

**SOUTH AFRICA  
HALF-HEARTED REFORM**

**The Official Response to the  
Rising Tide of Violence**

**Human Rights Watch/Africa  
(formerly Africa Watch)**

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***Human Rights Watch/Africa (formerly Africa Watch)***

**Human Rights Watch/Africa was established in 1988 to monitor and promote the observance of internationally recognized human rights in Africa. Abdullahi An-Na'im is the executive director; Janet Fleischman is the Washington representative; Karen Sorensen, Alex Vines and Berhane Woldegabriel are research associates; Kimberly Mazyck and Urmi Shah are associates; Bronwen Manby is a consultant. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.**

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## **GLOSSARY**

<b>ANC</b>	<b>African National Congress, the most widely supported South African opposition group, founded in 1912, banned in 1960, and unbanned in February 1990.</b>
<b>APLA</b>	<b>Azanian People's Liberation Army, the armed wing of the PAC.</b>
<b>Assegal</b>	<b>Spear.</b>
<b>Casspir</b>	<b>Armored truck.</b>
<b>CCB</b>	<b>Civil Co-operation Bureau, a covert operations unit of the SADF, alleged to have engaged in illegal activities, including assassinations. The CCB was officially disbanded in August 1990.</b>
<b>Codesa</b>	<b>Convention for a Democratic South Africa, a multi-lateral forum for negotiations for democracy in South Africa at which nearly all political groups are represented. Codesa negotiations commenced in December 1991 and broke down in May 1992. Renewed multi-party negotiations commenced in early 1993.</b>
<b>Goldstone Commission</b>	<b>The Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation, chaired by Mr. Justice Richard Goldstone and appointed by President de Klerk in October 1991, after the agreement of all parties to the National Peace Accord. The Commission investigates incidents of serious violence in South Africa and makes recommendations to the government on steps to take to prevent further violence.</b>
<b>HRC</b>	<b>Human Rights Commission, an independent human rights monitoring group based in Johannesburg.</b>
<b>IBIR</b>	<b>Independent Board of Inquiry into Informal Repression, an independent monitoring group based in Johannesburg.</b>
<b>Inkatha</b>	<b>Inkatha Freedom Party, established in 1975 as a Zulu cultural organization, and re-launched in July 1990 as a nonracial political party; its membership is predominantly Zulu.</b>
<b>Knobkerries</b>	<b>Wooden stick-like implements.</b>
<b>KZP</b>	<b>KwaZulu Police, the police force in the homeland of KwaZulu.</b>
<b>MI</b>	<b>Military Intelligence, the intelligence wing of the SADF.</b>
<b>MK</b>	<b>Umkhonto we Sizwe, the armed wing of the ANC.</b>
<b>National</b>	<b>An agreement entered into by nineteen parties to the political process</b>

**Peace Accord** (excluding, most importantly, the Transkei government, the PAC and the right wing Conservative Party) in September 1991, by which they committed themselves to certain measures to reduce political violence in South Africa.

**PAC** Pan Africanist Congress, a black anti-apartheid political group that broke away from the ANC in 1959. The PAC did not take part in Codesa, although it has undertaken bilateral negotiations with the government. Unlike the ANC, the PAC has not suspended the armed struggle against apartheid.

**Panga** Machete used to cut sugar cane.

**SADF** South African Defense Forces, the South African army.

**SAP** South African Police, the main police force in South Africa.

**UDF** United Democratic Front, a coalition of community, labor, religious, youth and other organizations opposed to apartheid, formed in 1983 and disbanded in 1990 following unbanning of the ANC.

## **INTRODUCTION**

**The greatest obstacle to the transition to a peaceful democracy in South Africa is the political violence that continues to rage in the black townships. The violence, which began in 1984 and gained greater momentum after reform initiatives were undertaken in 1990, has resulted in more than 14,000 deaths – 3,499 in 1992 alone, according to the Human Rights Commission, an independent human rights monitoring group based in Johannesburg. The violence was initially centered in the province of Natal and presented itself in the form of rivalry between the Inkatha Freedom Party (Inkatha), led by Chief Gatsha Buthelezi, the Chief Minister of the KwaZulu homeland, and the African National Congress (ANC). In 1990, it spread to the townships around Johannesburg and Pretoria, although by late 1992 the focus of violence had once again returned to Natal. Few townships in these areas are left untouched, and a culture of violence, spawned by revenge, pre-emptive attacks, crime, lack of education and poverty, now pervades South African society.**

**In January 1991, Africa Watch released a report on the violence in South Africa, "The Killings in South Africa – The Role of the Security Forces and the Response of the State." The report found that members of the South African Police (SAP) and the KwaZulu Police (KZP) had demonstrated a pattern of bias against supporters of the ANC. The bias was manifested in several ways, including a refusal to take preventive measures to halt attacks, actively assisting attackers by shooting at ANC supporters, transporting supporters of Inkatha to attack ANC areas, and using teargas and bullets to prevent ANC supporters from defending themselves. The report also found that the South African government had refused to respond adequately to evidence of security force involvement in the violence. The report made specific recommendations both to the security forces and to the government on how to curb the violence.**

**This report analyzes the extent to which the South African government and security forces have implemented the recommendations made in our previous report. Our analysis shows that although some minor efforts have been made, the steps taken fall far short of a serious attempt to end the violence that has claimed more than 6,000 lives since our report was released. The government has been markedly reluctant to accede to even the most limited demands and recommendations of the ANC, independent human rights groups, violence monitors and independent commissions of inquiry. Government rhetoric has continued to denounce abuses committed by ANC or PAC activists, but has been notably silent about abuses by Inkatha or by the repressive homeland regimes supported by Pretoria. This bias has extended to the activities of the police and defense forces. Since our January 1991 report, the independent press and human rights groups in South Africa have frequently exposed abuses committed by the SAP and the South African Defense Forces (SADF). Without such exposure, it is doubtful that the information would have been made public.**

**During 1991, in an attempt to address the causes of violence, representatives of all sectors of South African society, including religious groups, labor, business, and major political parties, came together and agreed on the need to take concrete steps to halt the killings. These efforts culminated in the signing of a National Peace Accord in September 1991. The Peace Accord included provisions governing the conduct of the police force and political parties. It was agreed that regional and local committees would be created whose task would be to seek to end the violence in their area by promoting peaceful resolution of disputes and monitoring ongoing violence. A National Peace Committee would oversee implementation of the Peace Accord on the national level. Parties to the Peace Accord also agreed that a Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation, headed by Mr. Justice**

**Richard J. Goldstone, (the Goldstone Commission)<sup>1</sup> should investigate serious incidents of violence and provide recommendations on steps to take to prevent further violence.**

**The work of the Goldstone Commission has represented the greatest hope for an end to violence in South Africa.<sup>2</sup> During 1992, the Commission made many recommendations, some of which echoed those made in the past by the ANC, human rights organizations and church groups. The government, however, often ignored the recommendations and always delayed their implementation. Rather than addressing itself to the issues of policing and the other social and economic issues that contribute to the culture of violence, the government has involved itself only at crisis points.**

**This report focuses on the role played by the government and the security forces in the violence. It does not address the substantial responsibility of the two largest black political groups, Inkatha and the ANC, for the escalation in violence, nor does it make any effort to assess their relative blame. This report also does not analyze the proliferation of illegal weapons or the social and economic factors underlying the violence that are the legacy of apartheid. While Africa Watch calls on all parties to cooperate in making genuine efforts to end the violence, and we recognize that it will take many years to reverse the effects of systematic discrimination against most of South Africa's population, we believe that the government could take immediate steps to break the spiral of violence. Our report finds that much more could and should have been done by the government and the security forces in the past two years to deploy the resources at their disposal, including their investigative and prosecutorial powers, to prevent further violence.**

**The need to take urgent action to prevent political violence has been emphasized more than ever by the assassination of Chris Hani, the leader of the South African Communist Party and one of the most influential black politicians in South Africa, on April 10, 1993, as this report went to press.**

## **SUMMARY OF FINDINGS**

**Of the 17 recommendations made by Africa Watch in our January 1991 report, no noticeable progress has been made in implementing eight recommendations (the recommendations are summarized below and discussed in detail in the sections following this Summary):**

- o "Afford adequate police protection to all groups ...."**

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<sup>1</sup> The Goldstone Commission was established by the government on October 24, 1991, under the terms of the Prevention of Public Violence and Intimidation Act of 1991, and is a structure of the National Peace Accord. Mr. Justice Goldstone, who is a judge of the Appellate Division of the Supreme Court (South Africa's highest court of appeal), was unanimously approved as chair of the five-person Commission by all 19 parties to the National Peace Accord. He was the chair of an earlier enquiry which blamed police for opening fire on a march of 50,000 in Sebokeng on March 26, 1990, killing nine people and injuring hundreds more.

<sup>2</sup> The Commission has received many requests to investigate incidents of violence and has established several sub-committees to enable it to investigate a greater number of violent incidents. It has conducted 24 major enquiries and produced numerous reports on different aspects of the political violence. See Recommendations to the National Party Government.

- o **"Retrain security forces ...."**
- o **"Consolidate the forces into one force ...."**
- o **"Be more thorough in preparing cases ...."**
- o **"Lift emergency restrictions on "unrest areas" ...."**
- o **"Begin immediately to dismantle the homeland administrative structures ...."**
- o **"Establish administrative and judicial procedures that provide for the prompt and effective discipline or prosecution of those who have abused the new guidelines."**
- o **"Ensure that courts are adequately equipped to try violence-related cases without delay."**

**Of the remaining nine recommendations, real progress has been made in implementing only three:**

- o **"Issue written orders that establish public guidelines about the procedures that security forces personnel should follow in dealing with political violence."**
- o **"The results of these investigations, including information about any disciplinary action ... should be made public."**
- o **"Invite genuinely independent domestic and international monitoring groups to help implement changes."**

**Only half-hearted attempts have been made to implement the remaining six recommendations:**

- o **"Issue clear and unequivocal instructions to all members of the security forces that bias against any group will not be tolerated ...." -- The failure to enforce these instructions has considerably weakened their effectiveness.**
- o **"Afford witnesses adequate protection ...." -- A program has recently been created that applies only to witnesses testifying before the Goldstone Commission. No program has been made available to witnesses in criminal trials.**
- o **"Establish independent and thorough judicial commissions of inquiry ...." -- The Goldstone Commission, which has no power to try offenses, has been the only independent commission to investigate misconduct by the security forces.**
- o **"Hold joint forums with police and political groups to hear grievances ...." -- The minimal efforts made have not been supported by the government, and have operated on the basis of part-time and volunteer personnel.**
- o **"Take steps to speed up the judicial process ...." -- Implementing legislation abandons many**

**fundamental rights of the accused.**

- o "Investigate all allegations of abuses by the SAP, the KZP and the SADF..."**

**Two years after the release of the Africa Watch report, the situation in South Africa remains volatile. Because the violence is the single greatest obstacle to the transition to democracy, it is incumbent on the government to make every effort to bring it to an end. It is hoped that the compromises arrived at by the government and the ANC in February 1993 in preparation for the resumption of all-party negotiations may signal the beginning of a new period in which violence is controlled.**

**The 1991 report directed recommendations to the South African security forces and to the National Party government. What follows is our analysis of the extent to which each of those recommendations has been implemented.**

## **COMMENTS ON AFRICA WATCH RECOMMENDATIONS MADE IN JANUARY 1991 TO THE SOUTH AFRICAN SECURITY FORCES**

**1. A. Issue clear and unequivocal instructions to all members of the security forces that bias against any group will not be tolerated - and that abuses of human rights by members of the forces will be punished.**

**B. Investigate all allegations of abuses by the SAP, the KZP and the SADF. Bring those suspected of committing abuses to a speedy and public trial and punish them accordingly.**

### **A. Efforts Made to Eliminate Bias**

Much more needs to be done to implement this recommendation. In their public statements, the security forces have claimed that bias in policing has been eliminated and that human rights abuses committed by members of the police force will be punished. However, publicly declared standards of conduct are only as effective as the measures taken to ensure their compliance. Unfortunately, the public statements of the security forces are entirely at odds with their practices in the black townships, where bias against ANC supporters is evident, police abuse of residents is commonplace, and deaths in detention are frequent.

The September 1991 National Peace Accord includes codes of conduct for members of the police forces. In setting forth basic principles for the conduct of police officers, the Accord states that "the police in particular shall emphasize that there is no place in the police force for policing practices based on personal or racial prejudice, corruption, excessive force or any unlawful actions."<sup>3</sup> More specific provisions include requirements to respond promptly to calls for assistance, to endeavor to disarm persons who illegally bear dangerous weapons in any gathering, to arrest all those reasonably suspected of participating in any unlawful act and, following an arrest, to conduct a full, proper and expeditious inquiry. The Accord provides for the establishment within the SAP of a unit specifically to investigate complaints alleging police misconduct. On completion of an investigation, the unit is to make recommendations on disciplinary action to the Commissioner of Police. The Accord noted that a Code of Conduct for members of the SADF was being negotiated under the auspices of the National Peace Committee.<sup>4</sup> More than a year later, this Code has not been finalized.

In August 1992, when South Africa township violence was under the international spotlight, following the massacre of 42 people in the township of Boipatong, the Law and Order Minister announced

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<sup>3</sup> National Peace Accord, Chapter 3.

<sup>4</sup> The National Peace Committee was created by the National Peace Accord to monitor and make recommendations on the implementation of the Peace Accord and to ensure compliance with the code of conduct for political parties and organizations. The National Peace Committee is composed of representatives of the political parties and organizations that signed the Peace Accord.

plans for changes in the SAP, including a new emphasis on training. The Minister enunciated basic principles to be included in police training, including total impartiality, absence of discrimination on grounds of race, color, creed or sex, lawful procedures by the police, and accountability to the public. A committee would also be appointed to evaluate all aspects of SAP training. Africa Watch believes that the inclusion of international observers and advisers in any attempt to revise SAP training would greatly enhance such efforts. For too many years, policing in South Africa was directed solely at enforcing apartheid. Many of those in the senior ranks of the SAP, including those who oversee the training of new recruits, rose to positions of power during the apartheid years. International assistance in the implementation of new training techniques could prove invaluable in building a force that will eliminate the bias of the past.

In addition to the change in emphasis in training, the Minister also announced that 18 white generals in the SAP would retire. Black police officers, who make up at least 40 percent of the force, would for the first time be considered for promotion to the office of general. Africa Watch welcomes the removal of racial barriers to promotion within the SAP. It should be noted, however, that none of the most senior ranking officers in the SAP who have been implicated in unlawful activities were among those scheduled to retire. In addition, it cannot be assumed that these candidates, merely because they are black, will ensure that respect for human rights is observed. They, too, were trained in the same value and operational system as the recent retirees and must be assessed on the basis of their past performance. While the Minister said efforts would be made to "sensitize all serving members on an urgent basis about the changed environment," he also said that a major restructuring of the police force would have to be negotiated at talks on the transition to non-racial democracy between the government and other political groups.<sup>5</sup> Further delay in implementing necessary changes in the SAP, however, can only serve to increase the existing widespread distrust of the SAP among the African community.

Notwithstanding the principles set forth in the Peace Accord and subsequent government statements, police bias and misconduct remains prevalent. The attached Appendix details incidents in which police demonstrated a bias in favor of Inkatha and against supporters of the ANC (see Appendix, cases 4, 13, 14 and Police Bias and Violence), failed to respond to calls for assistance (see Appendix, cases 1, 2 and 14), failed to disarm persons carrying dangerous weapons in public places, including on commuter trains, or at gatherings (see Appendix, cases 8, 13, 22 and Police Investigation of Train Attacks), failed to arrest those suspected of conducting attacks (see Appendix, cases 4, 8, 10, 12, 20, 21, 22 and Police Investigation of Train Attacks), used political rivalries between the ANC and Inkatha to promote further chaos (see Appendix, case 3) and failed to conduct adequate inquiries into violent incidents (see Appendix, Police Investigation of Train Attacks). The evidence establishes that, irrespective of the Peace Accord and police training manuals, bias against anti-apartheid activists still pervades policing. Mistreatment of detainees and widespread harassment of anti-apartheid activists continues. (See for example, recent allegations by a prominent South African pathologist, Appendix, case 31, and Police Abuse of Detainees.)

## **B. Efforts to Investigate Abuses**

The failure to implement this recommendation is perhaps the most serious obstacle to the creation of trust and confidence in the security forces.

