COMMISSION OF INQUIRY

COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION

INTERIM REPORT ON CRIMINAL POLITICAL VIOLENCE BY ELEMENTS WITHIN THE S. A. POLICE, THE KWAZULU POLICE & THE INKATHA FREEDOM PARTY

GOLDSTONE REPORT ; GK - 34

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GK-34

THE STATE PRESIDENT

1. The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation has the honour to present an interim report on criminal political violence by elements within the South African Police, the KwaZulu Police and the Inkatha Freedom Party.

2. The Commission accepts the findings of the report and agrees with its recommendations.

R J Goldstone.

According to the Department of Justice p. 346 is the last page even although it looks as if it should go on

R J GOLDSTONE
CHAIRMAN

18 March 1994

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INTERIM REPORT ON CRIMINAL POLITICAL VIOLENCE BY ELEMENTS WITHIN THE SOUTH AFRICAN POLICE, THE KWAZULU POLICE AND THE INKATHA FREEDOM PARTY

1. INTRODUCTION

1.1 Some two months ago the Chairman of this Commission was approached by a senior foreign diplomat who informed him that an officer in the SAP had information concerning third force activities and was not prepared to furnish it to any South African but only to an appropriate foreign person. The diplomat requested the Chairman's agreement to the information being disclosed to one of the foreign police experts working with the Commission.

1.2 The Chairman informed the diplomat that he had no objection but was of opinion that the proposed course of action would not lead to any satisfactory conclusion and suggested that the diplomat should use his good offices to encourage the police officer to speak in confidence to the Chairman of the Commission.

1.3 On 10 February 1994 the Chairman received a telephone call from an employee of the Pretoria Branch of Idasa. He informed him that the person referred to by the diplomat was prepared to speak only to the Chairman and that an Idasa colleague would make the introduction if a "safe" venue could be arranged.

1.4 The meeting took place on the evening of Sunday, 13 February 1994. The police officer was accompanied by two other police officers, Major P du Plessis and Major E van Vuuren. The two

majors informed the Chairman that they were on the staff of Major-General G Fivaz, head of the Department of Efficiency Services of the SAP. It was explained that the police officer was only prepared to speak to the Chairman on condition that he had an absolute undertaking and assurance that his identity would never be disclosed to any person. The Chairman gave the undertaking after the full names and rank of the officer were disclosed to him. It was agreed that henceforth he would be referred to as "Q". Q is an officer who has had a number of years of experience in the SAP.

1.5 The majors explained that Q was introduced to Idasa with regard to Idasa's interest in community policing. In turn, Idasa introduced Q to the foreign diplomat referred to earlier.

2. INFORMATION FURNISHED BY Q AT THE FIRST MEETING

2.1 Unit C1 at Vlakplaas (later Unit C10), under the command of Colonel Eugene de Kock, was involved from 1989 in violence aimed at the destabilisation of South Africa. It was involved, *inter alia*, in the organisation of train violence and hostel violence. The operations were under the command of Lieutenant-General Basie Smit, now Deputy Commissioner of the SAP and Major-General Krappies Engelbrecht, now head of the Department of Counter-Intelligence of the SAP. Lieutenant-General Johan le Roux had full knowledge of, and was involved in these activities.

2.2 Until some 18 months ago the group was involved in the manufacture of home-made guns at premises on the East Rand and in

Silverton. The persons who directed this manufacture were Warrant Officer Snor Vermeulen, Warrant Officer Lionel Snyman and Warrant Officer Dawid Britz, all members of C10. The arms were delivered to three senior members of the Inkatha Freedom Party (IFP), viz Messrs Themba Khoza and Victor Ndlovu. (Khoza is presently the chairman of the Transvaal Region of the IFP). The middle man who arranged the deliveries, was a former officer in the SAP, Dries (Brood) van Heerden. Van Heerden had become a senior security official in ABSA Bank. He saw to it that he employed only Zulu security officers loyal to the IFP. He was assisted by Dougie Crew, also an ABSA Bank employee.

2.3 When the Vlakplaas unit was disbanded in the aftermath of the CCB exposè, the members of C10 were transferred to other units of the SAP. Some of the transferred members as well as others who are no longer in the SAP continued and still do operate in hit squads. The members were all given false identity documents and passports. These were arranged by Brigadier Beukes and Colonel Cronje of SAP Headquarters in Pretoria ("HQ").

2.4 Examples of false ID and passports furnished by Q were:

Real Name	False Name
Douglas E R Holtzhausen	Michael Anthony Douglas
Kobus (Chappies) Klopper	Martin Reyneke
Leon Flores	Shaun Riley
Willie Nortje	Willem Cronje
Eugene de Kock	Lourens Vosloo de Wet

2.5 Notwithstanding Eugene de Kock's discharge from the SAP some months ago with a "packet" of R1,2 million, he was still actively involved in third force activities and had used his false passport some two weeks previously on a trip to and from Zurich.

2.6 Q indicated to the Chairman that he would furnish further detailed information to the Commission only subject to the following conditions:

2.6.1 The Commission established an investigation team which included Major du Plessis and Major van Vuuren;

2.6.2 Q would not meet with any person other than the two majors and the Chairman;

2.6.3 The members of the Transvaal Investigation Unit of the Commission were not involved in the matter and foreign police experts serving with the Commission were to be members of the investigation team.

The Chairman agreed to the conditions.

3. ACTION TAKEN IN CONSEQUENCE OF THE INITIAL INFORMATION

3.1 Before proceeding further in this matter, and particularly having regard to the identity of the senior police officers, it was decided that at least some of the information furnished by Q should be tested.

3.2 On Tuesday 15 February 1994, a visit to the Department of Home Affairs in Pretoria was made by Adv J J du Toit, the Commission's counsel, and Lieutenant-Colonel Dutton, the head of the Commission's Natal Investigation Unit.

3.3 Acting pursuant to the Commission's powers of search and seizure under Act 139 of 1991, the files relating to the false names furnished by Q were requested. It was found that in respect of the three false names that were identified on the computer there was a computer block. The files relating to identity documents in those names were then sought. They contained no documents save a reference to a Mr Lombard, a senior official in the Department of Home Affairs. Mr Lombard was said to be unavailable prior to the Friday.

3.4 On the Tuesday evening Mr G Steyn, a member of the Commission, contacted Mr P Colyn, the Director-General of Home Affairs. Mr Colyn gave instructions in consequence of which, the following morning, the Commission was furnished with photocopies of three of the applications for false documents. Two of them, including that of Colonel Eugene de Kock (Lourens Vosloo de Wet) were attested by Brigadier Beukes in his capacity as a commissioner of oaths.

3.5 Mr Steyn and Adv du Toit were informed that the Commission's enquiries regarding the false documents had been conveyed to Colonel Cronje at HQ in terms of a standing instruction relating to those files.

3.6 On the same morning Mr Steyn, Adv du Toit and Adv J Pretorius, another of the Commission's counsel, approached Colonel Cronje to discuss the matter. They were taken by Cronje to Lieutenant-General Johan le Roux. The latter explained that members of the SAP in special cases were issued with false identification documents where that was necessary for them to carry out legitimate covert investigations.

3.7 Mr Steyn asked General le Roux whether the passports being investigated by the Commission were being used for legitimate covert purposes and General le Roux undertook to make enquiries and telephonically inform Mr Steyn. Later that afternoon Mr Steyn was informed by Colonel Cronje that the persons in question were not involved in any covert investigations requiring them to have passports or identification documents in false names.

3.8 In consequence of information furnished by Colonel Cronje, the documents in relation to a fourth false passport were obtained.

3.9 Colonel Cronje also informed Mr Steyn that the SAP were not in possession of any of the false passports.

4. SECOND MEETING WITH THE MAJORS

4.1 On Wednesday 16 February 1994, the Chairman was informed that the majors requested a further meeting. The meeting was held that afternoon.

4.2 The majors informed the Chairman that they had information that some persons in the unit had been contacted by Colonel Cronje and instructed to bring in their false passports and identity documents for destruction. The information was further to the effect that Colonel Cronje had stated that the Goldstone Commission was investigating the passports.

4.3 The two majors informed the Chairman further they had received information that on the Tuesday, on the instructions of Major-General Engelbrecht, all relevant files and correspondence relating to Inkatha involvement were to be destroyed. General Engelbrecht had also instructed members of C10 to destroy any documents that might relate to Inkatha involvement.

4.4 It was agreed that the investigation should be commenced as a matter of urgency. The two majors were in agreement that the Chairman should take General Fivaz into his confidence and request their secondment to the Commission.

5. THE MEETING WITH GENERAL FIVAZ

5.1 On the evening of Wednesday 16 February 1994, the Chairman requested General Fivaz to see him as a matter of urgency in Bloemfontein on the following day. General Fivaz agreed to cancel his appointments and meet as requested. The meeting took place over lunch on Thursday 17 February 1994.

5.2 When informed of Q's allegations, General Fivaz expressed

surprise that such activities were still being carried out by the former Vlakplaas unit. He offered the Commission his fullest assistance and cooperation in its investigation.

5.3 General Fivaz informed the Chairman that he had the fullest confidence in the efficiency and integrity of the two majors and that he would arrange for their secondment to the Commission. However, in order to do so he would require the consent of the Commissioner of Police, General J van der Merwe. The Chairman agreed that General Fivaz should approach the Commissioner. On Friday 18 February 1994, General Fivaz informed the Chairman that the Commissioner had agreed to the secondment and had been informed of the general nature of the Commission's investigation.

6. MEETINGS WITH THE STATE PRESIDENT AND MINISTER H J COETSEE

6.1 On 20 February 1994 the Chairman informed the State President and the Minister of Justice and Defence of the broad nature of the Commission's investigation. The Chairman also informed them that in order to proceed with it, the Commission required additional technical assistance and advice.

6.2 The State President urged the Chairman to proceed with the investigation as a matter of urgency and both he and Minister Coetsee assured the Chairman of their full cooperation and assistance.

6.3 The Commission has received all the assistance requested by it.

6.4 The State President further requested the Chairman to conduct the investigation in such a way that if evidence was found it should form the basis upon which speedy and decisive action could be taken by him.

7. MEETING WITH MR R SIMMONDS

7.1 On Sunday 27 February 1994, the Chairman met with and briefed Mr R Simmonds, the former Commissioner of the Canadian Police. Mr Simmonds has been seconded to the Commission in order to assist with its investigation units during the election period. Mr Simmonds agreed that he and Chief Superintendent W Hove of the Danish Police should join the two majors and Advocates du Toit and Pretorius in the investigation.

8. SECOND MEETING WITH Q

8.1 On the evening of Sunday 27 February 1994, a further meeting was held by the Chairman with Q who was accompanied by the two majors. Q refused the Chairman's request that Mr Simmonds should be present.

8.2 Major van Vuuren informed the Chairman privately that he had received information that General Engelbrecht had instructed members of the unit to obtain any information which could be used to to compromise the Chairman for the purpose of "persuading" him to cease the investigation.

8.3 Q informed the Chairman that Colonel Roelf Venter had been investigating arms smuggling by De Kock and had been instructed by General Engelbrecht to stop the investigation.

8.4 The two majors informed the Chairman that they would obtain more information from Q.

8.5 The Chairman informed Q that if he required it he could have witness protection both inside and outside South Africa. Q stated that at that point he did not require to go into hiding. He wished to remain "out of the way" and requested funds to be able to do so. The Commission subsequently agreed to pay Q an amount up to R10 000 in instalments for the purpose requested by him. Up to the present time he has received an amount of R3 000.

9. DISCUSSION WITH GENERAL VAN DER MERWE

9.1 On the evening of Monday 28 February 1994, the Chairman hosted a dinner in Johannesburg for the visiting Commissioner of the Royal Danish Police, Mr Ivar Boye. One of the dinner guests was General van der Merwe.

9.2 During the evening the Chairman and Mr Steyn spoke confidentially to General van der Merwe and requested his assistance in the investigation. General van der Merwe assured the Chairman and Mr Steyn of his cooperation and expressed the view that a good source of information would be Colonel Eugene de Kock. He added that he had heard that De Kock had approached the ANC for

an indemnity. He suggested that De Kock might be ready to speak to the Commission.

10. MEETING WITH THE HEAD OF ANC INTELLIGENCE

10.1 On Tuesday 1 March 1994, the Chairman met in Johannesburg with Mr Joe Nhlanhla, the head of the ANC Intelligence Department. He enquired as to whether there had been an approach to the ANC from De Kock. Mr Nhlanhla informed the Chairman that De Kock had indeed approached him with the enquiry as to whether he could be reinstated in the SAP and that he wanted the opportunity to prove his innocence in relation to the many rumours and allegations of his involvement in criminal conduct.

10.2 Mr Nhlanhla further informed the Chairman that De Kock had been brought to meet him at the Midrand Hotel by General Krappies Engelbrecht and Brigadier Oosthuizen. He had entered into no agreement with De Kock.

11. EASTECH

11.1 In consequence of information received by the Commission, Adv du Toit decided to approach Lieutenant-Colonel A F J Botha of the Commercial Branch of the SAP in Pretoria with regard to a company called Eastech.

12. MEETING WITH THE PRESIDENT OF THE ANC

12.1 On Wednesday 2 March 1994, the Chairman met with Mr Mandela and confidentially briefed him on the nature of the investigation being conducted by the Commission. Mr Mandela was updated on the investigation at a further meeting on 12 March 1994.

13. MEMORANDUM OF INFORMATION FURNISHED BY Q TO THE MAJORS

13.1 On 3 March 1994, a written memorandum was handed by the majors to Advocates du Toit and Pretorius and Messrs Simmonds and Hove.

13.2 Allegations in the memorandum include the following:

13.2.1 The project which led to the manufacture of guns was initiated by Generals Basie Smit and Krappies Engelbrecht with the support of the Inkatha leaders referred to earlier for the purpose of orchestrating violence. This also involved crash-course training to IFP members in the use of weapons and hand grenades.

13.2.2 The following persons were involved in the project.

<u>From Unit C10</u>

13.2.2.1 Eugene de Kock

13.2.2.2 Brood van Heerden

13.2.2.3 Willie Nortje

13.2.2.4 Charlie Chate

13.2.2.5 Chappies Klopper

13.2.2.6 Snor Vermeulen

13.2.2.7 Lionel Snyman

13.2.2.8 Dawid Britz

<u>From East Rand Murder and Robbery</u>

13.2.2.9 Vossie de Kock

13.2.2.10 Koekies Koekemoer

<u>From Security Branch, Durban</u>

13.2.2.11 Larry Hinton

13.2.2.12 Laurie Wasserman

13.2.2.13 Andy Taylor

<u>From KwaZulu Police</u>

13.2.2.14 The then Commissioner, General Jac Buchner

13.2.3 Weapons from Namibia (Koevoet) had been transported to Vlakplaas and later to Murrayhill (Mechem). The weapons were cleaned in acid and their serial numbers removed. That was done by the persons referred to in 13.2.2.3, 13.2.2.4, 13.2.2.6, 13.2.2.7 and 13.2.2.8. They were placed in black bags and distributed to the IFP.

Later weapons were also received from Mozambique and similarly handled.

13.2.4 Mr Themba Khoza was recruited by Brood van Heerden. Later Victor Ndlovu joined them. Weapons were distributed by them and also directly by members of C10 in Natal. It was in that way that Themba Khoza was caught with some of the weapons in a roadblock on 4 September 1990. Unit C10 paid his bail and legal fees. His false version as to how the weapons were planted in his car was accepted by the magistrate as reasonably possibly true and he was acquitted.

13.2.5 When the unit's stock of ammunition ran low, it was purchased from a weapons dealer - Brooklyn Circle Arms in 1991/1992. (Confirmation from the weapons register of Brooklyn Circle Arms was found by the Commission's investigators to the effect that members of the unit did buy weapons and ammunition on the dates alleged by Q).

13.2.6 De Kock received money payments from the IFP in return for the weapons. He has continued with this project since he left the SAP almost a year ago with a "packet" worth R1,2 million.

13.2.7 Willem Coetzee (Timol) from the East Rand Security Branch organised the train violence in cooperation with De Kock. They made use of members of C10, black policemen and

Askaris as well as Brood van Heerden and the members of IFP employed at ABSA Bank.

13.2.8 De Kock, Vermeulen, Paul van Dyk, Jeff Bosigo, Joe Mamesela and Lukas Kalino left the SAP with huge "packages" to keep them quiet. The Askaris each received between R200 000 and R600 000 for the same purpose.

13.2.9 An example of other specific incidents and hit squad activities was a murder perpetrated by a group led by De Kock near Nelspruit in March 1992 in which four ANC members and one IFP member travelling in a Hi-Ace Minibus were shot and killed.

14. MEETING WITH LIEUTENANT-COLONEL A F J BOTHA

14.1 On 8 March 1994, Adv du Toit met with Lieutenant-Colonel Botha at his office in Pretoria. With the consent of his superior, General Martin Nel, he supplied Adv du Toit with a host of information concerning two companies, namely Eastech and Intercol. According to a letterhead found by Lieutenant-Colonel Botha, Intercol was established and controlled by De Kock and Messrs Stander, Van Rooyen and a Lieutenant Piet Botha. Although the letterhead so declares, the companies' office documents establish that the only director of the company is Stander. Lieutenant-Colonel Botha informed Adv du Toit that Stander was coming to see him later that day and he agreed to Adv du Toit interviewing Stander when he arrived.

14.2 Stander arrived and agreed to speak to Adv du Toit. He provided Adv du Toit with certain information. Since then he has failed to appear to confirm this information under oath. His allegations implicate Vlakplaas members in serious criminal activities. He is materially contradicted by witnesses who did testify under oath. The Commission regards his evidence with suspicion and considers it inadvisable to rely on it or to report on it in this report.

14.3 Lieutenant-Colonel Botha informed Adv du Toit that Brigadier Schoeman had been requested by General Engelbrecht to furnish a report to the effect that General Engelbrecht's department was not involved in the criminal matters under investigation. He refused to do so.

