

COMMISSION OF INQUIRY REGARDING
THE PREVENTION OF PUBLIC VIOLENCE
AND INTIMIDATION

REPORT ON THE PLANNING OR INSTIGATION OF
ACTS OF VIOLENCE BY MEMBERS OF THE
S. A. POLICE IN THE VAAL AREA

GOLDSTONE REPORT ; GK-12

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29/10/92

THE STATE PRESIDENT

THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION HAS THE HONOUR TO PRESENT ITS REPORT ON THE PLANNING OR INSTIGATION OF ACTS OF VIOLENCE BY MEMBERS OF THE SOUTH AFRICAN POLICE IN THE VAAL AREA.

N. J. Goldstone
R J GOLDSTONE

CHAIRMAN OF THE COMMISSION

PRETORIA

27 OCTOBER 1992

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1. On 22 May 1992 the Commission appointed Mr R.M. Wise, SC, of the Johannesburg Bar to be a one-man committee to inquire into the Weekly Mail reports concerning the alleged planning or instigation of acts of violence by members of the South African Police in the Vaal area.

2. The Commission has now received the report of the Committee and it is attached hereto.

3. The report and the findings speak for themselves. At the preliminary enquiry, counsel for the Weekly Mail submitted that the Commission should launch a general enquiry into whether members of the South African Police were involved in, or sponsoring, violence as part of their normal covert operations in relation to criminal investigation. No evidence to support such activities was presented to the Commission other than that which formed the subject matter of the Committee's enquiry. Obviously, if the Weekly Mail's allegations proved to have substance that would have justified a wider enquiry. In the Commission's view the proper procedure was first to investigate the Weekly Mail's allegations and in the light of that investigation to consider what further steps, if any, should be taken. As the Committee has found and, indeed as counsel for the Weekly Mail conceded, the sources relied on by the Weekly Mail proved to be untruthful and without substance. It follows that there is no evidence at all to justify

the wider enquiry called for by the Weekly Mail.

4. With regard to the recommendations at the end of the report, the Commission wishes to make the following comments:

RECOMMENDATION (A)

The Commission considers that it would be inappropriate to address any request to the Weekly Mail as suggested by counsel for the South African Police.

RECOMMENDATION (B)

The question of practices and procedures relating to covert operations by any police force is important and difficult. It is made more difficult in South Africa because of the high level of suspicion concerning the security forces generally. The manner in which covert police investigations should properly be carried out in South Africa now and in the future falls outside the terms of reference of this Commission. In the circumstances the Commission recommends that Recommendation B be referred to the Minister of Law and Order for his consideration.

RECOMMENDATION (C)

It is obvious that the reports that appeared in the Weekly Mail were seriously prejudicial to the South African Police in general

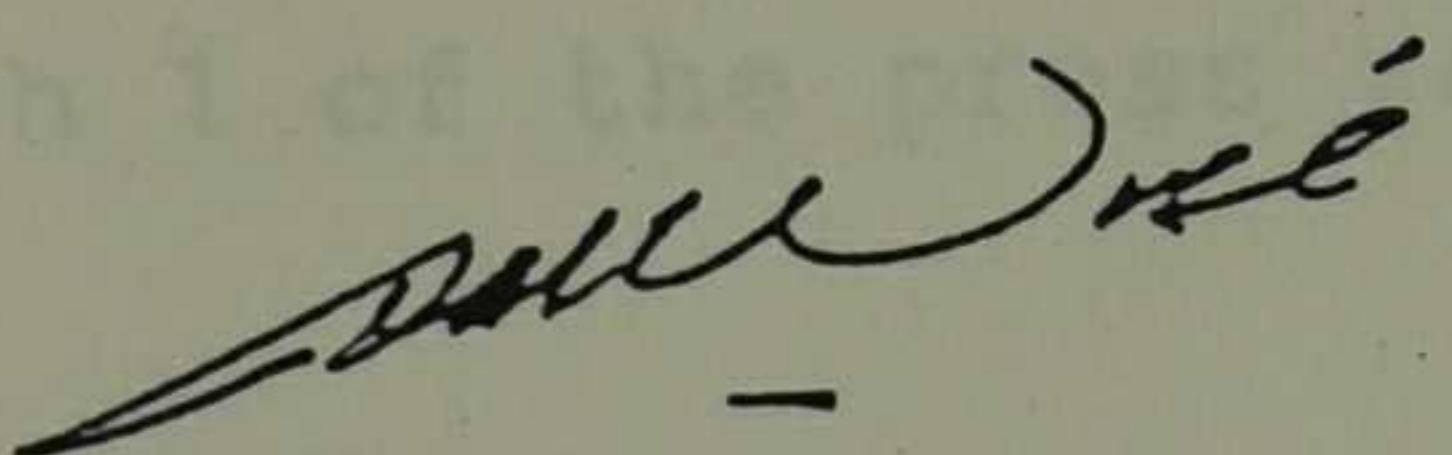
and to the named police officers in particular. The Commission agrees that, having due regard to the gravity and importance of the allegations in the current climate of violence, the manner in which the South African Police were invited to respond prior to publication was inadequate both as to content and to the time given them to respond.

[Signature]
R.M. WISE
CHAIRMAN OF THE COMMITTEE

INTRODUCTION

The Commission

REPORT TO THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE AND INTIMIDATION OF THE COMMITTEE APPOINTED TO CONDUCT AN INVESTIGATION INTO THE ALLEGATIONS PUBLISHED BY THE WEEKLY MAIL ON 8 AND 15 MAY 1992 CONCERNING THE PLANNING OR INSTIGATION OF ACTS OF VIOLENCE BY MEMBERS OF THE SOUTH AFRICAN POLICE IN THE VAAL AREA


R.M. WISE
CHAIRMAN OF THE COMMITTEE

INTRODUCTION

After holding a preliminary inquiry, the Commission of Inquiry regarding the prevention of Public Violence and Intimidation ("the Commission") issued a press release in terms of which it appointed Mr R.M. Wise, SC, chairman and sole member of a committee to investigate the allegations concerning the planning or instigation of acts of violence by members of the South African Police in the Vaal area which were published by the *Weekly Mail* in its editions of 8 and 15 May 1992. (See paragraph 4(a) read with paragraph 1 of the press release.)