Evidence continues to emerge of security force misconduct, yet few investigations have taken

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<sup>5</sup> Anton Ferreira, "South Africa Announces Police Shake-up to Ease Apartheid Tension," Reuters, August 27, 1992.

place. (See Appendix, Investigations of Police Misconduct, which describes investigations of serious misconduct known to have been undertaken.) In some cases, police officers have been convicted of criminal conduct, and in one case a senior police officer was sentenced to death for his involvement in the massacre of eleven people. In the vast majority of cases, however, members of the SAP, the KZP or the SADF have not been suspended from duty pending the outcome of an investigation into their conduct. Moreover, when judicial inquiries have recommended that the Attorney-General for the area consider prosecuting security force personnel for abusive conduct, few prosecutions have taken place. The infrequency of prosecutions is totally disproportionate to the vast number of eyewitness accounts of police and defence force personnel escorting attackers to attack sites, assisting attackers, standing by while others attacked residents, or carrying looted goods away from the scene of the attack. (See Appendix, cases 12, 20 and 21.)

### **The SAP**

It would be incorrect to assume that because many allegations of abuse are made against members of the SAP that the force is entirely corrupt or that all officers are biased against the ANC. For example, one notable exception is Major Frank Dutton who was involved in a series of prosecutions that exposed police wrongdoing, and is now seconded to the Goldstone Commission. Nevertheless, while victims continue to see police officers abuse their powers, engage in illegal activities (including murder), and receive light sentences for serious crimes, trust in the SAP cannot be created. The SAP has demonstrated its inability to conduct full independent investigations into alleged misconduct by fellow officers. A number of cases illustrate this, including the Trust Feeds case in which one white and four black police officers were convicted of multiple murders and the police force was accused of an attempted cover-up (see Appendix, cases 23 and 33); the inadequate efforts made by police to investigate the assassination of Bheki Mlangeni, a lawyer involved in human rights work, suggesting attempts at a cover-up (see Appendix, case 15); and the forced resignation of Lieutenant-General Ronnie van der Westhuizen from the investigation into police misconduct at the Welverdiend Police Unit (see Appendix, case 29).<sup>6</sup> As a result, it is incumbent on the government to appoint a body with all the necessary resources to conduct a full, independent investigation of all SAP activities, leading to full public disclosure and criminal prosecution for those found to have participated in illegal acts.

The government has taken a modest step in this direction. In August 1992, after years of ignoring the evidence, Law and Order Minister Henus Kriel announced proposals for an independent unit to investigate complaints against the SAP. The unit would be staffed by SAP investigators who would resign from the SAP to become full-time employees of the unit. The unit would be headed by a serving or retired judge and would be assisted by 35 inspectors. In January 1993, as part of a series of announcements about the future of the police force, Minister Kriel stated that an external body of ten regional ombudsmen would be created to whom members of the public could complain of police misbehavior. Africa Watch welcomes the creation of such bodies but notes that they can be successful only if they are completely independent of the SAP, and have all the necessary powers and resources to obtain relevant information, including adequate staff and the power to subpoena evidence and to protect witnesses. In the past, independent investigations into allegations of police misconduct, such as that conducted by the Harms Commission in 1990, proved unsuccessful when evidence was destroyed or disappeared or witnesses

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<sup>6</sup> Often police have opened investigations of police misconduct only after press coverage has drawn attention to cases of serious abuse. See, for example, the Goniwe case, Appendix, case 50, and the allegations of abuse of suspects in police custody, Appendix, Police Abuse of Detainees.

refused to provide evidence.<sup>7</sup>

**Additional measures necessary to ensure greater police accountability would be the elimination of the indemnity against prosecution presently enjoyed by policemen acting in "unrest areas," the repeal of the indemnity enacted by the government in October 1992 for all those confessing in secret to political crimes (this legislation is described below: see Comments on Africa Watch Recommendations made in January 1991 to the National Party Government, Recommendation 1), and the extension of the period during which the police may be sued in civil proceedings for harm inflicted on others while acting in the course of duty. The indemnity for political crimes is especially troubling, as it has only recently been enacted and displays the lack of governmental interest in ensuring that all persons who commit criminal acts, including members of the security forces, will be brought to justice.**

### **The KZP**

**In contrast to the steps taken to increase accountability within the SAP, no independent public investigation of the KZP, the police force of the KwaZulu homeland, has been conducted to date, in spite of continuing reports of bias and abuse. In August 1992, Chief Gatsha Buthelezi, Chief Minister and Minister of Police of KwaZulu, stated that there was no reason for any investigation of the KZP. In late March 1993, the Goldstone Commission announced it would conduct an investigation into the KZP. Africa Watch welcomes this long overdue investigation.**

### **The SADF**

**Some investigations into SADF activities have been conducted. These include the investigation by the Goldstone Commission into funding by the security forces of Inkatha and criminal gangs engaged in township violence (see Appendix, Covert Police Activities and case 47), the Goldstone Commission report on the behavior of 32 Battalion in Phola Park in April 1992 (see Appendix, case 49), the incomplete inquest into the security force link to the killing of Matthew Goniwe and others in 1985 (see Appendix, case 50), the Goldstone Commission report on covert operations of the SADF aimed at undermining the ANC (see Appendix, case 52), and the inquest into the death of anti-apartheid activist David Webster (see Appendix, case 55). While Africa Watch commends the Goldstone Commission for its efforts impartially to investigate**

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<sup>7</sup> The Harms Commission, which investigated allegations of death squad activities by the security forces, allowed testimony by witnesses appearing in disguise and had considerable difficulty obtaining documentary evidence from the security forces. In some instances, evidence had been destroyed. Justice Harms criticized the operations of the Civil Co-operation Bureau (CCB), an undercover unit engaged in a range of unlawful actions targeted at anti-apartheid activists. He found, however, that the police had never operated death squads and that testimony by self-confessed members of such death squads was not credible. In January 1991, in a decision in a libel suit against two independent South African newspapers brought by South Africa's then-forensics expert and expert on poisonous substances, Lieutenant-General Lothar Neethling, Judge Johan Kriegler found that General Neethling had been untruthful and misleading when giving testimony to the Harms Commission. The two newspapers had printed allegations by Dirk Coetzee, one of the self-confessed members of the death squads, claiming that General Neethling had provided him with poison to murder ANC activists. Judge Kriegler found that Coetzee had been truthful when he told the court that he had visited Neethling's office to obtain the poison and strongly criticized evidence by a former police commissioner in favor of General Neethling. The decision cast further doubt on the report of the Harms Commission, which anti-apartheid activists had dismissed as a whitewash.

**abuses by the SADF, allegations of SADF abuses continue to emerge (see Appendix, cases 52, 53 and 54) and the government continues to resist appointing an independent investigator that would have a broad mandate.**

**Following an August 1992 report by the United Nations Secretary-General on South Africa that recommended a thorough investigation of all security forces, including the SADF, the KZP, MK and private security firms, the government indicated that such an investigation would be considered. The Goldstone Commission is perhaps the only body in South Africa today with sufficient credibility to conduct such an investigation. However, no such wide-ranging investigation has yet been undertaken, nor is the SADF the subject of any general enquiry into its activities.**

**The Goldstone Commission has undertaken an investigation into claims that Military Intelligence (MI) hired agents to conduct a covert campaign aimed at undermining the ANC (see Appendix, case 52). A dramatic raid on MI premises by the Commission led to a government-appointed internal investigation of all intelligence activities. On the basis of information produced by the internal investigation, President de Klerk dismissed 23 SADF officers and some civilians in December 1992. However, some of those most compromised by allegations of involvement in covert activities, including General "Kat" Liebenberg and Brigadier Christoffel van der Westhuizen, remain in office. The Goldstone Commission's investigation into MI is continuing.**

**2. Issue written orders that establish public guidelines about the procedures that security force personnel should follow in dealing with political violence.**

**The police have failed to adhere to the standards they accepted in the National Peace Accord for dealing with political violence generally. Allegations of their involvement in fomenting political violence continue (see Appendix, Police Bias and Violence).**

**The Peace Accord requires the police force to form a special unit to investigate crimes relating to political violence and to produce a monthly report detailing progress in ongoing investigations. The Accord calls for the convening of a National Peace Committee to be composed of members of the political parties who signed the Accord. The Committee has the right to require the police to submit a report on the progress of their investigations. The Police Commissioner is required to "have regard" to recommendations of the National Peace Committee but is not obligated to adopt Committee recommendations or explain his refusal to do so.<sup>8</sup> The Accord also requires police to consult regularly with regional and local groups established by the Accord.**

**The general principles concerning police conduct set forth in the Accord also apply to policing of political violence. Among the principles which police have not observed are ones requiring them to use the least possible force to disperse gatherings, to carry a legible external form of identification, to have an identification number painted on the side of official police vehicles, to endeavor to disarm and disperse aggressors, and to give a gathering a reasonable time to comply with requests to disperse.**

**Political demonstrations and rallies continue to be a focus of political violence in South Africa.**

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<sup>8</sup> National Peace Accord, Chapter 3, 3.2.2.6(xi).

**Although, in an effort to implement the Accord, the SAP formed a special 5,600 person anti-riot unit, the Internal Stability Division, this division, too, has repeatedly used excessive force while policing public demonstrations.**

**In April 1992, the Goldstone Commission requested a panel of international and South African experts to examine policing of public demonstrations. The panel criticized the use of lethal force by the police when adequate non-lethal substitutes could be made available. It urged the government to stop using the Internal Stability Division to police public demonstrations and to rely instead on local police and the development of a co-operative relationship between police and local communities. The panel urged a basic change in attitude among police officers who in the past have taken measures, including the use of violence, to prevent demonstrations from taking place. The panel emphasized that "[t]he right to demonstrate is as fundamental a right of democratic citizenship as the right to take part in political campaigns.... One of the central responsibilities of the police is to facilitate the right to demonstrate."<sup>9</sup> It also stressed the need for consultation among organizers, local authorities and the police before and during demonstrations, as well as their joint responsibility to ensure that demonstrations were peaceful. Among the panel's recommendations for reform were the following:**

**1. Organizers should be required only to give "timely notice" (six days) to local government authorities of their intent to hold a demonstration. Currently, organizers are required to obtain a permit, and police frequently try to break up demonstrations for minor infractions of permit requirements. The panel also strongly emphasized that discussions should take place between police, local authorities and organizers of demonstrations to enable arrangements to be made in advance of demonstrations to allow them to proceed peacefully.**

**2. A universal ban should prohibit demonstrators from carrying weapons or replicas of weapons.**

**3. Lethal force should be used only when delay in its use and the use of anything less would subject police or others to a severe risk of death. Sufficient numbers of police officers should be deployed to police demonstrations, and they should be provided with riot shields, masks and other non-lethal equipment to enable them to control any violence that may erupt during a demonstration.**

**The government, the SAP, the ANC and Inkatha agreed to implement a system of advance discussion, which was used successfully during largely peaceful strikes of August 3 and 4 and a march on government buildings in Pretoria on August 5, 1992. Many other recommendations made by the panel were accepted by all participants, but Inkatha rejected a recommendation to prohibit the carrying of dangerous weapons, including "cultural weapons" such as assegais, at demonstrations.**

**Other recommendations made by the panel require the SAP to revise their training techniques to emphasize human relations and communication between police and the community. In addition, the panel recognized that new training would be required in the use of non-lethal equipment not previously used in South Africa. The panel's report was published and is available in South Africa.**

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<sup>9</sup> Testimony of Multinational Panel Regarding Lawful Control of Demonstrations in the Republic of South Africa, July 9, 1992.

**While the government agreed with the recommendations made in the panel's report, it has not taken prompt steps to implement them. Some of the panel's recommendations called for legislative amendments, such as one enabling local authorities or local magistrates to determine the conditions applicable to a particular demonstration and one repealing the present permit requirements. Implementing legislation is being drafted by the Goldstone Commission for presentation to Parliament. The thrust of the report focused on establishing better relations between police and community relations, but the government has taken few significant steps to accomplish this, although in February 1993 a campaign to improve community relations was announced, some seven months after acceptance of the panel's recommendations. In addition, the government has refused to adopt stringent regulations governing the carrying of dangerous weapons (see Appendix, Regulation of Dangerous Weapons).**

**The recommendations have not affected the homelands, where lethal force has been used to prevent peaceful demonstrations. For example, failure to adhere strictly to the court-appointed route for a demonstration, which would be treated as the crime of trespass under the panel's guidelines, was used to justify the use of lethal force in Ciskei against demonstrators marching on the capital Bisho in September 1992. Twenty-eight unarmed civilians died and two hundred were injured as a result.**

**3. A. Afford adequate police protection to all groups and individuals.**

**B. Retrain security forces with an emphasis on peacekeeping and protection, rather than on enforcement of outmoded apartheid laws.**

**Although some progress has been made in beginning to address the second of these recommendations, there has not yet been any appreciable effect on police behavior. The anti-ANC bias of the SAP and the KZP, evident all too often in the black townships, demonstrates that they do not yet view themselves as peacekeepers whose responsibility is to protect South Africans of all races. Africa Watch has seen no significant change in the behavior of the security forces, many of whose members still fail to take adequate action to protect ANC supporters from attack. In a review of actions taken by the security forces since January 1991, Africa Watch found the following:**

- o The SAP failed on numerous occasions to take effective preventive action when warned in advance of attacks against residents of ANC-aligned townships or squatter camps.**
- o The SAP, when it was present, frequently failed to take any action to halt attacks by Inkatha supporters and escorted attackers from the scene of the attack without attempting to disarm them.**
- o The SAP repeatedly used excessive force when attempting to disperse demonstrators, causing unnecessary injuries and, in some cases, deaths.**
- o The SAP often mistreated suspects while in detention, sometimes causing their deaths.**
- o The KZP frequently demonstrated a bias in favor of Inkatha, and continued to attack residents seen to be non-Inkatha supporters and to break up meetings held by non-Inkatha supporters.**
- o The KZP failed to perform its functions as a peacekeeping force, and in fact on many occasions, inflamed violence.**

- o Both the SAP and the KZP failed to investigate incidents of violence adequately.**
- o The SAP attempted to cover up police complicity in the violence.**
- o The SADF and SAP demonstrated a bias in favor of Inkatha.**
- o When employed on township duty, the SADF frequently contributed to the violence and tended to use excessive force.**

**The conduct of the police following the June 1992 visit of President de Klerk to Boipatong township, after the killing of 42 in a raid from the nearby hostel, illustrates the poor training of the SAP in policing public demonstrations: in a stand-off between police and demonstrators, once again a crowd was fired upon without provocation, and three were killed. (See Appendix, case 25.) South African demonstrations have repeatedly turned into violent confrontations between the public and the police. As recently as February 1993, when taxi drivers protested in Johannesburg, police responded by using force; press images of police in riot-helmets using rubber bullets, tear gas, attack dogs and live ammunition again became a common sight.<sup>10</sup> Police appear to be unwilling or incapable of isolating individuals who incite violence, disarming those who openly display dangerous weapons, or dispersing a crowd without causing panic and injury.**

**In order to improve their effectiveness in peacekeeping, the recommendations made by the panel of experts on policing of public demonstrations (see above) should be implemented and disseminated widely among members of the SAP and the SADF. Police equipment also contributes to abuses. Rather than wearing bullet-proof vests or carrying riot shields, police officers carry loaded firearms, thereby encouraging the use of excessive force. Clearly, alternative methods of riot control should be implemented.**

**Police training, which did not become racially integrated until 1992, has only recently been reprogrammed to reflect post-apartheid policies. Brigadier L. van Vuuren, commanding officer of the Police College of Pretoria, told reporters that the curriculum now includes subjects previously ignored, such as police ethics and human rights. "That teaches the student to start off with a respect for life, people, their belongings," he said.<sup>11</sup> These changes, however, will affect only the newest recruits and, in an existing force of more than 100,000, greater efforts are needed to retrain police in skills of peacekeeping and protecting citizens while maintaining respect for human rights, particularly for those who rose through the ranks during decades of counter-insurgency work. An independent researcher granted access to police training institutions concluded in a report published in July 1992, that "the organization as a whole has not yet succeeded in making the transition to a new set of values and aims for policing; to a large extent, the police force remains the victim of its history."<sup>12</sup> In January 1993, as part of a campaign to improve community relations, Minister of Law and Order HERNUS KRIEL announced various measures, including that police**

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<sup>10</sup> Paul Taylor, "S. Africa's Taxi 'Miracle' Explodes," *The Washington Post*, February 9, 1993.