14.4 The Commission has information that Lieutenant Piet Botha had been the subject of a motor theft investigation which was terminated by Lieutenant-General Basie Smit.

15. ATTEMPTS TO OBTAIN INFORMATION

15.1 Major du Plessis informed the Chairman that on Saturday 19 February 1994 Colonel Roelf Venter unexpectedly contacted him at his home and stated he had information that he was involved with an investigation with the Goldstone Commission and asked what it was all about. The major told him that investigation related to violence and intimidation. Colonel Venter said he was investigating allegations that old Vlakplaas members are still

involved with irregular activities and that his men were on standby to raid some of their homes. He mentioned names including Colonel Eugene de Kock. He asked if that would endanger the Commission's investigation. The major said that he was not involved in any specific investigation. Du Plessis gained the impression that Colonel Venter was testing him and that he in fact had no intention to raid the homesteads of the men he referred to.

15.2 Major du Plessis was approached by Major Henning Brand on 21 February 1994. He informed him that he had information that the major was involved in getting witnesses to confess to the Goldstone Commission about the activities of former Vlakplaas members. He said there was a meeting on Friday 18 February 1994 attended by Major-General Engelbrecht, Brigadier Oosthuizen and Colonel Otto and others. They were surprised and anxious that Majors du Plessis and Van Vuuren were working with the Goldstone Commission. He wanted to know what the major's involvement was with the Commission and whether he had introduced witnesses to the Danish Embassy. The major denied this.

15.3 On Tuesday 22 February 1994, Major Henning Brand again approached Major du Plessis. He asked whether he had introduced Leon Flores and Chappies Klopper to Idasa. He said he had done so at their request for the purpose of seeking assistance to obtain indemnities from prosecution. No further meetings between Leon Flores, Chappies Klopper and Idasa had been arranged.

15.4 On Wednesday 23 February 1994, Colonel Venter invited Major du Plessis for lunch. He asked if he had been transferred to

the Goldstone Commission. The major said the transfer was still pending. Colonel Venter said he and General Engelbrecht wanted the major to join the Goldstone Commission and keep them informed on who was giving information to the Commission and, in particular, what NIS was passing on.

15.5 Later, on 23 February 1994, Major du Plessis was again approached by Major Brand. He told him of the meeting with Colonel Venter and Brand said he would request Brigadier Oosthuizen to get Colonel Venter "off his back" and that he should rather give him (Brand) the information.

16. MEETING WITH MINISTER OF LAW AND ORDER AND COMMISSIONER OF POLICE

16.1 On 15 March 1994, the Chairman and Mr G Steyn, at the request of the State President, informed the Minister of Law and Order, Mr H Kriel, of the nature of the allegations concerning the aforegoing. The Minister then requested that the allegations be put to the Commissioner of Police. That was agreed and the Chairman, Mr Steyn and Advocates du Toit and Pretorius met with the Minister of Law and Order and the Commissioner of Police and the allegations were again explained.

16.2 The Commissioner expressed the view that it would be fair and just if the allegations against them were put to Generals Smit, Engelbrecht and Le Roux and he offered to make them available to the Commission for that purpose. The Chairman and Mr Steyn agreed with the Commissioner and requested that in addition

the Commission would like to have evidence from Colonel Roelf Venter, Colonel Eugene de Kock and four of the former Vlakplaas members, viz Willie Nortje, Chappies Klopper, Snor Vermeulen and Dave Baker.

17. FURTHER EVIDENCE ON 16 MARCH 1994

17.1 On Wednesday 16 March 1994, the Chairman and Mr Steyn heard the evidence of Generals Smit, Engelbrecht and Le Roux and Colonels de Kock, Venter and Bellingham.

17.2 The three generals denied all allegations of criminal conduct as well as any knowledge thereof. So, too, did Colonel de Kock.

17.3 Colonel de Kock admitted that he was still in possession of the passport and identity document in the name of Lourens Vosloo de Wet. He stated that he had refused to return it after he left the SAP in April 1993. He retained it, he said, as evidence should he ever need it. He also admitted that during his SAP career he also had passports in other false names.

17.4 General le Roux stated that he had not been aware that false passports were still in the possession of the former Vlakplaas members and had instructed Colonel Cronje to order their return to him.

17.5 General Engelbrecht confirmed that he, Brigadier Oosthuizen and Colonel de Kock had recently met at the Midrand

Hotel with the ANC Intelligence Department heads, Messrs Nhlanhla and Shaik. The purpose, he said, was to enquire about the future of the former Vlakplaas members.

17.6 Colonel Venter stated that General Engelbrecht had indeed put a stop to his investigation during 1993 into alleged arms importation by De Kock. According to Colonel Venter General Engelbrecht had told him that arms had indeed been imported by De Kock but that it did not constitute illegal conduct.

17.7 Colonel Venter admitted having met with Major P du Plessis on two occasions in recent weeks. He denied the versions of Major du Plessis to the extent that they implicated him in suggesting that Major du Plessis furnish him with information concerning his work with the Goldstone Commission.

17.8 Mr Andries (Brood) van Heerden, the head of security of ABSA Bank, denied any involvement in the supply of weapons to Inkatha. However, he admitted his fluency in Zulu and his acquaintance with Messrs Themba Khoza and Victor Ndlovu.

17.9 General Smit confirmed that large payments were made to De Kock and other members of Vlakplaas, particularly Askaris, when they terminated their employment in April 1993. The amount paid to De Kock was in excess of R1 million. The amounts were actuarially assessed and approved by the Cabinet.

18. SEARCH AND SEIZURE ABSA BANK

18.1 Acting in terms of its powers the Commission searched the safety deposit boxes of Colonel de Kock and Warrant Officer Chate of ABSA Bank in Pretoria. In one of the boxes a firearm registered in the name of De Kock was found and also undeveloped photographic negatives. The latter were developed. They are not relevant to the incidents referred to in this report.

18.2 The Commission also obtained documents relating to an account which appear to have been operated by a partnership. The account is apparently a secret one of the SAP. At this time the Commission does not have any knowledge regarding the use of these funds.

19. FURTHER EVIDENCE ON 17 MARCH 1994

19.1 On 17 March 1994 evidence was heard under oath from Andries (Brood) van Heerden, Willie Nortje, Snor Vermeulen, Dave Baker and Chappies Klopper. All these witnesses were formerly members of Vlakplaas.

19.2 Information given under oath by some of the aforegoing indicated, *inter alia*, that

19.2.1 A large quantity of weapons from Koevoet in the former South-West Africa was transported to Vlakplaas in the late 1980s. They included AK-47s, mortars, RPG-7s, hand grenades amongst others. They were stored under the control of De Kock. Snor Vermeulen used some of the

control of De Kock. Snor Vermeulen used some of the weapons including AK-47s to give regular training to black and white members of Vlakplaas. A substantial quantity of these weapons, including AK-47s, were supplied to Inkatha.

De Kock reported to them in 1991 that on the instructions of General Engelbrecht the weapons were to be removed from Vlakplaas. They were taken first to a farm called "Daisy" some 12 kilometres from Vlakplaas and then to TIN Store. Some of the weapons were taken to Speskop, a military installation.

At all times De Kock was in charge of these arms.

In his evidence De Kock denied all allegations or knowledge concerning these arms.

19.2.2 De Kock arranged payment for the purchase of firearms and ammunition by members of Vlakplaas from Brooklyn Circle Firearms in Pretoria. In particular on 8 June 1992 members of Vlakplaas purchased Glock pistols in this matter. They included Willie Nortje, D J Brits, K K Klopper, D W Snyman, C G P Chate, F D R Holtzhausen, R D Gevers and J J Els. In the weapons register of Brooklyn Circle Firearms, seized by the Commission, the address of the purchaser was reflected as Badger Arms. Badger Arms was a front company of De Kock.

19.2.3 Mr Themba Khoza of the IFP was given a motor vehicle and he and Ndlovu were paid by De Kock and given false names as informers. Firearms were delivered to Messrs Khoza and Ndlovu of the IFP for their activities against the ANC.

19.2.4 Units of Vlakplaas conducted hit squad operations.

19.2.5 General Krappies Engelbrecht has at all times been involved and a party to the projects. He approved payments out of the secret fund. According to many reports from De Kock to the witnesses he received portions of the payments dishonestly received for arms. Furthermore, De Kock has made it known to the witnesses and many other members of Vlakplaas that he has incriminating evidence against Generals Engelbrecht and Basie Smit.

19.2.6 One of the witnesses alleges that De Kock's hold over General Smit relates to the murder in the late 1980s of an Indian member of the PAC and his whole family. The Commission's investigators are aware that the incident took place in Botswana. The witnesses are aware of the identity of the assassins.

19.2.7 After the Commission's inquiries concerning the false passports, at a social event arranged by some of the Vlakplaas members, General Engelbrecht expressed his concern that one of them had been giving information to the Commission. Yesterday, after he had given evidence,

General Engelbrecht informed some of the witnesses that he was in big trouble.

19.2.8 The only evidence directly implicating General le Roux was an incident when he was a colonel in Krugersdorp and became aware of the murder by Vlakplaas members of a certain Maponya. One witness alleges that De Kock informed him at the time that he had received a message from Le Roux for Maponya to be killed.

19.2.9 Other murders were carried out by members of Vlakplaas.

19.2.10 The fact that arms were manufactured by Vlakplaas members at Mechem and distributed to Messrs Themba Khoza and Victor Ndlovu.

19.3 The aforegoing is by no means a complete list of the incidents recalled by the witnesses.

20. INVESTIGATION INTO KWAZULU POLICE HIT SQUADS

20.1 At the end of November 1993, the Chairman and Adv du Toit met with the State President, the Minister of Justice and Defence and the Minister of Law and Order in order to brief them on the evidence which the Commission had concerning at least one hit squad operating in the KZP. The Chairman had requested the Commissioner of the SAP, General J van der Merwe, also to be present. He was unable to attend the meeting and Lieutenant-General Johan le Roux represented him.

20.2 At the meeting it was agreed, *inter alia*, that Brigadier E du Preez would head the investigation in order to establish whether there were other hit squads and that he would work closely with Adv C Koenig, of the Commission's Natal Investigation Unit in that investigation.

20.3 In the result little or no progress was made in the further investigation and, in effect, that was what General R During, the Commissioner of the KZP, eventually reported to the TEC some weeks ago.

20.4 The Chairman, after consulting with Adv Koenig and Lieutenant-Colonel Dutton, was unhappy with the apparent lack of progress. He requested the two police officers who had been appointed by Brigadier du Preez to conduct the investigation to visit him. The officers are Major van Aswegen and Captain Scholtz. The Chairman requested General Meintjies, the Deputy Regional Commissioner in Natal to arrange for these two officers to visit the Chairman in Johannesburg. They did so in the company of Adv Koenig and Lieutenant-Colonel Dutton. Mr G Steyn was also present.

20.5 Captain Scholtz informed the meeting that he had approximately 100 dockets relevant to the KZP hit squad investigation. Some of them called for further and immediate investigation. At about the end of November or beginning of December 1993, it was made clear to both Major van Aswegen and Captain Scholtz by Brigadier du Preez that they were not to

continue with any further investigations and only to complete the Mkhize investigation which was the matter reported by the Commission in its report of 6 December 1993 and which matter had led to the meeting with the State President.

20.6 The blocking of the further investigation by Brigadier du Preez was in direct contradiction to the decision reached at the meeting with the State President. Why Brigadier du Preez acted as he did and, in particular, who instructed him to do so are matters which clearly call for investigation.

20.7 In his evidence on 16 March 1994 Lieutenant-General le Roux denied any knowledge of the aforegoing allegations and undertook to investigate them forthwith.

20.8 According to Captain Scholtz there is convincing evidence that elements in the KZP have been and are still involved in hit squad activities in Natal and also in the Transvaal. Caprivi trainees are involved and many of them are being kept together in two KZP camps.

20.9 Some months ago in the Esikhawini area of Northern Natal, survivors of more than one massacre reported that the very persons who committed the massacres came back later in their capacities as KZP policemen to investigate the scenes of crime.

20.10 In the recent past members of the KZP who were involved in these hit squad activities were transferred to Mpumalanga and

Bambayi. Soon after their transfer massacres were perpetrated in these two areas which until then had been peaceful communities.

20.11. Furthermore, according to Captain Scholtz, there was evidence in some of the dockets indicating the involvement of members of SAP security police in hit squad activities.

20.12 According to Major van Aswegen and Captain Scholtz it would take months to investigate the matters referred to by them.

20.13 When the aforegoing was put to General le Roux on 15 March 1994 he stated that he was unaware that the investigation had been terminated and was unaware of the stage that the investigation had reached.

20.14 The professed ignorance by senior officers of the activities of Vlakplaas is difficult to understand.

21. THE WALLIS COMMITTEE

21.1 The Commission also attaches hereto two reports it has received from the Wallis Committee which consists of Adv M Wallis SC (Chairman), Mr R Zondo and Mr J A L Geyser.

21.2 The First Interim Report

The first interim report was furnished to the Commission during September 1993. The sole issue discussed was the well publicised

attempts by the Wallis Committee to obtain agreement for the establishment of a carefully selected police investigation unit in the Natal Midlands. Notwithstanding broad agreement with regard thereto, the initiative died in the face of unequivocal and strong opposition from the Commissioner of the South African Police.

21.3 As recommended by the Wallis Committee, its report was discussed by the Commission with the Commissioner of Police. The issues raised in the report were then overtaken by subsequent events. In particular the relevant matters became the subject of debate and negotiation by the Multi-Party Negotiation Process and its Committee on Law and Order and later by the Transitional Executive Council and its Sub-Council on Law and Order.

21.4 In the circumstances the Commission decided that the matter should be left for resolution by the political parties and that the role of the Commission could only be ancillary thereto. It is not considered necessary or appropriate to set out in this report the subsequent decisions taken or to comment on them. Suffice it to say that methods of handling complaints against members of a police force are of fundamental importance with regard to public perceptions of that force. This is a matter which will require to be considered in relation to the restructure of the South African Police.

21.5 **The Second Interim Report**

For some years now the KwaZulu Police (KZP) has been the subject of criticism and attack not only from the ANC but also from South

African and international human rights organisations, academics and members of the public.

21.6 The Commission now refers to the cumulative effect of this report, and the evidence concerning at least one "hit squad" operating within the KZP referred to in the Commission's Report of 6 December 1993. In addition there is the involvement of former Caprivi trainees in an increasing number of cases of criminal conduct in KwaZulu and the apparent failure by the KZP to investigate the activities of the Caprivi trainees either before or since the Commission's report on those trainees in June 1993. A further point is the retention in high office of Major-General Mathe, the Deputy Commissioner of the KZP. His name has regularly and over years been linked with improper conduct in the course of his official duties. Finally, the Commission is satisfied that the KZP is presently dragging its feet (probably a generous description) in investigating the presence of other hit squads within its ranks.

22. THE COVER UP OF THE NQUTU MASSACRE

22.1 On 14 March 1994, the Commission held a preliminary inquiry into allegations first published on 6 March 1994 in the London Sunday Observer newspaper. The report related to a cover-up by the KZP of the identity of the persons who committed a massacre at Nqutu on 7 November 1993. It was alleged that Mr Khoza may have been involved in the planning of a disruption of an ANC rally to be held in Nqutu on 7 November 1993. It was alleged that as the

rally was cancelled at a late stage, members went and massacred the inhabitants of the Molefe kraal. The record of the preliminary inquiry will soon be available. The Commission has received submissions from the legal teams of the KZP and the ANC. At this point it can be stated that there appears to be *prima facie* evidence that the massacre was not investigated with any diligence and, indeed, was hopelessly inefficient. In particular the three members of the Commission who heard the evidence have no doubt that Brigadier Ndlovu and Major Nyasula are dishonest witnesses and, in particular, knowingly misinformed General R During, the Commissioner of the KZP, that Lieutenant Mbatha who gave the information to the Sunday Observer, had never been involved in the Nqutu Massacre investigation.

22.2 When it was announced that the Commission would inquire into this matter, Mr Themba Khoza made a press statement to the effect that he would not testify before the Commission. That notwithstanding, Mr Khoza was invited to give evidence. The letter addressed to him was formally acknowledged without any further communication from him.

23. REASONS FOR REPORTING AT THIS STAGE

23.1 The Commission would have liked to have had additional time in order to investigate more thoroughly a myriad of allegations made by many witnesses. However, with the election now less than 6 weeks away the members of the Commission and its counsel came to the unanimous decision that with the corroboration

already at hand it has no option but to bring all the information contained in this report to the attention of the public. If those intent on further destabilisation succeed in aborting the election an investigation afterwards would be a futile exercise.

23.2 The corroboration for the major allegations include the following:

23.2.1 The fact that false passports and identity documents were still in the possession of members of the SAP who have no innocent use for them;

23.2.2 The fact that one of the persons in possession of such documents is Eugene de Kock who ceased to be a member of the SAP months ago. The Commission has been given further information from a reliable source to the effect that De Kock is presently in possession of no less than seven passports all in false names. In his evidence, De Kock stated that of all the false passports issued to him he has retained only one - that in the name of De Wet.

23.2.3 The reaction of Colonel Cronje and General Engelbrecht to the investigation by the Commission into the false passports;

23.2.4 The approach by De Kock to the ANC;

23.2.5 The fact that De Kock was accompanied by General Engelbrecht and Brigadier Oosthuizen and the fundamentally important inferences that must be drawn therefrom. [The association <u>now</u> of the officers with De Kock, in the view of the Commission is of particular significance].

23.2.6 The request by General Engelbrecht to Brigadier Schoeman to furnish a report that General Engelbrecht's department was not involved in the criminal matters under investigation.