The evidence presented to the full Commission at that preliminary inquiry consisted of statements made under oath by Mr Drew Forrest, a journalist in the employ of the *Weekly Mail* and the author of the principal articles concerned; by Mr A. Harber, the editor of the *Weekly Mail*; and by Col. Potgieter, the officer commanding the Crime Intelligence Service of the SAP in the Vaal area, on behalf of Lt Gen P.J. Viljoen. From this evidence and from the articles themselves it was clear that the allegations concerning the planning and instigation of violence were based, in the first instance, on statements by one Daniel Kolisang ("Kolisang") and one Solly Mngomezulu ("Mngomezulu") and, in the second instance, on inferences drawn from such statements and other facts and alleged facts, which were ascertained by Mr Forrest and others during the course of their investigations.

These articles in the *Weekly Mail*, in addition to containing allegations about the planning and/or instigation of acts of violence by members of the SAP, also dealt at length with other matters, viz the facts and alleged facts referred to above. In particular there was much about the use by the South African Police of unmarked vehicles with false number plates; about the "safe" houses which were used by the police and which were not registered in the name of the SAP but in the names of other persons; of the use of page (sic) (presumably "paging") numbers and the persons or companies in whose names such numbers were registered and about the identity and details of a number of policemen most of whom were alleged to have used false names.

At the preliminary inquiry the Commission was requested to have this Committee, in addition to inquiring into the allegations of planning and instigating violence, also inquire into various aspects of these other matters. The Commission declined this request and mentioned two main grounds for doing so, the first was that these other allegations with regard to police methods and police accountability would require an enormous amount of specialist and expert evidence and would therefore take a great deal of time and would, in any event, form part of an inquiry by the Commission into the police and policing methods generally and the second was that there was a need for the allegations that the SAP had planned and instigated violence to be dealt with more urgently than would be possible if the other matters were to be inquired into at the same time. Accordingly, the terms of reference laid

down by the Commission in respect of this inquiry expressly excluded inquiry into these other matters.

The African National Congress ("ANC") and the *Weekly Mail* were represented by an advocate, Mr F. Rautenbach, who was instructed by an attorney, Mr David Dison. Throughout virtually the entire hearing two attorneys were present to assist Mr Rautenbach. The South African Police were represented by an advocate, Mr P. Hattingh, SC, and Mr L Wepener, also an advocate. An advocate, Mr J.P. Pretorius, presented the evidence on behalf of the Commission.

At the outset it is necessary to identify the allegations that are the subject matter of this inquiry.

THE ALLEGATIONS IN THE EDITION OF THE *WEEKLY MAIL* PUBLISHED ON 8 MAY 1992

Because the articles in the *Weekly Mail* deal with much more than just the allegations to be inquired into, it is desirable to identify the specific allegations in question. Set out in subparagraphs (a) to (k) below are the passages in question in the edition of 8 May which contain allegations about the planning and/or instigation of violence. Unless the contrary is indicated all underlining is that of the Committee.

Besides what is contained in an accompanying article on page 3 by Paul Stober, all allegations about the planning and instigating of

violence in this edition of the *Weekly Mail* are based upon statements by Kolisang, or are inferences drawn from such statements and from the fact that the police were indeed conducting covert operations.

(a) On the front page of this edition the main headline, in large letters, reads as follows:

"In this house these police plan violence"

The word "house" is followed by a photograph of a house and the word "police" is followed by the photograph of three men.

It is common cause that the house shown in the photograph is that of the safe house at Rosashof. The three photographs of three men on the front page correspond with photographs on pages 2 and 3.

From these it is clear that the centre photograph on the front page is that of Capt A.G. du Plessis; the photograph on the left is that of Sgt Seago, who used the pseudonym "Oupa", and that on the right is of Constable Johannes Nkwane, who used the pseudonym "Mike".

The clear and intended effect of the headline is that the three identified policemen, namely Capt du Plessis, Sgt Seago and Constable Nkwane, were the policemen who planned violence at the Rosashof house.

- (b) In the first column at the foot of the front page the following appears:

"Strange men befriended unemployed activist Daniel Kolisang, put a blanket over his head and drove (sic) him to a house where he was offered money to kill ANC officials."

- (c) The next relevant passage immediately follows the one set out in (b) above:

"Following a six-week investigation, the *Weekly Mail* has tracked down both the house and the men. They are a group of policemen headed by Captain A.G. du Plessis who go to extraordinary lengths to keep their activities secret, including using false names, fictitious names, fictitious companies and false licence plates."

- (d) There is a double heading in large lettering which runs across the top of pages 2 and 3 which reads:

"The Weekly Mail exposes a mysterious covert operation"

"The Police Plotters and the Secret Base"

The text immediately below this at the top of the left hand column on page 2 reads:

"The Weekly Mail has uncovered a top-secret South African Police base linked to the planning of assassinations in the Vaal area.

The discovery, one outcome of an intensive six-week investigation, comes against the backdrop of a silent

war against leaders and activists of the African National Congress and its allies in the Vaal, involving assassinations, attacks on houses, kidnapping and various forms of harassment. (See accompanying story.)"

It is clear that the "accompanying story" is the article appearing in the first four columns of the bottom half of page 3 of that edition of the Weekly Mail under the heading

"Comrades are being gunned down - ANC"

together with the chronicle of alleged incidents of violence under the heading

"Evidence of Death Campaign".

This is the article written by Paul Stober.

(e) Also on pages 2 and 3 below the headings referred to in (d) are the photographs of the three mentioned in (a) above. In addition there are photographs of two other policemen. They are Warrant Officer Thys Nolte and Sergeant George Supra. In the context the clearly intended implication is that they too were among the "police plotters" who planned and/or instigated violence.