<sup>11</sup> Tom Cohen, "Critics Say New Police No Different Than The Old," *The Associated Press*, July 31, 1992.

<sup>12</sup> Charles Leonard, "Independent study evaluates police training," *Johannesburg Sunday Times*, July 5, 1992.

command would be decentralized, individual police retrained, and a system of "community oriented policing" introduced within six months. The minister admitted that some members of the police force still regarded the ANC as the enemy.<sup>13</sup> In March 1993, a senior Dutch policeman monitoring violence in Sebokeng sharply criticized SAP methods, stating that police conduct in "slaloming" through mourners at a political funeral seemed designed "to cause trouble."<sup>14</sup>

In March 1993, the Police Commissioner announced a ten-point plan to combat the increased violence and crime in South Africa. The plan included increased use of reservists and watch groups to patrol the community, greater deployment of the SADF in community protection and in fighting crime, increased visibility for the SAP, greater use of scientific and technical methods for investigating crime, increased cooperation between the Department of Law and Order (to which the police force reports), the Department of Justice (which is responsible for the administration of justice) and the Department of Correctional Services (which administers prisons), prevention of the illegal import and distribution of weapons, and efforts to use available information to oppose bail applications and to provide evidence promptly to courts.<sup>15</sup>

Many of the problems identified by the Police Commissioner are indeed problems that require immediate attention. Africa Watch welcomes the effort, however belated, to combat crime in South Africa but notes that without public support it cannot hope to succeed. This is particularly true in the most violent areas where fear and distrust of the police is deep-rooted and where continuing police bias and violence undermine all other efforts to establish peace.

#### **4. Consolidate the forces into one force in order to oversee actions and ensure neutrality.**

At the time of our report in January 1991, South Africa had a multiplicity of police forces. That situation has not changed. The SAP, the police force of the central government, has no jurisdiction in the "independent" homelands, each of which has its own army and police, and limited jurisdiction in the "self-governing territories," which may also have their own police forces.<sup>16</sup> The security forces in all parts of South Africa, including the "independent" homelands, receive direct and indirect support from the South African government, and South African officers are often seconded to leadership positions in homeland forces. In the "independent" homelands, separate security legislation is also in force, which in Bophuthatswana and Ciskei is comparable to that in effect in South Africa before reforms were introduced in 1991.

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<sup>13</sup> Michael Hamlyn, "Police to be trained for society free of apartheid," *The London Times* January 26, 1993.

<sup>14</sup> Pat Sidley, "Dutch police slam SAP," *The Weekly Mail*, March 19 to 25, 1993.

<sup>15</sup> Press release by the SAP, March 25, 1993.

<sup>16</sup> During the apartheid years, the South African government created 10 separate homelands for the black population. Thereafter, blacks could not be citizens of South Africa or reside there unless they had a working permit. Blacks were often forcibly moved to these homelands, located in poor rural areas generally incapable of providing a livelihood for the huge influx of people. Only in the homelands could blacks have rights such as the right to vote or move freely from one area to another. Of the ten homelands, four became nominally independent, Ciskei, Bophuthatswana, Transkei and Venda. The South African government financially supports all the homelands and retains many means of control over their governments.

**No effort has been made by the government or the security forces to consolidate the various security forces operating in South Africa and the ten homelands. Moreover, during 1992 the government enacted legislation to enable "cross-border" activities by homeland police forces,<sup>17</sup> while it continued to transfer to KZP jurisdiction areas formerly policed by the SAP. Residents in those areas were not consulted and are justifiably afraid. In its third interim report on violence, the Goldstone Commission stated that the transfer of police stations to the KZP from the SAP should be halted, as it would "seriously aggravate the violence."**

**In Natal province, where many areas are suffering what has been described as a low-level civil war, the existence of two police forces has repeatedly thwarted attempts to prevent violent incidents from occurring. Residents of areas falling within the KwaZulu homeland have often requested and been denied assistance by the SAP on the grounds that the area falls within KZP jurisdiction. The attached Appendix describes incidents in which members of the KZP have demonstrated a strong bias in favor of Inkatha and incidents in which residents who are not Inkatha supporters have been refused assistance by the KZP when they were attacked. In some cases, residents were attacked by KZP members. (See Appendix, Complicity by the KwaZulu Police.)**

**Police forces in Ciskei and Bophuthatswana have been notorious for their opposition to the ANC and its supporters. Since our January 1991 report, ANC supporters in those homelands have repeatedly been assaulted or intimidated by members of their respective police forces. The Gqozo regime in Ciskei and the Mangope regime in Bophuthatswana, supported by their respective security forces, continue to prevent the ANC from organizing on their turf. ANC meetings have been forbidden or disrupted and persons attending have been harassed, arrested and detained.**

**On August 3, 1992, Brigadier Gqozo sought help from the South African army to prevent an ANC march from East London to Bisho, the capital of Ciskei and refused entry to a U.N. violence monitor who had planned to observe the march. On August 4, Gqozo ordered his police to set up a line of machine guns along the border with South Africa and gave an order to shoot any marchers who crossed. Under pressure from the National Peace Committee and the South African government, he later permitted the marchers to hold a meeting at the stadium in Bisho.<sup>18</sup> One month later, on September 7, he ordered troops to be positioned outside the stadium at Bisho, where a peaceful demonstration organized by the ANC was to take place. When some unarmed demonstrators broke through a hole in the fence surrounding the stadium, troops opened fire, killing 28 demonstrators and wounding at least 200. The troops fired without warning and many of those injured were hit as they tried to flee. Brigadier Marius Oelschig, in command of the Ciskei forces on that day, was on secondment from South Africa.**

**The ultimate integration of all South Africa's security forces was agreed in principle at the Convention for a Democratic South Africa (Codesa).<sup>19</sup> After the breakdown of Codesa, in June 1992, General**

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<sup>17</sup> Police Amendment Act of 1992, amending s.34G of the Police Act of 1958 to allow any member of a homeland police force to act outside the homeland with the same powers as the SAP. In 1991, KwaZulu published the KwaZulu Police Amendment Act, which was passed by the KwaZulu Legislative Assembly in 1989 and empowers the KwaZulu Minister of Police to enter into agreements with the South African Minister of Police for "cross-border" operations.

<sup>18</sup> David B. Ottaway, "ANC, S.African Government Dispute Meaning of Strike," *The Washington Post* August 5, 1992.

<sup>19</sup> Codesa was convened in December 1991 as a forum for conducting negotiations for the transition to democracy.

**A.J. "Kat" Liebenberg, Commander-in-Chief of the SADF, announced a plan to incorporate the armed wing of the ANC, "Umkhonto we Sizwe" (Spear of the Nation) (MK), the "Ystergarde" (Iron Guard) of the right-wing white Afrikaner Resistance Movement (AWB) and the defense forces of the "independent" homelands into a "super-army," which was rejected by the various unofficial military groups. Although the government has stated in the past that the disbanding of MK is a non-negotiable precondition to the creation of an interim multiparty government, the ANC refuses to disband it until a democratic government is in place. It also insists that MK can not be integrated into the SADF but that a new security force will need to be created that includes personnel from the various military groups presently existing in South Africa, including the Azanian People's Liberation Army (APLA; the military wing of the PAC), and the defense forces in each of the homelands. In bilateral negotiations between the government and ANC in early 1993, it was agreed that "transitional executive councils" would be established to supervise the operations of, amongst other things, the security forces during the run-up to multiracial elections.**

**In the interim, while the negotiations continue their halting progress, conscription into the SADF for whites only continues, and no concrete steps have been taken to consolidate the multiple security forces operating in South Africa.**

**5. Be more thorough in preparing cases to ensure that courts have evidence to convict perpetrators of violence.**

**Since January 1991, more than 6,000 people have died in political violence. Many of these deaths were witnessed by township residents, and human rights organizations have taken statements from many of them in an effort to assist investigations into police abuse. In addition, the government has hired more police officers in the past year who should be available for this work. Nevertheless, in the vast majority of cases, police have been unable to provide prosecutors with sufficient evidence to mount successful prosecution of suspects implicated in township violence.**

**The poor quality of police investigative techniques can be illustrated by two important examples. On June 19, 1992, a provincial Supreme Court judge dismissed all charges against seven suspects, including three residents of the KwaMadala Hostel, who were implicated in the funeral vigil massacre of 38 people in Sebokeng in January 1991, saying that the State's case had been riddled with "inconsistencies, contradictions and fabrications"<sup>20</sup> (See Appendix, case 1). Most recently, on April 13, 1993, charges were withdrawn by the prosecution against 27 of 74 men accused of involvement in the massacre of 43 people in Boipatong in June 1992 (See Appendix, case 14).<sup>21</sup>**

**The failure of the police successfully to prosecute persons responsible for acts of violence has**

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**Most political parties are represented at Codesa, as well as the governments of all ten homelands. Working groups formed at the initial conference continued to meet in 1992, and agreement was reached on several issues. The Codesa negotiations broke down in June after the Boipatong massacre, when the ANC refused to continue talks until the government took steps to end the violence. In early 1993, multiparty negotiations resumed following intense bilateral negotiation between the government and the ANC on the one hand, and the government and other disgruntled groups, including Inkatha, the PAC, and the Bophuthatswana and Ciskei administrations, on the other hand.**

<sup>20</sup> Susan Smuts, "Judge slams Alex vigil inquiry," *The Star*, August 11, 1992.

<sup>21</sup> "Charges Against 27 Boipatong Suspects Withdrawn," Reuters, April 13, 1993.

**permitted distrust of the police to continue and grow. This distrust can be blamed on the attitude of the police toward the investigation of crimes involving black victims; the bias of the police against ANC supporters; the investigative techniques developed during the apartheid years which relied heavily on confessions and largely ignored the need to seek forensic or other evidence; and finally, to a lesser extent, on the huge increase in general crime levels in South Africa.<sup>22</sup>**

**An urgent need exists for a radical change in the attitudes towards crime investigation and training techniques, and to equip police with the investigatory skills they need to identify perpetrators of crime. Police must overcome the long history of black South African distrust of the police in order to conduct effective investigations.**

**In view of the high level of political violence and crime generally in South Africa, police often claim they are understaffed and that it is impossible for them to investigate every violent incident adequately. While police may be understaffed in some of the worst areas, the failure of the police to identify perpetrators of crime and to provide sufficient evidence for successful prosecutions is not entirely attributable to lack of manpower. In its presentation to the Goldstone Commission investigation into train violence, Lawyers for Human Rights contended that**

**the manner in which train attacks have been investigated thus far is a cause for concern. There has only been one successful prosecution to date. During the last year, the police have made only a handful of arrests as a result of train attacks... They themselves do not appear to have made an enormous effort to investigate. In many instances, their information was more sketchy than that available in newspaper reports. Several newspaper reports mentioned witnesses by name, and even in these instances, the police have not bothered to trace the witnesses. On the East Rand, there are only two officers investigating train attacks ... yet one of them gave evidence to the effect that they do not have a heavy workload. It then became clear during cross-examination that they had simply not applied themselves to investigating properly.<sup>23</sup>**

**Lawyers for Human Rights concluded that**

**as far as policing is concerned, it is primarily a matter of inefficiency, poor training and laziness. Whether there is a more sinister motive for the inadequate performance of the SAP remains to be seen. Certainly, an immediate increase in personpower ... a tightening-up of procedures, and a more enthusiastic pursuit of evidence and suspects, would make a noticeable difference.<sup>24</sup>**

**In its interim report on the train violence, the Goldstone Commission noted that only one successful prosecution had taken place since attacks first began in 1990. The Commission plans to**

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<sup>22</sup> The murder rate in South Africa has doubled in the past four years. Of the 19,400 murders committed in South Africa excluding the ten homelands in 1992, less than 2,500 were attributed by the police to political motives (independent monitoring groups would put the figure for political deaths in the whole of South Africa nearer to 3,500). Paul Taylor, "South Africa Facing Social Anarchy," *The Washington Post*, March 8, 1993.

<sup>23</sup> Memorandum to the Goldstone Commission on its inquiry into violence on trains, June 1992.

<sup>24</sup> *Ibid.*

**continue its investigation of train attacks. The attached Appendix details the poorly coordinated efforts made by police to investigate train attacks, in spite of continuing attacks and a rising death toll. (See Appendix, Train Attacks and Police Investigation of Train Attacks.)**

**In another illustration of poor policing and investigative techniques, Dr. Peter Waddington, director of criminal justice studies at the University of Reading in Great Britain, released his report in July 1992 on police conduct during and after the Boipatong massacre the previous month. His report characterized the police response to the massacre as "woefully inadequate":**

**Contingency planning was inadequate and non-commissioned officers were left at the scene of a rapidly unfolding disaster to make fateful decisions... Command has been notable by its absence for much of the time; junior officers have not been adequately debriefed....<sup>25</sup>**

**The report stated that, if the glaring failures of the investigation represented normal policing in South Africa,**

**the SAP is an unaccountable police force. The difficulties encountered by this inquiry team in uncovering the most routine aspects of the police response and investigation suggested systems do not exist for either internal or external accountability.<sup>26</sup>**

**The report also criticized the manner in which police had investigated the deaths. For example, residents of KwaMadala Hostel, some of whom were later charged in connection with the massacre, were permitted to toss their weapons into a pile, making it virtually impossible to match weapons to individuals. As a result, the report concluded, it may never be possible to obtain convictions. A similar failure had been criticized by the Goldstone Commission in February 1992 following its investigation into the Bruntville massacre of December 1991 (see Appendix, case 22.) Clearly, police ignored the earlier recommendations concerning the gathering of evidence made in that report. The report also criticized the investigation as having a disproportionate focus on obtaining confessions rather than supporting evidence.<sup>27</sup>**

**The police responded to the report by listing 16 mainly technical steps they would take to improve investigations, but they rejected its main conclusion that the SAP appeared to be an unaccountable police force, claiming that Dr. Waddington had not taken proper note of special conditions in South Africa. Given the glaring inadequacies highlighted by the Waddington report, such a response is extremely disappointing and reflects a lack of appreciation of the extent to which changes need to be made in the SAP and its operating and investigative procedures to comply with international standards.**

**6. Afford witnesses adequate protection by investigating the possibility of legal reforms that would enhance the prospect of witnesses cooperating with the prosecutions.**

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<sup>25</sup> Phillip van Niekerk, "Inquiry condemns police response to SA massacre," *The Guardian*, July 23, 1992.

<sup>26</sup> Ibid.

<sup>27</sup> Christopher Munnion, "Pretoria pledges action on critical Boipatong report," *The Daily Telegraph*, July 24, 1992. Bill Keller, "British Experts Accuse Pretoria Police of Bungling," *The New York Times*, July 23, 1992.

**This recommendation has not been implemented, and the absence of a comprehensive witness protection program forms one of the most serious barriers to bringing those who perpetrate violence to justice. Although the government did agree to provide protection to witnesses testifying before the Goldstone Commission, in all other legal proceedings witnesses receive no protection, despite numerous incidents of intimidation, particularly in cases involving allegations of misconduct against police officers. The government has given no indication that it is considering the creation of such a program.**

**In some cases, private lawyers and human rights organizations, such as Lawyers for Human Rights, have provided protection for witnesses in political cases, including those testifying before the Goldstone Commission. In its April 1992 report, the Independent Board of Inquiry into Informal Repression (IBIIR), an independent human rights monitoring group based in Johannesburg, reviewed the scheme implemented by private lawyers and concluded that a private protection plan can never be as effective as one supported by the authorities. It described incidents of intimidation involving witnesses who had testified before the Goldstone Commission. In one case, the witness's mother was stabbed to death a few days after he had given evidence; another witness was shot to death after giving evidence concerning the violence in Phola Park.**

**In its second interim report released in April 1992, the Goldstone Commission recommended that it be given power to protect witnesses. In July, the government published regulations to implement a witness protection program for the Commission. The regulations did not provide for any major relocation and change of identity for witnesses, but made it a crime to try to gain access to, or to disclose the location of, protected witnesses, punishable by a fine of \$660 or six months' imprisonment. Although some witnesses have been kept in hotels, others have been kept -- often for quite lengthy periods -- in housing on prison grounds, and there is considerable distrust of the program. Moreover, protection is only supplied while a witness is testifying before the Commission, leaving witnesses vulnerable to attack upon returning to their communities.**

**Intimidation of witnesses is also prevalent in cases of alleged police misconduct and in inquests into the death of well-known anti-apartheid activists. For example, the senior police investigator assigned to examine allegations of torture against the police unrest unit at Welverdiend in the eastern Transvaal admitted that the public was afraid to come forward with evidence for fear of retaliation. In an interview with reporters, he said, "You can't take steps against officers without evidence from the public, and most of the public doesn't have the confidence in the local police to go to the station and make a charge against an officer."<sup>28</sup> This same investigating officer was later removed from his position amid reports of attempts to cover up police complicity in the violence. In its third interim report, the Goldstone Commission repeated its call for government action, stating that "an adequate, well-known and trusted witness protection programme would encourage witnesses to report information to the police."<sup>29</sup>**

**Africa Watch welcomes the introduction of a witness protection program for those testifying before the Goldstone Commission. However, because witnesses testifying before ordinary courts are also subjected to intimidation, Africa Watch urges the implementation of a witness protection program applicable to all trials where concerns of intimidation are real. In the past, the government has shown its**

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<sup>28</sup> Scott Kraft, "S.Africa's Feared Law Enforcers," *Los Angeles Times*, November 13, 1991.