23.2.7 The action by General Engelbrecht in putting a stop to the investigation against De Kock by Colonel Roelf Venter.

23.2.8 The approaches to Major du Plessis.

23.2.9 The documentary proof of the purchase of arms and ammunition by Vlakplaas members from Brooklyn Cirle Arms.

23.2.10 The arms from Koevoet being stored and used at Vlakplaas.

23.2.11 The training of Vlakplaas members in the use of AK-47s.

23.2.12 The false denial of the facts in 23.2.10 and 23.2.11 by De Kock.

23.2.13 The manufacture and distribution of arms and ammunition to the Inkatha members referred to above.

24. EVIDENCE ON OATH

24.1 All of the evidence referred to above was given under oath to a committee of the Commission.

24.2 The evidence heard by the committee from the witnesses on 17 March 1994 was not able to be put to the witnesses who testified prior thereto. In this regard it was generally inconsistent with the blatant denial of the earlier SAP witnesses.

24.3 From the information available to the Commission so far, it is clear that one of the motives of those involved was the substantial financial gain which flowed from their illegal activities.

25. STATEMENT BY MAJOR-GENERAL B HOLOMISA

25.1 On 14 March 1994, a SAPA report containing allegations made by Major-General B Holomisa were faxed to the Commission. The allegations, coming when they did, could have seriously prejudiced some of the Commission's attempts to obtain further detail and corroboration of the illegal activities referred to in this report.

26. RECOMMENDATIONS

26.1 The Commission would like to stress that the persons named in this report have not been found guilty of the allegations

made against them. The evidence, much of it strong, remains ***prima facie*** until proven by normal judicial processes.

26.2 The Commission exhorts the Government, the TEC and other relevant authorities to take all possible steps to neutralise elements in the SAP and KZP which may or might be likely likely to to cause or encourage criminal acts of violence and intimidation between the present time and the election and in the period immediately thereafter.

26.3 The Commission earnestly appeals to all South Africans to recognise and appreciate that as serious as the alleged misconduct by some members of the SAP may be, there are over 100 000 members of the Police Force. Without the courage and honesty of Majors van Vuuren and Du Plessis, Brigadier Schoeman and Colonel Piet Botha, the Commission would have been unable to discover the evidence pointing to a horrible network of criminal activity. Without the support of General G Fivaz and the Commissioner, General J van der Merwe, it would have been difficult if not impossible to have put together an effective investigation unit.

26.4 The honest and dedicated police officers to whom we have just referred are not the exception. They should serve as role models for their colleagues especially as we enter a democratic era. It would be unfair and dangerous to tar the whole Police Force with the brush of Vlakplaas.

26.5 Other members of the SAP should be encouraged to come forward and expose what has been happening. That is the most effective way of stopping it. Consideration should be given to the grant of an indemnity to persons who wish to come forward and who were themselves guilty of criminal conduct. Those most deserving of exposure and punishment are the senior officers who may be proved to have misused positions of great trust and power. They indeed used that trust and those powers to do the very things they were designed to prevent.

26.6 To the extent that they are practically capable of implementation, the Commission supports the recommendations contained in the second report of the Wallis Committee.

27. The Commission considers it to be in the public interest to state that it is not in possession of evidence of current or recent third force activities apart from those of the responsible organisations referred to in this report.

28. DEDICATION OF THE COMMISSION STAFF

The Commission would like to commend the dedication and work of its staff. In particular reference must be made to Advocates J J du Toit, J Pretorius and C Koenig, the Commission's secretary, Adv G Cuthbertson and Mrs E Pelton, without whom this report could not have been timeously produced. They have worked for inordinate periods of time during nights and on weekends on the work of the Commission. Without their dedication and efficiency this

difficult and sensitive investigation could not have been brought to a successful conclusion. Particular praise is due to Lieutenant-Colonel F Dutton and the members of the Natal Investigation Unit for their continuing efforts in the investigation of so many of the acts of terror and criminality perpetrated in Natal/KwaZulu.

INTERIM REPORT OF THE WALLIS SUB-COMMITTEE

OF THE GOLDSTONE COMMISSION

The committee was established pursuant to the third interim report of the Commission dated the 21st December, 1992 having the following as its terms of reference:-

> "A number of parties requested the Commission to inquire into the many incidents of violence that have taken place. To accede to all these requests would be practically impossible and will not add significantly to the Commission's understanding of the causes of pubic violence and intimidation in the areas in question. It is not the Commission's function to investigate incidents of public violence where the cause thereof is known. That is the function of the police. However, the Commission has established a committee, with the necessary concurrence of the Minister of Justice, in order to ascertain whether there are any incidents of violence other than political rivalry between the IFP and ANC".

The Committee understands that its function is to ascertain whether there are any causes of violence in the Natal Kwazulu area other than political rivalry between the IFP and the ANC.

2.

The Commission and the Committee called for representations from the public and thereafter held initial public sittings in Port Shepstone on the 11th January 1993 and in Empangeni on the 13th January 1993.

3.

Wide ranging submissions were made to us at both these centres on these and other occasions and we were referred to a number of incidents of violence.

4.

It was clear that whilst many of these incidents arose from political conflict between the ANC and the IFP - a matter specifically excluded from our terms of reference - the parties appearing before us had identified other causes as having a material influence on the continuation of violence and intimidation in Natal and Kwazulu.

5.

Central to the allegations made by the various parties was that incidents of violence and intimidation were not followed, as they should in the ordinary course be, by the operation of the normal processes of law, namely, investigation by the police, arrest of the perpetrators and their subsequent prosecution, conviction and sentencing by the courts.

6.

This problem had to some extent been identified by the Commission

in paragraph 5.6.3 of its third interim report which reads:-

"5.6.3.1 Both the ANC and the IFP complained about the inability of or failure by the SAP and the KZP to apprehend and successfully charge the perpetrators of serious political crimes. On the other hand the SAP and the KZP complained about the lack of community co-operation when they seek to investigate such crimes.

5.6.3.2 In this area the Commission believes that international police observers could be of substantial assistance to both the SAP and the KZP. Their presence and involvement for example in selected police stations would go a long way towards lessening the fears of many that they would not receive fair and serious attention and adequate response to complaints.

5.6.3.3 Without the full co-operation of the communities in which they operate the police cannot be expected to perform adequately or successfully.

5.6.3.4 In this area, too, an adequate, well known and trusted witness protection programme would encourage witnesses to report information to the police.

5.6.3.5 Many parties expressed their concern at the frequency and ease with which bail is granted to persons arrested on charges relating to serious cases of public violence and intimidation. This phenomenon heightens fears of further

violence and acts as a form of intimidation that prevents witnesses furnishing information to the police. This, in turn, reflects badly upon the ability of the police to successfully bring to justice the perpetrators of such violence. More attention should be given by the appropriate authorities to the effect of the release of such persons in already traumatised fear-ridden communities.

7.

The representations made to us both confirm this and go beyond it by making allegations in specific cases that the perpetrators of violence either were or included members of the South African Police.

8.

The essence of the submissions made to us was that there are both active and passive causes of violence and intimidation in Natal and in Kwazulu; active in the sense that specific allegations were made that member of the South African Police were guilty of such conduct and passive in the sense that the failure to bring perpetrators (including members of the South African Police) to book encouraged further violence by withdrawing the restraints and protective measures which should operate to prevent it.

9.

We confine ourselves at this stage to the South African Police because separate hearings have been undertaken by the Committee in relation to certain allegations against the Kwazulu Police and it will be necessary for us to report on that separately. It suffices for present purposes to say that in broad

detail the allegations referred to above were also made against the Kwazulu Police particularly in regard to their activities in and around Empangeni.

10.

In order to test the allegations that there is a major problem in relation to the investigation of incidents of violence and in securing the arrest and conviction of offenders we requested and obtained from the Senior Public Prosecutor in Port Shepstone certain statistics relating to such cases. We attach hereto marked "A" the information obtained from him concerning incidents of public violence and unrest - overwhelmingly cases of murder, attempted murder and public violence - in the area of his jurisdiction.

11.

What emerges from that information is this:-

(a) the bulk of such cases in the past two years in the Port Shepstone district are still under investigation with no one being arrested and charged even where a suspect has been identified;

(b) even in cases where charges have been brought there are inordinate delays in bringing matters to trial and the bulk of the accused in such cases have been released on bail which tends in the public eye to convey that no steps have been taken by the law in respect of the offences which they are believed by the public at large to have committed.

12.

We understand that the situation in Port Shepstone is in no way unique and is typical of the situation in other areas where violence and public intimidation has taken place in the past few years.

13.

When in addition to these cases regard is had to the numerous incidents identified by the parties who appeared before us, we are satisfied that there are substantial problems being experienced in Natal and Kwazulu in regard to the investigation and prosecution of cases involving violence and intimidation and in many, and possibly the bulk of, such cases, no effective action is being taken against the perpetrators.

14.

We are also satisfied that this failure or inability to bring such perpetrators to account is itself a substantial contributory cause to further violence because it encourages the view amongst perpetrators of violence that they can continue their actions with impunity. It lowers the standing of the police in the eyes of the community and diminishes their ability to perform an effective job of policing, particularly in relation to the incidents of violence and intimidation with which the Commission is concerned.

15.

The submissions as placed before us particularly by the ANC, the IFP and the Port Shepstone Local Dispute Resolution Committee suggested that the Committee should itself conduct an investigation into the various incidents of

violence reported to it and to identify the perpetrators thereof. Whilst not expressly stated the hope appeared to be that this would result in the Commission exercising its powers in terms of section 8(3) of the Prevention of Public Violence and Intimidation Act, 139 of 1991,

16.

It seemed to us that the suggestion that the Committee itself or the investigating team of the Commission operating in Natal under Colonel Dutton neither could nor should engage in an investigation of all the incidents reported to us. From a logistical point of view the undertaking of such an investigation was simply not feasible. Secondly the Commission in its third interim report had already recorded its view that it was not its function to undertake such inquiries and that:

> "....little significant advantage is to be gained by multiplying its inquiries into specific incidents of violence".

17.

Against this background the members of the Committee engaged in extensive discussion with the representatives of the various parties appearing before us with a view to ascertaining in what way the Committee could proceed with its investigations in a positive fashion. It is appropriate at this stage to record that all of the representatives who appeared before us adopted a helpful and co-operative approach in these discussions.

18.

We must say in this regard that we are firmly of the view that the problems of public violence and intimidation in this country will only be fully resolved once those whose actions and words contribute thereto acknowledge their responsibility therefor and participate willingly in steps to bring it to an end.

19.

We were therefore encouraged, after our initial meetings in Port Shepstone and our discussions with the various parties to receive from the South African Police a memorandum dated the 17th February 1993, a copy of which is annexed hereto marked "B", which contained the following acknowledgement:-

> "Nevertheless the SAP is aware that the complaints levelled against it are due to the activities of these individuals, not without foundation and accepts that some of its members have:-
>
> (a) displayed an anti ANC bias;
>
> (b) attempted to discourage support of the ANC;
>
> (c) attempted to encourage support of the IFP;
>
> (d) committed acts of violence against supporters of the ANC;
>
> (e) refused to entertain complaints by ANC members;

(f) turned a blind eye to violations of the law by members of the IFP;

(g) abused their powers.

In the turmoil that is wreaking havoc within the community, this conduct cannot be allowed to continue and the perpetrators of these acts must be rooted out before credibility and effective policing can be restored".

20.

The Committee welcomes this candid approach and regarded it as a breakthrough in the difficult process of resolving the problems referred to above. We agree entirely with the sentiments embodied in the last sentence of the quotation and wish to add only this. It is not only necessary that members of the police force responsible for the conduct referred are rooted out, but also that the police force should be seen to be pursuing the perpetrators of violent acts even-handedly and with only one goal in mind, namely, to bring to justice the perpetrators of violence irrespective of their motivation or political affiliations.

21.

The significance of this candid approach by the SAP was recognised by other parties appearing before the Committee. Thus in a memorandum in response to the police memorandum they were described by the ANC as being "momentous and far-reaching".

22.

After these memoranda had been delivered to the Committee a further meeting was held in Port Shepstone at which the implications thereof were discussed between the Committee and the representatives of the various parties appearing before us. There was an strong feeling among all concerned that this opportunity should be seized and used as a basis upon which all concerned could build in a co-operative fashion the beginnings of a solution to the problems referred to above.

23.

At the meeting the following proposal was put to the parties by the members of the Sub-Committee. We could see little to be gained by engaging in an endeavour to allocate blame for the situation which had arisen. We sought, however, to build upon common ground which existed. We accordingly suggested that the ANC and the IFP should identify certain key cases the investigation and resolution of which would have the effect of reassuring members of the community that the police are there to assist them and that the justice system provides a satisfactory means of resolving their problems. We asked that these cases should be selected not simply on the basis of their importance to the organisations concerned, but also on the basis of those organisations having available to them information which and witnesses who would materially assist in completing the investigations leading up to the arrest of the persons responsible for the crimes in question.

24.

Once these cases had been identified the Committee would then, bearing in mind also the cases referred to us by the Local Dispute Resolution

Committee, select a workable number of cases and refer them to a special task force, established by the local police in the area, with a view to solving the crimes quickly and bringing the offenders to book. The key to achieving this lay in a mechanism for overcoming suspicion which all parties agreed existed and which might in other circumstances result in witnesses being reluctant to come forward to report what they knew to the police. We suggested that this problem could be overcome and the gap bridged if one or more members of the Natal Investigation Unit of the Commission, including possibly one of the foreign policemen seconded to the Commission, could join the police investigating team and act as a link or bridge between them and the community organisations and the witnesses produced by them.

25.

In making this proposal we were mindful of our obligations not only to identify the causes of public violence and intimidation but, wherever possible, to make recommendations in regard to the steps to be taken to eliminate such public violence and intimidation. We saw this proposal as a very small first step in the process of restoring community trust in the police force and as a means of enabling the SAP to demonstrate to the community their willingness to engage in impartial and effective policing in this area.

26.

The proposal was welcomed by the ANC and the IFP and their legal representatives agreed to support it. The Committee asked for and received undertakings from them that they would use their best endeavours to produce witnesses and information to such an investigation unit.

27.

The proposal was likewise accepted by the representatives of the police who appeared before us. They made it clear, however, that they would require approval at a higher level before such a proposal could be implemented. In doing so it was accepted that if there existed logistical problems in implementing such a proposal these could form the subject of debate before the Committee in order to resolve them prior to the implementation of such proposal.

28.

It is with considerable regret that the Committee must report that the necessary approval to implement this proposal has not been forthcoming from the police authorities. Our understanding is that it has been referred to the Commissioner of the South African Police but we have received no official response thereto. Approaches made to the Commissioner through the offices of the Secretariat of the Commission have likewise elicited no response. No approach has been made to the Committee to suggest any reason why the proposal is impractical or unworkable.

29.

Shortly after our sittings in Port Shepstone the attention of the Committee was drawn to allegations made against the SAP in regard to their investigation of incidents in the Mooi River area, particularly the burning down of the Bruntville Hostel in January 1993.

30.

As a result of these complaints and the investigations undertaken by

the Natal Investigation Unit of the Commission, the Committee conducted hearings in Mooi River on the 14th, 21st and 22nd April, 1993 and the 12th May, 1993.

31.

It would be inappropriate at this stage bearing in mind the interim nature of this report, to make specific findings in regard to the proceedings in Mooi River. It suffices to say that the evidence led before us and the contents of the dockets placed before us by the Investigation Unit provide a *prima facie* basis for either criminal proceedings or disciplinary proceedings to be taken against members of the South African Police. It is pertinent to note at this stage that the South African Police were represented by the same legal team in Mooi River as had represented them in Port Shepstone and Empangeni.

32.

At the last sitting of the Committee on the 12th May 1993, we heard the evidence of GENERAL VAN DER MERWE who is the commanding officer of the South African Police in the Natal Midlands area. Like the SAP legal representatives he expressed a sincere desire to restore normal relations between the police and the public in the area under his command and to examine and improve community relations in that area.

33.

At the end of this hearing we were asked by the legal representatives for the ANC and the SAP to adjourn further proceedings of the Committee in relation to events in this area in order to enable the parties through their legal representatives to meet and discuss matters with a view to seeing whether it would be possible to arrive at a common proposal which could be put before the

Committee for its consideration. Naturally we agreed to this.

34.

In agreeing to postpone the further work of the Committee on these matters we were conscious of the fact that it is highly desirable for this Committee to bring its work to a conclusion and report thereon. We felt, however, that this had to be balanced by the need, if our work is to have any purpose, to make helpful recommendations with a view to resolving the problems identified by us. It was, and is, our view that such recommendations are far more likely to be effective and have desirable results if they flow from agreement between the parties principally involved. It was for that reason that we acceded to the request.

35.

We pause at this point to mention that the indications from the evidence before us are that the problem of lack of confidence in the ability of the SAP to provide an effective policing service is not confined to those areas referred to in our terms of reference, which areas are particularly associated with public violence having a political origin.

36.

Relatively shortly after the Committee was established we received an approach from Advocate MADONDO, a member of the bar in Pietermaritzburg, as the chairman of the MSINGA CRISIS COMMITTEE, a body established in 1980, expressing concern about the continuing violence in the Msinga area, a matter which is of general public notoriety, and of which every member of the legal community in Natal is fully aware.

37.

The interesting feature of Mr. MADONDO's evidence, for present purposes, is that, as with the other areas in relation to which we had received submissions, there is a considerable complaint in the Msinga area of inadequate policing, similar in character to that reported in other areas. This leads us to believe that the problem is a widespread one and this is confirmed by the police officers forming part of the Commission's Natal Investigation Unit.

38.

The Committee accordingly attached considerable importance to the willingness of the SAP in Natal to engage in discussions with interested parties with a view to seeking a solution to these policing problems and their willingness to participate in endeavours, such as those suggested by the Committee, to resolve those problems.

39.

The discussions which ensued from the hearings held by this Committee in Mooi River took place between representatives of the SAP, the ANC and the Legal Resources Centre in Durban, which represents various people in the area. In addition, we understand that attorneys representing COSATU were involved in these discussions. The Committee itself did not participate therein.

40.