(f) In the fourth paragraph of the first column of page 2 the following appears:

"Kolisang says that with his head covered he was taken to the house, where a white man called 'Brian' offered weapons and training and money to carry out petrol bomb

attacks on ANC and South African Communist Party leaders and activists."

(g) The sixth paragraph in the first column of page 2 reads:

"One of his targets, Kolisang says, was ANC member and South African Council of Churches field worker Saul Tsotetsi, who was killed in a grenade blast in March (see accompanying story). It has been established that the investigating officer in the Tsotetsi case, Warrant Officer Thys Nolte worked at the "safe house" early this year."

(The "accompanying story" is clearly a further reference to the article by Stober.)

(h) In the paragraph commencing in the bottom right hand corner of page 2 and continuing onto page 6 the following appears:

"Kolisang says 'Brian' then offered him R5 000,00 to carry out petrol bomb attacks on the houses of Tsotetsi, Vilakazi, Sithole, Nkonkoto, 'Comrade Phyllis', 'Speech', 'Ntjanyana' and Molatu. It was stressed to him, he says, that it was essential to kill 'Speech'.

He was allegedly given details of the type of petrol bombs required - using a 'lappie', rather than being sealed and shaken - and when he said he did not know how to make these, he was told the bombs would be supplied. He was also told, he says, that he would be provided with 'clothing' for protection."

- (i) Also on page 6 in column 2 near the bottom appears the following:

"Kolisang says he was asked to sign a form stating his name, ID number, the R5 000,00 payment and his code name, 'Patrick Khumalo'."

- (j) Also on page 6 is the following passage:

"Kolisang says he was taken to the house on one further occasion where a date and rendezvous was set for the attacks, the night of January 17. He was given a page (sic) number with which to contact Mike ..."

- (k) It is necessary to refer to "the accompanying article" mentioned in items (d) and (g) above. The tenor of this article is that there is an on-going campaign of "low intensity conflict" which "involves the identification and elimination of key members of organizations active in communities" with a reference to "numerous assassinations, kidnappings and assaults since April, 1990". There are fifteen incidents listed in the chronicle of violent deaths under the heading "Evidence of a death campaign". These range from 14 December 1991 to 5 May 1992. Generally the source of the alleged information is not identified save in broad, vague terms eg. "African National Congress Activists in the Vaal Triangle".

THE ALLEGATIONS IN THE EDITION OF THE *WEEKLY MAIL* PUBLISHED ON
15 MAY 1992

The allegations in this edition of the *Weekly Mail* about the planning and/or instigation of violence by the SAP are based on statements by both Kolisang and Mngomezulu. These are identified and set out in subparagraphs (l), (m), (n), (o) and (p) below. Again, all underlining is that of the Committee.

(l) On page 2 under the headings

"What the police are trying to hide"

and

"Court action blows covert SAP Network"

the following appears in the third column:

"The *Weekly Mail* has established a second link with violence. In a sworn statement, a former inmate of the ANC's Quattro detention camp in Angola, Solly Mngomezulu tells of his 'abduction' at the hands of mysterious white and black men to a house in the Vaal area, where he, too, was promised training to 'eliminate' underground members of the ANC's armed wing, Umkhonto we Sizwe (MK)."

(m) In the same article, on page 3 near the top of the third column the following appears:

"'He said that they would help me get revenge on them,' Mngomezulu states. 'He said that I would be given

training to eliminate those in the underground structures of the ANC.

"Mngomezulu says both the 'boss' and the white man he had met earlier asked him if he had received weapons training, and promised to provide it when he replied he had not."

- (n) Near the bottom on page 2 of that edition the following appears as part of an article which is headed:

"On the long and winding trail of two page (sic) (paging) numbers"

"Introduced to the Weekly Mail in February he (Mngomezulu) told a bizarre tale of an 'abduction' by mysterious men which ended at a house near the Vaal River. Here, he said, he was quizzed about 'DLBs' (dead-letter boxes) and underground Umkhonto we Sizwe cadres, and was promised training to wreak his revenge on his ANC tormentors."

- (o) In the left hand column of page 2 is an article headed

"Police said hit squad poisoned Baby ..."

The author of the article is Paul Stober. The first two paragraphs read as follows:

"Belinda 'Baby' Makgolotso was an ordinary member of the Everton branch of the African National Congress, yet her sudden death in November last year raises the possibility that she may have been another victim of hit squads active in the area.

Sebokeng activist Daniel Kolisang claims he was told, in an interview at a secret police base in Vanderbijlpark, that Makgolotso was poisoned 'by the government'."

(p) On page 3 there is an article written by Eddie Koch under the heading

"Eighty days to blow away vital hit-squad information"

"January 2 1992: a young man called Daniel Kolisang from Sebokeng meets a policeman known as 'Brian' and is asked to participate in petrol-bomb attacks on the homes of African National Congress leaders in the township, including charismatic church field worker Saul Tsotetsi. Kolisang is horrified, runs away and reports the request to Tsotetsi.

Eighty days later, March 22: Tsotetsi is blown up outside his home - ... Tsotetsi was walking home in the early hours of the morning when he was attacked by a group of five men. After a struggle, a hand grenade exploded, killing Tsotetsi and injuring two of his attackers."

It should be noted that the allegations of violence, contained in items (b), (f), (h), (i), (j), (l), (m), (n) and (o) are based entirely, or almost entirely upon statements made by either Kolisang or Mngomezulu. By contrast the other allegations, namely those in items (a), (c), (d), (e), (g), (k), (n) and (p), are based primarily on inferences drawn from other matter and only peripherally, if at all, on the statements attributed to Kolisang and Mngomezulu.

OVERVIEW OF THE EVIDENCE PRESENTED TO THE COMMITTEE

Affidavits setting out the main points that would be given in evidence by the witnesses to be called in support of and against the allegations in question were lodged prior to the hearing of oral evidence. Affidavit evidence by other persons was also received, without such persons giving oral evidence where the facts set out in such affidavits were common cause. The hearing of oral evidence took nine days in all, followed by two days of argument. Unfortunately it was not possible to complete the hearing in one session and, because of the constraints on the availability of the parties involved, a substantial adjournment was inevitable.