<sup>29</sup> Third Interim Report of the Goldstone Commission, December 21, 1992.

**willingness and ability to provide protection for witnesses, such as those who provided testimony to the Harms Commission. Clearly, it could and should do so now for those testifying in the ordinary courts.**

**COMMENTS ON AFRICA WATCH RECOMMENDATIONS  
MADE IN JANUARY 1991 TO THE  
NATIONAL PARTY GOVERNMENT**

**1. A. Establish independent and thorough judicial commissions of inquiry into the role of the police and defense forces and act on evidence collected. The government should investigate on its own initiative serious human rights cases that come to its attention, regardless of whether a formal complaint has been made.**

**B. The results of these investigations, including information about any disciplinary action the government has taken or any prosecution it has initiated, should be made public.**

The principal effort to implement these recommendations has been the establishment of the Goldstone Commission whose reports have been made available to the public. The Goldstone Commission, however, is charged with investigating all serious incidents of violence and it has been able to conduct only a limited number of investigations into security force misconduct. The Commission may only make recommendations to the government or, when circumstances warrant, refer matters to an Attorney-General who, alone, makes the decision to prosecute persons suspected of complicity in the violence. Since it began its work in late 1991, the Commission has established a reputation as a fair and impartial body. However, the Commission lacks authority to determine guilt or innocence, and victims of violence must look to the police and the overwhelmed criminal and civil courts for redress.

In the few other isolated instances in which judges have been appointed to conduct independent investigations, they too have only had the power to recommend prosecutions to the relevant Attorney-General. However, because these inquiries have not led to prosecutions and because an Attorney-General is not required to disclose reasons for a decision not to prosecute, the impression is created that the government is unwilling to prosecute police or security force members for misconduct. Results of internal investigations into police or security force misconduct are not made available to the public.

Under the 1991 National Peace Accord, individuals may bring allegations of public violence to the attention of the Goldstone Commission with a request to investigate. Proceedings of the Commission are public. Initially, the Commission relied solely on information placed before it by individuals or organizations who testified; in October 1992, it was finally given independent powers of investigation and a limited number of police personnel to form an investigation unit. The Commission has powers of search and seizure of documents, and the power to compel witnesses to give evidence, including self-incriminating evidence (though such evidence cannot form the basis of a later court case). Since its establishment, the Commission has received an overwhelming number of requests to conduct investigations of violence. It has carried out 24 major investigations to date, and its written reports have been of great importance in establishing the facts of violent incidents. Nevertheless, the Commission remains a small operation with few staff,<sup>30</sup> inadequate to address the overwhelming level of violence in South Africa.

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<sup>30</sup> Of its five members, only two are full time, and Goldstone himself retains his duties as a judge on the Appellate Division of the Supreme Court; the Commission's staff consists of three counsel, its secretary (who is also a lawyer), three typists, and a telephonist. In addition, it has five investigative units, based in the major urban centers of South Africa.

**Reports produced by the Goldstone Commission are made public. However, the government has been able to manipulate the publication of these reports in an attempt to exonerate itself from responsibility for the violence. In April 1992, the Commission released to Parliament a second interim report on the violence. The government released the report only after one month's delay. The portion of the report then released stated that "the Commission has no doubt that the primary cause of the violence in all these areas is the political battle between supporters of the African National Congress and of Inkatha,"<sup>31</sup> and that the Commission had no evidence suggesting there was a secret group behind the violence. The statement also said "even if the allegations against members of the security forces prove to be justified, such misconduct would not have been possible but for the ongoing battle between the ANC and the Inkatha Freedom Party." The government claimed that its past denials of complicity in the violence had been vindicated.**

**The ANC immediately condemned the report. Several days later when the government made the full report available to the public, it became evident that in fact the Commission had not exonerated the government. Although it identified many causes for the violence, the Commission noted that "our recent history has been one in which the government has failed to take sufficiently firm steps to prevent criminal conduct by members of the security forces and the police and to ensure that the guilty are promptly and adequately punished," and that while it had received no evidence of direct complicity in or planning of current violence by President de Klerk, any member of the Cabinet or any highly placed officer in the security forces, it had received evidence supporting other allegations of government and security force involvement in the violence.<sup>32</sup> In his report on South Africa released in August 1992, the U.N. Secretary-General recommended that reports of the Goldstone Commission be made available to the Peace Accord signatories within 24 hours of being submitted to the President. The government has agreed to follow this procedure.**

**Since January 1991, in addition to inquiries conducted by the Goldstone Commission, there have also been other judicial inquiries have taken place into allegations of police or defense force misconduct (See Appendix, Investigations of Police Misconduct, and Complicity by the Defense Forces). None of these inquiries has yet resulted in completed prosecutions of police officers. The police officer responsible for uncovering evidence of police involvement in the Trust Feeds massacre (see Appendix, case 23), Major Frank Dutton, was responsible for many of the investigations that did lead to prosecutions. Police officers have been convicted in the criminal courts for isolated acts of criminal misconduct, but often sentences are very light, or those convicted are released early (see Appendix, cases 39-42). In the vast majority of cases in which complaints are made, no prosecutions occur. There is as yet no evidence of a practice of state willingness to prosecute errant police officers.**

**Until December 1992, when President de Klerk admitted that elements within Military Intelligence**

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<sup>31</sup> "Judge blames black parties for township carnage," Reuters, May 27, 1992. Michael Hamlyn, "Inkatha and ANC blamed for violence," *The Times*, May 28, 1992.

<sup>32</sup> Second Interim Report of The Commission regarding the Prevention of Public Violence and Intimidation, April 29, 1992. In December, 1992, the Goldstone Commission reported that certain officers within Military Intelligence had mounted a covert campaign in 1991 to undermine the ANC (see Appendix, case 52). This report led to the dismissal by President de Klerk of 23 officers in MI.

had conducted a covert campaign against the ANC and dismissed 23 officers (see Appendix, case 52), the government rejected outright allegations of complicity by members of the security forces in the violence. When newspapers have printed reports of alleged security force involvement in covert activities, the government has dismissed these reports as orchestrated attempts to discredit the security forces and the government. However, in 1991, when *The Weekly Mail*, an independent South African newspaper, published reports of secret police funding of Inkatha rallies in 1989 and 1990, the government conceded it had provided funding but claimed that it was part of an anti-sanctions campaign.

While the government has established the Goldstone Commission and made public its reports, the Commission has frequently complained that some of its recommendations have been ignored. They include a recommendation that certain single-sex hostels for migrant workers, often at the center of violence in the Johannesburg and Vaal area, should immediately be adequately and securely fenced, that a strong police presence should be provided to ensure that no arms are taken into or out of hostels, and that police should be in a position to protect hostel dwellers from outside attack. (For a description of violent incidents involving hostel dwellers, see Appendix, cases 11-14 and Government Inaction on the Hostels.) The Commission characterized the response of a senior member of the SADF to another recommendation that 32 Battalion, a unit of the SADF, should not be deployed in peacekeeping in the townships as "unhelpful" and said no reasons had been furnished for ignoring its recommendations. In addition, it said its recommendation concerning the carrying of dangerous weapons had been "partially but inadequately implemented."<sup>33</sup>

In July 1992, the government announced that Battalions 32 and 31 and the Koevoet unit (or Crowbar unit, a former South West African police counterinsurgency unit and one which the Commission recommended be disbanded) would be disbanded and members incorporated into other existing units,<sup>34</sup> that fencing of workers hostels would be considered if it was agreed to by hostel residents and would improve community security, and that police would crack down on the possession of dangerous weapons. This announcement came two months after the Goldstone Commission's recommendations, and was made only after the Boipatong massacre in which 45 people were killed at the hands of hostel dwellers, when international attention focused on the violence in South Africa, the ANC withdrew from democracy negotiations and the U.N. Security Council met to discuss South African violence. The timing called into question the sincerity of the government's response to the virtual civil war being waged in the country.

In September, in bilateral talks with the ANC aimed at restarting full scale negotiations, the government agreed amongst other things to release about 500 political prisoners, to implement the Goldstone Commission recommendations to fence hostels in violent areas, and to take steps to prevent persons carrying dangerous weapons, including "cultural weapons" such as assegais, in public. While many political prisoners have been released, amid much controversy, hostels have still not been fenced and dangerous weapons are still routinely carried in public.

The Goldstone Commission has also recommended that the government should investigate on its

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<sup>33</sup> Tom Cohen, "Commission Finds No Evidence of Government Involvement in Massacre," AP, July 6, 1992. Anton Ferreira, "Judge calls ANC charges against De Klerk baseless," Reuters, July 7, 1992.

<sup>34</sup> In February 1993, the Army Chief announced that Battalions 31 and 32 would in fact not be disbanded until March 1993, some eight months after the government first announced they would be disbanded.

own initiative serious human rights cases that came to its attention, even if a formal complaint had not been made. The government has made no effort to do this; generally it has only reluctantly investigated abuses when public pressure in South Africa or abroad has forced it to act. Indeed, government action in 1992 reveals a desire to avoid investigations of human rights abuses if members of the security forces are implicated. In September 1992, the government began to push strongly for a general amnesty for all persons who had committed political crimes before October 1990. After being rejected by parliament, legislation embodying the government's amnesty proposal was adopted in October 1992 by the President's Council, a body dominated by the National Party government and created to ensure enactment of National Party policy. The legislation permits individuals to be given an indemnity from prosecution if they confess their crimes in secret to a body appointed by President de Klerk. Evidence submitted to that body may later be destroyed. As a result, black South Africans who have suffered for years under apartheid will not even be permitted to know what happened to loved ones who died in prison or who disappeared. The ANC announced it would not recognize this legislation and would annul it if elected to government.<sup>35</sup>

Passage of this legislation deserves strong international condemnation. Instead of conducting amnesty proceedings, the government should reverse its policy of secrecy, particularly with regard to covert operations, and provide bodies such as the Goldstone Commission and criminal courts access to evidence of security force misconduct. The courts in South Africa already have sufficient powers to grant indemnity from prosecution to witnesses who would not otherwise give evidence. It is incumbent on President de Klerk and his Cabinet to take every measure necessary to create public trust in the security forces by ensuring they are accountable under the law for violent acts. The measures should include abolishing the immunity of security forces for all actions taken during the course of duty, repealing the latest indemnity act, conducting independent investigations of security force complicity in the violence and, in cases where members of the security forces are implicated in the violence by credible evidence, immediately suspending those persons from active duty pending a full independent investigation.

**2. Lift emergency restrictions on "unrest areas," which have been used as an excuse by security forces to perpetuate abuses.**

This recommendation has not been implemented. The practice of declaring "unrest areas" under the Public Safety Act appears to be on the rise, despite evidence that the attendant additional powers do not enhance the ability of the police to prevent further violence. In 1992, 58 districts were declared "unrest areas" and by year end, 33 districts were still affected. The declaration of an "unrest area" effectively imposes a state of emergency on the area and grants to police the usual emergency powers, including detention without trial; dispersal of gatherings by force; entry, search and seizure without a warrant; curfews and other restrictions on movement of residents; and indemnity against prosecution for members of the security forces. In many areas, emergency restrictions remain in place for months. Each of the townships of Soweto, Meadowlands, Dobsonville and Diepkloof were subjected to unrest restrictions from March 11, 1991, through October 23, 1992. During that time, incidents of violence continued; and in Soweto the level of violence in March rose to one of the highest levels experienced since August 1990.

In the attached Appendix, Africa Watch describes incidents of violence occurring in areas designated as "unrest areas." (See Appendix, cases 2, 4, 12, 13 and 20.) In some of these cases, witnesses

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<sup>35</sup> An Africa Watch newsletter on the amnesty legislation, *Accounting for the Past: The Lessons for South Africa from Latin America*, was published on October 23, 1992.

alleged that members of the security forces had participated in the violence or otherwise engaged in misconduct. (See Appendix, cases 4 and 20.) In only a few of these incidents have the perpetrators been identified.

**3. Begin immediately to dismantle the homeland administrative structures and bring them all under the direct control of the South African government.**

At the heart of the structure of grand apartheid was the creation of a system of "homelands" for black South Africans, who were to be deprived of their South African citizenship and given membership instead of supposedly independent countries, one for each ethnic group. Although the homeland system was never fully implemented, ten homelands were created, of which four are nominally independent, and six merely "self-governing."<sup>36</sup> All ten homelands depend directly on the South African government for funding and other support.<sup>37</sup> Conflict surrounding the creation of the homelands, the allocation of land to them, and the forced removals of whole communities to homeland areas has always been the cause of some of the most serious political violence in South Africa.

Political violence is particularly of concern in the "independent" homelands of Bophuthatswana and Ciskei, and in the "self-governing territory" of KwaZulu. In Bophuthatswana, the government of President Lucas Mangope remains as repressive as that of South Africa before the reforms which began to be introduced in 1990.<sup>38</sup> Although Bophuthatswana has not been a center of serious non-state political violence, violence by police and security forces against activists opposed to the government is commonplace. In Ciskei, the regime of Brigadier Oupa Gqozo gained international notoreity in September 1992, when the security forces of the homeland opened fire on a peaceful march organized by the ANC, killing 28 and injuring more than two hundred. Political violence in the homeland generally has been increasing ever since late 1990, when Gqozo cracked down on the ANC and its allies after a brief period of liberalization.<sup>39</sup> KwaZulu is the site of some of the worst conflict in South Africa, and receives extensive attention elsewhere in this report.<sup>40</sup> The governments of Bophuthatswana, Ciskei and KwaZulu have joined conservative white groups in South Africa to form the "Concerned South Africans Group" (Cosag), to

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<sup>36</sup> The four "independent" homelands are: Transkei, Bophuthatswana, Venda and Ciskei ("the TBVC states"). The "self-governing territories" are: KwaZulu, Gazankulu, Lebowa, KwaNdebele, KaNgwane and QwaQwa. The TBVC states are treated by South Africa as fully independent countries, and they supposedly have complete control over their own affairs. The self-governing territories are excluded from legislating in certain areas, but still have substantial freedom to implement their own policies.

<sup>37</sup> Historically, almost no control has been exercised by the South African government to prevent the misuse of the money allocated to the homelands, and corruption has always been extreme. During 1992, the government appointed commissions which investigated the finances of KwaNdebele and Lebowa and confirmed spectacular levels of embezzlement. In February 1993, the former auditor general of South Africa criticized the government for its reluctance to act more forcefully to ensure that there is proper control over money given to the TBVC states.

<sup>38</sup> *Out of Sight: The Misery in Bophuthatswana*, News from Africa Watch Vol.3 No.12, September 16, 1991.

<sup>39</sup> *Ciskei Ten Years On: Human Rights and the Fiction of Independence*, News from Africa Watch, Vol.3, No.16, December 20, 1991.

<sup>40</sup> A report on KwaZulu is forthcoming from Africa Watch.