As was to be expected the discussions were not free from difficulty. This inevitably slowed the process.

41.

One of the factors which occasioned difficulties was the need for parties to revert to their principals for instructions on every issue. During the process this was resolved and the parties ensured that their representatives had a mandate to attend and participate in the meetings. To this end Lieutenant General STEYN, the Regional Commissioner of the SAP, appointed Brigadier General MEIRING to participate in the discussions.

42.

During August 1993, the members of the Committee were advised that as a result of these deliberations the parties had managed to reach an agreement which, although initially applicable to the Natal Midlands area, it was anticipated could be extended to other areas in Natal in respect of which the Committee has been investigating incidents of public violence and intimidation.

43.

We were furnished with a memorandum dated the 9th August 1993 by the legal representatives of the SAP which set out the agreement which had been concluded. We annex hereto marked "C" a copy of that memorandum.

44.

In essence the agreement embodied in that memorandum involved the establishment of a carefully selected police investigation unit in the Natal Midlands, which would investigate every case of misconduct laid against any member of the SAP other than unlawful conduct arising out of the driving of a motor vehicle. It was contemplated that this police unit would operate in close conjunction with a

member of the staff of the Attorney-General in Natal as well as the Natal Investigation Unit of the Commission and the International Police Observers. The unit would report a quarterly basis to the police reporting officer in Natal, Advocate NEVILLE MELVILLE.

45.

The unit proposed to be established in terms of this memorandum would operate on a more limited basis than that foreshadowed by the discussions before the Committee at its sitting in Port Shepstone. It would be confined to investigations of cases of misconduct against members of the SAP and it would operate only in the Natal Midlands area. The reservations felt about this were, however, tempered by the fact that the memorandum stated the following:-

> "However, notwithstanding the intentions of the SAP to implement these proposals in the Midlands, it considers it desirable that a similar unit be established in Durban, Pinetown, Port Shepstone, Newcastle and Empangeni. However, due to constraints of time interested parties in these areas have not yet been canvassed on their views which are considered to be of importance if the units are to have the credibility necessary for their proper function".

46.

It was the view of the Committee and we believe of all interested parties that the establishment of this unit would provide the first step along the long road which needs to be walked towards an effective and credible police force operating in the interests of all members of the community.

47.

The Committee was gravely disturbed therefore to be advised, when it convened on the 12th August 1993 to receive these proposals, that, notwithstanding their approval by the entire hierarchy of the SAP in Natal, the Commissioner of Police had on the previous evening instructed the legal representatives of the SAP that they were not to be placed before the Committee.

48.

During the day on the 12th August 1993 we understand that substantial efforts were made by the senior officers in the Natal Region of the SAP to discuss the proposal with the Commissioner and seek to persuade him to agree thereto. Those discussions came to nought and the hearing on that day was aborted.

49.

We were advised at the hearing by counsel representing the SAP, that whilst the Commissioner did not object to the proposal in principle, he was unwilling to accede thereto because of the existence of the Security Forces Board of Inquiry Act. This is so, notwithstanding the fact that:-

(a) that Act has not yet been implemented nor is it expected to be implemented in the foreseeable future;

(b) there have been demands for the amendment of that Act, and this process will not only not come before the present Parliamentary session but it is unclear as to when Parliament will be able to consider it;

(c) the board of inquiry to be established under that Act will only deal with a limited range of serious offences namely:-

(i) murder;

(ii) kidnapping;

(iii) assault with intent to do grievous bodily harm if such assault is committed on a person while he is in custody;

(iv) defeating the ends of justice;

(v) a contravention of the Corruption Act, 1992;

(vi) any other offence which in the opinion of the Chairman of the Board and the Chief Executive Officer of the Board is of a serious nature;

(vii) any attempt to commit one of the offences set out in sub-paragraphs (i) to (v).

50.

It will be apparent from the aforegoing that even if the Board of Inquiry had been established and was functioning it would not have the powers to investigate many of the complaints which exist against the members of the SAP. Certainly, only a few of the matters placed before us at our sittings in Mooi River would have fallen within the proposed ambit of authority of this Board. The power of the Chairman and the Chief Executive Officer of the Board to enquire into any matter which they view as being of a serious nature is insufficient to overcome the

problem that in many cases the establishment of a Board of Inquiry having these terms of reference would in no way meet the problems experienced in relation to certain members of the SAP.

51.

The Committee's further objection to this approach is that it does very little to meet the concerns expressed above. Thus, for example, the Board could not undertake the tasks we had envisaged in our discussions at Port Shepstone namely of investigating criminal activity in the context of incidents of public violence and intimidation which are of great concern to the affected communities where the persons responsible therefor are not members of the SAP.

52.

The attitude of the Commissioner of the SAP was commented upon in certain newspapers over the weekend following the abortive sitting of the Committee. This resulted on the 13th August 1993 in the Commissioner issuing a press statement, a copy of which is annexed hereto marked "D".

53.

We do not regard the contents of that statement as being an adequate response to the problem. Whilst we share the view of the Commissioner that it is necessary to resolve the present problems of the SAP by way of a "comprehensive and well planned strategy on a national basis" we cannot accept that this is any justification for not establishing a unit such as that agreed to by the hierarchy of the Natal police in relation to the Natal Midlands area. We find it significant that those directly involved in the negotiations who would be responsible for the implementation of that agreement did not regard it as being

likely either to "create confusion" or to be "drastically counter-productive". Instead they regarded it as being a sensible and immediate response to an existing problem. We believe that they also shared the view that this could provide a stepping stone towards the type of national policy which the Commissioner has in mind.

54.

Our second serious objection to the standpoint of the Commissioner is the delays inherent in it. Every day which goes by without any effective steps being taken to address the problems referred to herein is another day on which ordinary people living in the affected communities will believe that the SAP is unable, or worse still, unwilling to address these problems and seek to fulfil its function of providing a proper and credible policing service to the community.

55.

The attitude that the affected communities must simply wait until a Board is established sometime in 1994 (if they are lucky) which Board may, or may not, regard their problems as a priority and which in any event cannot deal with most of them, seems to us entirely unacceptable. When this is seen in conjunction with a refusal by the Commissioner to permit the members of his force to participate in negotiated structures aimed directly at addressing their problems, the perception must at best be that the SAP are unconcerned about these problems, and at worst that they are unwilling to have them investigated. This is reinforced by the Commissioner's lack of a favourable response to the proposals in respect of Port Shepstone.

56.

All of this in our view adds to the lack of credibility which the SAP has in the community, discourages people from assisting the police in their investigations and leaves the field open for those who have chosen violence as their path to engage in it with little fear of apprehension.

57.

The attitude adopted by the Commissioner in relation to this matter also gives rise to grave concerns about the functioning of this Committee and, with all due respect, the functioning of the Commission. We say this for the following reasons. It is inevitable that in the area of the investigation of violence, the willingness of the police to undertake such investigations and the investigation of allegations that members of the SAP are involved in such incidents, any committee of the Commission or the Commission itself will make recommendations as to the manner in which the SAP should deal with these problems. Indeed, but for the agreements to which we have referred above, it is probable that this Committee would already have reported and made recommendations for the establishment of investigation units in the areas principally affected by violence in Natal, such teams to operate broadly on the basis discussed above.

58.

The making of such recommendations seems to us, however, to be rendered entirely pointless by the attitude which has been adopted by the Commissioner in relation to the agreed proposals in respect of the Natal Midlands area and his lack of response to the Port Shepstone proposals. If a proposal such as the former negotiated on the part of the police by officers of the highest rank acting with the approval of the Regional Commissioner in Natal are not to be

approved by the Commissioner then it is legitimate to ask what purpose would be served by this Committee, or the Commission, making recommendations of a broader and more general nature but along similar lines in its reports.

59.

Such recommendations would be made in the certain knowledge that it is improbable in the extreme that they will be approved by the Commissioner and accordingly improbable that they will be implemented.

60.

In effect the Committee finds itself in a position where whatever recommendations it may make in respect of the problem of public violence and intimidation in Natal, it knows in advance that such recommendations will almost certainly not be approved by the Commissioner and not be implemented.

61.

For those reasons we thought it best to issue an interim report at this stage indicating:-

(a) the nature of the problems which we have identified and the role which those play in contributing to the continuing public violence and intimidation in Natal;

(b) the possible solutions to those problems which have been explored by the Committee;

(c) the impasse in which we find ourselves as a result of the attitude of

the Commissioner of the SAP.

62.

The only recommendation which we make at this stage is therefore that the Commission should meet, as a matter of urgency, with the Commissioner of Police, and if necessary, with the Minister of Police and the State President, with a view to clarifying the attitude of the police to recommendations by this Commission and to ascertain whether any useful purpose would be served by this Committee pursuing its present investigations and making recommendations which require for their implementation the co-operation of the SAP.

DATED at DURBAN this day of SEPTEMBER, 1993.

M.J.D. WALLIS S.C

A.J.L. GEYSER

R.M.M. ZONDO

REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

Fax 031-3044466

./Rel. No.

INQUIRIES: Mrs M E W Coetzer
(0391) 20136

C König
LDSTONE COMMISSION

KANTOOR VAN DIE—OFFICE OF THE
Magistrate
Private Bag X845
PORT SHEPSTONE
4240

4 February 1993

ATISTIC OF VIOLENCE AND UNREST CASES NOT YET FINALISED

Attached two lists of statistics as required by you.

1 List A - Cases where accused have already been charged but not yet finalized in Court.

2 List B - Cases still under investigation.

E/W COETZER
NIOR PUBLIC PROSECUTOR

C/ib

"A"

SAKE REEDS AANGEKLA - NOG NIE IN HOF AFGEHANDEL

K NO:	TIPE SAAK	PLEK WAAR PLAASGEVIN	NAAM VAN BESKULDIGDE	NAAM VAN OORLEDENE	BY P.G.
	POGING TOT MOORD MR 6-8-92		1. MBONJWA J MBHELE 2. BHEKITHEMBA M DUMA	MLUNGISI CELE MICHAEL MBILI	-
/92	POGING TOT MOORD MR 256-4-92		1. NOTA J MNCWABE 2. SCELO E DLAMINI	-	-
/92	POGING TOT MOORD MR 7-7-92	MEHLOMNYAMA	1. GOODMAN G MKHONDE 2. ZAKHELE JEROME GOOSE 3. WILSON M MALINGA	-	-
/92	POGING TOT MOORD MR 248-7-92		SCELO DLAMINI	THABO MKIZE SHOZI SHOZI	-
9/92	MOORD MR 360-09-92	BOBOYI	ARMSTRONG M ZONDI	KOMFATSHE NGWANE	JA
/92	MOORD MR 79-2-92	NYANDEZULU	1. SIMON M MBILE 2. NHLABUZINA NZAMA 3. FANA NDWALANE	JEREMIA MAVUNDLA	JA
	MOORD MR 221-5-92	NKULU WARD GAMALAKHE	DIDIZA MAVUNDLA	THOKOZANE BLOSE	JA
92/0463	MOORD 41-10-92	NTHABA WARD PADDOCK	1. THOKOZANE BLOSE 2. MDU PHINEAS MBAMBO 3. MDUDUZI MADLALA	ZEPHANIA MZOLO	JA
079/92	MOORD MR 207-9-92	GAMALAKHE	JAMES MAVUNDLA	-	-
481/92	P/MOORD MR 1-10-92	MURCHISON	SISISO NGUBELANGA	-	-
37/92	PUBLIC VIOLENCE MR 5-8-92	MURCHISON	1. KHEHLANI J MBILI 2. JOSEPH B MBILI 3. MAKHELE S HLOPE	-	-
		NYANDEZULU	1. PHYMALANI C MBUTO	-	-

SAKE REEDS AANGEKLA - NOG NIE IN HOF AFGEHANDEL "A"

AK NO:	TIPE SAAK	PLEK WAAR PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORLEDENE	BY P.C.
/92	PUBLIC VIOLENCE	NYANDEZULU	1. PETROS SITHOLE 2. SIBUSISO A SITHOLE 3. BONGANI P MBILI 4. SIBUSISU E MBULE	-	-

CASES WITH A.G. 2. CHARGED AND NOT FINALIZED IN COURT UNREST CASES

. NO	CASE NO:	CASE NO	C.R. NO:	TYPE OF CRIME	ACC - SUSPECT'S NAME	DECEASED'S NAME
		B1231/92	29:12:1991	MURDER	BABO CELE	NGIBONISELE BETIWELL NGWANE
		A 886/92	247:01:1992	MURDER	ELF SIMA	ZITIWELENI CYRIL SIBEZI (FORMAL INQUEST)
		A 74/93	2: 65:02:92	MURDER 2 COUNTS	FUNWISE NDWALANE	ROBERT MSELEKU ARMSTRONG MSELEKU
		B687/1992	56:04:1992	MURDER	STANLEY GEU MKWANAZI TSATSATSA MKWANAZI	THOLANI KEFAS LUSHABA (INQUEST BOTH ACC DECEASED)
		RC 208/92	214:07:1990	MURDER	SIPHO PULULU DLAMINI	MFANFUTHI ALLEN W/A MDLALOSE
		"	116:06:1990	THEFT - FIREARM	"	-
		B685/92	39:05:1992	3 COUNTS MURDER 2 ATT. MURDER	SKOFU ALFRED DLAMINI + 32	MATHANDA RICHARD MBILI MAGIBELA NDODA SHAZI
		A74/93	396:12:1991	ATT. MURDER	FUNZVISE NDWALANE	ZITHWELENI C
		B1231/92	7:07:1992	POSS. OF AK	BABO CELE	-
			207:08:1992	MURDER	NHLANHLA MSELEKU	GIDEON MCHUNO (INQUEST ACC DECEASED)
		A968/92	41:09:1992	MURDER 4 COUNTS	KETHUTHULA INZIMANDELONGO	KETHUTHULA NZIMANDE NCANSELWA DUMA (WITHDRAWN PROV.) NONKULEKO NZIMANDE VIOLA SILANDIZE NZIMANDE
		B1231/92	30:07:1990	3 COUNTS MURDER	BABO CELE ZULU CELE	DUMISANI NGANDU NTOMBI VIVIAN GUMEDE NLOKO DLANI
		B1011/92	77:[illegible]:1992	PUBLIC VIOLENCE	SIPHIWE DUBE	M/A ATTACK ON POLICE

SAKE WAT NOG ONDERSOEK WORD "B"

R. NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	BY P.G.
-06-92	FACTION FIGHT		MBEKEKWA S. CELE	MAQOQWANE NGWAZI	JA
-01-91	MOORD	NKULU WYK PADDOCK	1. MBONGENI CELE 2. ZINTI NYAWOSE	1. SIBOSISO A CELE 2. ZOLA NHLUMAYO	- -
4-2-92	MOORD	NEW TOWN AREA MURCHISON	F E NVUYANE	SIMON S NZIMANDE	
6-2-92	MOORD	KOKOKO MTHEMBU	XABA AREA GAMALAKHE	MANCUNTSU MALINGA	-
0-2-92	MOORD	MBAYIBAYI WYK MURCHISON	JABULANI T CELE	EPHRAIM M MKHUNGO	-
3-2-92	BRAND= STIGTING	BHOMELA WYK BOBOYI	SCELO E DLAMINI	-	-
8-3-92	MOORD POGING TOT MOORD BRANDSTIGTING	MTHENGWANE WYK MURCHISON	ZAKHELE GCABA SCELO E DLAMINI SKOFY A, DLAMINI + CYRIL GCABA	LINDOGUHLE BRIGHT MBHELE	-
5-4-92	POGING TOT MOORD	SEA VIEW FARM IZ OTSHA	SCELO E DLAMINI	-	-
6-8-92	MOORD	NEW TOWN MURCHISON	-	ONBEKEND	-
3-11-92	POGING TOT MOORD	GAMALAKHE	-	-	-
2-11-92	OPENBARE GEWELD	MBAYIBAYI WYK MURCHISON	SIMPHIWE SHEZI ZENZELE NDWALANE THANDOWAKHE NDWALANE MFANA NDWALANE	-	-
5-11-92	POGING TOT MOORD	OSHABENI WYK MEHLOMNYAMA	-	-	-
6-4-92	POGING TOT MOORD	NCAZOLO WYK BOBOYI	SCELO E DLAMINI	-	-

"B"

SAKE WAT NOG ONDERSOEK WORD

NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	BY P.G.
-92	FACTION FIGHT		MBEKEKWA S. CELE	MAQOQWANE NGWAZI	JA
01-91	MOORD	NKULU WYK PADDOCK	1. MBONGENI CELE 2. ZINTI NYAWOSE	1. SIBOSISO A CELE 2. ZOLA NHLUMAYO	– –
-2-92	MOORD	NEW TOWN AREA MURCHISON	F E NVUYANE	SIMON S NZIMANDE	
-2-92	MOORD	KOKOKO MTHEMBU	XABA AREA GANALAKHE	MANCUNTSU MALINGA	–
-2-92	MOORD	MBAYIBAYI WYK MURCHISON	JABULANI T CELE	EPHRAIM M MKHUNGO	–
-2-92	BRAND= STIGTING	BHOMELA WYK BOBOYI	SCELO E DLAMINI	–	–
-3-92	MOORD POGING TOT MOORD BRANDSTIGTING	MTHENGWANE WYK MURCHISON	ZAKHELE GCABA SCELO E DLAMINI SKOFY A, DLAMINI + CYRIL GCABA	LINDOCUHLE BRIGHT MBHELE	–
-4-92	POGING TOT MOORD	SEA VIEW FARM IZ OTSHA	SCELO E DLAMINI	–	–
6-8-92	MOORD	NEW TOWN MURCHISON	–	ONBEKEND	–
3-11-92	POGING TOT MOORD	GAMALAKHE	–	–	–
-11-92	OPENBARE GEWELD	MBAYIBAYI WYK MURCHISON	SIMPHIWE SHEZI ZENZELE NDWALANE THANDOWAKHE NDWALANE MFANA NDWALANE	–	–
6-11-92	POGING TOT MOORD	OSHABENI WYK MEHLOMNYAMA	–	–	–
6-4-92	POGING TOT	NCAZOLO WYK BOBOYI	SCELO E DLAMINI	–	–

