KwaMakhutha community agreed to allow the court order to lapse and to work towards establishing a local ANC-Inkatha peace committee. The KwaZulu Police agreed to make available senior representatives to assist in the committee's work.

The settlement was not accompanied by any visible investigation by the authorities into the conduct of individual members of the KwaZulu Police. The Commissioner of the KwaZulu Police, in his affidavit replying to the allegations placed before the

court in 1990, denied that his police force was acting unlawfully or in a biased manner. In addition, he stated, on receipt of the memorandum of 14 March 1990, he had ordered an immediate investigation into the complaints against the police, whom he found had not acted unlawfully. No details of these investigations or of the investigations referred to the Commissioner or in the affidavit submitted to the court by the KwaZulu Minister of Police have been made public. No police officers appear to have been suspended from duty or charged and prosecuted in connection with serious allegations which were accepted as credible by the Supreme Court. The only acknowledgement came in the form of an out-of-court settlement in a civil damages suit brought by Detective-Sergeant Joseph Kabanyane against the KwaZulu Minister of Police. The situation in the township remained tense and violent, and the KwaZulu Police continued to be involved in acts of violence against the community.

On the morning of 10 December 1990, for instance, armed men accompanied by members of the KwaZulu Police went on a shooting spree through sections of KwaMakhutha township, killing several teenagers and wounding others. An eye-witness described seeing a vehicle with darkened windows pass his house. A gun barrel was sticking out of one of the windows. The car was accompanied by two KwaZulu Police vehicles, whose registration numbers the witness noted. The witness heard gunfire. Soon after, the vehicles drove past his house again, this time moving slowly behind a group of about 10 armed men. The men were shooting at anyone on the street or visible to them in the houses. The witness recognized two of the men in plain clothes and one man wearing camouflage. There were three other men wearing KwaZulu Police uniform. When the men and vehicles had disappeared, people began to emerge from their houses. The witness heard women next door to his house begin to wail. He ran over and found them next to the body of Nzuzo Ngcobo. "He had been shot in the head I think, but there was a lot of blood everywhere, so I could not be sure." He learned of other victims, including Mduduzi Edward Msane. When members of the South African Police arrived about an hour later to collect the bodies, the witness stated, "they were accompanied by the same ZP vehicles which had escorted the attackers".

A member of a human rights monitoring organization who was attempting to take statements from witnesses soon after the shootings had occurred saw a KwaZulu police van approaching them. The residents scattered in fear. The monitor asked a KwaZulu Police officer in the vehicle if he had any information concerning the killings which had taken place. The officer, who identified himself, replied that he was unable to comment on the matter as the incident was still under investigation. The monitor then asked him if he had heard that there were allegations of KwaZulu Police involvement. He replied that he had and said that he was still investigating the allegations. The monitor then noted in his statement that the officer politely excused himself and drove away. "As he did so, I noticed the rear door of the vehicle was open, and there were about eight plain clothed people in the back. Among the weapons they had with them I noticed R 1 [rifles] and pump-action shotguns." These were the same type of weapons the attackers had used earlier that morning. The monitor also noted the vehicle registration number. It matched the number of one of the police vehicles which had been seen escorting the attackers as they moved through the streets shooting at residents.

Several days after the shootings lawyers representing the community wrote to the KwaZulu Police Commissioner, drawing his attention to the very serious allegations made against members of the KwaZulu Police arising from incidents in KwaMakhutha between 7 and 10 December, and also on 15 December 1990. The lawyers noted that the allegations included reports of random shootings of residents and acts of arson by police and vigilantes, resulting in the deaths of seven residents and causing

some 100 people to flee the area. The lawyers reminded the Commissioner that he had an obligation to ensure that the members of the police force conformed with the terms of the Supreme Court order of June 1990. They urged him to ensure that the police act lawfully and enforce the law in a proper and neutral manner, and that action be taken against named vigilantes operating from the community hall. On 18 December 1990 the Commissioner responded to the communications with the assurance that "these allegations will be thoroughly and immediately investigated". He emphasised that "any member of the KwaZulu Police who takes part in illegal actions against the community of KwaMakhutha will be charged and brought before court, and the same applies to any other person who acts illegally in the KwaMakhutha area."

Despite these assurances, the men responsible for the attacks in December 1990 remained at large and equipped with police shotguns. On 26 January 1991 some of the same men shot at and wounded six residents and vandalized as many houses. Three of the wounded residents were under 18 years of age. One eye-witness stated in an affidavit that he heard noise and gunshots and, looking out of his home, he saw a KwaZulu Police van and another vehicle from which men in camouflage and plain clothes were emerging. They were holding shotguns, R1 rifles and pistols. The next moment, as the shooting resumed, the witness's brother was struck by bullets in his stomach, leg and arm. The witness recognized three of the attackers and noted the registration number of the police vehicle. It was the same vehicle which had been on the scene during the shootings of 10 December 1990.

On 30 January 1991 KwaMakhutha township councillor Johannes Mbeje and one other resident brought an urgent application in the Supreme Court for a restraining order against four of the armed men operating out of the community hall. In his affidavit, Johannes Mbeje stated that there was a complete breakdown in law and order in the township, primarily because of the "unlawful conduct of members of the KwaZulu Police who provide support to certain criminal gang elements in the township". He said that houses and residents in his area of the township had been attacked many times in the past few years. "The only reason," he thought, "for the attacks is the fact that residents of this area ... do not support Inkatha." His own house was among those attacked on 26 January – the third time it had been targeted. It was pointless, he stated, to report these attacks to the KwaZulu Police. He had done so on the first occasion in 1988, providing the police with eye-witnesses and statements. "The suspects were well known to the KwaZulu Police at the KwaMakhutha Police Station and were known to be members of Inkatha. As far as I am aware no investigation took place and no arrests were made." When his house was attacked again in the following year, he reported the matter to the police. Again, there was no follow-up. On this third occasion, he said there was no point in reporting the matter "to the very police who were involved in the attacks against our community on 26 January 1991".

The Supreme Court issued an interim order restraining the four men from assaulting, intimidating or threatening the applicants. The court made the order final on 27 March 1991 when those interdicted by the court failed to respond to the allegations. Once again the Commissioner of the KwaZulu Police assured the community's legal representatives that the allegations against the police and others involved in the attacks of 26 January would be urgently investigated. He stated that instructions had been issued to the local commandant to ensure that members of the KwaZulu Police at KwaMakhutha did not engage in unlawful acts of violence against the community.