Both Kolisang and Mngomezulu gave oral testimony and were cross-examined at length.

The police witnesses consisted of the following: Colonel Jan Potgieter, the regional commander of CIS WWR, Sgt Steenekamp (alias "Brian"), Sgt Seago (alias "Oupa") and Constable Robert. There were also affidavits by Warrant Officer Nel, Warrant Officer E.R. Coetzee, and Colonel J.F. Hattingh (SAP handwriting expert).

Independent witnesses who testified were Dr Nkadimeng, Ms Nozipho Manni, Mrs Sophia Margaretha van der Westhuizen and Mr Johan Swarts. In addition there was evidence on affidavit by Mr Peter

M. Horley, (independent handwriting expert) and male nurse, P. Moeletsi.

It will be helpful at this stage to set out briefly certain matters in the nature of background that were common cause in consequence of an express agreement between the legal representatives or because relevant evidence was accepted without challenge by the representatives of the other parties involved and the committee saw no reason not to accept it. A synopsis of these matters follows.

The police evidence was that the policemen involved were all part of the Crime Intelligence Service ("CIS") or, in Afrikaans, the "Misdaadintelligensiediens" ("MID").

It was common cause that this section of the SAP carried out "dekkingsoperasies" by which was meant "undercover" or covert operations. According to the SAP these undercover operations were solely for the purpose of obtaining intelligence necessary for the combating of crime, especially violent crime, including, in particular, murders and attempted murders (especially when these involved the use of firearms) and armed robberies. (While the *Weekly Mail* and the ANC did not dispute this, they raised the issue of such undercover operations being used to achieve other ends.) In this connection it was also, in general, common cause that in executing such undercover operations the police staff involved used false names; that the vehicles used were unmarked and that those vehicles had false registration numbers; that

paging services were used and that similarly these paging services were not contracted for in the name of the SAP but in the name of private persons or companies; that houses were used by the police as safe houses for the purpose of making contact with informers and receiving reports from them and that one such safe house was the one identified by the *Weekly Mail* at Rosashof.

The police testified that these measures were necessary to preserve the secrecy of the undercover operations and of the identity of the informers and policemen involved. The police witnesses laid great stress on the need to keep the identity of informers secret for their own safety and the safety of their families and homes. Although these facts were mentioned in general the precise details of these undercover operations were not investigated by the Committee nor were they adduced in evidence. To have done so would have been to exceed the terms of reference of this Committee.

THE QUESTION OF CREDIBILITY AND SOME MATTERS THAT ARE COMMON CAUSE

The fundamental issue that was to be decided by the Committee was whether the allegations of the SAP having planned and/or instigated violence were true or not.

Persons who could give relevant evidence as to the truth or otherwise of these allegations, were called as witnesses and were subjected to cross-examination.

In their evidence in chief Kolisang and Mngomezulu re-affirmed the statements attributed to them in the articles published by the *Weekly Mail* and said that they were true. And they vehemently maintained the truth of these allegations under cross-examination. These are the statements quoted in or forming the basis of items (b), (f), (h), (i), (j), (l), (m), (n) and (o). The police witnesses denied them and said the allegations were false.

Apart from this direct conflict of evidence, what Kolisang and Mngomezulu told the Committee in evidence conflicted starkly and irreconcilably in all material respects with what was told to the Committee by the police witnesses and by other "independent" witnesses. (By "independent witnesses" is meant persons who have no connection with the SAP, the *Weekly Mail*, or other interested parties.) The opposing versions were irreconcilable in the sense that the acceptance and belief of one version as being true necessarily involved the rejection of the other as false. That this was so, was accepted by counsel for the SAP and by counsel for the *Weekly Mail* and the ANC. The question of credibility was therefore of critical importance.

The evidence and cross-examination traversed an enormous amount of detail. No useful purpose will be served by repeating it in this report, even in summarised form. However, because of the crucial importance of credibility it seems to the Committee desirable to set out sufficiently fully the material respects in which the opposing versions differed from each other and the more important

reasons which persuaded the Committee that the police version was true and the versions of Kolisang and Mngomezulu were false.

AS TO KOLISANG'S EVIDENCE

In so far as credibility is concerned the first, and probably the most important, aspect of Kolisang's evidence concerns the nature of his dealings with the police and the kind of relationship he had with them. In this regard it was common cause that Kolisang had had meetings and dealings with both Sgt Seago and Sgt Steenekamp whose cover names were "Oupa" and "Brian", respectively. It was further common cause that the meetings with Brian had taken place at the safe house at Rosashof and that Seago had been present at these meetings.

Kolisang's version was that he first met Oupa on 7 December 1991 and that, after a number of further contacts and meetings with Oupa during that month, an arrangement was made for 2 January 1992 for him to get a job with the TPA, but this resulted in his meeting Brian for the first time at the secret house at Rosashof. Kolisang's version was that during all this time and even after the meeting with Brian on 2 January he was unaware that he was dealing with policemen.

By contrast the police version as testified to by both Steenekamp and Seago was that during the months of November and December 1991 he, Kolisang, had been a police informer and had been paid for his services as such. Sgt Seago amplified this by saying that

he had first met Kolisang during the first half of November 1991 and, after a few meetings, had arranged a meeting at which Kolisang met Brian. This meeting took place in the safe house at Rosashof on 18 November 1991. Steenekamp confirmed that the occasion upon which he met Kolisang was at this meeting on 18 November 1991.

Under cross-examination Kolisang denied persistently and vehemently that he had ever been a police informer; that he had had any contact with Brian or Oupa prior to 7 December; that he had first met Brian at the safe house at Rosashof on 18 November and that he had had a total of 6 meetings with Brian, the last of which was on 30 November 1991.