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SAKE WAT NOG ONDERSOEK WORD "B"

NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	BY P.G.
-4-92	MOORD POGING TOT MOORD	MBAYIBAYI WYK MURCHISON	SCELO E DLAMINI	JULUIS SHEZI	-
-9-92	MOORD	BETANIA SWART WOONGEBIED	1. N A CELE 2. NKAMFU DUBE 3. M K NZAMA	MIZE GCWENSA	
-9-92	MOORD POGING TOT MOORD	MASHEMBENI WARD MURCHISON	1. SCELO DLAMINI 2. SIYABONGA MLURI	LIVINGSTON M CELE	-
08-92	MOORD	BOBOYI	MBUSO OBERT SIMA	PATRICK T MTHETHWA	

SAKE WAT NOG ONDERSOEK WORD

"B"

R. NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OGRL.	BY P.G.
-06-92	FACTION FIGHT		MBEKEKWA S. CELE	MAQOQWANE NGWAZI	JA
4-01-91	MOORD	NKULU WYK PADDOCK	1. MBONGENI CELE 2. ZINTI NYAWOSE	1. SIBOSISO A CELE 2. ZOLA NHLUMAYO	- -
44-2-92	MOORD	NEW TOWN AREA MURCHISON	F E NVUYANE	SIMON S NZIMANDE	
76-2-92	MOORD	KOKOKO MTHEMBU	XABA AREA GAMALAKHE	MANCUNTSU MALINGA	-
50-2-92	MOORD	MBAYIBAYI WYK MURCHISON	JABULANI T CELE	EPHRAIM M MKHUNGO	-
73-2-92	BRAND= STIGTING	BHOMELA WYK BOBOYI	SCELO E DLAMINI	-	-
48-3-92	MOORD POGING TOT MOORD BRANDSTIGTING	MTHENGWANE WYK MURCHISON	ZAKHELE GCABA SCELO E DLAMINI SKOTY A, DLAMINI + CYRIL GCABA	LINDOCUHLE BRIGHT MBHELE	-
25-4-92	POGING TOT MOORD	SEA VIEW FARM IZ OTSHA	SCELO E DLAMINI	-	-
96-8-92	MOORD	NEW TOWN MURCHISON	-	ONBEKEND	-
13-11-92	POGING TOT MOORD	GAMALAKHE	-	-	-
2-11-92	OPENBARE GEWELD	MBAYIBAYI WYK MURCHISON	SIMPHIWE SHEZI ZENZELE NDWALANE THANDOWAKHE NDWALANE MFANA NDWALANE	-	-
6-11-92	POGING TOT MOORD	OSHABENI WYK MEHLOMNYAMA	-	-	-
-4-92	POGING TOT MOORD	NCAZOLO WYK BOBOYI	SCELO E DLAMINI	-	-

SAKE WAT NOG ONDERSOEK WORD "B"

R. NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	BY P.G.
169/9/92	MOORD	GAMALAKHE	-	-	-
00/12/90	MOORD X3	BETANIA	ALBERT NDWALANE	-	P.G.
72/1/91	MOORD	MTENGWANA	WELCOME NDWALANE	-	P.G.
96/3/91	MOORD	MURCHISON	ALBERT NDWALANE	-	P.G.
74/3/91	MOORD	MURCHISON	WELCOME NDWALANE	-	
93/4/91	MOORD X4	NKULU	-	-	P.G.
20/4/91	MOORD.	MURCHISON	ALBERT NDWALANE	-	P.G.
41/6/91	MOORD	BOBOYI	ALBERT NDWALANE	LINDANI MORAFU	P.G.
30/6/91	MENSEROOF	GAMALAKHE	-	-	P.G.
9/7/91	MOORD X2	NYANDEZULU	-	-	-
13/10/91	OPENBARE GEWELD	MURCHISON	-	-	
56/12/91	MOORD	NKULU	-	MOMOMO NDWALANE	P.G.
0/12/91	MOORD	MURCHISON	-	BECANI MEMELA	-

SAKE WAT NOG ONDERSOEK WORD "B"

R. NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	BY P.G.
5/12/91	MOORD	GAMALAKHE	–	MDUDUZI LUTHULI	–
0/5/92	P/MOORD	MTENGWANE	–	–	–
1/6/92	P/MOORD	MTENGWANE	–	–	–
16/6/92	MOORD	BOBOYI	–	–	–
/7/92	MOORD X7	BOMELA	MAKHANDA NDWALANE	–	P.G.
0/7/92	MOORD	MADEGANE	–	–	–
04/7/92	MOORD X4	MURCHISON	MAKHANDA NDWALANE	–	P.G.
87/7/92	P/MOORD X8	MADEGANE	–	–	–
95/7/92	P/MOORD	MADEGANE	–	–	–
46/7/92	OPENBARE GEWELD	MURCHISON	–	–	P.G.
51/7/92	MOORD	BOBOYI	–	–	–
61/7/92	MOORD X3	BOBOYI	–	THEMBA MTHEMBU GILBERT CUMEDE FKILE NLOPE	–
74/7/92	P/MOORD	MURCHISON	–	–	–

SAKE WAT NOG ONDERSOEK WORD

R. NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	BY P.G.
2/8/92	OPENBARE GEWELD	BOBOYI	–	ZWAKELE CELE	–
0/8/92	OPENBARE GEWELD	MURCHISON	–	–	–
7/8/92	MOORD X3	NKULU	–	LUNGANI MSOMI PATRICK DANCA SHABANE ZULU	P.G.
4/8/92	MOORD	NKULU	–	DAVID MAVUNDLA	P.G.
7/8/92	OPENBARE GEWELD	BOBOYI	–	–	–
6/8/92	MOORD X2	BOBOYI	–	–	–
4/9/92	MOORD X4	BOBOYI MDLAZI WYK	–	MBOBO CELE BUSELAPHI NCOBO	MA NDWALANE BONISILE DLADLA
2/9/92	MOORD	BOBOYI	–	GERTRUDE GCABA	
6/10/92	BRANDSTIG=TING	MPENGWANE	–	–	–
9/10/92	MOORD	BOBOYI	–	SWEDI MOKOENA	–
6/10/92	MOORD	NEWTOWN	–	ALPHIOS CELE	–
24/11/92	MOORD	GAMALAKHE	–	PAPO NGUBAKO	–

SAKE WAT NOG ONDERSOEK WORD

"B"

. NO	TIPE SAAK	PLEK PLAASGEVIND	NAAM VAN BESKULDIGDE	NAAM VAN OORL.	DY P.G.
/11/92	P/MOORD	MURCHISON	-	-	-
/11/92	P/MOORD	MURCHISON	-	-	-
/11/92	OPENBARE GEWELD	MURCHISON	-	-	-
/11/92	P/MOORD	MURCHISON	NORMA MNCWABE	-	-
/12/92	MOORD	MURCHISON	-	DUMISANI DLAMINI	-
/12/92	MOORD	MURCHISON	-	KIETTIEYAKHE GUMEDE	-
/12/92	P/MOORD	MURCHISON	-	-	-

CASES BEING INVESTIGATED BESIDES FIREARM

. NO	TYPE OF CRIME	ACCUSED'S NAME	PLACE OF CRIME	DECEASED'S NAME
CE /06/1992	ATT. MURDER	BONGINKOSI CALDWELL + 3 OTHERS	HIBB MNAMFO LOCATION	-
:06:1993	"	"	"	
2:06:1992	MURDER	-	MURCHISON	BHEKIFA SAMPSON MAJOLA
2:07:1992	2 COUNTS OF MURDER	SUSPECT BUZU NDWALANE	MURCHISON	HENRY NGCOBO ALBERTINA NGCOBO
4:07:1992	4 COUNTS OF MURDER	-	BOBOYI	NHLANHLA NTONJA BESHI NTUNJA MILLION NXUMALO DONI NDWALANE
7:07:1992	MURDER	SUSPECT - ZAKHELE GCABA	MURCHISON	MARY MZANDLE
08:1992	PUBLIC VIOLENCE MURDER		BOBOYI LOCATION	KONZAPHI ALBERTINA NOMSOL-WANE JOHANNES NOMSOLWANE
1:06:1992	MURDER	-	MURCHISON	BHEKIFA SAMPSON MAJOLA (GOLDSTONE COMMISSION)
6:06:1992	MURDER	SUSPECT - ZAKHELE GCABA	MURCHISON	MFANO MAXWELL MAKHANYA W/A
7:09:1992	MURDER	-	MURCHISON	VIVAMA MADLALA
0:09:1992	MURDER	-	MURCHISON	MADONDO CHILIZA
2:09:1992	MURDER	SUSPECTS - BUZU NDWALANE BONI NDWALANE	G G WARD	BONGANI ALECK NGCOBO
10:1992	MURDER 6 COUNTS	SUSPECT - SABELO MZOBE	MEHLOMYAMA	GUGU NGWAZI NTOMBI NGWAZI MPIZANE TUTSHINI NOGBONGA NGWAZI ALFRED NGWAZI TALLMAN GUMEDE

R. NO.	TYPE OF CRIME	SUSP. - ACCUSED'S NAME	PLACE OF CRIME	DECEASED'S NAME
11:1992	ATT. MURDER	-	MEHLOMNYAMA	-
5:03:1990	2 COUNTS OF MURDER	ZAKHELE GCABA	MURCHISON	NOKUTHULA MILDRED SIBISI ALICE MAZUBANE
11:1992	ROBBERY	ZAKHELE GCABA	PORT SHEPSTONE	-
:11:1992	ATT. MURDER	-	MBOJA WARD	-
RGATE 7:11:1992	ATT. MURDER		NOSITHA LOCATION	-
12:1992	ESCAPING	BONGANI MBILI	PORT SHEPSTONE	-
5:11:1992	ESCAPING	ZAKHELE GCABA	MARGATE	-
LOMNYAMA 12:1992	MURDER	-	MEHLOMNYAMA	NHLANHLA CHALUZA
:10:1992	MURDER	-	MEHLOMNYAMA	FANA WILLIAM DANCA
1:1993	ATT. MURDER	-	MEHLOMNYAMA	-

TOTAL P. 89

BEFORE THE GOLDSTONE COMMISSION
SITTING AT PORT SHEPSTONE DURING MARCH 1993

MEMORANDUM SUBMITTED ON BEHALF OF THE SOUTH AFRICAN POLICE

The South African Police (SAP) and the African National Congress (ANC) have indicated their willingness to submit to this committee further submissions which may assist the Commission in identifying solutions to the violence without the necessity of hearing months of evidence in the form of accusations and counter accusations.

It is believed that no purpose will be served in investigating each and every complaint by those more intent on political posturing and point scoring than attempting to eliminate the causes of violence which should, it is submitted, be considered in broad perspectives rather than by reference to specific incidents.

The SAP believes that months of inquiring into specific complaints will reveal nothing that is not already common knowledge, namely

(a) that certain members of the SAP have perpetrated acts of violence against ANC members ;

(b) that certain members of the ANC have perpetrated acts of violence against the SAP ;

(c) that the ANC are viewed with suspicion and hostility by certain members of the SAP which manifests itself in various forms of bias against the organisation ;

(d) that the SAP are regarded as the enemy by elements in the ANC which manifests itself in attacks on the police and an attitude of obstruction rather than co-operation ;

During the 1980's the ANC's campaign of violence and destabilisation inevitably placed it on a collision course with the SAP who bore responsibility for the maintenance of law and order. The police force actively sought out and arrested members of the ANC who in turn responded with acts of violence against the police themselves, who were perceived to be collaborators and upholders of a system which was viewed as oppressive. In the ensuing low intensity war, victims abounded on both sides and amongst some an attitude of animosity towards each other became entrenched. After the unbanning of the ANC, certain individuals found past hostilities difficult to bury which presently manifests itself in acts which are the major cause of the accusations which are continuously made by the SAP and the ANC against each other.

Those accusations and counter accusations fuel existing attitudes of distrust and hostility which effectively discourage co-operation and assistance between the SAP and the ANC thereby exacerbating the tensions that exist between elements within their ranks.

The SAP endorses the view of the Commission made pertinently in its Third Interim Report that "without the full co-operation of the communities in which they operate, the police cannot be expected to perform adequately or successfully (paragraph 5.6.3.3) and recognises the importance of removing negative perception and creating community trust in itself.

In common with many police forces in the world the SAP has amongst its members a minority who abuse their authority and behave in an improper and sometimes unlawful manner. In addition there are those in its ranks with attitudes deeply rooted in the past, whose activities encourage distrust and increase perceptions of bias by the police against the ANC.

Whilst the behaviour of these members should not be tolerated, the suggestion that their conduct is condoned by the SAP is surely as puerile and unhelpful as the contention that those of the ANC who perpetrate acts of criminal violence, do so within the ambit of official ANC approval and encouragement.

Nevertheless the SAP is aware that the complaints levelled against it are due to the activities of these individuals, not without foundation, and accepts that some of its members have

(a) displayed an anti-ANC bias ;

(b) attempted to discourage support of the ANC ;

(c) attempted to encourage support of the IFP ;

(d) committed acts of violence against supporters of the ANC ;

(e) refused to entertain complaints by ANC members ;

(f) turned a blind eye to violations of the law by members of the IFP ;

(g) abused their powers.

In the turmoil that is wreaking havoc within the community, this conduct cannot be allowed to continue and the perpetrators of these acts must be rooted out before credibility and effective policing can be restored. The SAP however urges its detractors to refrain from making unfounded, false and politically motivated complaints which effectively sow confusion, perpetrate mistrust and create difficulty in uncovering those troublesome elements amongst it.

It is suggested too that the attitude of "them" and "us" which exists amongst elements of the SAP towards the ANC could largely be eliminated if its leaders were to condemn publicly the killing and injury of policemen who are being violently attacked at an appalling rate. Re-education amongst the ranks is made more difficult when certain organisations are perceived, by the silence, to condone violent attacks against the police.

These submissions are not made in an attempt to shift the blame from the SAP but rather to emphasize that the solutions to the problems that exist cannot lie exclusively in their hands and require the assistance and co-operation of the ANC.

SOLUTIONS

The SAP has introduced the following innovations in an attempt to address the question of proper police behaviour and its relationship with the community.

Police Reporting Officer

Advocate N J Melville, one of three nominations by the Association of Law Societies and the General Council of the Bar, has been appointed Police Reporting Officer for the region of Natal to oversee investigations into alleged police misconduct which is of such a serious nature that it may detrimentally affect police/community relations. While the investigation is in progress, he may recommend to the

Commissioner of Police the suspension or transfer of the official under investigation and on the completion of the inquiry, may make recommendations in respect of the disciplinary action that should be taken against the member involved in misconduct. The Complainant will be notified of the recommendations together with the outcome of the complaint. It is submitted that this procedure will ensure impartial and thorough investigations into all serious complaints and assist in removing the perception that misconduct is tolerated by the SAP.

Special Investigation Unit

This unit under the command of General Manuel has been specifically established to investigate complaints referred to it by the Police Reporting Officer and will submit to Advocate Melville a report on the complaints received from him. The Police Reporting Officer will have the authority to ensure that the investigation is carried out fully and properly and shall be entitled to refer the report back to the unit for further action should it be necessary.

The Police Investigation Unit

This unit, whose function it is to investigate crimes involving members which are neither of a serious nature nor affect police community relations, is being expanded. Members of this unit are hand-picked for their impartiality and have unblemished records of past behaviour.

The Community Police Unit

The creation of the Community Police Unit which is headed by General Manuel is an attempt to provide a basis on which the entire community, irrespective of political affiliation, can give support to the SAP in the fight against crime and violence. In this regard the SAP refers to the memorandum prepared by the Division for Community Relations which is attached hereto marked "A".

The Re-education of Members

The SAP has embarked upon a training program designed to create a new attitude amongst its ranks. A community sensitive policy style, courtesy impartiality and the use of minimum force are now the subject of lectures throughout South Africa and it is hopeful that this re-education will soon bear fruit.

CONCLUSION

Whilst the SAP has accepted responsibility for many of the allegations made against it by the ANC, it does not believe that the organisation is itself beyond reproach. Nevertheless, in the belief that no purpose will be served by casting blame upon each other it has refrained from identifying incidents of legitimate complaint against the ANC. Similarly it makes no response at this stage to the specific incidents listed by the ANC in its earlier memorandum and suggests instead that these be referred to Advocate Melville for investigation in terms of the procedure outlined herein.

17 February 1993

1. The history and origins of community supported policing

Community supported policing can be taken back to the establishment of modern policing by Sir Robert Peel in 1826 in England. It was not established as a result of a new school of thought, but (it was established) to accommodate and satisfy the growing need of society to be protected against crime and other forms of disorder.

From the earliest days of modern policing the relationship between the police and the public was described as: "The police is the public, and the public is the police".

Others like Critichley stated:

> "From the start, the police was to be a homogeneous and democratic body, in tune with the people, understanding the people, belonging to the people and drawing its strength from the people."

Some writers like Berkley in the United States pointed out that mutual consensus between the police and the public is the only way to solve policing problems and issues. From these statements of years gone by the principles and philosophy of community supported policing were established.

It was only since the 1970's that these principles and philosophies were used as the starting point for the construction of community structures in order to consult with the community on law and order issues. In the United States the model was adjusted and shaped over a period of more than 20 years. In 1991 the New York Police Department formulated new principles and strategies in order to give a new meaning to community policing. From the early eighties different models of community policing was also introduced inter alia in England, Canada and other western countries.

The system of community policing is new to South Africa, but the South African Police however believes that community supported policing provides a framework and mechanism to effectively deal with crime, community relations and other law and order problems.