**oppose reincorporation of the "independent" homelands and to support a federal system for South Africa with strong local autonomy.**

**Transkei, while one of the least violent areas in South Africa, has received attention as the location of or alleged base for a number of politically-motivated attacks against whites, allegedly carried out by APLA, the armed wing of the PAC. In March 1993, following an investigation with which neither the PAC nor the Transkei government would cooperate, a report by the Goldstone Commission concluded that "APLA members received military training at various places in Transkei, [although] there would appear to be no permanent base in Transkei." The government immediately announced that more than one thousand troops would mount blocks on all roads into and out of the homeland, and patrol the border. This reaction is in notable contrast to the government's response to violence involving black people. The blockade, alleged by the ANC and PAC to be an attempt to topple Major-General Bantu Holomisa, the homeland's ruler, simply served to generate further conflict. Consumer boycotts protesting the blockade in towns bordering Transkei led to armed confrontations between business people, police and consumers.**

**At the Codesa negotiation in 1992 there was agreement in principle by all parties except Bophuthatswana to the reincorporation into South Africa of the "independent" homelands, Transkei, Bophuthatswana, Venda and Ciskei ("the TBVC states"). This principle was confirmed in bilateral negotiations between the government and the ANC in January 1993. Formal reincorporation would not take place until an interim government was in place after multi-racial elections, but the TBVC states would be bound by transitional arrangements. In early April 1993, however, soon after troops surrounded Transkei, a leaked government document revealed proposals for the immediate assimilation of the TBVC states.**

**While Africa Watch supports the idea that the "independent" homelands should be reincorporated before multi-racial elections, and in particular that all security forces should be brought under a unified command, unilateral steps of this type taken without consultation with all parties cannot at this stage be helpful, and are likely to contribute to conflict.**

**Unilateral measures have also been taken in respect of the "self-governing territories," but in this case with the apparent aim of strengthening the homeland governments. In August 1992, it was discovered that the government was intending to transfer to the control of the governments of Lebowa, QwaQwa and KwaZulu a total of 1.2 million additional hectares of land. Approximately half the land would be transferred to the control of KwaZulu. The details of the type of control that would be offered to the homelands, as well as the purpose of the transactions, remain obscure. However, it is clear that the proposal is extremely likely to lead to conflict in communities threatened with homeland administration. Moreover, transfer of land at this stage both strengthens undemocratic and corrupt homeland leaders and preempts crucial decisions over land allocation that will be amongst the most important of any new government in South Africa.**

**In its third interim report, of December 21, 1992, the Goldstone Commission concluded, in its discussion of violence in Natal, that "there should be a suspension of any further transfers of land ... to the KwaZulu government. To proceed at the present time would, in the opinion of the Commission, seriously aggravate the violence." However, on February 1, 1993, Deputy Minister of Regional and Land Affairs Johan Scheepers said that the government would not put a moratorium on the transfers.<sup>41</sup> Africa Watch is extremely concerned at this failure to heed warnings of further conflict.**

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<sup>41</sup> Quoted in ANC press release, SAPA, February 4, 1993.

#### **4. Hold joint forums with police and political groups to hear grievances and raise awareness of rights.**

**In an effort to develop conditions for peace at the grassroots level, the National Peace Accord of September 1991 provided for the establishment of a National Peace Committee to be complemented at the local level by regional dispute resolution committees (RDRCs) and local dispute resolution committees (LDRCs). The committees are composed of community representatives, including those from political organizations, churches, trade unions and business, the police and defense force, and relevant local and tribal authorities. An RDRC is supposed to advise the Goldstone Commission on the causes of violence and intimidation in a region, to settle disputes by negotiating with the parties, to monitor compliance with the Peace Accord and to inform the National Peace Committee of steps taken to prevent violence in an area. An LDRC's responsibility is to promote peace and stability by creating trust and reconciliation at the grassroots level, cooperating with the local judicial system, settling disputes by negotiating with the parties, reporting and making recommendations to the relevant RDRC and eliminating obstacles to peace. By May 1992, eleven RDRCs, covering all South Africa, and 23 LDRCs had been formed in violence-torn areas. By the end of the year, over 90 LDRCs were in existence.**

**Many problems hamper the creation of RDRCs and LDRCs. In the areas where they are most needed, they have had to battle the lack of trust between supporters of different political groups and between the community and the police. During 1991, in particular, efforts to create the committees were met with outbursts of violence coinciding with breakthroughs in peace initiatives. In many cases, persons actively engaged in the formation of the committees have been targets of intimidation and violence, and in some cases they have been assassinated (see Appendix, cases 16-19). The targeting of grassroots peace activists has discouraged others from participating in peace initiatives and increased the risk of being seen as effective. In Natal, Inkatha announced that it would no longer participate in peace initiatives owing to increased violence, and the formation of local dispute resolution committees under the Peace Accord has been frustrated. In March 1992, the Black Sash Repression Monitoring Group, an independent human rights monitoring group based in Natal, stated in its report on Natal that a Regional Dispute Resolution Committee (RDRC) had been formed for Natal but, months after the signing of the Peace Accord, only one Local Dispute Resolution Committee (LDRC), in Umlazi, was meeting regularly. Efforts to establish other LDRCs in the area are ongoing, but where they have been set up they have generally had little long-term success.**

**In an interview with a *Washington Post* correspondent, the Chairman of the National Peace Committee, John Hall, said, "Anarchy is rife, people are being killed every day and we are becoming inured to it." He also claimed the Peace Accord had been a dismal flop.<sup>42</sup> Throughout the country efforts to establish LDRCs have met with limited success only after considerable effort on the part of those involved and numerous deaths on all sides. They have suffered from a lack of resources and full-time personnel. Nevertheless, there have been some successes, and local dispute resolution mechanisms have received part of the credit for the reduction of violence in the Pretoria and Johannesburg area during the second half of 1992.**

**In a report released in August 1992 by U.N. Secretary-General Boutros Boutros-Ghali, following a**

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<sup>42</sup> Paul Taylor, "South Africa's Bitter Loss of Hope," *Washington Post*, September 4, 1992.

visit to South Africa by U.N. special representative Cyrus Vance, Mr. Boutros-Ghali said the Peace Secretariat had a "desperate need for efficient functioning offices or operation centers at the major 'flashpoints',"<sup>43</sup> staffed on a 24-hour basis and fully funded and equipped. The government subsequently announced that funding had been made available to open these operations centers.

One of the most important tasks facing the committees is the creation of public trust in the security forces. In May 1992, the National Peace Committee said that the "role of the police was clearly linked to the whole question of community stability and lack of trust in the security forces was seen as a major obstacle in the way of achieving peace."<sup>44</sup> The Committee agreed that the RDRCs and the LDRCs should be encouraged to form groups to monitor and report on police activities and police and community relations. It encouraged the police and political parties to hold community orientation seminars and urged members of political parties and the National Peace Committee to attend police training courses to provide constructive comment.

In March 1993, the government made approximately \$3 million available to the National Peace Accord trust for urgent reconstruction initiatives. Half of this money would be given immediately, and the remainder would be available only if other organizations provided an equal amount. While it is encouraging that the government is finally providing financial assistance to Peace Accord structures, the amount is paltry and much more will be necessary to have a demonstrable impact.<sup>45</sup>

**5. Invite genuinely independent domestic and international monitoring groups to help implement changes.**

The government has made real progress in implementing this recommendation. In 1992, South Africans witnessed more international involvement in their domestic affairs than was evident in the previous 40 years. Africa Watch welcomes the government's willingness to seek outside assistance in solving some of its most difficult problems. However, while the government has displayed a desire to be accepted into the international community and particularly to reap the benefits of foreign investment, it remains defensive about international criticism and has implemented international recommendations with reluctance. As recently as 1991, several months passed before the government would allow representatives of the United Nations High Commissioner for Refugees to assist in the resettlement of the large number of exiles then returning to South Africa.

Since unbanning the ANC and releasing Nelson Mandela in 1990, President de Klerk has made many visits abroad and has made a concerted effort to recreate the image of the South African government and attract foreign investment. As a result, when the Boipatong massacre in June 1992 attracted international attention, the government's past position of vigorous opposition to international interference became untenable. Pressure to respond to the ANC's demands and to be seen by the international

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<sup>43</sup> United Nations Security Council, Report of the Secretary-General on the Question of South Africa, S/24389, page 17.

<sup>44</sup> Press Release, May 28, 1992.

<sup>45</sup> For example, contrast this amount with the R.5,976.7 million (\$1.9 billion) out of a total education budget of R.17,844.8 million (\$5.7 billion) allocated by the government for education of South African whites in 1991/92; South African Institute of Race Relations, Race Relations Survey 1991/92, p. 193.

community as responsive to the violence undoubtedly was instrumental in causing the government to accept some form of international presence. The government agreed to permit Justice P.N. Bhagwati, the former chief justice of India, to assist the Goldstone Commission in its investigation into the massacre. Dr. Waddington, the director of Criminal Justice studies at the University of Reading in the United Kingdom, was appointed to act as an assessor of the police investigation, assisted by two police officers from Scotland Yard. Earlier in 1992, Judge Goldstone empaneled a group of domestic and international experts to examine the policing of public demonstrations in South Africa led by Philip Heymann from the Center for Criminal Justice at Harvard Law School (see Comments on Africa Watch Recommendations made in January 1991 to the South African Security Forces, Recommendation 2 above).

In May 1992, the South African government permitted observers from the U.N., the Commonwealth and the Organization of African Unity to attend the negotiations for democracy at Codesa.

In July 1992, the U.N. Security Council met to consider the violence in South Africa in a session addressed by Nelson Mandela, Foreign Minister Roelof "Pik" Botha and Chief Buthelezi. The Security Council sent a special envoy, Mr. Cyrus Vance, to South Africa on a goodwill mission supported by the government to assist in bringing the various groups back to the negotiating table. The Foreign Minister said the government had "no objection to ... international organizations which wish to acquaint themselves with the facts, who want to observe, facilitate, endeavor to get the negotiations on track again."<sup>46</sup> Following the Boipatong massacre, the ANC called for the introduction of an international force to monitor township violence. In August, ten U.N. monitors went to South Africa with the consent of the government to monitor the ANC-organized strikes.

Following the mission of Mr. Vance to South Africa in July and August 1992, Secretary-General Boutros-Ghali issued a report recommending a number of steps to end the violence and create the conditions for democracy negotiations. The recommendations included the strengthening of mechanisms provided for under the Peace Accord; empowering the Goldstone Commission to conduct a thorough investigation of the SADF, the SAP, the KZP, and non-governmental armed groups, including MK and private security firms; and the dispatch of 30 additional U.N. observers to South Africa. Further recommendations urged the government promptly to implement previous recommendations made by the Goldstone Commission. The U.N. Security Council adopted a resolution embodying the Secretary-General's recommendations. Judge Goldstone agreed that he should be granted the power to investigate fully the various security organizations. In October, additional personnel were finally made available by the government to the Commission to enable it to conduct its own investigations, but no comprehensive examination of all armed forces within South Africa, of the type suggested by the U.N. report, has yet been undertaken.

In November, the U.N. Secretary-General sent another special envoy on a two-week trip to South Africa to assess how the U.N. could assist in the peace process. There are currently about 50 U.N. peace monitors in South Africa who attend rallies and demonstrations as observers. Monitors from the Organization of African Unity, European Community and the Commonwealth are also present and work with the U.N. monitors. In August 1992, Ciskei refused entry to a U.N. monitor attempting to observe a protest march; while Bophuthatswana refused permission to monitors to observe a demonstration by clerics in November.

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<sup>46</sup> "U.N. should press ANC to resume talks, Botha says," Reuters, July 12, 1992.

In its third interim report, the Goldstone Commission stated that it believed 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."<sup>47</sup> The European Community provided to the Commission in late 1992 the services of six experts from different member states, to assist in its work and in violence monitoring.

The government's recent willingness to permit international observers is welcome. An international presence may help to renew democracy negotiations among the various political groups, whose attacks on each other grow increasingly vitriolic. The initiative taken by the Goldstone Commission to seek expert advice on the problems of policing public demonstrations is especially welcome.

**6. A. Establish administrative and judicial procedures that provide for the prompt and effective discipline or prosecution of those who have abused the new guidelines.**

**B. Take steps to speed up the judicial process that will allow it to deal more effectively with violence-related crime.**

**C. Ensure that courts are adequately equipped to try violence-related cases without delay.**

While the government has made progress in establishing new guidelines, as discussed above, it has not made progress in taking action against those accused of violating the guidelines. Although the 1991 Peace Accord provided for the establishment of special criminal courts, none has yet been created. No evidence exists that police have taken prompt action when allegations of abuse have been levelled against fellow officers.

The National Peace Accord included a provision under which the Department of Justice, in co-operation with local legal practitioners, would establish project committees to advise it on the administration of proposed Special Criminal Courts that would deal with unrest-related cases. The courts would dispense justice on an expedited basis and, if necessary, would be mobile. The Accord provided that the courts would be located where they were most needed and acknowledged that for the courts to be effective, special procedural and evidentiary rules would be required. The signatories agreed they would take steps to implement the Accord but, as yet, none have been taken.<sup>48</sup> In addition, the special justices of the peace envisaged by the Peace Accord who would investigate and mediate violence issues have not materialized.

Efforts made by the government to speed up the judicial process resulted in the enactment of the Criminal Law Second Amendment Act in June 1992 which included new expedited procedures for trying certain offenses. Many of the provisions of this Act, however, adversely affect the ability of an accused to

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<sup>47</sup> Third Interim Report of the Goldstone Commission, December 21, 1992.

<sup>48</sup> An exception is the February 1993 agreement of the KwaZulu-Natal RDRC to establish special courts and create a witness protection program.

**enjoy their rights to due process.**

**The Act introduces special measures to combat intimidation and speed up trials for special offenses. It criminalizes both direct and indirect forms of intimidation, and removes the obligation of the state to prove intent to intimidate if it shows that the person committed the act specified in the indictment. The Act also includes a presumption of intent to commit an offense of intimidation if a person is unlawfully in the possession of certain weapons, including guns and bombs, and if the state proves that the accused committed any act that constitutes direct or indirect intimidation. It introduces new measures to control organizations of a military nature and prohibits any person from taking part in the control, training or equipping of any organization whose purpose is to take over or to usurp some of the functions of the SAP or the SADF. It provides that certain offenses, including murder, violence and intimidation, may be certified by an Attorney-General as a "special offense." An accused charged with a "special offense" may not be granted bail and the trial of such an offense proceeds on an expedited basis. The state is required to commence the proceedings within 60 days or explain its inability to do so. It is also required to submit a summary of the substantial facts on which its case rests. Under the legislation, the accused is compelled to state whether he accepts this summary of facts and, if not, to state specifically why not. If he does not, the court may draw an unfavorable inference from his failure to do so if it believes that inference is justified. The accused must also state the nature of his defense.**

**The Act seriously undermines the rights of an accused person. The addition of indirect intimidation as a criminal offense, coupled with the presumptions included in the legislation, radically alter the burden of proof for the state and remove the presumption of innocence fundamental to a criminal justice system, recognized both in South Africa and in the Universal Declaration of Human Rights. The provisions concerning control of military or paramilitary organizations ignore the fact that the National Peace Accord recognized the right of persons to protect themselves and their property and to "establish voluntary associations or self protection units" to accomplish this. Many black townships have in fact organized self-defense units for the protection of the community in the face of repeated attacks by others and ineffectual protection by the police. In many townships, homeowners have been forced to flee their homes and police have done nothing to help them recover their property. The new legislation would allow the prosecution of those who participate in these units on the grounds that they are attempting to take over or usurp the functions of the police. Reports in 1992 suggested that some of these self-defense units were out of control and were intolerant of democratic opposition; the ANC announced that it was itself setting up a commission to investigate these allegations. If members of self-defense units are engaging in unlawful activities, adequate legislation already exists to charge them with criminal misconduct.**

**The creation of expedited procedures to try certain offenses is welcome only if fundamental rights of the accused are respected. Clearly the right of all persons charged with a criminal offense to be presumed innocent until proven guilty according to law is abrogated by the various presumptions included in this legislation. The legislative provisions compelling the accused specifically to admit or deny the summary of facts set forth in the State's indictment and enabling the court to draw an unfavorable inference from a failure to do so is a departure from the privilege against self-incrimination recognized under South African law and in many other countries. Although a legal aid system exists in South Africa, 85 per cent of all accused are not legally represented at trial.<sup>49</sup> Given the expedited nature of the procedure**

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<sup>49</sup> David Macquoid-Mason, "Legal Representation and the Courts," South African Human Rights and Labour Law Yearbook 1990.