Steenekamp re-inforced his evidence about Kolisang having been a police informer by producing various forms which had been signed by Kolisang both in his actual name of Kolisang and his police cover name which was Patrick Khumalo. These forms included receipts which bore the signatures of "Daniel Kolisang" and/or "Patrick Khumalo" acknowledging payment of sums of money in return for information. Other documents produced by Steenekamp included reports in manuscript which he said were in the handwriting of Kolisang and which had been given to him by Kolisang at one or other of the meetings they had had at the safe house at Rosashof.

Most of these documents were dated and bore out that Kolisang had been an informer from 20 November (the date on which he agreed to

accept the offer to be employed as an informer) to 30 December 1991.

When these documents were put to him under cross-examination Kolisang denied the genuineness of all of them. He also denied that any of the handwriting was his, and that the signatures thereon purporting to be his signature and that of his pseudonym, Patrick Khumalo, had been signed by him. He also denied that he had received any money from the police during this period. His explanation for the existence of those documents was that they had been fraudulently created by the police and/or the State in order to discredit him. He frequently used the word "bedrog" and "propaganda" to describe these documents.

The issue as to whether or not the signatures on the documents produced by Sgt Steenekamp were those of Kolisang and whether or not the other exhibits were written in his handwriting was obviously crucial to the question of credibility. For this reason the disputed documents together with other documents containing agreed samples of Kolisang's signature and other specimens of his writing were handed to two handwriting experts, one of whom was a member of the SAP and the other engaged by the legal representatives of the ANC and the *Weekly Mail* as an "independent" expert. Both these handwriting experts submitted affidavits in which they agreed that the signatures on the critical document (ie. the certificate, exhibit "C", confirmed that for operational purposes Kolisang was the same person as Patrick Khumalo) and the receipts (exhibits "E", "F" and "M") had clearly and definitely been signed

by Kolisang. (The last-mentioned exhibit has added probative value by being computer generated and part of the computer printout is the date 30 December 1991). The experts also agreed that the probability was that the other handwritten documents were in the hand of Kolisang. To the extent that these experts had any reservations with regard to the latter documents, they arose from the fact that these were only a few samples of cursive handwriting by Kolisang that were not disputed.

A crisp but significant point relevant to Kolisang's credibility on the question of his signature is that Kolisang initially denied his signature at the end of the affidavit taken by Anthony of the Independent Board of Inquiry. Only when he realised that the document was his affidavit (which he had already admitted having made) was he constrained to admit his signature. It is a distinctive signature and can readily be seen to match the signatures on the receipts and other police documents.

The committee finds as a fact that Kolisang's relationship with Seago and Steenekamp had commenced during November 1991; that with effect from 20 November 1991 he was a police informer and that during the balance of November and December he met on at least six occasions with Steenekamp at the safe house at Rosashof during which meetings he gave reports on a variety of matters, which reports were given both orally and in writing. It should be mentioned that Mr Rautenbach, on behalf of the ANC and the *Weekly Mail*, expressly acknowledged that Kolisang had been shown to be

lying with regard to these matters and that the police evidence had to be accepted as true.

The next point upon which independent evidence established that Kolisang had lied concerned the place where Kolisang said he first met "Oupa", namely at the house at 366 Zone 6, Extension 1, Sebokeng. Kolisang's evidence was that "Oupa" was living there at that time and throughout December 1991. Many of his meetings were at this house, he said. However, an affidavit by the actual owner of the house, a male nurse by the name of Moeletsi, stated that Sgt Seago (Oupa) had lived in the house until the end of November 1991 whereafter he, the owner, had resumed occupation thereof. Mr Rautenbach informed the Committee that it was accepted by the *Weekly Mail* and the ANC that what was stated by the owner of the house in his affidavit was correct. The importance of this is that it establishes that Kolisang was lying in so far as he said that he met Sgt Seago at that house on 7 December and visited him there on numerous occasions during December 1991. This, of course, is a fact which could have been verified by the *Weekly Mail* independently of the police.

What was described in evidence as the "Saddam operation" is also of significance in assessing Kolisang's credibility, or lack of it. This was an operation mounted by the police which involved a significant number of men and police vehicles. It was carried out at night. The police believed that there was a cache of AK47 rifles at the home of a person whose cover name was Saddam Hussein and the purpose of the operation was to find his house and recover

the AK47 rifles which the police believed were there. Neither in his evidence in chief nor in his affidavit dated 5 February 1992 given to the Independent Board of Inquiry nor in the "affidavit" before this Committee did Kolisang make any mention of having participated in the Saddam operation. Yet, when the fact of his having participated in that operation was put to him by Mr Hattingh, he immediately admitted it. In response to questioning by Mr Hatting, he gave details of the operation which in a great many and significant respects agreed with the police version of that operation. So, for example, he agreed that it had taken place at night; that it had involved a number of police vehicles and a substantial number of policemen; that the vehicle he had been in was a panelwagon; that he had not been able to find the house and had been required to get out of the vehicle and walk in order to do so; that that had upset him very much; that he had eventually pointed out a house, but that it had been the wrong one.

The police version was that that operation had taken place on 27 November 1991 and that Kolisang had participated as an informer. In the light of his denial of having been an informer and of his evidence that his first meeting with Steenekamp had been on 2 January 1992, Kolisang was forced to date the Saddam operation after that meeting. He chose to date the operation as having taken place on the evening of 2 January 1992. That, however, placed him in further difficulties. He had already committed himself in evidence that nothing with regard to the Saddam operation had been said during his meeting with "Brian" earlier in the

day on 2 January 1992. Indeed he was emphatic that he had left that meeting without knowing that he was dealing with the police. He sought to escape these difficulties by saying that he was contacted by telephone after the meeting with "Brian" on the morning of 2 January 1992 and told to participate. He could give no sensible explanation consistent with his version as to why the SAP would have thought that he would be prepared to co-operate, let alone why they might have thought that he would know who Saddam was or where he lived. Indeed, according to him, he told the police that he did not know Saddam Hussein and did not know where he lived. He says that despite having made it clear to the police that he did not know where Saddam lived they insisted that he should accompany him on this operation and point out Saddam's house.