Members of the South African Police undertook a study tour to Canada in 1992. These members collected information on the principles of community policing and the models that were introduced to Canadian Police Forces. The South African Police consulted also with local experts like Mr Etienne Marais, Me Janine Rauch and Professor Clifford Schearing. The community policing models of the New York Police Department and Metropolitan Police Force were also examined. We also consulted with foreign observers currently in South Africa, from inter alia England and Holland.

Our own model is being developed in such a way that it suits South Africas own unique circumstances. The principles of community supported policing will be the following:

* consultation between the police and the communities about problems, policies, priorities and strategies.

* adaptation of policing strategies to fit the requirements of particular communities and circumstances.

* mobilization of all resources available to a community to resolve problems of disorder and to promote safety and security.

* accountability through mechanisms that encourage transparency in the design and execution of policing policy.

The Police Board has also formed a sub-committee comprising of Lt-general Pruis, Me Rauch and Me van der Spuy to further develop the community policing model.

2. The necessity of community supported policing

Today the police are front and centre in every major issue facing society. The public expect us to do something about our own credibility, quality of service, violence, intimidation, the drug problem, child abuse, nature conservation, the escalating crime problem, etc. They expect our actions to have a long term impact on the quality of community life.

External forces such as political reform, urbanization, the increased demand for police service and protection, the changing nature of criminal activity, fiscal restraints, increased police accountability, etc are forcing us to change.

Common to the new system of community supported policing is the believe that effective policing can be achieved only when there is on-going consultation, cooperation and partnership between the Police and the public. Community policing is a multi-dimensional model which provides for the transformation of police structures, culture and strategy.

It is not possible to construct a ready made system at central level that will work everywhere in the country. Every region, district and station area have its own unique issues and problems and one needs to be pragmatic to identify and to solve the unique problems that are experienced in a specific region, district or station area. Such an approach calls for consultation with the community.

3. Functions and duties

The components dealing with community policing within the Division for Community Relations consist of the following:

* community liaison which will co-ordinate the activities of more than 120 community policing officers country-wide whose task it is to facilitate the implementation of community supported policing by members of the South African Police.

* internal communication whose task it will be to establish a service orientated policing style and working culture in accordance with the principles of community policing amongst all our members;

* Peace liaison structures whose task it is to co-ordinate the activities of SAP members serving on structures established in accordance with multi-lateral and bilateral agreements, such as the Grootte Schuur Minute and the National Peace Accord.

3. Training

As far as training is concerned a working group, consisting of overseas experts, local experts and experts within the Force has been appointed who will do an intensive study on basic training.

For the interim, guide-lines have been compiled on community supported policing which will serve as a working document. In addition to that a working group has been appointed consisting of training personnel, members from community relations and other experts. This working group will compile training manuals for all our formal as well as in service training courses.

The in service training of members in the Force will commence on the 1 'st of March 1993. In close co-operation with all our training divisions, the section for community liaison will facilitate and co-ordinate in service training. Seminars on the topic will also be conducted in every region so that members can acquaint themselves with the principles and philosophies of community supportive policing.

4. <u>Role and function - Police Reporting Officer (PRO's)</u>

The PRO's have been appointed for each of the eleven regions (10 PRO's in total), except the Eastern Cape which became vacant on the appointment of adv. Liebenberg as Chief Justice. (See press statement by Ministery of Law and Order on 23 January 1993, attached hereby)

Each of the PRO's have been informed of their responsibilities and duties. They have already started receiving complaints from the public.

They will attend a meeting with the Deputy-Minister of Law and Order in Pretoria on Wednesday 1993-02-17 where they will be fully informed of the fees decided upon, the procedures and administrative arrangements.

5. <u>Role and function - Police Regional Complaints Investigation Unit (RCIU)</u>

The eleven RCIU's initiated in terms of par 3.2.4.1. of the NPA have been appionted and serve under the command of Major-general H V Hayns. Each RCIU comprises of seven members: a lieutenant as commander, one warrant officer, two sergeants and three constables. Thus in total 77 members form part of the RCIU's.

All serious complaints about police misconduct that will have a detrimental influence on police-community relations are investigated by these units. In all cases a report is compiled and forwarded per fax to Head Office. A progress report on each investigation must be forwarded to Head Office every fourteen days.

After the completion of an investigation all relevant documents are forwarded to Head Office for verifying and

recommendations by a Major-general. His recommendation together with the documents is then send back to the commanding officer for further action and to the Co-ordinating Office of the SA Police.

The Co-ordinating Office of the SA Police will send copies of the documents, findings and recommendations to the National Peace Secretariate.

When not busy with investigations under the NPA, the members of the Units resume their normal policing duties and functions.

IN RE : POLICE INVESTIGATION UNIT

MEMORANDUM

In consequence of numerous allegations of misconduct levelled against the Police at the sitting of the Goldstone Commission Sub-Committee, Mooi River, discussions were entered into between the SAP and representatives of the affected community. These deliberations were designed to identify and address the problems experienced in Mooi River between the police and the local population and to reach agreement, if at all possible, on the implementation of structures which would foster improved relations between them.

A number of fruitful and constructive meetings were held and after consideration of all relevant factors, the SAP has undertaken, in respect of the Natal Midlands, to create a Police Investigation Unit to investigate every case of misconduct laid against a member of the SAP with the exception of unlawful conduct arising out of the driving of a motor vehicle.

In an attempt to overcome misgivings of the SAP's ability to investigate itself and having considered suggestions and proposals made by interested parties, it was decided : -

(a) That a selection panel consisting of laymen who have no obvious links to any political party would be chosen by agreement between interested parties or by the sub-committee.

(b) That applicants for membership of the unit would be required to appear before the aforementioned panel for evaluation of their ability and suitability.

(c) That the panel would initially consist of seven members and thereafter any three would constitute a quorum for further selections.

(d) That so as to assist the panel in the assessment of the candidates suitability, his service record, curriculum vitae and record of previous misconduct would be made available.

(e) That the rank, name and station of each applicant should be submitted to the Regional Peace Committee which would be afforded a reasonable opportunity (a period of two weeks is envisaged) to make written representations to the panel in respect of the Applicant's suitability.

(f) That a member of the Attorney General's staff would be appointed to work with such unit.

(g) That the Goldstone Investigation Team under Colonel Dutton and his international police observers would be requested to oversee such unit in the investigation of complaints.

(h) That the unit would be required to report on a quarterly basis to the Police Reporting Officer.

(i) That the member of the Attorney General Staff, The Goldstone Investigation Team and the Police Reporting Officer would have full access to all investigations and that some co-ordinatio should exist amongst them.

(j) That as far as possible the unit will be housed separately from other police units.

However, notwithstanding the intentions of the SAP to implement these proposals in the Midlands, it considers it desirable that a similar unit be established in Durban, Pinetown, Port Shepstone, Newcastle and Empangeni. However, due to constraints of time, interested parties in these areas have not yet been canvassed on their views which are considered to be of importance if the units are to have the credibility necessary for their proper functioning.

A memorandum setting out these proposals and requesting comment by 18 August 1993 has been sent to representatives of the ANC, IFP and COSATU.

The police are mindful of the fact that without community co-operation the initiatives outlined herein will be unsuccessful and to this end intend arranging meetings with the local community where the members of these units will be introduced. It is hoped too that their training program will include addresses by various community leaders as well as by organisations such as the Community Law Centre, Legal Resources Centre and the Peace Accord Structures who will be able to present the problem of police community relations from the perspective of the affected community.

Although the SAP are hopeful that implementation of these proposals will lead to sound police community relations, their optimism is tempered by the awareness that those with cynical agendas and attitudes rooted in the past will continue to denounce the SAP no matter what positive steps are taken. It is suggested in this respect that the ANC and IFP have an important role to play in the education of their members and to this end are urged to act as bridge builders between the police and the community so as to help bring to an end the appalling spiral of violence and intolerance towards others of opposing factions.

The SAP believes that unless there is a concerted effort by leaders to depoliticise the violence, members of political groupings will continue to frustrate all efforts to apprehend perpetrators of criminal activity who belong to their own particular faction. In its view no steps taken to ensure more effective policing will be effective unless political and community leaders accept the responsibility of educating their

followers and emphasising that violence can never be justified whether it emanates from their own grouping or not.

It is hoped that the fruitful and constructive discussions that have led to the proposals outlined herein will continue in respect of proposals made by others and lead to an era of community co-operation with the police in attempting to achieve the common aim of eliminating the orgy of violence that has swept Natal.

R J A CALLUM
COUNSEL FOR THE SAP

9 August 1993

SECOND INTERIM REPORT OF THE WALLIS SUB-COMMITTEE OF THE GOLDSTONE COMMITTEE

1.

After the establishment of this Committee in December 1992 our mandate was extended in March 1993 in consequence of an agreement between the Commission, the Chief Minister and Minister of Police of Kwazulu and Lieutenant General DURING of the Kwazulu Police.

2.

The Committee was requested to conduct such enquiries as it might consider necessary or appropriate in regard to the following matters:-

1. the possession by Constable NGUBANE of an AK-47 rifle during August 1991 and the investigation by the Kwazulu Police in consequence thereof;

2. the murders committed in March 1990 with AK-47 rifles and hand grenades at two houses in KwaMakhuta and the failure of the Kwazulu Police to cause the re-arrest of two suspects who absconded and whose whereabouts are known to the Kwazulu Police;

3. the lack of any progress in KwaMashu Case CR261/9/90 in which uniformed Kwazulu policemen are alleged to have shot and killed a Kwa Mashu resident;

4. the failure to investigate thoroughly the death of Mr. T.C. CELE (Umlazi DR99/90). The inquest magistrate found that policemen had

falsified their version and recommended that they together with a senior officer be charged with murder and defeating the ends of justice;

5. the conduct of the Kwazulu Police relating to the shooting incident and later the murder or Professor SIBANKULU on 11 November 1992;

6. the conduct by the Kwazulu Police with regard to the investigation into the murder of Mr. REGGIE HADEBE on 28 October, 1992.

3.

Pursuant to that request the Committee conducted hearings on the 28th, 29th and 30th July 1993, the 31st August 1993, and the 17th January 1994. Notwithstanding our endeavours it was not possible to complete our enquiries more expeditiously due to the impossibility of finding dates on which both the members of the Committee and the legal representatives of the various parties were available.

4.

During our hearings we heard the evidence of a number of witnesses, were handed numerous exhibits, were assisted by comments from Colonel DUTTON and Colonel Reid and listened to submissions from the legal representatives of various parties.

5.

We do not propose to engage in a lengthy analysis of the evidence and documents particularly as, in accordance with the Commission's usual

practice, we did not permit cross-examination as this would have protracted proceedings without furthering our enquiries. We must record that even without cross-examination certain witnesses were not entirely satisfactory and would, we have little doubt, have become even less so if exposed to careful probing by way of cross-examination.

6.

We think the only safe basis upon which to proceed is to summarise in respect of each case that which was common cause or accepted and to base our report upon that material.

THE NGUBANE CASE:

7.

Much of the evidence we heard was devoted to this case but the salient circumstances can be relatively briefly summarised.

8.

Constable NGUBANE became a member of the KZP on the 3rd June 1987 and was stationed at Esikhaweni. About a year prior to joining the KZP he had returned from training in the Caprivi Strip. During the interim he claimed to have been recruiting Inkatha members in Ladysmith. The training he had received was the subject of the interim report issued by the Commission on the 1st June, 1993.

9.

On the 29th August 1991 NGUBANE was found in possession of a AK-47 and 20 rounds of ammunition. He was approached at his home by his station commander Lieutenant DLAMINI, Warrant Officer NXUMALO, a constable MBATHA and another constable who informed him that they had information that he kept weapons at his house.

10.

Lieutenant DLAMINI (subsequently promoted to Captain) had received the information about NGUBANE from Major MDLULI (subsequently promoted to Lieutenant Colonel) the then District Commandant at Esikhaweni district.

11.

NGUBANE produced the weapon in question and the ammunition which was impounded. NGUBANE was not taken into custody.

12.

The following day Lieutenant DLAMINI reported back to Major MDLULI and caused Detective Sergeant KHUMALO to open a docket and send the weapon concerned for ballistic investigation.

13.

After the docket was opened a statement was obtained from NGUBANE in which he claimed that the weapon had been left with him that day for safe-keeping by PETER MSANE, JOYFUL MTHETWA and DALUXOLO LUTHULI.

The first of these worked at the IFP office in Johannesburg and the other two at the IFP headquarters in Ulundi. The first two had been Caprivi trainees with NGUBANE and LUTHULI was the political commissar at Caprivi.

14.

The source of Major MDLULI's information turned out to be Lieutenant Ma (subsequently promoted to Captain) who gave evidence *in camera* that he had learnt from an informant whom he declined to identify that the three men referred to in paragraph 13 intended to assassinate him with an AK-47 which they had left with NGUBANE. After consulting the Security Branch of the SAP he telephoned Major MDLULI with this information. He did advise us that his informant claimed to have been a Caprivi Strip trainee who was now a member of the Kwazulu Police.

15.

About two weeks after this in the middle of September 1991, Lieutenant Ma was summoned to a meeting in Ulundi by Brigadier MATHE (subsequently promoted to Major General) the Deputy Commissioner of Kwazulu Police: Administration. At this meeting he met with Messrs. MSANE, MTHETWA and LUTHULI. We will revert to this in due course.

16.

The investigating officer in respect of the docket opened by Detective Sergeant KHUMALO was one Captain Mi (now promoted to Major) who likewise gave evidence *in camera*. After taking NGUBANE's statement he claims to have been frightened because it referred to a threat to assassinate him and Lieutenant Ma. Accordingly he contacted his superior officer, Brigadier VAN ZYL in Ulundi

and delivered the docket to him shortly after the 2nd September 1991. Major MDLULI was informed of this.

17.

The docket was returned to Captain Mi on the 16th April 1992 without any apparent progress having been made with the investigation. Captain Mi inserted in the docket a ballistics report received at Esikhaweni in October 1991 and apparently filed as undetected, which connected the firearm in question with the attempted murder of a prominent ANC member in the area, Mr. WELLINGTON MTHIMKULU. He then returned the docket to Detective Sergeant KHUMALO.

18.

For several months the docket records nothing more than occasional telephone calls to the IFP offices in Ulundi with a view to obtaining statements from MSANE, MTHETWA and LUTHULI. One statement was obtained on the 13th October 1992 but it was only recorded in the docket on the 9th February 1993.

19.

For some reason which does not emerge from the docket it was then returned to Ulundi only to be sent back on the 23rd February 1993 for further investigation under the signature of the by now Lieutenant Colonel MDLULI.

20.

On the 26th April 1993 after the announcement of the Committee's instructions the docket was taken over by Colonel LEWETT, who, within four

weeks obtained the outstanding statements (all of which denied involvement in the matter) and sent the docket to the Attorney-General. Subsequently the Attorney-General directed that NGUBANE be prosecuted in terms of the Arms and Ammunition Act. He has been convicted and sentenced to a lengthy term of imprisonment.

THE KWAMAKHUTA MURDERS:

21.

No evidence was led before us concerning the murders referred to in the terms of reference.

22.

The evidence we heard was to the effect that arising out of the investigation of one of those murders four people were arrested in a mini bus near the scene and found in possession of home-made weapons.

23.

These people in turn identified one QHU, a KZP police reservist, and Constable CYRIL NGEMA of the KZP, both of whom were as a result arrested at Lindelane. QHU when arrested was found in possession of a 7,65 pistol and NGEMA was in possession of an HMK machine gun.

24.

Thereafter three further people were arrested in Isipingo and two R1 rifles and a shotgun were seized.

25.

: Three of the others arrested were also members of the KZP. They were Constable NTSHINGILE, Constable MBAMBO and Constable MNCWANGO. MBAMBO and one of the civilians arrested, one MSELEKU, had been Caprivi trainees.

26.

MNCWANGO, QHU and another civilian, DLAMINI, were charged and convicted of illegal possession of weapons. NGEMA, however, estreated his bail. That was in June 1991. Charges against the other people arrested were withdrawn at that time.

27.

There was nothing in the evidence led before us which suggested that two suspects in these cases had absconded and not been re-arrested by the KZP, although their whereabouts were known. We were given evidence concerning NGEMA alone.

28.

Investigations regarding NGEMA's whereabouts were undertaken by Warrant Officer BRONKHORST of the SAP whose evidence (supplementary record page 32, line 25 - page 34, line 1) was that he made enquiries from the KZP and was told NGEMA had left the service and could not be traced. It was not suggested that his enquiries were addressed to the wrong people or were inadequate in other respects.

29.

In June or July 1993 after this matter had been referred to the Committee General RAS of the KZP called Warrant Officer BRONKHORST in and told him NGEMA was still working for the KZP. NGEMA was subsequently arrested whilst on duty at Pongola.

KWAMASHU CASE CP261/9/90:

30.

S. MTOLO, a KwaMashu resident, was shot and killed on the 9th September 1990. The shot came from the gun of Sergeant MBATHA of the KZP who has himself since died. According to the explanation of the incident given by counsel for the KZP, MTOLO was not the person at whom MBATHA aimed but unfortunately interposed himself between MBATHA and the suspect at whom the shot was aimed.

31.

Although the explanation set out above was given by the KZP it is apparent that the docket on this incident opened by the KZP did not contain a statement on these lines, nor did it identify Sergeant MBATHA as the person who fired the fatal bullet or indeed refer to him at all.

32.

The principal features of this case are that:-

(a) a witness referred to in the docket was never traced and asked for a

statement, although he was found within the space of a day or so by Detective Sergeant MHLONGO of the Commission's Investigation Unit;

(b) there was no incident report about the shooting by Sergeant MBATHA;

(c) the Polyclinic records did not disclose the registration mark of the police vehicle which took MTOLO to the clinic;

(d) the shooting took place in the course of a combined operation by the SAP and the KZP in the course of which a number of people (at least five) were killed but no attempt was made to consider any link between the deaths and there is no reference in the docket to this exercise. The investigating officer Lieutenant VEZI was the investigating officer in relation to at least one of the other deaths. It was only investigation by two members of the Commission's investigation unit which disclosed the existence of this possible link to the Committee.