There is little evidence to suggest that the perpetrators of the attacks in December 1990 and January 1991 were ever arrested and charged with any offence arising from those incidents. Indeed, one of the four men interdicted by the Supreme Court in

January 1991 was later linked to the assassination of a prominent community leader, Emmanuel Bhengu, in July 1991. As an Inkatha executive committee member in KwaMakhutha, Emmanuel Bhengu participated in the first Joint Peace Committee established in the township during the late 1980s. He continued to serve on the committee when Inkatha withdrew its support. In 1990 he became the chairperson of the ANC KwaMakhutha branch. Throughout this period he was persistently harassed. Shortly after he defied Inkatha's instructions by remaining on the Joint Peace Committee, one of his sons was murdered. In December 1990 unidentified attackers fired shots and threw petrol bombs into his home. Emmanuel Bhengu sustained injuries during the attack. His car was also set alight.

Despite the gravity of the threat against him, he refused to flee the township. His standing as a community leader had also grown. On a number of occasions he acted as a mediator between residents, the authorities and other parties. On 1 February 1991 he was detained without charge by the KwaZulu Police. Four youths, including one who had testified against the police in the previous month's Supreme Court proceedings, were detained with him. They were assaulted in custody. On 3 February 1991 they were all released without charge. A formal complaint of assault was later lodged with the police, but no police officers have yet been suspended or prosecuted in connection with the assaults.

On 20 July 1991, at approximately 2am, two attackers shot and stabbed to death Emmanuel Bhengu at his home. His family witnessed the murder. In response to a call, members of the KwaZulu Police arrived at the house. After being told that Emmanuel Bhengu had been killed, the police left without entering the premises or taking a statement from the family. The family later contacted their lawyer, who reported the matter to the South African Police. The South African Police arrested two suspects who were later charged in court with the murder of Emmanuel Bhengu. The accused included one of the men against whom the Supreme Court had issued a restraining order in January 1991. Both of the accused were granted bail. By early 1992 they had still not been brought to trial.

During 1992 Amnesty International has continued to receive reports from different parts of Natal of unprovoked shootings by members of the KwaZulu Police, of their complicity in killings, assaults and arson attacks by groups of armed men against ANC-supporting communities, and of their failure to investigate and arrest suspects in cases involving the murder of ANC supporters. The incidents indicate that, despite Supreme Court injunctions restraining the police and the commitments given by KwaZulu "homeland" officials, the police have still not been brought under effective control and made accountable for their actions. It is disturbing in this context that the Police Amendment Bill debated and passed by the South African Parliament in early 1992 effectively extends the jurisdiction of the KwaZulu Police to the whole of South Africa.

CHAPTER FIVE

"This isn't a police-bashing exercise. It's a demand for accountable and proper policing in terms of the police code of conduct as set down by the National Peace Accord. It's a demand for policing that allows trust to build so that the community feels that it has the recourse to the policing that is its right in terms of the law of the land and ultimately, it's a demand that the community have the policing that ensures that it can live in peace, in its own place."

(Susan Collins, Centre for Intergroup Studies, member of Cape Town's Joint Forum on Policing which monitors the role of the police in the township violence, in *Weekly Mail* 21 February 1992)

As indicated in preceding chapters, the conflict between the ANC and Inkatha has been marked by a systematic failure by the police to carry out their duty to protect the lives of all South Africans. The police have passively and at times actively colluded in Inkatha attacks on people believed to be ANC supporters. The principal aim of the police often appears to have been to perpetuate conflict as a means of seeking to prevent peaceful political transition.

Similar behaviour on the part of the police has also been evident in the Western Cape, where the presence of Inkatha is not a factor in the local violence. The ostensible source of violence in the townships and squatter camps is a long-standing rivalry between two taxi associations which are competing for lucrative routes. However, one of the associations apparently has majority backing in the strongly pro-ANC township communities. There is ample evidence of covert intervention by the police on the side of the rival association. Both the ANC and the Western Cape Civic Association have been involved in attempts to mediate in the conflict, but the police have appeared on occasions to be more concerned with stimulating hostilities between the rival bodies. Amnesty International has copies of sworn statements from eye-witnesses which show a consistent pattern of police involvement in armed attacks, killings and torture of ANC and civic association supporters.

The origin of the "taxi war" lies in a dispute between the long-established Langa, Guguletu, Nyanga Taxi Association (LAGUNYA) and the Western Cape Black Taxi Association (WEBTA). The conflict is about control of lucrative routes between the city of Cape Town and the townships and squatter camps where the majority of the black population lives. Since WEBTA's formation in the early 1980s there have been political undercurrents to the rivalry, with WEBTA initially seen as aligned with the poorer squatter communities and LAGUNYA with the settled township communities. LAGUNYA ran services only in and between the townships. In the early 1980s the pirate taxi owners who later formed WEBTA illegally ran services to and from the city centre. When influx control was abolished in 1986 WEBTA taxis were issued with permits to operate the city centre routes, but LAGUNYA taxis were excluded. The "taxi war" flared in 1990, when LAGUNYA began to run a service to the city centre from Khayelitsha township, which had been created out of the forced relocation of squatters from the Crossroads area near the established townships in 1986. Three civic bodies, which subsequently formed the Taxi Crisis Coordinating Committee (TCCC), tried to mediate in the dispute and in April 1991 got both associations to agree to a 10-point compromise plan. However, the agreement broke down, with accusations that a "third force" was operating to stir up the conflict.

The dispute began to assume increasingly political dimensions, with WEBTA blockading the roads around the ANC office in Athlone. In June 1991 Michael Mapongwana, chairperson of the Western Cape Civic Association and a crucial figure in attempts to reach a settlement, was assassinated in a carefully planned attack (see box). This followed the similar killing a few weeks earlier of Mziwonke "Pro" Jack, an ANC activist who had also been involved in mediation between the rival groups, and Zola Ntsoni, leader of the ANC Youth League in Khayelitsha.

Violence escalated in the weeks following Michael Mapongwana's death, with each side burning rival taxis and killing drivers. However, in a number of incidents eye-witness testimony makes it clear that not only have police failed to intervene to stop violence by WEBTA against LAGUNYA supporters and Khayelitsha residents, but they have also actively participated in such attacks.