**and the provisions compelling the accused to specifically admit or deny the prosecution's case, absence of counsel seriously undermines the ability of an accused to receive a fair trial. In addition, the ramifications of designating "special offenses" are so important to the accused's right to due process that the power to certify such offenses should rest with an independent judicial authority and not with an administrative division of government. Africa Watch recognizes that violence is endemic in South Africa and that few of those participating are convicted. However, a respect for human rights in the "new" South Africa cannot be developed by undermining those rights. As stated previously, increased efforts to improve police-community relations and more vigorous investigations by police could immediately increase the likelihood of obtaining convictions in violence-related crimes without infringing on the rights of the accused.**

**The government has also made attempts to reduce the overwhelming workload of the criminal courts, including the Decriminalization Act 1991. Among other things, this Act provides that a justice of the peace, a non-legally trained junior judge, may adjudicate a number of "decriminalized" offenses. In addition, the Internal Peace Institutions Act of 1992 includes provisions to enable justices of the peace to better assist in the promotion of peace at the local level and to assist LDRCs in their work. This Act provides for the appointment of a number of justices of the peace for a specific region whose exclusive function will be to prevent and combat violence and intimidation. In July 1992, the Justice Ministry distributed a package of information on qualifications required for the position of justice of the peace and explained their functions. The Justice Minister called on "all communities of South Africa to identify persons who are held in high esteem by the community and who meet the requirements of a justice of the peace, for appointment as justices of the peace in their district."<sup>50</sup>**

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<sup>50</sup> Press statement by Justice Minister Kobie Coetsee, July 3, 1992.

## **CONCLUSION**

**Although the government has repeatedly asserted it is doing everything possible to end the violence, it is clear that this is not true. Steps taken in 1992 by the government could all have been taken in 1991 when they were first proposed by the ANC. Instead, the government has waited for the Goldstone Commission to make similar recommendations so that opponents cannot allege government weakness in the face of ANC demands. According to the Human Rights Commission, the number of political deaths in 1992 rose by 35% on the previous year, but the government has continued to react only after serious incidents occur, rather than developing a comprehensive policy to address the many facets of violence. The recent announcement by the government of its intention to implement a major military call-up to deal with violence and to request parliament to vote on the reintroduction of implementation of death penalty sentences indicates the urgent necessity for a different perspective in South Africa. The old repressive methods should be firmly abandoned, respect for human rights should be cultivated and intense efforts need to be urgently made to establish public trust in the rule of law.**

**The security forces, too, have been reluctant to change to meet the post-apartheid era. Abuses of human rights by members of the security forces continue and neither the government nor the security forces themselves have made serious efforts to investigate and prosecute those responsible. Efforts to establish better relations between the police and the black population have been slow and are hampered by the lack of police success in investigating crimes and by continuing security force bias. Perhaps more than any other single factor, the key to restoring peace in South Africa lies in creating public trust in an impartial and effective police force.**

## **APPENDIX**

**The level of political violence in South Africa has remained critical since Africa Watch's January 1991 report "The Killings in South Africa," and is the most serious obstacle to the successful management of a transition to majority rule. Those killed as a result of political violence range from ordinary township residents to some of the most senior leaders of the different political parties, and include human rights activists, church leaders, and individuals involved in peace negotiations. The vast majority of the victims of violence has been black, though whites have recently become the targets of a limited number of highly publicized attacks. Where whites have been killed, the response of the government and media has been consistently more forceful, and efforts to find the culprits more thorough.**

**In this Appendix, Africa Watch describes typical incidents of serious political violence in South Africa since January 1991; details the complicity of the security forces, including the South African Police (SAP), the KwaZulu Police (KZP) and the South African Defense Force (SADF), in this violence; and comments on the response of the South African government. The information detailed in this Appendix is collected from a variety of reliable sources, including reports prepared by independent human rights monitoring groups in South Africa, conversations with human rights monitors based in South Africa and press reports. Events described include only the most serious occurring in South Africa since January 1991 and receiving widespread coverage: this appendix does not claim to be a comprehensive record of all violent incidents.**

### **KILLINGS**

**The political violence has centered in the black townships located in the Pretoria, Witwatersrand and Vereeniging (PWV) area around Johannesburg and in the province of Natal. During 1991 and the first half of 1992, the PWV area accounted for the greatest number of deaths, but by the end of 1992 Natal had once again become the most violent area.**

**In July 1992, the Human Rights Commission reported that 49 massacres resulting in the death of 1,250 people had occurred during the two year period beginning in July 1990. They defined a massacre as an incident in which at least ten people were killed. Five further massacres, killing 80 people, occurred before the end of the year. Some of these incidents are described below. Though some of the violence seems completely senseless, and many have suffered who have not been active politically, some patterns have emerged.**

#### **1. Funerals, Political Rallies**

**Instances of township residents being killed while attending funeral vigils or funerals have occurred repeatedly as have attacks after speeches at political funerals or rallies. Rallies are often held in townships known to favor an opposing political group. Frequently, thousands attend the rallies, and participants are bused in from other townships. In many cases, when violence has broken out after these rallies or funerals, police have been unable or unwilling to prevent the bloodshed.**

**In addition, widespread violence has often become more intense immediately before breakthroughs in political initiatives, such as occurred in May 1991 before the ANC's deadline to force the government to take specific action to curb the violence; preceding the signing of the National Peace**

**Accord in September 1991; preceding the "whites only" referendum of March 17, 1992; and before the resumption of negotiations in March and April 1993. Moreover, where local peace initiatives have been successful, unexplained attacks have sometimes occurred that seem designed to stir up new tensions. In the Port Shepstone area in southern Natal, where a local peace accord seemed to have succeeded in calming serious violence, and refugees were returning to the area, unidentified gunmen massacred ten people in an attack in April 1993, leading to a further outbreak of violence.**

**Serious incidents of violence of this type occurring since January 1991 include the following:**

- 1. On January 13, 1991, gunmen attacked a crowd attending an all-night vigil for an ANC supporter in Sebokeng, a black township in the Vaal area south of Johannesburg, with hand grenades and AK-47 rifles, killing 45 mourners and wounding 50. Residents said they had warned the police in advance of the vigil that they might be attacked but the police had done nothing to prevent it. Police later arrested ten suspects and took possession of seven AK-47 rifles, ammunition, three petrol bombs and two vehicles.<sup>1</sup> In June 1992, a judge dismissed charges against three suspects arrested in connection with this attack because the police failed to produce enough evidence to establish their case.<sup>2</sup>**
- 2. On March 27, 1991, at 4:00am, six men armed with automatic weapons and knives attacked a funeral vigil in Alexandra, a black township north of Johannesburg, killing 15 of those present and wounding 16, including a 7-month old baby. Once again residents had warned the police they might be attacked. The police had checked the vigil twice, the last time at 1:00am, but they did not return again until more than an hour after the attack. The police station was within earshot of the gunfire; during the attack the police were informed.<sup>3</sup>**
- 3. On September 8, 1991, three unknown gunmen opened fire on Inkatha supporters marching to a peace meeting at the local stadium in Thokoza, killing at least 23 people and injuring 26. In the following days, clashes between ANC supporters and Inkatha supporters left at least 14 dead and 100 injured. In November 1992, the Goldstone Commission reported that the attack had been organized by a police informer, Mncugi Ceba, who posed as the head of an ANC self-defence unit. The Commission also found that Ceba had led a coup by the Phola Park self-defence unit which violently ousted the Phola Park resident's Committee and had falsely claimed that the Committee had fraudulently misused development money. The report noted that the "acknowledged use of informers in positions such as that held by Ceba are not conducive to improving the already tense relations between the security forces and the communities in question."<sup>4</sup>**
- 4. On October 7, 1991, gunmen ambushed mourners leaving the funeral of ANC member Sam Ntuli, killing 20 ANC supporters and injuring at least 24 others. One victim alleged that he was shot by a**

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<sup>1</sup> Human Rights Commission (HRC), Area Repression Report (ARR), January 1991.

<sup>2</sup> Bill Keller, "South African Massacre: Fingers Point at the Police," *The New York Times*, June 20, 1992.

<sup>3</sup> HRC, ARR, March 1991.

<sup>4</sup> HRC, Human Rights Update, November 1992.

policeman, whom he was able to identify in a press photograph; the policeman was later confirmed by the police to be a member of the Criminal Investigation Services Unit of the SAP. Witnesses said that police in armored police vehicles shot at residents shortly after the attackers first opened fire. Others observed that although an armored police truck was parked about 300 feet from the scene, police did not apprehend the attackers, and that police took no action when a victim was shot about 300 feet from a police station.<sup>5</sup>

5. On April 11, 1992, shortly after the funeral of an Inkatha supporter in KwaNkengewa, near Esikhawini in northern Natal, residents of the township were attacked. Eleven people died.<sup>6</sup>
6. On August 2, 1992, eleven people were killed in the township of Esikhawini in northern Natal, a few hours after approximately one thousand residents of the pro-ANC J1 section marched to the local police station to protest KZP behavior. Several groups of attackers dressed in similar clothing, including balaclavas, carried out raids in different parts of the section. The victims included five women and a two year old child. Chief Buthelezi issued a statement claiming that those killed were Inkatha supporters; however, this was denied by reports from the township.<sup>7</sup>

## **2. Train Attacks**

For working black South Africans in the Johannesburg area, perhaps the most terrifying violence has taken place on the commuter trains. Attackers shoot randomly at commuters waiting on platforms, generally during rush hours, and then often board the trains and shoot, hack and stab commuters. Some have died as they jumped from moving trains in an attempt to flee their attackers. The dead encompass all ethnic groups and political affiliations, but witnesses have often claimed that the attackers are Inkatha supporters or hostel dwellers. The frequency of the attacks varies; in January 1992, 14 attacks resulted in 15 deaths and 72 injuries, the month before, 2 attacks resulted in 3 deaths and 2 injuries. During the period from July 1990 to January 1992, the Independent Board of Inquiry into Informal Repression (IBIR), an independent human rights monitoring group based in Johannesburg, recorded 48 attacks resulting in 112 deaths and 557 injuries.

Train attacks rose sharply in 1992. In December 1992, the Human Rights Commission reported a total for the year of 302 attacks resulting in 278 deaths and 563 injuries.<sup>8</sup> Among the most serious train attacks since January 1991 are the following:

7. On October 23, 1991, attackers carrying firearms and sharp weapons attacked commuters on the 7:00am train between Nancefield and Orlando stations, leaving nine dead and 36 injured.<sup>9</sup>

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<sup>5</sup> HRC, ARR, October 1991.

<sup>6</sup> HRC, ARR, April 1992.

<sup>7</sup> HRC, ARR, August 1992; Carmel Rickard "Attack at Esikhawini was an organized massacre, says ANC," *Weekly Mail* August 7 to 13, 1992.

<sup>8</sup> HRC, Human Rights Review, 1992.

<sup>9</sup> IBIR Report, "Blood on the Tracks: A Special Report by the Independent Board of Inquiry," January 1992.

8. **On March 9, 1992 between 7:00 and 7:30am, seven were killed and at least five injured in an attack on a train at Lindiwe Station. Eyewitnesses reported that four attackers wearing long overcoats got out of a white vehicle and waited on the platform for the train to arrive. Two attackers entered the second carriage and two entered the third carriage, and fired on passengers. The attackers then exited the train and got back into their vehicle. Witnesses claimed they pointed out the departing vehicle to the arriving police who made no effort to stop the vehicle.<sup>10</sup>**
9. **At 6:45pm on June 15, 1992, three men, armed with AK-47 rifles, opened fire on commuters getting off a train at the Daveyton station, killing seven and injuring 16.<sup>11</sup>**
10. **Five people were killed and about seven were injured when gunmen attacked commuters on a train travelling through the East Rand on November 3, 1992. The attackers struck three times, the first time killing three people and causing widespread panic as commuters fled in terror. Shortly after the first attack, the same attackers struck again, killing two men at Lindela Station. The attacks lasted for about ninety minutes. Police explained that they were unable to arrest the attackers because the doors between the carriages were locked. An ANC spokesperson claimed that witnesses had repeatedly called the Katshehong police for help but their calls went unanswered. One witness claimed that three policemen arrived at the scene of the first attack but took no statements. A second group of policemen who arrived about three hours after the attack took statements and removed the corpses.<sup>12</sup>**

### **3. Hostel-related Violence**

Numerous violent incidents in the PWV area are centered around the hostels in the black townships. The hostels, mainly owned and operated by the government, house migrant workers who have travelled to the urban areas seeking employment, often leaving their families at home in the rural areas. Hostel dwellers have generally been more conservative than their neighboring township residents, and in recent years, many hostels have become Inkatha strongholds. Violence between township residents and hostel dwellers became increasingly bloody in 1992 although it decreased during the later part of the year. The violence approached full-scale warfare in March 1992 in Alexandra, a township in the northern suburbs of Johannesburg. During that month alone, 52 people were killed and 389 were injured in Alexandra, and many hundreds of residents fled their homes. Other major incidents involving attacks by hostel dwellers on township residents include the following:

11. **On April 14, 1991, violence broke out between ANC supporters from Klipspruit township and Inkatha supporters from Nancefield Hostel, resulting in at least eleven deaths and 73 injuries. Witnesses claimed that police caused some of the deaths and injuries when they fired without warning on the township residents. Police said the groups were armed with spears, axes and sticks and that they**

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<sup>10</sup> HRC, ARR, March 1992.

<sup>11</sup> HRC, ARR, June 1991.

<sup>12</sup> HRC, ARR, November 1992.

used teargas, rubber bullets, birdshot and shotguns to disperse the crowd.<sup>13</sup>

12. **On September 8, 1991, members of Inkatha, including those from local hostels and hostels in Katlehong, went on a rampage in Mofolo in the East Rand, killing 14, after township residents refused them permission to gather in the township for the launching of a new Inkatha branch. The Inkatha supporters then moved to the Dobsonville stadium, throwing stones at homes on their way. Eyewitnesses claimed that, following the rally, participants started breaking windows and looting homes. They also said the SAP who arrived did nothing to prevent the destruction, instead, providing an escort for the Inkatha supporters. Most of those killed were old-age pensioners; one was a blind man who was stabbed six times. One of the most brutal incidents was the massacre of the Motsoeneng family. According to Mr. Motsoeneng, he passed armed, chanting and ululating Inkatha supporters on his way home, where he found his mother, sister, wife and daughter murdered. He alleged that three police vehicles were parked in front of his house and that police did not take a statement from him despite being given two spent cartridges.<sup>14</sup>**
13. **On December 8, 1991, Inkatha supporters, returning from a Soweto rally to the Dobsonville Hostel, marched through the township armed with axes, spears, knives and guns and attacked residents resulting in nine deaths and ten injuries. Police who were present apparently made no effort to disarm the group. Later the same evening, an attack on the home of the Seleke family claimed nine lives and, though the attack occurred at 8:30pm near the police station, the police did not arrive at the scene until 6:00am the following morning. Five minutes after the attack on the Seleke home, the same attackers killed one person and injured three others who were waiting in a minibus. Some time later, three men and two women were killed and eight other women were injured by shots fired at passing vehicles from the Dobsonville Hostel.<sup>15</sup>**
14. **On the night of June 17, 1992, a group of more than 200 men, armed with knives, pangas and guns, attacked residents of the Boipatong township and the Slovo Park squatter camp, a pro-ANC area, causing 45 deaths and at least 30 injuries. Many of the victims were women and children, including a pregnant woman and two babies. Hundreds of homes were attacked and looted. Reports indicate that Boipatong residents, fearing an attack, patrolled the streets beginning at 8:00pm. At about 9:00pm, police arrived and told patrolling youths to get off the streets, allegedly teargassing and firing birdshot at those who refused. Police deny using teargas. At about 9:30pm, an attendant at a garage just outside the township called the nearby police station when he saw a group of attackers moving towards the township. Police arrived within 15 minutes but ignored the man's pleas for assistance, ordering the attendant and a garage security guard to go to a factory out of sight of the township. They did not do so and claimed to have seen the armed group leave the township at about 10:30pm. At 10:00pm, workers from nearby factories leaving the night shift claimed they saw groups of police in casspirs dropping off men near the Slovo Park camp. Ten minutes later the attack started. It began in the squatter camp, then moved on to the township after**

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<sup>13</sup> HRC, ARR, April 1991.

<sup>14</sup> IBHR Report, September 1991. HRC, ARR, September 1991.