Thus, Kolisang would have it that after only one meeting with him, to which he had been taken under false pretences, and during which the police had not disclosed their identity and had not secured his agreement to co-operate, the police decided to contact him during that afternoon about his helping them in the operation and despite his categorically telling them that he did not know where Saddam Hussein lived, they nonetheless mounted a substantial operation involving many vehicles and men, the success of which was totally dependent on his pointing out the correct house. This, in the opinion of the committee, has only to be stated to be seen to be preposterous and utterly improbable.

Moreover if, as he would have it believed, he was concerned after the meeting on 2 January 1992 fully to inform the ANC of what had happened, it is inconceivable that he would not have mentioned the Saddam operation to them when he made such reports, as he said he did, on 4 January. Had he done so there would have been mention of the Saddam operation in his affidavit to the Independent Board of Inquiry and in the affidavit of this Committee.

The Committee accordingly finds that Kolisang lied in regard to these matters as well.

Over and above the foregoing there are numerous examples of inconsistencies and gross improbabilities in Kolisang's version which make it unworthy of belief. In addition it is significant that none of the independent evidence supported his version in any way. On the contrary the independent evidence is totally inconsistent with his version. The same is true of the documentary evidence. By contrast the documentary evidence was totally supportive of the police version, as was the independent evidence. It is also to be noted that not one of the police witnesses were in any way shaken in cross-examination. A great deal of what they said was not even challenged.

In argument, after the conclusion of the evidence, it was common cause that much of Kolisang's evidence was false, and that he had wilfully lied about a considerable number of matters. Mr Rautenbach therefore conceded that the police evidence as to Kolisang having been an informer during the period November and

December 1991 had to be accepted as true and that, in so far as Kolisang denied that evidence, he had lied. This concession by counsel for the *Weekly Mail* was substantially based upon the evidence of the two handwriting experts and, in the Committee's opinion, was correctly made.

Notwithstanding that Kolisang had patently been a dishonest witness in the foregoing respects and notwithstanding that this Committee had to find as a fact that Kolisang had been an informer during November and December and had signed or written the various documents which he had denied signing or writing, Mr Rautenbach urged upon the committee what may be described as "a curate's egg" type of argument; namely, that whilst Kolisang's evidence was clearly bad in parts, it should be seen as being good in parts. The way he advanced this argument may be paraphrased briefly as follows: that there was a perfectly acceptable and understandable reason for his having denied being an informer and all that went with having been an informer; the reason, so his argument ran, was that the consequences to, or fate of, an informer (once the fact of his having been an informer becomes known to the ANC and/or the community at large) is so severe and extreme that, as a matter of self-defence, he virtually had no choice but to falsely deny having been an informer. Then, understandably having made these false denials, so the argument continued, he was compelled to fabricate other facts in order to give an innocent yet satisfactory explanation as to how and why he had come into contact with the police in order for them to have been able to put to him their nefarious propositions. It did not therefore necessarily

follow, Mr Rautenbach argued, that Kolisang's evidence of what was said to him about the planning and/or instigation of violence was false.

For such an argument to be accepted it must be sufficiently (if not entirely) consistent with all the other established facts. This makes it necessary to test it against all the other established facts. It seems to the Committee that the first finding of fact that would have to be made is when the meeting would have taken place at which Brian would have put to Kolisang that he was required to commit acts of violence. There was no suggestion that this could have happened before Kolisang ceased his activities as an informer and Kolisang himself placed such meetings in January 1992. In this regard it is to be remembered that Kolisang made it quite clear that at no stage during the alleged meeting on 2 January 1992 was anything said about his being required to commit any acts of violence. Similarly he denied that, on that occasion, any threats were made to or against him, whether expressly or by implication. According to him it was at the alleged second meeting on 16 January that he was told that he would be required to commit acts of violence.

A major difficulty in the way of finding that a meeting took place on 2 January is that that conflicts irreconcilably with the evidence that, as an informer, Kolisang met Steenekamp on 30 December 1991, and with what happened at that meeting. Steenekamp's evidence as to the date is corroborated by exhibit "M" which is a

document bearing Kolisang's signature that was identified with complete certainty. This was accepted by Mr Rautenbach.

According to Steenekamp (and this is supported by the documents) the main subject discussed at his meeting with Kolisang on 30 December 1991 was a training camp for a self-defence unit which was to take place at Phola Park. According to Steenekamp Kolisang had said that he was going to attend that training camp and the police had urged him to do so in order for him to be able to report on any relevant information with regard to weapons, etc. It was expected that that camp would take about three weeks and accordingly the police were not expecting to hear from Kolisang for at least that period of time. It is most improbable that there would have been any other meetings arranged prior to the expiry of this three-week period. Mr Rautenbach sought to escape this by submitting that there had been a change of plan and that Kolisang was not going to go on that course at Phola Park. However, an insuperable difficulty in the way of accepting this submission is that there is no basis for rejecting the admittance that Steenekamp and Seago *bona fide* believed that such a training camp was going to take place and that Kolisang was going to attend it. Given such a belief, it would not matter whether Kolisang in fact attended such a course or not, neither Steenekamp nor Seago would do anything to arrange or attend any meeting during those three weeks. The police evidence in this regard is corroborated by the events that occurred after expiry of this three-week period, which events are in the main common cause. What happened then was that the police set about actively trying

to contact Kolisang to get him to attend a meeting. They had therefore waited for the relevant period and were anxious to get a report from Kolisang. Accordingly, the Committee finds no merit in these arguments advanced by Mr Rautenbach and rejects them.

A further argument was advanced by Mr Rautenbach on the basis of motive. He postulated the question why Kolisang who was receiving remuneration as an informer should suddenly change and give up being an informer with the advantages that entailed and go to the ANC and tell stories that were fabrications. Apart from the fact that it is not incumbent upon this Committee to make any findings as to motive, there was insufficient evidence (if any) upon which to make reliable findings as to motive.