On 7 August 1991, for example, Zwelitsha Mhluthwa of Site B, Khayelitsha, was awakened at 3am by a group of armed police officers, some black and some white, with some wearing camouflage uniforms. They accused him of involvement in a shooting incident at the Nyanga taxi terminus and demanded information about weapons. They handcuffed him, kicked and beat him, and pulled a piece of plastic tightly over his face, nearly asphyxiating him. They also threatened to kill him. They then drove to the house of David and Sidwell Halam, the latter an ANC official and advice centre worker. Sidwell Halam was not there. The police beat David Halam and then took him and Zwelitsha Mhluthwa to the advice centre. David Halam was taken home but Zwelitsha Mhluthwa was kept in police custody for two days before being charged and released on bail. The charge was later withdrawn. His right ear was swollen as a result of the beating and he has lost his hearing in that ear. He was refused medical treatment in police custody.

Solomon Tshuku of Site C, Khayelitsha, is chairperson of his local ANC branch. Between 1am and 2am on 15 August 1991, two black men reportedly wearing the blue overalls of kitskonstabels and armed with what were described as "long guns" entered his house while he was out at work. They shot dead his wife and four of his children. His seven-year-old daughter was spared (see cover photograph). Then the attackers set the house alight.

The same night, David Nggeza, a civic association activist also from Site C, Khayelitsha, was awakened by a stone and petrol bomb being thrown through his window. Outside his house he identified a number of men, including two whites and three black men in the uniforms of kitskonstabels. They fired shots at him when he tried to open the front door, so he ran and hid. He heard the men questioning his wife and then heard a shot. When they had gone he found his wife lying on the ground with a gunshot wound in the stomach. She died later in hospital.

The worst night of violence was on 3 September 1991 when 78 shacks in Site B, Khayelitsha, were burned down and 11 people were shot or hacked to death. The attackers were apparently searching for ANC and TCCC members engaged in mediating in the taxi dispute. Representatives of the ANC and the Urban Monitoring and Awareness Committee (UMAC) had asked the police for special protection for the area because WEBTA members had earlier threatened to attack that night. No protection was provided, nor did the police intervene even though the scene of the attack was only some 150 metres from Site B police station. In 36 sworn statements submitted to police authorities, eye-witnesses allege that, far from providing protection, the police themselves took part in the attacks that night. The following are typical

extracts from the affidavits:

"I saw a yellow [vehicle] with police signs on it parked across the road there, blocking the road. There were two white policemen standing outside of the car. They were wearing camouflage uniforms, the kind that the riot police wear. They had hand guns on their hips and they were firing shots from long guns.

"When I saw the car I decide to turn back and go home. When I did, however, I was shot in the right side of the back of my neck. Then I was shot again. This time in my back. The shots came from the direction that the police were standing."

* * *

"I opened the door and saw a white policeman. He was wearing a camouflage uniform. He was also wearing a camouflage cap. He had an object in his hand, but I was not quite sure what it was.

"I was afraid, so I retreated into my house, leaving the door open. I then saw the man, who was standing at the door, shooting at the top of my house. I could hear the shots being fired. Then I saw the roof of the house catch on fire."

* * *

"I saw shots being fired from the bush near my house. Standing in the place from where the shots had been fired, I saw many white men. I am not certain about the exact number. I could see from the light of the floodlights that some of these men were dressed in camouflage uniform, wearing their caps with the peak to the back instead of the front. Other men wore the brown uniform as worn by soldiers of the SADF."

Allegations of police involvement in the "taxi war" continued after the September attack. During a confrontation between WEBTA and LAGUNYA members at Nyanga Terminus on 2 October 1991, a police casspir arrived. According to the affidavit of an eye-witness, two white men in camouflage uniforms got off the casspir and opened fire on the LAGUNYA group. One person appears to have died.

The police role was further thrown into question by the testimony in court of M. Gubayo, a WEBTA taxi operator charged with murdering a LAGUNYA driver at the Nyanga taxi rank on 27 October 1991. He testified that he had been in the company of the police during an earlier shooting incident on 2 October 1991 and that he always carried a gun because he was a "protected person". He was granted bail.

Serious violence flared again in mid-February 1992. Hundreds of residents fled their homes in Khayelitsha's Site C shack settlement after an attack by balaclava-clad men in the early hours of 15 February. Five people died and at least 36 homes were burned. Over a three-day period beginning on 14 February 1992, WEBTA members launched a series of attacks on KTC squatter camp, which is near the Nyanga Terminus. During the attacks a number of LAGUNYA taxis and shack dwellings were set alight and residents shot at. According to eye-witness accounts, the attackers were accompanied by policemen in vehicles. Eye-witnesses also allege that the police failed to intervene when the attackers set fire to the shacks and in some cases actually participated in setting them on fire. Among those injured in one of the attacks was a mother of five children, Nonina Angelina Bhenu, whose arms had to be amputated later because of the severity of her burns. An ANC member and KTC resident, Elliot

Bolani, who was wounded together with his son in the attack, later told journalists that the person who had shot at them was white. Another KTC resident, Gladstone Ntamo, said the attacks were not about taxi routes, but represented an attempt to destroy "KTC as an ANC and South African Communist Party stronghold".

The Joint Forum on Policing, which includes representatives of human rights and political organizations and Cape Town City Council officials, saw the KTC attacks as yet another disaster for police-community relations. It said:

"The community's belief that the police are involved in attacks has eroded any trust in the police being a source of protection or justice. [P]erceived police partiality aggravates the conflict and the result is that the community takes the law into its own hands."

As with allegations of police involvement in violence against the ANC in Natal and the Transvaal, the authorities have taken only limited steps to investigate or initiate action against the officers allegedly involved in the Western Cape violence. It has been local human rights monitors, in particular those active with the Joint Forum on Policing, who collected sworn statements from eye-witnesses in late 1991 and submitted them to the police special investigation unit set up in terms of the National Peace Accord. The police liaison officer for the Western Cape, Colonel Anthony Dewhurst, told journalists in late February 1992 that the members of the unit "are investigating and making regular reports to the police general designated in terms of the National Peace Accord. The system is functioning". Unfortunately for the community, this slow and barely visible process still had not resulted in arrests or prosecutions arising from murders or other unlawful and violent acts six months earlier. The lack of concrete results, the fact that the special investigation unit is under the direction of former Security Branch members associated with harassment and arbitrary detentions in the past, and the continuing allegations of police involvement in new attacks have prevented the community from developing any faith in the utility of cooperating with the police.