<sup>15</sup> HRC, ARR, December 1991.

about 15 minutes continuing until about 1:00am. Police later arrested and charged 78 residents of the nearby KwaMadala Hostel, whose residents were known to be Inkatha supporters, in connection with the massacre. In April 1993, charges were withdrawn against 27 of these by the prosecution, with no reasons given. The Goldstone Commission is conducting an investigation.<sup>16</sup>

#### **4. Hit-Squad Activities**

A number of political assassinations usually described as "hit-squad" killings have occurred in 1991 and 1992. These cases have several distinguishing features: the targets appear to be carefully selected grassroots-level political leaders, the killers often leave no evidence behind them and, in many cases, witnesses reported that gunmen used military-style tactics, often wearing balaclavas and communicating with each other by means of prearranged hand signals. The intention behind these assassinations appears to be to generate further distrust among opposing political groups, thereby frustrating peace efforts. In some cases, a killing of one group leader is quickly followed by a killing of a rival group leader. The many assassinations since January 1991 include the following:

15. In February 1991, Bheki Mlangeni died instantly when a bomb exploded in the headphones of a walkman he received in the mail. Mlangeni, a lawyer who chaired the local ANC branch and had also worked with the IBIIR, had participated in the 1990 Harms Commission inquiry into allegations that the police force and the South African military operated death squads. The package had been mailed in May 1990 to a former member of the South African military, Dirk Coetzee, who had provided evidence to the Commission of security force involvement in hit-squad activity and was the target of a foiled assassination attempt by senior military officials in London in July 1992. The package reached Mlangeni as he was the designated return addressee. The tape included in the package was labelled "Evidence of hit squads." It exploded when Mlangeni hit the play button.<sup>17</sup> During the inquest into Mlangeni's death in June 1992, a member of the SAP testified that micro-detonators placed in the earphones of the cassette recorder were available only from the military or could have been obtained only by a person with close contacts in the military. An investigating officer in the case, Captain Kritzinger, also admitted that he had deliberately misled the independent forensic expert hired by the Mlangeni family to investigate the killing but denied that police had not made a serious attempt to investigate Mlangeni's death.

The court also heard evidence from a law student working at the same firm as Mlangeni. Within hours, the law student was able to locate a witness whom Captain Kritzinger had claimed was impossible to trace during the 15-month police investigation. Other testimony at the inquest revealed that Captain Kritzinger had delayed for months before giving handwriting samples to the police handwriting expert. Even then, the samples had to be repeated. The testimony also revealed that the handwriting on the tape in the lethal package had never been made available for comparison purposes to the police expert. Both Captain Kritzinger and the retired Major-General Ronnie van der Westhuizen, who was the senior investigating officer in the case, were earlier implicated in the Trust Feeds cover-up (see case 23). Mr. Justice B. O'Donovan found that there was insufficient evidence to determine who was responsible for Mlangeni's death but noted that if the

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<sup>16</sup> HRC, ARR, June 1992; IBIIR Report, June 1992; Reuters, April 13, 1993.

<sup>17</sup> HRC, ARR, February 1991.

investigating team acted with greater promptness a different finding may have been possible.

16. **On September 29, 1991, gunmen with AK-47 rifles killed Sam Ntuli, a prominent member of the ANC, secretary general of the Civic Association of the Southern Transvaal (CAST), and chairperson of the Thokoza Civic Association, after they forced him off the road. The day before his death Ntuli had met with Inkatha officials to discuss the implementation of the Peace Accord. The following day he was due to meet several financial institutions to discuss bond repayments by the community. Ntuli had escaped an earlier attack on his home in February 1991.<sup>18</sup>**
17. **On February 7, 1992, gunmen killed Winnington Sabelo, a KwaZulu MP and member of the Inkatha Central Committee, in his store in Umlazi in Natal. He was killed two days after he and a local ANC official made a joint appeal for calm following eight area deaths the previous week.<sup>19</sup> An alleged ANC member has been charged with Sabelo's murder.**
18. **On February 8, 1992, S'kumbuzo Ngwenya, chairperson of the Imbali ANC branch and member of the ANC Regional Executive Committee, who was active in local peace initiatives was gunned down as he left a restaurant following a meeting with unrest monitors in Pietermaritzburg.<sup>20</sup> On June 9, police arrested two Inkatha officials, Phikelela Ndlovu and Abdul Awetha, mayor and deputy mayor of Imbali, a township outside Pietermaritzburg where the murder took place, and the son of an Imbali town councillor who was a "special constable" in the KZP for Ngwenya's murder.<sup>21</sup> A weapon was confiscated from Awetha one month later which was ballistically linked to the murder. However, the weapon had been tampered with or "accidentally damaged" while in Awetha's care: in February 1993, all three accused were acquitted on the grounds that the ballistic evidence was not conclusive.**
19. **On October 27, 1992, Reggie Hadebe, the ANC's second in command in Natal, was killed after leaving a peace meeting with Inkatha officials in Pietermaritzburg. His death followed an upsurge of violence which included the massacre by unidentified gunmen of at least 20 people attending a traditional ceremony in Folweni in southern Natal on October 25. On October 28, an assassination attempt was made in Pietermaritzburg on David Ntombela, KwaZulu MP and prominent Inkatha leader. In March 1993, the Goldstone Commission announced that it would investigate the conduct of the KZP in relation to the investigation into the assassination. Since the SAP had been conducting the investigation, this raised speculation that the KZP had been deliberately obstructive.<sup>22</sup>**

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<sup>18</sup> HRC, ARR, September 1991.

<sup>19</sup> HRC, ARR, February 1992.

<sup>20</sup> HRC, ARR, February 1992.

<sup>21</sup> David B. Ottaway, "South African Police Arrest Three for the Murder of an ANC Activist," *Washington Post*, June 10, 1992.

<sup>22</sup> Farouk Chotha, "Goldstone to probe Hadebe slaying," *The Weekly Mail*, March 19 to 25, 1993.

**In a June 8, 1992 press conference, Inkatha reported that since the signing of the Peace Accord on September 14, 1991, more than 120 attacks on Inkatha office bearers had occurred, resulting in more than 20 deaths.<sup>23</sup>**

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<sup>23</sup> **Press statement issued by the office of the president of the Inkatha Freedom Party, South African Press Association PR Wire Service (SAPA), June 8, 1992.**

## **THE ROLE OF THE SECURITY FORCES**

### **Complicity by the South African Police**

#### **1. Police Bias and Violence.**

During the decades of apartheid, police were used as the primary means of enforcing apartheid laws, and police/community relations were founded on fear. Distrust of the police is still widespread among members of the black community. While those suffering most from the violence are township residents, members of the SAP have increasingly come under attack. In 1992, 226 policemen were killed, according to the SAP.<sup>24</sup> The Goldstone Commission is conducting an enquiry into attacks on the police.

Charges of police bias are made by the opposing political camps. In pro-ANC areas, township residents have frequently claimed that police have refused their requests for assistance during Inkatha attacks. In some cases, it has been claimed that police actively assisted in those attacks, or that goods looted from homes were carried away from the scene in police vehicles. Inkatha members, on the other hand, have sometimes claimed that members of the SAP are biased in favor of ANC supporters.

Human rights monitors have documented many incidents in which members of the SAP have been responsible for violent incidents and have suggested that members of the security forces deliberately fuel distrust among communities in an effort to divide the black population, charges which the government and the police have consistently denied. In April 1992, a Supreme Court Judge, Mr. Justice J.M. Didcott, echoed these charges. At a public function, he said that certain crimes and planned murders had been committed by policemen in defiance of the law. He went on to say, "we are paying the price, however, for legislation which puts the police force above the law, or at the very least beyond the law's effective reach, equipping it with vast powers, shielding its activities from scrutiny and indemnifying its members against accountability for unlawful behavior."<sup>25</sup> The judge indicated he was speaking on the basis of information available from legal records. A study by the Centre for Social and Development Studies of the University of Natal and the government-funded Human Sciences Research Council found in a study of violence in Natal during the first half of 1991 that the SAP served to intensify the conflict in 27 percent of events at which they were present.<sup>26</sup>

Incidents documented by human rights monitors of complicity by the police in South Africa's political violence since January 1991 include the following:

20. On May 12, 1991, about 1,000 residents of the Kagiso Hostel armed with spears and clubs rampaged through the Swannieville squatter camp from about 5:00 - 7:00am, killing at least 27 people,

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<sup>24</sup> "226 Policemen Killed in 1992," SAPA, January 4, 1993.

<sup>25</sup> Christopher Munnion, "S Africa judge links police to murders," *Daily Telegraph*, May 5, 1992. HRC, HRU, April 1992. The judge was referring to laws that indemnify police for wrongdoing committed in "unrest areas" (many of the most troubled black townships) and which make it difficult to obtain information concerning police activities.

<sup>26</sup> "Monitoring Conflict in Natal," *SA Indicator* Vol.9, No.1.

injuring at least 30 and destroying at least 112 shacks. Residents claimed that police vehicles removed looted goods from the area. The squatter camp had been declared an "unrest area" only 24 hours before. In "unrest areas" there is a greater police presence and police have sweeping powers of search and seizure and may restrict entry and exit to the area. Police said they were not aware of the attack until 6:30am because local riot squads were changing shifts between 5:15 and 5:30am. Police escorted the attackers back to their hostel in Kagiso following the attack but waited almost 24 hours before making arrests. They then searched the Kagiso Hostel and arrested six men, three of whom were subsequently released for lack of evidence.<sup>27</sup> In February 1993, seven of those charged in connection with the massacre were acquitted for lack of evidence. The judge found that if the police had called their video unit when they first encountered the large group of hostel dwellers making its way back to the hostel, a strong case could have been made against hundreds of people. He also found that he could not exclude the possibility that police had been involved in the massacre.<sup>28</sup>

21. On June 23, 1991, confrontations between ANC and Inkatha supporters in Inanda and Ntuzuma in Natal caused 16 people to be injured. The Inkatha supporters were armed with spears, battleaxes and sharpened sticks. Some residents claimed their injuries resulted from police gunfire, after the residents threw stones at the Inkatha group. One man's arm was broken while members of the SAP stood nearby and did nothing. Reports indicate there was a heavy presence of SAP, SADF personnel and KwaZulu police in the area during the attack.<sup>29</sup>
22. On December 3 and 4, 1991, at least 18 people died when Inkatha supporters indiscriminately attacked residents of Bruntville, the township for Mooi River in Natal. The attack took place in three stages. On December 3, about 300 armed Inkatha hostel dwellers attempted to march on the local school, but residents forced them back. At about 6:00pm, the hostel dwellers launched an attack on Bruntville residents, killing four people. A police van and a SADF vehicle, seen driving past the attackers prior to the attack fired teargas at residents, rather than trying to prevent the attack. After the attack, members of the SAP and the SADF searched homes in the area for weapons but did not search the hostel. In an attack the following day, at about 4:30am, at least 15 people were killed in 90 minutes. Residents claimed that members of the security forces did nothing to stop the attack.

The Goldstone Commission conducted an investigation of this attack and released its report in February 1992. The report sharply criticized the conduct of the police for forcefully raiding homes late at night without search warrants, for not being in uniform during raids and for sometimes using unmarked vehicles with false license plates. The Commission said that such actions, "apart from being unlawful, cannot serve any proper or useful purpose and ... can only fuel rumors and theories about a 'third force' being responsible for much of the violence." It said that evidence

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<sup>27</sup> HRC, ARR, May 1991. Briefing document compiled by Lawyers for Human Rights, the IBHR and the Centre for Applied Legal Studies on the events at Swannieville squatter camp on the West Rand on May 12, 1991.

<sup>28</sup> HRC Monthly Repression Report, February 1993; John Carlin, "SA Police 'negligent' over killings," *The Independent* February 19, 1993.

<sup>29</sup> HRC, ARR, June 1991.

before the Commission indicating bias by the police in favor of Inkatha was a matter for serious concern. It recommended that urgent and effective steps be taken to educate the police force in understanding the necessity for impartial policing. The report did not find the police responsible for the violence, though it recommended that disciplinary action be considered against those members of the SAP involved in the incident.<sup>30</sup>

The Commission also criticized the manner in which police had collected evidence of possession of dangerous weapons. It found that 172 Inkatha supporters were arrested and

**"their weapons ... were confiscated en masse and the opportunity of identifying the man with his weapon(s) was lost... In the interests of the improvement of the existing negative perception of the system of justice and particularly the perception that the police (and in the minds of the people of Bruntville therefore the government) are partial to [Inkathal, attention will have to be given to this matter by the police."<sup>31</sup>**

In June and July 1992, the Minister for Law and Order announced the withdrawal of charges against 175 hostel dwellers implicated in connection with the attack because of lack of evidence. Following the Boipatong massacre in June 1992 (see case 14 above), this criticism of the Goldstone Commission was clearly ignored, and suspects were again permitted to surrender their weapons en masse.

23. In April 1992, a white police captain, Brian Mitchell, was convicted and sentenced to death for his part in the massacre of eleven in the town of Trust Feeds in Natal in 1988. Four black constables were sentenced to 15 years each for having carried out the killings on his orders. The court found that the planning of the massacre had involved at least the head of the SAP Pietermaritzburg Riot Unit, the head of Inkatha in Pietermaritzburg, KwaZulu MP David Ntombela, and the Trust Feeds station commander, then-Lieutenant Brian Mitchell. Judge Andrew Wilson said the plans resulted in the November 1988 furtive deployment of special constables to assist a local Inkatha leader, Jerome Gabela, to take control of the area. Mitchell told the court that members of the Riot Unit had previously used unlawful means to assist Inkatha in taking over other areas. The judge found that the entire force of special policemen was created as part of a counter-revolutionary strategy intended to act against the United Democratic Front and the ANC.

Judge Wilson accused the police of a high-level cover-up. He said that as the trial progressed, it became clear that the court could not accept the evidence of senior policemen, and that official records produced from the file were suspicious or wholly unreliable. He also pointed out that the two police officers responsible for conducting the initial investigation into the massacre had either acted incompetently or were not interested in conducting a proper investigation. He called for a public inquiry after noting that the unprecedented instruction to one of those officers before his testimony at the trial that he obtain his own counsel, indicated a reason to believe that the officer must have known he was concealing information from the court. Following the decision, the

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<sup>30</sup> HRC, ARR, December 1991.

<sup>31</sup> Report of The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation from the Committee established to inquire into the events at Mooi River on 3 and 4 December, 1991, released February 10, 1992.

Commissioner of Police said he had instructed the head of the Internal Stability Unit to launch a thorough investigation into the matter. In passing sentence, Judge Wilson said the inquiry should be a public and not an internal affair.<sup>32</sup> (See also cases 33 and 34 below.)

24. In May 1992, police officers and members of 32 Battalion carried out a series of raids on the Phola Park squatter camp, a pro-ANC area. On May 14, 500 policemen, members of 32 Battalion and local army units raided the squatter camp, arresting ten and injuring a one month-old baby. Many residents alleged police brutality, including a pregnant woman who was teargassed in her home, a woman in labor who pleaded with security forces for three hours before she was permitted to leave the area, and about 300 men who were rounded up into a fortress-like enclosure and teargassed. On May 18, police again raided the camp in what they claimed was an investigation into the killing of five policemen in the area since February. Police confirmed that they used rubber bullets during the raid. Around midnight on May 20, police again raided the camp, damaging two shacks. No injuries were reported. A member of the newly formed interim crisis committee said that police arrived in several casspirs equipped with loudspeakers with which they announced, "comrades, come out and shoot the police." He claimed that when residents emerged police began shooting. Police claimed they were fired on several times. On May 26, security forces again raided the squatter camp.

On May 30, following further raids on the settlement, police strung barbed wire around the area and conducted a house-to-house search. They arrested several illegal immigrants and nine suspects accused of possessing stolen goods. Residents claim that police stole money and property. At one point during the search, police ordered reporters out of the area. After erecting the wire barrier, police sprayed it with "sneeze powder" to prevent people tearing it down. They also sprayed some people directly with this powder. According to Peace Action, an independent monitoring group based in the area, an independent forensic scientist said that the judicious use of the powder to control riots should not cause a problem but that it could cause ocular and respiratory problems if sprayed directly on people and could kill children. Some infants were sprayed directly with the powder. The following day ANC youths tore down sections of the barbed wire and stoned police who trained their weapons on them.<sup>33</sup> Peace Action, which interviewed residents after the attacks, claimed that the combination of the constant raids and occupation by the security forces of Phola Park, the wire and sneeze powder, and the searches and harassment of camp residents resulted in a level of repression greater than that during the various states of emergency in South Africa.<sup>34</sup>

25. On June 20, 1992, about two hours after President de Klerk left Boipatong, where he had gone to express his sympathy to members of the bereaved families following the massacre of 42 people two nights earlier (see case 14 above), police casspirs slowly began to leave. As they left, youths threw a branch in the way of the last casspir, and when policemen got out of the casspir to remove the branch, the youths hurled insults and shouted slogans at them. Other police officers went to

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<sup>32</sup> HRC, HRU, April 1992.

<sup>33</sup> HRC, ARR, May 1992.