In this regard it is not without significance that no member of the ANC to whom Kolisang reported was prepared to come and testify before the Committee and that the ANC was unwilling to make available the tape recording of Kolisang's statement to them.

Whatever may have been Kolisang's motive (about which this Committee makes no finding) this Committee has to make its findings on the basis of the objective evidence before it.

The final line of argument advanced by Mr Rautenbach was to the effect that because the police were conducting covert operations the opportunity arose to use the cover to commit illegal acts. He argued that this would be all the more so if the covert operations were, in the ordinary course, related to legitimate criminal

investigation. As he put it "the more legitimate the operation the greater the opportunity to use that cover to commit also illegal acts." This argument is therefore predicated on the hypothesis that once the police are carrying out undercover operations for legitimate purposes it "provides the ideal environment" for the conducting of illegal operations. Again, as Mr Rautenbach put it, "if the police wanted to conduct an operation where they occasionally assassinated activists, this would have been the ideal environment. This would have been the ideal cover." While the committee accepts that on the basis of the hypothesis that the police wish to commit illegal acts of violence it follows logically that the structures and manner of operations available to the Crime Intelligence Service would facilitate their carrying out illegal acts, there is no reason in logic for accepting such a hypothesis and there was no acceptable evidence before the Committee that the police wished to commit such illegal acts.

Despite Mr Rautenbach's attempts to persuade the committee to believe the crucial portions of Kolisang's evidence, he conceded that there were strong grounds upon which Kolisang's evidence could properly be rejected *in toto*.

AS TO MNGOMEZULU'S EVIDENCE

The first point of relevance as far as Mngomezulu's credibility is concerned are the events which took place on 19 and 20 February 1992. The essence of Mngomezulu's story in this regard is that, having been out of the country as an exile for a number of years,

and having returned to South Africa on 17 February 1992, he was contacted on 18 February by a man called Robert who was a stranger to him. Robert offered him the opportunity of employment and by arrangement he was fetched on 19 February and taken by car to a meeting at a restaurant at the Ultra City Petrol Station between Johannesburg and Pretoria. When he got into the car after the meeting, the black man (Robert) told him to lie down on the back seat and to cover his head with a towel. He was then taken on a long drive which took hours and which ended at a secret house. He says he was detained there for a period of six days, whereafter he escaped and hitched lifts back to Johannesburg.

Against this the police version was that contact with him was first established by chance on 18 February 1992 when he was hitch-hiking on a road to the West of Soweto. The persons who gave him a lift were members of the SAP. He told them much about having been in exile, having been in ANC detention camps and having been badly treated by the ANC. They, the policemen, realised that he could give the police information with regard to returning exiles and weapons being brought into this country. The police agree that he was taken to a meeting at the restaurant at Ultra City between Johannesburg and Pretoria but say that this happened on 20 and not 19 February. Thereafter, they say, he was driven back to Johannesburg and sat as a normal passenger in the car and he was not asked to lie down on the back seat and cover his head. At his request Mngomezulu was taken to the Hoek Street Clinic.

As was acknowledged by Mr Rautenbach the dispute as to what had happened on 19 and 20 February was fundamental to Mngomezulu's story. This dispute as to the events which occurred on 19 and 20 February was resolved by independent witnesses, namely Dr Nkadameng and Ms Nozipho Manni, and by objective documentary evidence.

Dr Nkadameng testified that Mngomezulu had consulted him at the Hillbrow Hospital on 19 February 1992. In corroboration of this he produced a book in which were recorded, on a diary basis, the patients for that day. Solly Mngomezulu's name is recorded there together with a note in the doctor's own handwriting. In addition Dr Nkadameng was able positively to identify Mngomezulu by virtue of the fact that he, Dr Nkadameng, had treated Mngomezulu at a hospital in Tanzania during 1987. Dr Nkadameng is himself a member of the ANC and was at that time also in exile. The hospital card from the Hillbrow Hospital on which was recorded all of Mngomezulu's details was also produced. On this card was recorded not only the name Solly Mngomezulu and the fact that he was at the hospital that day, but also the address at which he was staying at the time, his telephone number and his date of birth. Also produced in evidence and identified and accepted as proven by Mr Rautenbach was the card and X-ray from the Hoek Street Clinic on 20 February 1992. This card was identified positively by Ms Nozipho Manni who was the nursing sister in charge at the time. When all of this evidence was put to Mngomezulu he denied that it had anything to do with him and said that it was all fabricated by the police who, as instruments of the State, had the means to do

so. In argument, however, Mr Rautenbach in no way supported the suggestion that these documents had been forged by the police or the State and accepted that it was Mngomezulu who was lying and the other witnesses who were honest and were telling the truth.

The second point upon which it was established without any doubt that Mngomezulu was lying concerns his version of the safe house to which he was taken. He identified a house on a property known as "Kleinsmaldeel" in the Parys district. There was no dispute as to the house which he identified. The police produced a number of photographs of that house, including aerial photographs. Mngomezulu had no difficulty in confirming that the house shown in those photographs was indeed the one to which he had been taken, and which he had pointed out to Mr Forrest. In addition, I was assured from the bar by Mr Rautenbach that Mr Drew Forrest confirmed that the house shown in the photographs was indeed the one to which he and Eddie Koch had been taken by Mngomezulu. The police version was that while they do indeed have safe houses, this was not and had never been one of them. Prior to the articles in question in the Weekly Mail, they had no knowledge of this particular house.

Again this dispute in the evidence was resolved by independent witnesses and objective evidence. The independent witnesses were Mrs van der Westhuizen and Mr Swarts. The former is the owner of the house, who has lived there at all material times. The latter is a representative of the company Tolcon, which had hired a portion of the house (which portion constitutes an independent

flat) for the occupation of an employee of Tolcon who works at the Tol Plaza nearby. The objective evidence took the form of photographs and plans of the house which showed that the description of the internal layout of the house given by Mngomezulu was so far at variance with reality that the only conclusion can be that he fabricated his description.