In late March 1992 human rights monitors were hoping that a new agreement, about a process which may lead to the formation of a unified taxi association, could help restore some peace to the area. There was an expectation, too, that the Goldstone Commission, whose hearings into the causes of the "taxi wars" were scheduled to resume in late April 1992, could assist the processes of bringing out the truth and seeking redress. The human rights community was emphatic, though, that the black community would continue to live in fear under the shadow of violence so long as elements within the police continued to act in an unlawful and biased manner. As the human rights organization and Joint Forum on Policing participant, Black Sash, commented:

"Any resolution depends in the first place on committed, effective and impartial policing, and on people seeing that justice is done and done swiftly. The absence of such policing is proving a serious obstacle to achieving peace."

CHAPTER SIX

"It is my experience from having lived in Khutsong all my life, that people always run when they see the police because they are terrified of them." (Monica K, 28-year-old resident, January 1991)

On 15 February 1992 police took 33-year-old Paulos Tshabalala from his Khutsong home at gunpoint to Carletonville police station. Two days later he was removed from the cells and taken away in a van by eight police officers. For many hours Paulos Tshabalala was the unwilling participant in a nightmare journey during which the police assaulted and tortured him. He was repeatedly beaten, kicked and punched, subjected to mock executions and electric shocks, while hooded and with his hands and feet tied. They ransacked his house, demanding to know the location of weapons. Eventually he was taken back to the police station before being released from custody on 18 February.

Among the eight police officers accused of involvement in this incident is a police constable whom an inquest court more than three months earlier had ruled to be criminally liable for the death of a 17-year-old youth. The same man has been implicated in many other incidents of assault, torture and extrajudicial execution. These incidents and the conduct of the police in the Khutsong/Carletonville area in the western Transvaal have been the focus of a "Special Task Force" investigation ordered by the police authorities in July 1991. It is a telling commentary on the quality and seriousness of this much publicized investigation that, seven months after it was initiated, police officers, including one who has been repeatedly implicated in past abuses, continue to commit human rights violations.

The Special Task Force investigation was set up after human rights monitors, lawyers and journalists had repeatedly urged the authorities to investigate numerous incidents from early 1990. These included assault, torture, deaths in custody and extrajudicial executions at the hands of police attached to Khutsong, Carletonville, Welverdiend and other police stations in the area. During this period the violence in the area initially seemed to arise from an intense rivalry between two groups of youths who had split from the pro-ANC "comrades". As their rivalry degenerated into violence, with other uninvolved individuals sometimes being drawn into the conflict as victims, the police response only served to deepen the crisis. Instead of acting swiftly to arrest and prosecute those responsible for murders and other unlawful acts, the police appeared to use the situation as an excuse to conduct a reign of terror against young people in the area. A human rights lawyer, active in Khutsong community mediation work, commented in May 1991:

"...whatever misdemeanours the [supporters of one particular faction are] believed to have committed or to be committing, the steps taken against them by the South African Police are in their violence and brutality beyond the provision of any law. The steps taken include assault and cold blooded murder."

Between January 1990 and July 1991, when the Special Task Force began its work, the police were implicated in at least 17 violent deaths, including deaths in custody resulting from torture, assassinations and unlawful use of lethal force against demonstrators.

Torture and extrajudicial executions: case studies

An early case which revealed the nature of police methods, as well as the enormous difficulty in securing justice for the victims of abuses, was the death in custody of 16-year-old Nixon Phiri. He had been arrested with three other youths, all between 16 and 18 years of age, on 16 January 1990 in Khutsong. They were forced into a police van in which there were already two other young men, whose faces were swollen. On the way to Khutsong police station, three *kitskonstabels* assaulted the youths with the butts of their guns, kicked and punched them, and tried to force them to sing "freedom songs". After being held for several hours at Khutsong police station they were transferred to Welverdiend police station, a satellite police station serving as a temporary base for a police "Unrest Unit" and located some 15 kilometres from Carletonville.

The three youths arrested with Nixon Phiri told lawyers after their release that, at Welverdiend police station, they themselves had been beaten, kicked, punched, hit with rifle butts and ammunition belts, and given electric shocks, to force them to sign statements confessing to arson. They were taken into separate rooms for interrogation but could hear each other screaming. One said that later that day he saw Nixon Phiri being taken into another room. He never saw his friend again. Another said: "We all heard him screaming when he was taken into the room. I don't know for how long he was screaming but I think it was approximately 10 hours". Two of the three youths were released on bail some days later after being charged with arson and other offences. The third was released uncharged. These and a number of other youths arrested at the same time identified the police officers responsible for the alleged assaults and torture.

On 19 January 1990 an independent pathologist conducted a post-mortem at the request of legal representatives of Nixon Phiri's family. He found evidence of extensive bruising and abrasions on the boy's face and body, bruising and haemorrhage in the brain, as well as haemorrhages and swelling in other internal organs. He concluded that the cause of death was cerebral haemorrhage associated with external injuries, which would have contributed to shock.

In the immediate aftermath of Nixon Phiri's death, the police issued contradictory versions of the circumstances leading to his death. On 17 January 1990 police representatives told journalists that Nixon Phiri had been arrested on suspicion of arson and had died during interrogation at Welverdiend police station. A member of the boy's family, who had been asked to identify the body, was told by the police that "Nixon was sitting on a chair and was asked who burned a police van, and while he was answering he just fell down and died". The police also said that he had had an epileptic seizure, although apparently he did not have a history of such an illness. Another member of the family was told on the same day by a different police officer that Nixon Phiri had been found unconscious in the back of the police van after his arrest. Distressed and under pressure, several members of his family put their thumb prints to statements drafted by the police and apparently supporting their claims that Nixon Phiri may have died from an epileptic fit.