DEATH OF T.C. CELE:

33.

The Committee were hampered in investigating this matter because the Attorney-General of Natal has instituted a prosecution for murder and defeating the ends of justice against certain of the policemen involved in the incident.

34.

In the circumstances all the legal representatives before the

Commission agreed that it would be inappropriate to seek to hear evidence from the policemen concerned as it might prejudice them in their defence to the criminal charges which they now face.

35.

All that was placed before the Committee was therefore the finding by the inquest magistrate referred to in paragraph 2.4, *supra*. We annex hereto marked "A" a copy of the magistrate's findings.

36.

In brief the position is that:-

(a) Mr. CELE was killed as a result of having been shot twice by an R1 rifle;

(b) the person who fired the shot was Constable MAPHANGA of the KZP;

(c) the explanations given by the various members of the KZP involved at the time of the incident are conflicting and contradictory;

(d) those explanations do show that there was a significant delay in securing appropriate medical treatment for CELE, which delay might have made the difference between his survival and his death;

(e) various steps were taken by the policemen to cover up their involvement in the matter including the falsification of records.

PROFESSOR SIBANKULU:

37.

Two matters were referred to us relating to Professor SIBANKULU, namely a shooting incident which took place on the 11th November 1992 and his murder later that night.

38.

The investigation of the murder is in the hands of Captain Nel of the South African Police at Newcastle, who testified that from his investigations there is no suggestion at this stage that there was any link between what happened on the night of the 11th November at 8.00 p.m. and the finding of Professor SIBANKULU's body the next morning.

39.

No further information was given to us concerning the murder of Professor SIBANKULU.

40.

In regard to the incident of the evening of the 11th November 1992, the evidence shows the following:-

(a) members of the KZP stationed at Madadeni were sent into the township to arrest Professor SIBANKULU in the light of reports that he had been seen in possession of a firearm;

(b) the efforts of these policemen ended up with SIBANKULU driving along the road which leads to the Madadeni police station being followed by a vehicle containing the members of the KZP;

(c) in sufficiently close proximity to the police station for persons there present to hear shots and see muzzle flashes, a number of shots were fired by the KZP members at SIBANKULU's vehicle;

(d) SIBANKULU turned into the police station and after alighting from his car spoke to Captain MBHELE the Station Commander at Madadeni.

41.

Initially in his evidence Captain MBHELE said that he had neither heard shots being fired nor had he been told anything by SIBANKULU about the shots having been fired. When confronted with a transcript of an interview he had had with Colonel DUTTON he accepted that SIBANKULU had said that he had been fired at by the policemen. Captain MBHELE says he spoke to the policemen concerned who denied firing shots. He appears to have taken no further steps to investigate the truthfulness of that statement.

<u>DEATH OF REGGIE HADEBE:</u>

42.

It is common cause that Mr. REGGIE HADEBE, a prominent member of the ANC, was assassinated on the 28th October 1992. The investigation of his death is in the hands of the SOUTH AFRICAN POLICE.

43.

Detective Sergeant VURTHAN, the investigating officer in this case, told us that a number of G3 shells were found at the scene of the murder. As a result he decided to make enquiries concerning G3 rifles which had been issued, as he thought, by the KZP to chiefs in the area.

44.

Detective Sergeant VURTHAN informed us that he sent a fax requesting information in this regard and received no response thereto. He then sent a reminder and in due course received a reply from Major General MATHE advising him to approach the Deputy Secretary of the Department of the Chief Minister, Mr. B.T. MNYANDU for information in this regard.

45.

Subsequent investigations show that Mr. MNYANDU was indeed the person who controls the issue of G3 rifles on behalf of the Kwazulu Government.

DISCUSSION & CONCLUSIONS:

46.

Five of the six incidents referred to above involved members of the KZP and their involvement in illegal or potentially illegal conduct. The offences concerned include murder, attempted murder, unlawful possession of weapons and ammunition and defeating the ends of justice.

47.

The matters involving NGUBANE, the killings of MOTOLO and CELE and the shooting at SIBANKULU all fell to the investigated by the KZP. In each case the investigation is characterised by neglect, delay, disregard of elementary procedures and a failure to bring offenders to book. In the SIBANKULU case (and we are not referring to his murder) no investigation at all was undertaken.

48.

The case of NGEMA reveals the deplorable situation that a wanted criminal who had estreated his bail was able to spend two years working openly as a policeman in the KZP, whilst enquiries about him received the response that he was no longer a member of the force.

49.

Whilst the KZP was represented before us neither in evidence nor in argument was there any endeavour to controvert the general conclusions set out above.

50.

It was argued:-

(a) that a number of the incidents occurred prior to the 17th July 1991 and accordingly fell outside the Committee's legitimate terms of reference in terms of the Prevention of Public Violence and Intimidation Act, 139 of 1991;

(b) in any event none of the incidents had any bearing on the phenomena of public violence and intimidation in the Republic and accordingly, however deplorable, they fell outside the ambit of matters in respect of which the Commission can make representations.

51.

Insofar as the first point is concerned it is undoubtedly correct that certain incidents in regard to which evidence was placed before us took place prior to the 17th July 1991. The investigation of those incidents was not, however, completed or indeed properly undertaken at all either prior to or after that date.

52.

The thrust of the arguments before us related to the approach which the KZP adopted to investigating these incidents involving the members of the KZP.

53.

As the process of investigation continued long after the 17th July 1991, and bore the hallmarks which we have referred to above, we were of the opinion that it was necessary for the proper performance of our functions to hear evidence relating to the prior incidents insofar as they set the stage for the investigation - or lack of it - which followed and indeed continued up to the date upon which these incidents were referred to the Committee.

54.

It was not disputed before us that there is considerable public violence and intimidation in the country generally and Natal in particular. It was also not

disputed that in the areas where these incidents took place public violence and intimidation is a present day reality.

55.

Clearly the killing of people, attempts to kill them and the unlawful possession of arms and ammunition may all be aspects of such public violence and intimidation. In our previous report we said the following:-

"13.

> When in addition to these cases regard is had to the numerous incidents identified by the parties who appeared before us, we are satisfied that there are substantial problems being experienced in Natal and Kwazulu in regard to the investigation and prosecution of cases involving violence and intimidation and in many, and possibly the bulk of, such cases, no effective action has been taken against the perpetrators.

14.

> We are also satisfied that this failure or inability to bring such perpetrators to account is itself a substantial contributory cause of further violence because it encourages the view amongst perpetrators of violence that they can continue their actions with impunity. It lowers the standing of the police in the eyes of the community and diminishes their ability to perform an effective job of policing, particularly in relation to the

incidents of violence and intimidation with which the Commission is concerned".

We remain of that view.

When the incidents which fall to be investigated by the police involve potential wrongdoing on the part of members of the police a further factor comes into play. In his argument in:-

Minister of Law & Order v Thandani 1991 (4) S.A. 862 (AD) at 868C-E,

Arthur Chaskalson S.C. said the following:-

"If servants of the State ignore the law and are permitted to do so without any sanction being attached to their conduct, the law is brought into disrespect and the result is lawlessness and chaos within society. In this regard, the following observation by Brandeis J in his opinion in *Olmstead v United States* 277 US 433 (1928) at 485, subsequently approved by the United States Supreme Court in *Miranda v Arizona* 384 US 436 (1965) at 479-80, is relevant:-

"In a Government of laws, existence of the Government will be imperiiled if it fails to observe the laws scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker it

breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means.....would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face".

57.

In principle we think those views are correct. Not only are the police not above the law but they must, if they are to have the respect of the community and perform their functions properly, be seen to adhere strictly to the letter of the law. Obviously it would be unrealistic to expect that no policeman would ever fall from grace in regard to these high standards. In that event, however, the police should be if anything more zealous than usual in the investigation of the matter and bringing the offender to book. The reason is clear. Any suspicion that the police force turns a blind eye to wrongdoing in its ranks will, once publicly known, hamper the police in the proper discharge of their functions.

58.

We do not therefore accept the argument that the failure by the KZP properly to investigate these various incidents has no bearing on public violence and intimidation. If as a result of that failure the image of the KZP has been tarnished amongst a substantial section of the community that will hamper it in the performance of its duties of maintaining public order and investigating crime. *A fortiori* it will hamper it in undertaking these duties in the context of preventing public violence and intimidation and bringing the perpetrators thereof to book.

59.

There is a further danger in the present highly politicised society in which we live. As was clear from the evidence given to us by Mr. MTHIMKULU the view of supporters of the ANC and its allies is that the Kwazulu Government forms part of a political system which it regards as illegitimate. We do not wish to enter upon the merits of that argument. The only point we make is that when there are strong feelings of that type in relation to Government institutions it becomes even more imperative than in ordinary circumstances that bodies such as a police force which have to deal with a polarised community must be meticulous in keeping their own house in order. A failure to do so can only result in charges of bias being levelled at that police force and its ability to perform its functions in respect of part at least of the community deteriorating.

60.

It follows that we do not think that the general argument advanced on behalf of the KZP that these incidents, whatever their demerits, necessarily fall outside the terms of reference of the Commission are correct.

61.

What then is the cumulative weight to be attached to these incidents? The critical question is whether they are to be treated as relatively isolated incidents or whether they have a cumulative effect.

62.

We have no doubt that the incidents disclose a deplorable level of incompetence in the KZP. This is reinforced by a report prepared by the Deputy

Attorney-General Natal, Mr. R.C. McADAM a copy of which is annexed hereto marked "B".

63.

The fact that there is incompetence of this magnitude in a police force having a responsibility for policing one of the most sensitive areas of the country in the run-up to the elections due to take place on the 27th and 28th April 1994, is of itself a cause not only for grave concern but a cause for steps to be taken to remedy that situation.

64.

In the present case these problems extend to the ranks of extremely senior police officers in the KZP including the Deputy Commissioner : Administration. The policemen concerned were afforded an opportunity in their evidence before us to explain their conduct which seemed to us to be in flagrant defiance of the basic principles on which a police force should operate namely that wrongdoers should be brought to book as rapidly as possible and where those wrongdoers were members of the force in addition to criminal proceedings internal disciplinary steps should be taken against them. No acceptable explanation was forthcoming from any of these officers for their failure to adhere to these principles.

65.

There is a further extraordinary feature of the evidence of Brigadier MATHE in relation to the meeting referred to in paragraph 15 *supra*. It is appropriate to deal briefly with this.

66.

Brigadier MATHE testified that he had been approached by Messrs. MSANE, MTHETWA and LUTHULI, all of whom were employed by the IFP, and told by them that they had heard that Lieutenant Ma was alleging that they intended to assassinate him. Brigadier MATHE's response to this was to organise a meeting between these men and Lieutenant Ma to discuss the matter with a view to resolving it. To that end he secured the presence of Lieutenant Ma at the meeting.

67.

We find Brigadier MATHE's conduct in arranging this meeting quite bizarre. If the allegations made by Lieutenant Ma were true the situation cried out for criminal investigation, which would have linked in with the entire matter of Constable NGUBANE's unlawful possession of an AK-47 and ammunition. If Lieutenant Ma's allegations were unfounded the situation required that steps be taken against a police officer making such unfounded allegations. On any basis convening a meeting between the two parties was entirely inappropriate.

68.

Brigadier MATHE's justification for his conduct is also open to criticism. He said that he acted as he did because the three people concerned were senior officials in the IFP. Apart from the fact that this appears to be factually incorrect it suggests that Brigadier MATHE's endeavours to smooth the matter over without formal investigation had a political motivation. That is entirely unacceptable in a police officer.

69.

Notwithstanding these disturbing features and the fact that all of the cases which we investigated involved Kwazulu policemen it is difficult on the basis of five cases to draw an inference that the KZP as a whole is tainted in its activities. There are simply insufficient cases to found such a conclusion with the requisite degree of certainty. We find ourselves on this issue forced to adopt the middle course of the old Scottish verdict of "not proven".

70.

As pointed out above, however, this does not mean that no steps should be taken. Whilst one cannot tar the entire force with the same brush the extent of proven incompetence within the KZP is disturbing and needs to be addressed. In addition, the public suspicion of the force and perception of possible bias in its activities and lack of control over the unlawful activities of at least certain of its members cannot go unheeded.

71.

In paragraph 5.6.3.2 of its third interim report the Commission expressed the following view:-

> ".....the Commission believes that international police observers could be of substantial assistance to both the SAP and the KZP. Their presence, and involvement for example in selected police stations, would go a long way towards lessening the fears of many that they would not receive fair and serious attention and adequate response to complaints".

We believe that an extension of this principle could contribute substantially to alleviating problems with the KZP.

72.

We do not and cannot go as far as was submitted to us by counsel for the ANC, COSATU and the families of certain victims, in recommending that the KZP be placed immediately under the SAP.

73.

We are informed that there are approximately 40 police stations under the jurisdiction of the KZP. It is our recommendation that with immediate effect a senior detective officer from the SAP accompanied, if possible, by an international police observer, should be stationed at each of those police stations. The role of these police officers would be:-

(a) to advise on and if necessary oversee investigations into criminal offences linked to public violence and intimidation particularly where that takes place in the context of political conflict;

(b) to receive complaints and investigate complaints concerning members of the KZP;

(c) to report to the Commissioner of the Kwazulu Police concerning the activities of any member of the KZP which they regarded as being harmful to the proper functioning of the KZP as a neutral and impartial police force;

(d) if they deem it appropriate to make reports to other bodies or persons

including the Independent Electoral Commission, the Transitional Executive Council and the Goldstone Commission

74.

In discussion with foreign police observers who attended the various sittings of the Committee, we were advised that in other countries it would be standard procedure to suspend police officers in respect of whom allegations of neglect of duties such as those set out in this report are made pending the findings of internal disciplinary proceedings.

75.

We are mindful of the fact that suspension is a serious step which may have a seriously detrimental effect on a police officer's career and personal life. On the other hand the public interest in these matters is of overriding importance. Particularly in the case of the senior police officers referred to in this report, namely Brigadier MATHE, Lieutenant Colonel MDLULI, and Captain MBHELE it may be thought inappropriate for no action to be taken against them.

76.

We are aware that the Commission as a whole has the benefit of a broader view of the proper functioning of a police force and has had the benefit of wider consultation than this Committee with foreign police observers and other experts in the field of policing as well as direct contact with senior police officers in this country.

77.

It is accordingly our view that a final decision on the question of

whether steps should be taken against any of the individual police officers mentioned in this report can more appropriately be taken by the Commission as a whole. Our recommendation is therefore that the Commission should consider whether any steps should be taken against any of the serving police officers referred to in this report and if so the nature of those steps.

78.

The third aspect of the submissions before us related to the involvement in the KZP of former Caprivi trainees.

79.

It is a disturbing feature of the evidence placed before us that it reflects that former Caprivi trainees have in some cases been guilty of serious criminal conduct related to public violence and intimidation and in other cases suspicion is cast upon those persons.

80.

In this regard, apart from the persons mentioned in evidence before us, we were referred to the report by the Commission issued on the 6th December 1993, concerning the possible existence of a hit squad in the KZP.

81.

On the information placed before us at least some, if not all of the persons concerned in that were Caprivi trainees.

82.

There is a clear public concern about the role which Caprivi trainees are playing in the KZP, which does not, with all respect, appear to have been dissipated by the Commission's investigation into and report on this topic.

83.

We do not believe that the evidence before us justifies the making of any blanket recommendation in regard to such trainees.

84.

We do point out, however, that after the election it is anticipated that there will be a reconstitution of police forces in South Africa which will involve, *inter alia*, the KZP.

85.

It seems to us that it would be appropriate in the reconstitution of such police forces for there to be a careful consideration of all persons who are to act as policemen in South Africa under the new constitution. We say this not particularly in regard to the former Caprivi trainees but in relation to all policemen. It seems to us that when the police forces are reconstituted careful consideration must be given to the suitability of each aspirant policeman for appointment to the newly constituted forces. If a suitable process for vetting candidates is undertaken that will include the background of all of the former Caprivi trainees at present serving in the KZP and to the extent that any of them may be unsuitable for police service they should be weeded out at that stage.

DATED at DURBAN this 5th day of MARCH, 1994.

M.J.D. WALLIS

A.J.L. GEYSER

R.M.M. ZONDO

RM2

ANNEXA

INQUEST NO 151/92

DATE 1992/05/21

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF KWAZULU HELD

AT UMLAZI

BEFORE — MR M B MADLALA

NAME OF DECEASED — THULANI CHRISTOPHER CELE

FOR THE STATE — M H MHLOPHE

INTERPRETER — MR B E MNCWANGO

ON BEHALF OF FAMILY (T C CELE) — MR H VARNEY

ON BEHALF OF SUSPECT WILLIAM SIBUSE MAPHANGA — MR VAN LINGEN

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TRANSCRIBER

SECRETARIAL SERVICES

ON RESUMPTION ON 25/09/1992 APPEARANCES AS BEFORE EXCEPT THAT PROSECUTOR IS MR M'R THIPA, MR R NIELSON APPEARS ON BEHALF OF THE MINISTER OF LAW AND ORDER, MR B E MNCWANGO IS THE INTERPRETER, AND THE FAMILY ATTORNEY IS MR R LISTER

F I N D I N G

COURT: This has been an inquest concerning an enquiry relating to the circumstances surrounding the death of Mr Chester Cele. I will refer to him by the name of Chester because this is the name that he is well-known, that is the deceased.

The Court, to arrive at its Finding, will first briefly narrate the summary evidence by each witness that gave evidence before it.

The first witness called was Nkanyiso Alexander Malinga who informed the Court that he is a lieutenant under the KwaZulu Police and stationed at Umlazi Police Station, also a Branch Commander for Detective Branch, and that he made an affidavit which was handed in as Exhibit A. Correcting his evidence, Lt Malinga informed the Court that he did not authorise the participation related to the deceased, and that on the day in question, that is the 12th day of November 1990, he was not present at the police station.