As indicated above it was Mngomezulu's version that he was detained at this house against his will and that he had to escape. In justifying his allegations that he was detained he gave evidence of how he was kept in a room that had burglar bars on all windows, preventing his escape. When invited to do so he had no hesitation in identifying the room in which he was detained, as shown on one of the photographs. As it happened the burglar bars on one of the windows in that particular room were deficient and left adequate space for a person to climb through so that he clearly could have got out had he so wished. Mrs Van der Westhuizen confirmed that the burglar proofing on that window had been like that for years.

He claimed to have made his escape from a window in the passage from which window he left the house. The plans and other objective evidence established that there is one small passage only in the house and that it has no windows (let alone windows leading to the outside) and the doors from it lead into other rooms and not directly outside.

Mrs van der Westhuizen's evidence also precluded the placing of any reliance on there being an old woman called "Granny" at that house.

So bad was he as a witness and so thoroughly was he discredited that in argument after the close of evidence Mr Rautenbach stated that he was unable to make any submissions in support of Mngomezulu or his version.

CONCLUSIONS AND OBSERVATIONS

1. The Committee finds that the statements by Daniel Kolisang and Solly Mngomezulu with regard to the SAP having planned and instigated violence, which constituted the basis of reports by the *Weekly Mail* in its editions of 8 and 15 May 1992, were totally false.
2. The Committee finds that there is no evidence to support any of the allegations contained in the editions of the *Weekly Mail* dated 8 and 14 May 1992 and 15 to 22 May of the SAP having planned and instigated violence in the Vaal area, and that such allegations are devoid of truth.
3. Nothing in the evidence before the Committee justified the allegations that the SAP had a base which was linked with the planning of assassinations in the Vaal Area or the innuendo that the police were involved, with or without others, in a death

campaign or in "a silent war against leaders and activists of the ANC and its allies...".

4. The Committee finds further that there was never any basis to justify the allegations that Capt A.D du Plessis, Constable Johannes Nkwane, Warrant Officer Thys Nolte or Sergeant George Supra were in any way involved with planning or committing acts of violence. The allegations with regard to them appear to have been based solely on the fact that they were part of the Crime Intelligence Service of the police and that, as such, they were associated with or involved in the covert operations being carried out by the CIS and that, when confronted by Mr Drew Forrest and others who investigated the matter on behalf of the *Weekly Mail*, they behaved secretively and were reluctant to talk or to disclose information. In the absence of other evidence, this is clearly an insufficient basis given that it was common cause that the police were indeed conducting covert operations for the gathering of intelligence for the purpose of combating crime.

RECOMMENDATIONS

It is difficult to find practical recommendations that will remedy the situation that has occurred or that will prevent a similar occurrence. However, the following is put to the Commission for its consideration.

(A) Mr Hattingh, on behalf of the SAP, submitted that if this Committee should find that the allegations with regard to the

planning and/or instigation of violence were unfounded, the *Weekly Mail* should be directed, or at least requested, to publish such findings with no less prominence than was given to the false allegations themselves. The Committee considers that any such directive or request would be outside its province, and it is also concerned that doing so would be or would be perceived to be an infringement of the freedom of the press. The Committee leaves this question to the decision of the Commission.

- (B) While the carrying out of covert operations for legitimate purposes such as obtaining intelligence relating to the Commission of crimes of violence appears to be recognised both internationally and by the National Peace Accord (subject to the restrictions contained in clause 3.5 thereof), it would appear to be necessary that the way in which such covert operations are implemented and supervised should be investigated by a non-police impartial agency and that guide-lines should be laid down in connection with this.

This recommendation is not to be construed as containing any criticism (either express or implied) of the manner in which the Crime Intelligence Service has carried out such operations hitherto. This Committee did not investigate such matters and has no basis for expressing any view thereon one way or the other.

The reasons for making this recommendation are as follows: First, on the basis of the arguments advanced by Mr Rautenbach which were to the effect that when an organisation exists which is permitted to carry out such undercover operations and which has sophisticated means of doing so, the opportunity and temptation for abuse exists. The need to eliminate the possibility of abuse is self-evident. Secondly, outside the evidence before this Committee there is much to suggest that in other contexts and other circumstances covert operations have been abused in that they have been the means whereby illegal acts of violence have been carried out by the security forces.

- (C) The police witnesses complained that the publication of these false reports had seriously and unjustifiably damaged their reputation and had served to destroy the confidence which the community should have in the Police Force. They also complained that the disclosure of the covert operations and the identity of the policemen involved had dealt a blow to the SAP's abilities to combat and eradicate crime, especially violent crime, and had exposed the policeman involved to personal danger. It was the scope of the Committee to investigate such complaints and the Committee accordingly makes no findings with regard thereto. However, mention is made of these complaints because, in the light of the enormously important function which the SAP is expected to fulfil in South Africa, it would appear plainly desirable not to

have legitimate crime combating operations improperly hampered or policemen carrying out such operations exposed to unnecessary risks. These matters are drawn to the attention of the Commission so that it may formulate such recommendations as it may see fit, having regard to the overall situation in the country. Also of relevance in this regard is a further complaint by the SAP that it should be given adequate opportunity to be able to deal fully with any such allegations. That the SAP should be given adequate opportunity in advance of publication appears to be accepted by Mr Anton Harber, the editor of the *Weekly Mail*, because in his affidavit before the Commission he was clearly concerned with creating the impression of having taken all reasonable steps to be completely fair and of having given the police adequate opportunity to respond to the allegations before publication. He mentions the fact that the *Weekly Mail* communicated with senior staff of the SAP shortly before publication. However, he did not send to the police the draft articles, but a list of questions which cannot really be said to have made it clear what they were being accused of. Having regard to the gravity of the allegations, it is the view of the Committee that the amount of time allowed was inadequate as was the content of the communication and the method of communication.