Lawyers representing the family wrote repeatedly to the authorities requesting information about the status of the investigation into his death. On 19 June 1990 the State President confirmed by letter that the South African Police in the western Transvaal were investigating the death of Nixon Phiri, and that upon completion of the investigation the inquest docket would be handed to the Attorney General for a decision as to whether charges would be brought. He concluded by stating that

he was satisfied that Nixon Phiri's death would be investigated and dealt with in an unbiased manner and that justice would prevail. In his view, he added, a judicial commission of inquiry into the case was not justified.

On 21 November 1990 the Regional Commissioner of the South African Police in the western Transvaal informed the family's lawyers that the police docket had been forwarded to the Attorney General. This information arrived more than a month after the press reported that the Attorney General's office had concluded from the evidence submitted to them by the police that Nixon Phiri had died from an epileptic seizure. The lawyers then wrote regularly to the authorities, requesting information on the date of the inquest hearing. On 1 March 1991 the lawyers received a letter from the Public Prosecutor dated 21 February 1991. The letter stated briefly that the inquest was scheduled to take place on 22 February 1991 and that "no formal inquest will be held". This decision regarding the type of inquest hearing, as well as the failure of the authorities to give sufficient notice to the family's lawyers, meant that the magistrate conducting the inquest reached his verdict solely on the basis of evidence provided by the police. The evidence included the state pathologist's report, which had concluded that the cause of Nixon Phiri's death was "unascertained", notwithstanding the evidence of extensive external injuries and internal haemorrhaging, including cerebral haemorrhaging, noted by the state pathologist in his report.

Three months after the inquest was held, the authorities made available to the family and their legal representatives a copy of the court's findings. The inquest court concluded that the cause of Nixon Phiri's death was unknown, due to lack of evidence. No one could be found responsible for the death. The court declared the matter closed.

Undaunted by the authorities' failure to investigate properly the cause of Nixon Phiri's death and the conduct of the police officers in whose custody he had died, his lawyers continued to pursue the matter. They asked the Attorney General to reopen the inquest so that the family could submit its evidence to the court. On request from the Attorney General's office, the lawyers forwarded to the Attorney General affidavits and other documentary evidence relevant to the circumstances of Nixon Phiri's death. In early September 1991 the lawyers received a letter from the Attorney General's office, acknowledging receipt of the documents and stating that the Attorney General would shortly be taking a decision on the question of reopening the inquest. By March 1992 the lawyers had still not received the decision of the Attorney General, despite frequent letters and telegrams of inquiry.

Representatives of Amnesty International were assured, during a meeting with the Johannesburg Attorney General in December 1991, that under the terms of the Inquest Act families must be notified before an inquest is held. If they are unhappy with the outcome of the inquest, they have a right to ask for a review or a reopening of the case. The general rule, he said, was that a "formal inquest", involving the hearing of oral evidence, is held after a death in custody. When an "informal inquest" is held, then the "aggrieved party can take further steps". When Amnesty International's representatives raised the case of Nixon Phiri with the office of the Transvaal Attorney General, in whose jurisdiction the case falls, they were assured that there was nothing to stop the Attorney General from reopening an inquest.

Nevertheless, Nixon Phiri's case remains unopened and more than two years after his death no police officer has been suspended and no one has been brought to justice in connection with his death.

The slowness and apparent reluctance of officials to investigate the conduct of the police in this case undoubtedly served to strengthen a sense of impunity amongst the police in the Khutsong area. There were further cases of torture, deaths in custody and extrajudicial executions after Nixon Phiri's death.

A sinister dimension was added to the pattern of abuses with the killing of witnesses under circumstances suggesting police complicity. For example, at least three of the people who witnessed police assaults on 15-year-old Eugene Mbulawa, who died in hospital on 13 July 1990 as a result of his treatment in custody, died themselves in suspicious circumstances. In one of these cases, that of 16-year-old William Makage, the police had attempted to arrest the released detainee on a charge of murder arising from Eugene Mbulawa's death. William Makage was one of a number of detainees who had made sworn statements to lawyers about their own torture and what they had witnessed of the police treatment of Eugene Mbulawa.

Amnesty International received a report in February 1991 that William Makage had gone into hiding, fearing for his life. According to the testimony of Mongi Mogale, the mother of William Makage's baby daughter, Patricia, he was arrested and brought to Carletonville police station cells on 8 May 1991. Mongi Mogale was at the time being held in a cell with eight other young women. On 9 May William Makage told her that, on the previous day, four police officers, whom he named, had taken him out to waste land, apparently intending to kill him. However, he said to Mongi, "the four started arguing about it so they did not kill me". Although he was due to appear in court on 10 May, he expected that by then he would be dead and he asked her to convey a message to his family. On the evening of 9 May she saw the police remove William Makage from his cell. Later, a police officer, whom she named, told her that the police were taking him to Welverdiend and that they were planning to kill him there. The same police officer, she says, returned at about 2.50am on 10 May and told her that William Makage was dead. During the following week one of the police officers named by William Makage allegedly threatened to kill Mongi Mogale.

In some of the cases of assaults and killings which occurred during this period, the police allegedly colluded with one faction in the conflict in Khutsong township. For example, according to the testimony of the surviving victims, at least two police officers in uniform acted in complicity with gang members in the murder of Sipho Mlangeni and the wounding of two other youths, whom they had abducted from a house in Khutsong on 20 November 1990. The youths were taken to a river bank outside the township where they were kicked, punched and beaten with sticks and iron bars, thrown into the water and shot at by their abductors and the policemen. One of the abducted youths managed to escape. Sipho Mlangeni, who died as a result of the assaults, and the third youth, who was severely injured, were later found by family members on waste land.

Despite fear of reprisals and a lack of faith in any likelihood of serious investigation, some of the victims of police assaults and other human rights violations lodged complaints against the police. In one such case, 21-year-old "Whitey" Mabitsa lodged a formal complaint of assault against three police officers on 26 April 1991. He had been arrested at his home 12 days earlier by the police who had accused him of hiding weapons for the "comrades". They also demanded to know the whereabouts of his brother, Johannes. The police first took him to Carletonville police station. Nine hours later he was transferred to Khutsong police station where, according to his testimony, he was assaulted and tortured by the police, three of whom he was able to identify. He says they beat and kicked him

all over his body and partially suffocated him with plastic sheeting. Then, after shackling his hands and feet together, the police administered electric shocks to different parts of his body, while continuing to interrogate him until he lost consciousness. On 17 April 1991 Whitey Mabitsa was released uncharged after a brief court appearance. He required medical treatment as a consequence of the assaults. With the assistance of a human rights monitoring organization, he lodged a complaint of assault against three police officers at Carletonville police station on 26 April 1991. Ten days later about eight police officers arrived outside his home in a vehicle with no registration plates. Three police officers, including one of those against whom he had laid a charge, questioned him and his father regarding the whereabouts of Johannes Mabitsa. Failing to get any information, the police then left. Later that day, Whitey Mabitsa was warned that he should not walk in the streets alone as one of the police officers against whom he had laid a charge of assault had threatened to kill him.