The second witness called was William Zibuse Maphanga, who informed the Court that he is a Detective-Constable under the KwaZulu Police, having six years' experience, and stationed at Umlazi Police Station, and that on the 12th day of November 1990 he was attached to the Murder and Robbery Unit, and that on the very same day he was executing his duties of investigating the cases in the whole area of Umlazi Township. While executing his

/duties,

duties, he was in the police motor vehicle ZP577, together with other policemen who were occupying other police vans, which were about four to six in number. Personally, he was investigating the murder and attempted murder cases, but could not remember their CR numbers. He and other policemen proceeded to G Section to trace the suspects in these cases and the deceased was one of the suspects.

Whilst at G Section, still driving on the road, they saw the deceased, Chester Cele, whom they then arrested and put inside the motor vehicle for interrogation. During interrogation, the deceased admitted having been in possession of the firearm which was used in committing one of these offences, and then referred them to his home, where thereafter they proceeded to his home to get the said firearm.

But at his home no firearm was found. As a result he, Chester, then informed them that the said firearm had been taken by one of his friends who was also a suspect, that is Mafruits. As a result, Chester took them to G Section to show them other suspects. In the State motor vehicle it was Detective-Constable Maphanga, Sergeant Cele and Constable Ngcobo, and the fourth one was the deceased himself. And the State motor vehicle was a sedan, being a Golf.

At G Section, he showed them the shack houses of F Section, where he said those suspects which he was speaking about were residing, and other policemen then proceeded there to trace those suspects. But Maphanga said whilst the police vehicle was still travelling, the deceased complained and cried of stomach-ache and asked that the motor vehicle be stopped so that he could lie

/down

down on the ground with his stomach.

When Chester complained of the stomach, he had already pointed out the three suspects at G Section, not far from the spot where the police motor vehicle stopped. After Chester had pointed out those three suspects, he, Maphanga, left Sergeant Cele, Constable Ngcobo and Chester inside the motor vehicle. He approached those three black males, and when he was about to interrogate them, he decided to call his colleagues, that is Constable Ngcobo and Sergeant Cele.

Whilst calling them, he then heard Sergeant Cele shouting, ordering Chester to drop his 9 mm pistol down, that is the pistol for Sergeant Cele. As he, Maphanga, was about fifteen paces away from the said motor vehicle, he then left the three black males which he intended interrogating, and rushed to the said motor vehicle, where there was a struggle.

As Maphanga was proceeding there, Chester had already started running away. As a result, Maphanga shouted at him, ordering him to stop, but Maphanga caught up with Chester behind the police van, about five paces away, but Chester proved to be more powerful than Maphanga. As a result, he broke loose and ran away again. As a result, Maphanga fired a warning shot with his R1 rifle in order to cause Chester to stop, but Chester continued running away. After the first shot, Chester was running in a zig-zag manner, proceeding down the road. Seeing that Chester was running to the bush, Maphanga then fired the second shot, but could not state whether it hit Chester or not. When Chester was entering the bush, Maphanga fired the third shot at him and Chester ran a

/short

856 short distance and fell.

He found Sergeant Cele's firearm lying next to him, that is about three to five metres. As a result, Maphanga reported the incident to the police station, whereafter Lt Maphumulo, who was the officer in command, arrived at the scene.

He, Maphanga, did not observe the deceased's injuries but he was told by other policemen that the deceased had sustained injuries on his back as a result of his shooting. He did not even see blood oozing from Chester, because Chester did not allow him to come nearer, as Chester was insolent towards him. But he could detect that Chester was still alive as he was talking to other policemen, pleading with them that he be taken to the hospital.

But he couldn't remember who removed Chester to the hospital, and he could not produce the pocketbook for the specific date. Further, he could not remember who recognised Chester on the road at G Section as they took him inside their motor vehicle. Further, he had no knowledge of Chester's background, whether he was an activist or ANC member. Although he, Maphanga, and others were investigating the murder case against Chester, he, Maphanga, did not know the victim in that murder case. And he could not comment about the CR254/1 of 1990 which, in the OB, relates that it was an armed robbery, whereas the said CR referred to a murder case which they were investigating.

Further, Maphanga averred that Chester did not resist the arrest nor was he assaulted after having been arrested. Further, that after Chester had been arrested,

/he

1012 he confessed to cases, that is murder and attempted murder, although he, Maphanga, and others had not explained to him who was the victim in those cases. So Chester even admitted that he was going to produce the firearm relating to these cases, although he did not have full knowledge of what was concerned in those cases.

Although Chester had admitted to being a murderer, Maphanga and others did not handcuff him because Chester so requested. Maphanga said Maphumulo took about three minutes to arrive at the scene after having been radioed.

Maphanga admitted having done the first aid course but he refused to answer questions relating to his abilities or what he would have done if finding a man being shot twice with an R1 rifle generally. He further said he was not compelled to render first aid assistance to the deceased, as other policemen did render such an assistance, but he was not certain whether those policemen did in actual fact render that assistance to the deceased.

Maphanga agreed that from the scene to Prince Mshiyeni Memorial Hospital is a ten minutes' drive. That was his evidence, in brief.

The third witness called was Sergeant Bongani Cele, who informed the Court that he is a ZP sergeant but that on the 12th day of November 1990 he was still a constable, having an experience of six years as a policeman. He also stated that he was unaware of Chester's background. All that he knew about Chester was that he was a criminal.

He stated that in the Golf sedan motor vehicle in which he was, he was together with Detective Constable Maphanga, Chester and Constable Ngcobo. He said it was Constable Ngcobo who pointed out Chester Cele when they

/were

were driving on the road at G Section, but that evidence was later disputed by Constable Ngcobo. He further stated that Chester, after having been arrested, did not resist, nor was he assaulted and he did not show any sign of physical distress; that Chester, after having been informed of the investigations against him, admitted the murder case, although the details of that murder case, for instance like victims involved, were not put to him and Chester promised to point other suspects.

That murder case was referred to as CR254 but Sergeant Cele could not comment as to how did it happen in the OB book that the said CR254 referred to an armed robbery case, not to murder which they alleged to have been investigating against Chester.

He said they first proceeded to Chester's home at G Section, but Chester could not produce the firearm. As a result, they proceeded to another place at G Section where Chester said he was going to point out other suspects.

At a certain spot at G Section, Chester complained of a stomach-ache and asked that he be taken out in order for him to lie on the stomach and that was done. After having lain on his stomach, unexpectedly he rose up and kicked Sergeant Cele and pushed him down. He got hold of Sergeant Cele's service firearm. At that stage during the struggle Sergeant Cele did not shout for assistance from the other members but only shouted when Chester was running away with his firearm.

Constable Ngcobo, who was the driver at that time and who was occupying the driver's seat at that stage, did not come to Sergeant Cele's assistance, although the struggle took place next to him.

/He

He then opened the robbery case against Chester. He denied that Chester ever threatened him with a knife, but Exhibit G reflected that Chester did threaten Sergeant Cele with a knife during the robbery of his firearm. Sergeant Cele could not explain how was this entered in the register concerned, but he said it means the officer who wrote he was threatened with a knife was updating the books because he, himself, Sergeant Cele, used to falsify the documents at the police station in order to prevent queries emanating from the Station Commander; that it was therefore not strange for the policemen to falsify the documents at Umlazi Police Station.

He further stated that Constable Ngcobo laughed at him when he, Cele, asked him to come to his assistance. Cele, after the deceased had been shot but still alive, then proceeded to the scene where the deceased was lying and put him properly as the deceased was lying facing downwards ... (unintelligible) ...;that the deceased was bleeding from the back, but not much.

He, Sergeant Cele, never received the first aid course at the College. He, Sergeant Cele, considered that Chester had to be taken to the hospital because of his injuries without any delay. He further agreed that from the scene to Prince Mshiyeni Hospital it is ten minutes' drive.

As Exhibit G stated that Chester was warned for court after having been shot, he, Sergeant Cele, could not explain how that happened, because in actual fact Chester was never warned for court after having been shot.

The fourth witness called was Constable Fortune Bongani Ngcobo, who informed the Court that he is a ZP constable having seven years' experience, and the

/affidavit

affidavit made by him was handed in as Exhibit H.

He said the pocketbook related to this incident was no longer available because even the pocketbook which relates to the burning of his house was no longer available; that on the day in question he was the driver of the motor vehicle which was occupied by Chester, Maphanga and Sergeant Cele.

He said he did not recall who recognised Chester on the road at G Section, and further said it could not be one of the passengers in his motor vehicle that recognised Chester, which means Chester was recognised by one of the policemen in other police vehicles. But Ngcobo could not account as to why Chester was put in their motor vehicle if he had not been recognised by one of the occupants there.

He said he had no knowledge of the accused's reputation in G Section. Suddenly, Constable Ngcobo commented that his house had been burned by Comrades and he is happy that Chester is one of those. He said this after Mr Varney had asked him whether he knew that Chester was an activist, that is the Comrade. He said his house was set alight in February 1990, that is before this incident. That is when Mr Mandela was released from prison.

He said he concluded that his house had been burned by Comrades because he was told by his mother that the attackers said they were burning the house of Bobayi, but that no investigations were conducted to verify his allegation that his house was burnt by Comrades.

He said he wanted Chester to produce the 9 mm firearm which was used in killing the policeman who was

/residing

B12 residing next to a Roman Catholic church, known as Sergeant Mashakwane; that the charges were put to Chester, but the victims in those charges were not mentioned. As a result, Chester admitted the knowledge of the firearm but denied the commission of the two offences.

He cannot explain why CR254/1 of '90 referred to a robbery case in the official books, as they say it referred to a murder case which they were investigating.

He said after Chester had failed to produce the firearm from his home, they proceeded to another place at G Section. He said that he complained of the stomach-ache and he was taken outside to lie on his stomach.

All of a sudden he saw the deceased struggling with Sergeant Cele outside the motor vehicle. He did not intervene between them as they were fighting because he wanted to see what Sergeant Cele was taught at school regarding techniques of fighting, and further that he does not intervene between the fighting people, but said that he waited the opportunity of shooting the deceased in the event of realising that the deceased was overpowering Sergeant Cele.

When being asked whether he was still fit to carry out police duties, he said he has an evil heart. He has no love of other people since the burning of his house, and he is still looking for those people who set his house alight, and should he find them they will see their end. And supporting his evil heart, he quoted the words in the Bible which reads thus, "Eye for an eye, tooth for a tooth." That is how he was going to deal with those people.

He said deceased never threatened Sergeant Cele with

/any weapon.

/2088 any weapon. As Sergeant Cele, in his evidence said, after the struggle with the deceased he approached Constable Ngcobo as to why he did not intervene, but Ngcobo said he was never approached by Sergeant Cele, and that if he had been so approached, he would have enquired from Sergeant Cele how he was trained at the College. How could he be overpowered by a free man?

He confirmed that, after the shooting, Chester pleaded with the policemen at the scene to take him to the hospital, and that the deceased was seriously injured to such an extent that only an ambulance could take him to the hospital because, according to the Police Regulations and General Procedure, a seriously injured person cannot be transported to the hospital in police vans but only in an ambulance that can do so.

That was his evidence in brief.

The fifth witness was Lieutenant Themba Joseph Maphumulo who informed the Court that he is serving under KwaZulu Police and stationed at Umlazi Police Station, and that on the 12th day of November 1990, he was called at the shooting scene after having been radioed whilst driving in V Section, Umlazi Township.

He drove to the scene of the incident where he found Detective-Constable Maphanga and other members, and Maphanga showed him the deceased who was still alive at that time, and gave an explanation of the shooting.

Lieutenant Maphumulo further said that after Maphanga had made the report of shooting, he then gave instructions that Chester be taken in the police van which he, Maphumulo, summoned for Chester to be conveyed to Umlazi Police Station where he would meet an ambulance

/which would

which would in turn convey him to hospital. He thought that Chester sustained two shot wounds. At the police station, seeing that no ambulance had arrived, he then gave further instructions that the deceased, Chester, be conveyed to hospital in the police van.

That what he, Lieutenant Maphumulo, entered in the Occurrence Book is an accurate report of what was made to him by the members concerned, that is Detective Constable Maphanga, Constable Ngcobo and Sergeant Cele.

He said it is not correct that Sergeant Cele was robbed of his firearm outside the motor vehicle, but the information with which he was furnished is that he was robbed inside the motor vehicle, and that the person who was nearer to Sergeant Cele with Chester during the struggle over the possession of the firearm was Constable Maphumulo, not Ngcobo as alleged by the other members.

And further, he said that the information that he received is that Chester dropped the firearm after the first warning shot, and when the second and third shots were fired at him, he had already dropped the firearm, running away. When he arrived at the scene, the firearm had already been retrieved by Sergeant Cele. It took him fifteen to twenty minutes to get to the scene of the crime from V Section, Umlazi.

He was driving in a sedan; therefore he could not convey the deceased in the said motor vehicle. As a result he in turn radioed for another police van which arrived eventually after about five minutes.

The convoy police vans were no longer at the scene, which were with the Golf in which Maphanga was driving. They left without having offered any assistance to

/Chester.

Chester.

42 He said Chester was in a critical state when he found him at the scene. According to him, Chester was delayed about five minutes at the police station. He made his report at 19:50 in the Occurrence Book, after the police van had already left for hospital with Chester. From the police station to hospital is about five minutes' drive. The deceased was conveyed in the very same police van to the hospital which had removed him from the scene of the incident, and he further stated that it was not the procedure that the injured person be taken to the police station for paperwork before being taken to hospital.

Further, he said that many houses of policemen have been burnt, including his, in March 1990, that is before this incident.

That was his evidence in brief.

The sixth witness was Boysie Nkosinathi Sibiya who informed the Court that he is a detective constable serving under the KwaZulu Police and stationed at Umlazi Police Station.

Briefly, he informed the Court that the sole aim of bringing Chester to the police station was for the Charge Office Commander to ascertain the nature of his injuries and for him, Sibiya, to make a lawful detention of Chester, and that the guard be issued to look after him at the hospital. He, Sibiya, personally did the detention and the paperwork.

Further, that the ambulance was never summoned because the same police van had to take Chester to Prince Mshiyeni Memorial Hospital. Therefore, there was no reason that the ambulance be summoned. That the only reason for

/a suspect

/256 a suspect to be brought at the police station was for the general procedure which he was taught at school, that is at the College, that is detention and paperwork and issue of the guard.

He disputed the evidence of Lieutenant Maphumulo in that the deceased was brought to the police station for the purpose of an ambulance because if that be the case, then that fact will be reflected in the Occurrence Book, but it did not reflect.

At the police station he did speak to Chester who asked that he be conveyed home, but Constable Sibiya told him that he was going to be taken to hospital.

He saw two shot wounds on his back. He, Sibiya, never did a first aid course at the College, that is why he did not bandage the top wounds.

The insertion in Exhibit D? is the post entry under 12:26, and the Court will refer to that entry at a later stage.

The seventh witness called was Simon Sipho Dlamini, who informed the Court that he is a warrant-officer serving under the KwaZulu Police and stationed at Umlazi Police Station, but that during the day in question he was still a Sergeant.

On the day in question he was the Charge Office Commander, and he is the one who conveyed Chester from the police station to Prince Mshiyeni Memorial Hospital. To convey him he used the route via the garage, that is eastern side of the police station and back to V robot, then straight to Prince Mshiyeni Memorial Hospital.

He said before he could convey Chester he made

/entries

2/354 entries of the shooting in the OB. He never saw Constable Sibiya doing any paper work in relation to the deceased, and as Constable Sibiya is a CID, the CID do not work in the Charge Office.

Although he observed that Chester had been seriously wounded, he had a chance of surviving if treated by the doctor timeously. Chester died after he, Warrant-Officer, had reported off-duty.

The hand-writing in Exhibit D1 and D2 was his, Warrant-Officer. In Exhibit D2, the insertion relating to the robbery of firearm of Sergeant Cele was made by him, Warrant-Officer. After having made the entry, he realised that he had omitted to make the said statement of robbery of firearm of Sergeant Cele. Without this insertion the sentence could be read with meaning.

To the hospital he asked Constable Zuke, who was going to be the guard of Chester. At the hospital, he asked Zuke to ask the hospital officials to bring the stretcher, which was brought. As a result he, Warrant-Officer, then left.

He considered that if it were him who had been asked to convey the seriously injured person, he would convey him directly to the hospital rather than convey him to the police station.

The eighth witness was Derek Mthandeni Gumede, who informed the Court that on the day in question he was serving under KwaZulu Police as constable, and that the statement A2 was made by him.

On the day in question he was driving ZP784 patrolling here in Umlazi Township, and whilst so patrolling he was radiced by Lieutenant Maphumulo to come

/to the scene.

to the scene. As a result he did proceed there. At the scene he was instructed to convey Chester to the police station where he would meet an ambulance which will in turn convey him to hospital, but he did not see the wounds of Chester as he did not inspect them.

From the scene he took the route via Checkers, that is Umlazi Checkers, which road to this Court is a longer road than the road which is coming straight to the V robots, which is the main road. He said Umlazi Checkers road, to his discretion, was free from traffic. That is why he took it.

At the police station he did not find an ambulance. As a result he handed over the police van, having the deceased inside, to Warrant-Officer Dlamini.

That was his evidence in brief.

The ninth witness called was Dr Abdul Karrim, who is the holder of MB Ch B, a specialist in hearts and veins. He said he acquainted himself with the post-mortem report relating to Chester, and that he was aware that it has been alleged that there was a delay of one hour forty-five minutes before Chester was taken to the hospital, and that if he had been taken timeously this prospect of his survival will be positive, as he fell in the second group.

The bleeding was a major contributory factor to his death. The deceased must have lain in a pool of blood. His left artery had been severed. Therefore that the deceased, in such circumstances, ought to have been taken to the hospital timeously.

That was his evidence in brief.

The tenth witness was Jerome Zibuse Ngcobo, who was called to testify about the entry made in Exhibit G, in

/that