The Special Task Force investigation

In July 1991, after months of pressure from human rights monitors, journalists and lawyers, the police authorities in Pretoria ordered an investigation into the allegations made against the police in the Khutsong/Carletonville area. The investigation was to be conducted by a Special Task Force under the direction of the Pretoria police headquarters' Political and Violent Crime Investigation Unit. The unit was headed by Major-General Ronnie van der Westhuizen until early December 1991 when he was replaced by a former senior Security Branch officer, Major-General Hannes Gloy. The Special Task Force was placed under the specific authority of an investigating officer, Major Frans Stear, from Klerksdorp in the western Transvaal. One of the first steps taken by the police authorities was to put a new officer in charge of the Welverdiend police station, which was most frequently cited as a place where torture and ill-treatment of detainees was occurring. A police liaison officer told journalists in late July 1991 that members of the police implicated in the affidavits of some of the victims had been transferred to other duties pending the outcome of the investigation. By the end of the month the Deputy Commissioner of the South African Police, Lieutenant-General Mulder van Eyk, announced that five members of the unit based at Welverdiend police station had been suspended from duty and that the functions of the unit itself had been transferred to another office and the station closed.

By mid-November 1991 a total of 11 police officers had been suspended from duty and prosecution proceedings had begun against five of them for offences ranging from common assault to attempted murder. On 21 February 1992 the Carletonville magistrate's court dismissed the case against one police constable for the alleged assault of Johannes Molefe. On 13 March 1992 the same court dismissed the case against another constable for the attempted murder of William Faltein. The case against three other constables for aggravated assault of Whitey Mabitsa is due to be heard on 12 May 1992.

In a short space of time, the Special Task Force investigation had become controversial. Reports indicate that police officers under investigation, including suspended officers, continue to be involved in unlawful actions. In addition, witnesses and human rights activists attempting to cooperate with the investigations have been harassed and threatened with death. In one instance, a police officer shot and wounded 20-year-old Enos Mhlongo in Khutsong on 24 August 1991, the very day after the officer concerned had been suspended from duty as a result of the Special Task Force investigations. In another incident, a police officer at

Carletonville police station allegedly instructed a member of the family of a witness, Mongi Mogale, who had cooperated with the Special Task Force investigators in the case of William Makage, to kill her. Mongi Mogale's uncle was summoned to the police station on 17 August 1991. He went there expecting to be interviewed about his application for a position as a police officer. However, when he arrived at the police station he was only asked about his niece. He was told that Mongi Mogale had "caused a lot of problems for the policemen who had been suspended from duty". A particular police officer, whom he named, apparently said that he should kill Mongi if he wanted himself to be employed as a policeman. He refused. The police officer who had given this instruction was at the time suspended from duty and facing a charge of attempted murder. Both these incidents resulted in formal complaints being made against the police officers involved to the head of the Special Task Force investigations.

Possibly the most serious incident occurred within weeks of the start of the investigation. Police officers, including members of the Welverdiend police station unit, arrested four residents of Khutsong township on 23 July 1991, interrogating and allegedly torturing them at Welverdiend police station. In statements made after their release a few days later, the four detainees, Thomas Mavundla, Frans Mahuma, Elliot Rampau and Thomas Monene, implicated a number of police officers, including the newly-appointed station commander, in their allegations of torture. They alleged that they had been forced to lie on the floor with their hands and legs tied and with their heads covered with a sack or bag. They also alleged that the police had placed a metal rod between their wrists or legs, which were tied together, and had then attached wires to their fingers, ankles or lower backs before administering electric shocks until they agreed to sign "confessions".

These fresh allegations of torture, occurring under the noses of the investigators, appear to have prompted the first set of suspensions and the closing of the Welverdiend police station itself at the end of July 1991. The new commanding officer was transferred to police duties elsewhere in the country. On 20 August 1991, apparently at the prompting of Major Stear of the Special Task Force, Thomas Mavundla and his fellow detainees laid charges against the police officers allegedly involved in torturing them at Welverdiend police station. However, Thomas Mavundla and his co-detainee, Thomas Monene, were later rearrested by the police officers against whom they had laid charges and were charged with illegal possession of weapons and ammunition. The prosecution case against Thomas Monene was withdrawn in court on 17 January 1992. Thomas Mavundla was due to appear in court again on 15 May 1992.

As in this last case, the local police have reacted against Khutsong residents laying charges against them, witnesses testifying against them, and human rights activists cooperating with the Special Task Force investigations by charging their accusers with offences. However, when the cases have come to trial, the prosecution has not been able to produce evidence to substantiate the charges. For instance, William Faltein, who was detained with Eugene Mbulawa in July 1990, was shot and wounded by a police officer after he had made a statement against the officer to the Special Task Force investigators. The witness was subsequently charged with possession of a firearm. The prosecution case against William Faltein collapsed during his trial in mid-January 1992.

The senior police officer with overall responsibility for the investigations, Major-General Ronnie van der Westhuizen, apparently became aware eventually of this pattern of harassment against people attempting to cooperate with the Special Task Force. Just before he retired in early December 1991 he was reported in the press

as saying that he was powerless to investigate whether the repeated arrests and charging of witnesses and other people assisting the inquiry was a form of harassment against them.

On 4 December 1991 Amnesty International's representatives, during a visit to the western Transvaal, raised their concerns with Carletonville police station officials about a recent victim of harassment, Walter "Blackey" Mningisi. He was then in the custody of the police. Some months earlier he had made a statement to the Special Task Force investigators in which he had implicated a police officer in the April 1991 murder of 15-year-old Abel Tshobe in Khutsong. He had also tried to assist the investigators in locating other witnesses. On 21 September 1991 he was arrested by the police, who removed from his possession lists of potential witnesses. He was later released uncharged. In December 1991 Walter "Blackey" Mningisi was rearrested, along with 11 others, and charged with the murder of Fransina Sithole, who had died during a shooting incident in Khutsong. An eye-witness, who had himself been shot at during this incident, handed over to the police a list of the names of suspects in the murder. However, the police took no steps to question or arrest the suspects, but continued to detain Walter "Blackey" Mningisi and the others. On 18 December Walter "Blackey" Mningisi and his fellow detainees appeared in court and were released on bail. The case against the accused has been remanded a number of times, apparently because the presiding magistrate requested clarification of the charge sheet and the prosecutor's case.

While Walter "Blackey" Mningisi and his co-accused remained facing charges, those allegedly responsible for Fransina Sithole's murder continued their activities as members of a gang reportedly responsible for a series of murders, robberies and rapes in the Khutsong area. On 16 December 1991 residents held a meeting in a local church in an attempt to resolve the conflict between themselves and the gang members. The meeting became acrimonious. The gang members walked out. An eight-person delegation was sent after them in an effort to persuade them to rejoin the peace talks. Reportedly when the delegation located them in a squatter camp adjacent to Khutsong, the gang members attacked and seriously wounded five of the community representatives. On seeing what was happening, residents of the squatter camp, who had often been victims of the gang's activities, rushed to assist their representatives. A battle ensued. Four members of the gang were beaten and stoned to death, and their bodies set alight by the angry squatters. Reportedly the police arrived during the fighting, but failed to intervene to stop the mayhem.

Amnesty International's representatives, during their visit to the Transvaal, Natal and the western Cape in December 1991, were frequently told by human rights monitors that police failure to protect black communities from attack, and also to investigate and prosecute those responsible for acts of violence, meant that aggrieved communities resorted to "self help". In this context, the violent deaths in Khutsong on 16 December appear in part at least to have resulted from abuse of their powers by the police and the failure of the criminal justice system.

The inadequacy of the government's reliance upon internal departmental investigations in response to allegations against the police is highlighted by the continuing reports of police abuses in the Khutsong/Carletonville area and the slow progress in bringing to justice those responsible for deaths in custody and other killings since early 1990. The inherent difficulties in the police force mounting an impartial investigation into unlawful activities by its own members are even greater where the police are accused of serious crimes against part of the population for so long regarded by them as their enemy. The effectiveness of investigations

into police abuses has also been hampered by what can only be described as the general passivity of the Attorney General's office. In terms of its statutory functions, this office does not initiate investigations. However, with respect to the Attorney General's office in Pretoria which has jurisdiction in western Transvaal cases, it appears that it has made little use of a discretionary power to direct the police to carry out further investigations into certain cases brought to its attention. While these flaws are not peculiar to the specific investigation ordered into police conduct in the Khutsong/Carletonville area, the paucity of results in such a high profile case points to a serious lack of will on the part of the authorities to investigate fully and bring to justice police officers involved in torture and unlawful killings.

6

Making the police accountable: a case study from the western Transvaal

CHAPTER SEVEN

"If I arrest these people at Mbongwa's place [in Trust Feed], the police are going to release them. If I detain them in terms of the emergency regulations, they will also be released at the expiry of the regulations. It would be much better if they would just be killed."

(Lieutenant [now Captain] Brian Mitchell's response to Inkatha member Jerome Gabela when the latter requested assistance against his UDF opponents in Trust Feed, as described to the Natal Supreme Court by Jerome Gabela, quoted in *Sunday Tribune*, Durban, 16 February 1992)

Five police officers, including a police station commander, carried out the cold-blooded, politically-motivated murder of 11 men, women and children in Trust Feed, Natal, in December 1988. This was the conclusion of the presiding judge, Andrew Wilson, in the Natal Supreme Court in April 1992.

In his judgment against Captain Brian Mitchell and four police special constables, Judge Wilson called for a public inquiry into the evidence of a cover-up of the police involvement in the massacre. The evidence pointed to a conspiracy linking local, regional and national level police officers in what the judge indicated could be construed as "obstruction of justice or accessory after the fact". The court found that the massacre had occurred in the context of the "counter-revolutionary strategy" which Captain Mitchell believed he was conducting against "the enemies of the state" – in this case the pro-ANC UDF. This strategy included, on the evidence of the police officer himself, rounding up young UDF-supporting men under the guise of a "crime prevention exercise", and detaining them incommunicado. It also included searching for weapons in households of UDF supporters so as to leave them defenceless against Inkatha and the special constables in their attempts to "eliminate" the UDF in the Trust Feed area.

In the aftermath of the judgment the Commissioner of the South African Police, General Johan van der Merwe, was reported to have said that it was "regrettable that individual members [of the force], who harboured misguided beliefs, chose to act outside the law." The Commissioner announced that he had ordered an internal police inquiry into the initial police investigation which had been carried out by the police after the killings occurred in 1988. In ordering and carrying out the Trust Feed killings, it is clear that Captain Mitchell and the other police officers directly involved were operating in an official environment which, as Judge Kriegler noted in his ruling against General Neethling in January 1991 (see Chapter 1), encouraged members of the security forces to do everything in their power to act against those perceived as the "enemy".

Integral to creating and maintaining this environment has been the authorities' reluctance to order swift, credible and public investigations into allegations of human rights violations by members of the security forces. The evidence which emerged in the Trust Feed case indicates that a cover-up involving police officers at a senior level began during the initial stages of the investigations, immediately after the killings, and continued on into 1991. This in itself raises the question as to whether other police investigations into alleged human rights violations by the security forces have been similarly flawed. The failure to bring to justice

all but a tiny proportion of those involved in human rights violations exposes the complete inadequacy of the state's reliance upon the police force investigating unlawful activities by its own members, particularly when they are accused of serious crimes against part of the population regarded by them for so long as the enemy.

The cases discussed in the body of this report underscore the importance of independent judicial investigations to establish the facts regarding security force involvement in torture, extrajudicial executions and other serious human rights violations. These investigations need to be followed rapidly by appropriate state action against members of the security forces found to be involved in or responsible for human rights violations. Without this, as noted earlier in the report, President De Klerk's policy, articulated in January 1990, of transforming the politicized state security forces into professional and accountable bodies is unlikely to succeed. On the contrary, the slowness with which the authorities and the prosecutorial system have responded during the past two or more years to compelling *prima facie* evidence against members of the security force can have only served to confirm the sense of impunity they developed during the years of violent repression under successive *apartheid* governments.

This report has focused on human rights violations for which the authorities, or people acting on their behalf or with their acquiescence, have a clear responsibility. The political struggle in South Africa has, however, clearly involved abuses on all sides, including those committed by the ANC against its own members. Amnesty International also recognises that in the spiralling violence in the townships during the past two years, the ANC and its supporters have been responsible for deliberate and arbitrary killings.

In September 1991 the ANC announced the formation of a commission of inquiry into allegations of torture and other ill-treatment of prisoners held in ANC camps in Angola and elsewhere outside South Africa. The commission, which began its hearings in March 1992, is chaired by an independent lawyer, while its investigations are directed by another independent lawyer. Amnesty International considers that just as officials of the state must be called to account and held responsible for human rights violations, so the same process must take place with regard to the ANC. The commission is an essential step towards the ANC fulfilling its responsibilities to victims of abuses carried out by its officials.

The state's policy of using surrogate forces in its battle against the ANC in the past, and the continuing failure of the police and prosecution services to intervene effectively in the violence, have helped to create a situation in many townships and squatter camps in which the violence has become endemic through reprisal killings. The 1991 Peace Accord, whose signatories include the government, the ANC and the IFP, and the mediation structures established under its terms, represent an important attempt to break the cycle of violence by creating circumstances of dialogue within conflict-ridden communities. A lack of resources and the slowness in establishing crucial monitoring structures are, however, undermining the effectiveness of the Accord.

Ultimately, however, it is the government which, through its control of resources and the security forces, has the obligation to take all possible steps to ensure that people can live within their own communities without fear. If the authorities continue to fail to intervene effectively and impartially in the violence and make the security forces accountable for their actions, then the prospects for a democratic transition in South Africa are seriously threatened.

With this in view and bearing in mind the continuing negotiations through the forum of the Convention for a Democratic South Africa (CODESA) about South Africa's political future, Amnesty International makes the following recommendations.

Amnesty International's proposals

Amnesty International calls upon:

The government at the highest level to acknowledge publicly that extrajudicial executions, torture and other grave human rights violations continue to be committed by members of the security forces and others acting apparently on their behalf or with their acquiescence.

The government to declare publicly that such violations will not be tolerated under any circumstances in South Africa.

The government to make clear that all members of the security forces will be held fully accountable for their actions and that those responsible for committing, instigating or encouraging human rights violations will be brought to justice.

The government to implement fully the United Nations (UN) Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions as part of a policy of combatting extrajudicial executions.

The government to issue clear instructions to all law enforcement personnel that they may use lethal force or firearms only in exceptional circumstance in accordance with relevant international standards, notably the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

South Africa to ratify international human rights treaties.

Amnesty International urges the government to:

Take steps to prevent extrajudicial executions by ensuring:

- strict control, including a clear chain of command, over all officials authorized to use force and firearms, as well as officials responsible for arrest, detention or imprisonment;
- that any member of the security forces or government who is suspected of ordering, inciting, suggesting, encouraging or facilitating extrajudicial executions is immediately suspended from his or her duties and investigated;
- that every member of the security forces is aware that any order from a superior authorizing extrajudicial executions is unlawful, and that all members of the security forces are aware that they have the right and duty to defy such orders;
- effective protection to individuals in danger of targeted assassination, including those who receive death threats;
- effective protection to individuals and communities who are likely to be victims of violent attacks or extrajudicial executions, through measures including disarming groups carrying dangerous weapons in public;

– that only those fully authorized to use force and bear arms are permitted to do so; and in particular to ensure that weapons are not provided to vigilantes and other unofficial groups.

Stop the security forces acting with impunity by ensuring:

– the repeal of legislation, such as the provisions of the Defence Act and other security legislation which provide immunity against prosecution to members of the security forces and others responsible for human rights violations;

– the prompt, thorough and impartial investigation, by individuals or institutions independent of the security forces or those in control of the security forces, of all reports of unlawful killing by members of government and government-backed forces;

– that relatives of victims and their legal representatives are informed of, and have adequate access to, any hearing and to all information relevant to the investigation, and are entitled to present other evidence;

– that all members of the security forces, officials or people acting with their acquiescence accused of responsibility for extrajudicial executions and other grave human rights violations are brought to justice;

– that an order from a superior officer or public authority cannot be invoked to justify extrajudicial executions. Senior officials should be held responsible for the acts of their subordinates if they had a reasonable opportunity to prevent such acts;

– that members of the security forces implicated in extrajudicial executions or related crimes are immediately disarmed and removed permanently from positions of power or control, whether direct or indirect, over complainants, witnesses and their relatives, investigators and lawyers;

– that the various investigative and prosecutorial agencies actively and systematically pursue all reports of human rights violations, and that responsibility for obtaining evidence and bringing criminal charges against suspects should be assumed by the authorities, not left to complainants or witnesses;

– that those conducting investigations should be empowered to obtain all the information necessary to the inquiry and to oblige witnesses and officials allegedly involved in extrajudicial executions to attend and give evidence;

– that all possible steps are taken to safeguard complainants, witnesses and investigators in human rights-related cases against violence, threats of violence or any other form of intimidation;

– that victims of human rights violations and their relatives receive adequate compensation from the state.

Amnesty International believes that the above steps, if implemented, would contribute significantly to eliminating the incidence of extrajudicial executions in South Africa. Other measures are also urgently required to prevent the continuance of other human rights violations. Amnesty International urges the government to:

Prohibit arbitrary arrests and administrative detention without charge or trial;

Prohibit incommunicado detention;

Provide strict controls over interrogation procedures;

Prohibit the use of confessions obtained under torture or other forms of duress;

Stop the occurrence of torture by ensuring that all torture allegations are swiftly investigated by individuals or institutions independent of the security forces or those in control of the security forces; ensure that security force members under investigation are immediately suspended from duties directly relating to arresting, guarding or interrogating detainees; and ensure that those found to be responsible directly or indirectly for torture or deaths of detainees as a consequence of torture are brought to justice and automatically dismissed from duty;

Abolish the death penalty.

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Conclusions and Amnesty International's proposals