<sup>34</sup> Peace Action May 1992 Report.

the scene and formed a line facing the crowd with their guns at the ready. For some minutes there was a tense standoff. Finally, the crowd turned back to the township and began to leave. The casspirs followed them into the township. One man was shot and when the crowd tried to retrieve his body the police ordered them to move back to enable a police van to pick up the body. The crowd shouted at the police officers. It appears that one police officer shot into the air to try to scare the crowd. This shot was rapidly followed by a 20-second volley of gunfire from the police directed at the crowd. When the shooting stopped, at least two dead and 18 injured lay on the ground. Journalists at the scene reported that no one had ordered the policemen to fire. Police maintained that no casualties had resulted from this incident and that television pictures showing casualties lying on the ground had been fabricated by members of the crowd faking death or injury.<sup>35</sup> The Goldstone Commission is investigating the incident.

## **2. Police Abuse of Detainees.**

Domestic and international human rights organizations alike have reported incidents of abuse of detainees in police custody. According to the Human Rights Commission, 123 people died in police custody in 1992.<sup>36</sup> Police have tortured and in some cases killed detainees but few police officers have been dismissed or prosecuted in connection with these deaths.

26. In January 1991, *The Weekly Mail*, an independent South African newspaper, reported allegations of torture against the Soweto Murder and Robbery Unit. It reported that Lawyers for Human Rights, an independent human rights organization based in Pretoria, had filed several applications with the courts on behalf of individuals seeking an order to prevent members of the unit from torturing or threatening members of the public. It had also filed several claims for damages against the unit for injuries inflicted. In one case in December 1990, a detainee was found dead while in police custody. The police claimed he had drowned in the swimming pool at the police station while trying to escape. The post mortem report recorded severe bruising on the victim's body and a fracture of his neck.<sup>37</sup>
27. In February 1991, *The Weekly Mail* reported that it had in its possession 30 affidavits alleging assault, theft and murder by policemen committed in the course of police duty. Twenty-four of the complainants alleged assault, including shock treatment. None of the incidents referred to in the affidavits led to charges being brought against police officers. Police claimed that 13 of the cases were still under investigation and that in eight of the cases there were no records of charges having been brought, although in five instances this was contradicted by the affidavits which provided details, including, in three cases, a charge number. Police said two cases had been referred to the Attorney-General's office, but that office said only one docket had been received. Many of the affidavits related to incidents that had occurred at the Brixton Murder and Robbery Unit and some others related to incidents at the Soweto Murder and Robbery Unit. Police said that they thoroughly investigated all claims of criminal conduct, even if a police officer was implicated.

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<sup>35</sup> Foreign Broadcast Information Service, Umtata Capital Radio, July 23, 1992.

<sup>36</sup> HRC, HRU, December 1992.

<sup>37</sup> John Perlman, "Soweto police must stop torturing us," *The Weekly Mail*, January 18 to 24, 1991.

**Lawyers for Human Rights disputed this assertion, saying that even when a pattern of abuse appeared to exist, such as that at the Brixton unit, police were not suspended pending investigation.<sup>38</sup> On December 12, 1992, police announced that they would thoroughly investigate allegations that police at the Brixton Murder and Robbery Unit tortured people in their custody.**

**According to Lawyers for Human Rights, complaints of police abuse of Soweto residents continue on a near daily basis. Residents continue to be assaulted on the township streets and tortured while in police custody. Certain families are targeted for repeated attacks on their homes which are generally conducted at night and result in doors being broken and other damage to their homes. Lawyers for Human Rights assists victims in bringing charges against these police officers in the face of stiff police resistance. Victims are often turned away from the police station when they attempt to bring charges and a representative of Lawyers for Human Rights must frequently accompany victims on a return visit to ensure that police will complete the charge sheet. Investigations of police abuse rarely occur and victims are often threatened by police in an effort to have the charges dropped. Few criminal cases have resulted in convictions of police officers for abusive police behavior. Cases are usually dismissed for "lack of evidence." Lawyers for Human Rights has, however, been successful in obtaining civil awards of damages for some victims of police abuse.<sup>39</sup> In its September 1992 monthly report, Peace Action also reported widespread abuse by police of youths in the area. Peace Action reported that many youths had been arrested by police and detained, without charge, for up to three months and some of the youths had been assaulted while in police custody.<sup>40</sup>**

**28. On May 19, 1991, a young ANC member named Tumi Padi was shot dead by police. He had escaped from police custody in November 1990. In February 1991, police had taken his father into custody for questioning concerning his son's whereabouts. They placed a bag over his head and fixed an electric prong to his genitals. When his father claimed not to know where Tumi was, they threatened him and said that when they caught Tumi they would kill him. Mr. Padi said that the room in which his son was found dead was covered in blood and the walls looked as if they had been attacked with pick-axes. Almost all the bullet marks were on the wall behind the bed. The police claimed they shot Tumi because he threatened to throw a hand grenade.<sup>41</sup>**

**29. In July 1991, after a year of denying abuses at the Welverdiend Police Unit headquarters in the eastern Transvaal, the SAP announced the establishment of a special team to investigate numerous allegations of torture there. Public interest arose when two detainees at the Unit, Eugene Mbulawa, 15, and Nixon Phiri, 16, died in police custody and police later blamed the deaths on epileptic seizures. At least in Phiri's case, there was, according to his family, no history of epilepsy; a private autopsy found numerous abrasions and bruises on his body.<sup>42</sup> An eyewitness to Mbulawa's interrogation said that "a white policeman and two black policemen forced Mbulawa to**

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<sup>38</sup> John Perlman, "Police files: Their own unsolved cases," *The Weekly Mail*, February 15 to 21, 1991.

<sup>39</sup> Interview with Africa Watch, September 8, 1992.

<sup>40</sup> Peace Action, September 1992 Report.

<sup>41</sup> John Carlin, "An angry son's life and death in the new South Africa," *The Independent*, June 1, 1991.

<sup>42</sup> Scott Kraft, "S.Africa Police to Probe 'Torture Camp'," *Los Angeles Times*, July 6, 1991.

stand with his palms on a desktop and his feet on the floor. Then they repeatedly kicked Mbulawa's feet out from under him. Soon Mbulawa was unconscious. Ten hours later, the police took him back to a holding cell."<sup>43</sup>

By November 1991, the police inquiry had resulted in the suspension of 28 officers, seven of whom were on trial for murder.<sup>44</sup> The police-appointed investigator, General Ronnie van der Westhuizen, told the press that it was difficult to take steps against police officers without assistance and evidence from the public, who had been reluctant to provide evidence to the police because of a history of retribution, including threats, harassment and even killings.<sup>45</sup>

In September 1991, the IBIR reported that eight people who had brought charges or could provide evidence against members of the Welverdiend Unit had been arrested, five of whom were facing charges ranging from possession of a firearm and ammunition to robbery. One of the IBIR's researchers and the local ANC chairperson had been arrested and charged with intimidation and assault of a police officer. The IBIR said that credible evidence suggested that certain SAP members were opposed to the investigation and had opened cases against potential witnesses in an effort to prevent them from testifying. Some of those arrested and charged were later acquitted.

Following investigations by the IBIR, five of the eleven suspended police officers from the Welverdiend Unit were charged with attempted murder. All of the suspended policemen were back at work one month after their suspension. Another member of the unit, Ephraim Fente Rampete, who was found responsible by an inquest for the death of a schoolboy shot by Rampete while hiding under a bed was acquitted on all charges relating to the death, following a trial in December 1992.<sup>46</sup> The Attorney-General has yet to decide whether to prosecute Rampete in connection with at least four other assault cases.

30. On September 30, 1991, Israel Mobote, a local youth leader, was arrested by 12 policemen, five of whom wore Inkatha t-shirts under their camouflage uniforms. They brought him to a farm where they accused him of killing Sam Ntuli, a prominent ANC activist (see case 16 above), of being involved in the massacre of Inkatha supporters in Thokoza on September 8 (see case 3 above) and of being a member of the armed wing of the ANC, Umkhonto we Sizwe (MK). They later took him to a mine, tied his hands behind his back and his feet together, rubbed brake fluid in his anus and placed a rubber tire over his face, making it extremely difficult to breathe. They repeated their questions and when he did not confess to the killings, they kicked and punched him for about three hours. Following ANC intervention, he was released the next day. Police claim that Mobote was taken to a district surgeon and examined while still in detention. Mobote said he was afraid to tell the surgeon what had happened because the report on his medical examination would be given to those detaining him. On the day of his release, Mobote was examined by a private doctor and the

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<sup>43</sup> Ibid.

<sup>44</sup> IBIR Report, November 1991.

<sup>45</sup> Scott Kraft, "S.Africa's Feared Law Enforcers," *Los Angeles Times*, November 13, 1991.

<sup>46</sup> IBIR Report, December 1992.

test results were consistent with Mobote's allegations of assault.<sup>47</sup>

31. On July 26, 1992, Dr. Jonathan Gluckman, an eminent South African pathologist, told the press that of the 200 post-mortems he had performed on prisoners who died in detention, he believed police were to blame for 90 percent of the deaths. He said:

**"The lower rungs of the police are totally out of control. Tragic case after tragic case goes on and on. I am overwhelmed by the horror of it... They use anything to brutalize people -- sticks, stones, rifle butts."<sup>48</sup>**

The government denied his claims, yet promised an urgent investigation. Gluckman, who had performed one post-mortem a week for the previous several months, said he made his claims public because the government had ignored his earlier pleas for action. Gluckman received death threats following his statements to the press and in December, he stated that technical experts had found sophisticated electronic surveillance equipment hidden in his office. (See also case 35 below).

### **3. Investigations of Police Misconduct.**

After years of enforcing repressive apartheid legislation, many in the police are finding it difficult to adapt to change and are unwilling to be held accountable for abuses. However, some efforts at establishing accountability have been made, including the following investigations into various allegations of police complicity in the violence:

32. In July and August 1991, ten members of the police unrest unit at Welverdiend in the eastern Transvaal were suspended from duty pending the outcome of an internal police investigation into alleged misconduct concerning 17 violent deaths (see case 29 above). At least ten more officers were subsequently charged. Most of these officers face at least 19 charges of criminal misconduct. In August 1992, eight of those charged were acquitted of one charge of assault, but they still face many other charges. Three were later charged with assault in another case. None has been suspended from duty.
33. In April 1992, police Captain Brian Mitchell and four special constables were found guilty of eleven counts of murder and two counts of attempted murder in connection with an attack on a funeral vigil in Trust Feeds, in Natal province in December 1988 (see also case 23 above). Captain Mitchell was sentenced to death and the four special constables were each effectively sentenced to 15 years imprisonment. Judge Wilson, who presided called for a full public and independent inquiry into irregularities when "it became clear that the evidence of senior policemen could not be accepted, and that official records produced from the file were suspicious or wholly unreliable."<sup>49</sup>

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<sup>47</sup> HRC, ARR, October 1991. IBIIR Report, October 1991.

<sup>48</sup> Judith Matloff, "Claims of prison deaths fuel police controversy," Reuters, July 27, 1992.

<sup>49</sup> HRC, HRU, April 1992.

**It appears that the police unit that conducted the second investigation, leading to the successful prosecution of Captain Mitchell, was too effective for its own good. It was disbanded after the investigation and cases it was investigating were assigned to other units. The SAP officer responsible for the later investigation, Captain (now Major) Dutton, now works with the Goldstone Commission.**

- 34. In May 1992, Minister of Law and Order, Hernus Kriel, appointed a former Regional Court Magistrate, Willem Krugel, to oversee the internal police inquiry into the alleged police cover-up of the initial investigation into the Trust Feeds massacre (see cases 23 and 33 above), effectively ignoring both Judge Wilson's recommendation that the inquiry be independent and public, and the criteria specified by the General Council of the Bar of South Africa. Krugel had previously held sensitive positions for the government, including as liquidator of 18 political and civil rights organizations that were banned in 1977, and as chair of the committee that ordered former policeman Dirk Coetzee to resign from the police force (Coetzee later made sensational allegations against the police about alleged hit-squads and more recently was the target of an assassination attempt in Great Britain by South African security force officers).**
- 35. In July 1992, in response to the Gluckman allegations (see case 31 above) which echoed the claims of numerous reports by domestic and international experts criticizing the conduct of the SAP, the government announced that a full investigation would be undertaken, and that six former magistrates would be appointed to check jails for possible abuses and report directly to the police commissioner and the Law and Order Minister. In October 1992, the ICRC was given permission to visit police stations. On December 10, Minister for Law and Order, Hernus Kriel, told a news conference that a police report demonstrated that most of Dr. Gluckman's allegations were false but he did not release the report. He announced that 20 retired police generals, twelve retired magistrates and representatives of the International Committee of the Red Cross would make surprise visits to prisons. Lawyers for Human Rights described the move as "inadequate and ridiculous" because these minimal resources could not possibly hope to examine the 280 police stations country-wide.<sup>50</sup> By year-end, the Human Rights Commission had recorded 123 deaths in police custody during 1992. Dr. Gluckman indicated that he would respond to Minister Kriel's announcement. In January, the government announced that about \$3.8 million would be made available to upgrade prisons as a result of recommendations made by the International Committee of the Red Cross. In February 1993 a spokesperson for the Minister of Law and Order denied that an in depth report into deaths in police custody had ever been promised.<sup>51</sup>**
- 36. On July 26, 1992, three policemen were charged with conspiracy to commit murder after the Goldstone Commission asked the Attorney-General to investigate allegations of attempted murder of activists Jerry Maine, the chairman of the Ipelegeng Civic Association, Boyce Mpempe, an ANC Youth League leader and Bajula Kanjee, in Schweizer-Reneke in the Transvaal.<sup>52</sup>**

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<sup>50</sup> HRC, HRU, November 1992.

<sup>51</sup> John Perlman, "Kriel rules out probe into police custody deaths," Johannesburg *Saturday Star* February 20, 1993.

<sup>52</sup> HRC, HRU, July 1992.

- 37. In August 1992, the Goldstone Commission opened a large-scale investigation into the massacre of 42 people in Boipatong two months earlier. There had been many allegations of police misconduct in connection with the massacre (see cases 14 and 25 above). The Commission heard evidence from police officers and witnesses to the massacre. At this writing, the Commission had not completed its investigation.**
- 38. On August 7, the Law and Order Ministry announced that a judicial commission would be appointed "as soon as possible" to investigate allegations of a cover-up of police involvement in the Trust Feeds massacre.<sup>53</sup> However, no progress has been made to date in this investigation, despite the serious nature of the allegations.**

**In addition to the above investigations, some police officers have been convicted of serious crimes, although it is still difficult for courts to obtain credible evidence, and when convicted, sentences are often ridiculously light or policemen are released early. Examples include the following:**

- 39. In February 1992, two police officers were convicted of kidnapping and murder charges and sentenced from two to eight years. The court found that the victim was killed to prevent him from pressing assault charges against the two officers.**
- 40. In May 1992, Kheta Shange, a KwaZulu policeman and member of Inkatha, was released after serving only nine months of a 27 year sentence for murder and attempted murder. At his trial he had been described by the judge as "a beast in policeman's clothing." The government claimed that he was a political prisoner.<sup>54</sup>**
- 41. In November 1992, five officers were given varying sentences after they were found guilty of assaulting and "necklacing" (placing a rubber tire over the neck of the victim, pouring petrol on the victim and setting him alight) a student. Two of the officers were sentenced to two years imprisonment of which six months was suspended for five years, another officer was sentenced to 18 months imprisonment, half of which was suspended for five years and two others, who were convicted as accessories after the fact, were fined \$160 with the option of 50 days imprisonment.**
- 42. In December 1992, a police officer was sentenced to 18 years imprisonment for the murder of two ANC prisoners. The judge in the case strongly criticized the convicted man's commanding officer for attempting to protect him from prosecution.**

**Although the police have initiated internal investigations, they have been notoriously slow, and relatively few have led to charges of police misconduct. Human rights activists and the South African press have repeatedly alleged that police cover up illegal behavior or misconduct by fellow officers. In a trial of a police officer in connection with the murder of two men, Mr. Justice Booysen, who tried the case, remarked that he had never seen so many witnesses lie in his 34 years as a judge. He said that police witnesses seemed to have given evidence which they thought would please their superiors and civilian witnesses seemed prepared to lie in order to incriminate the accused police officer. The police officer was acquitted.**

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<sup>53</sup> "South Africa to probe alleged police cover-up," Reuters, August 7, 1992.

<sup>54</sup> "Release of SA Policeman Sparks Outcry," *The Independent*, May 7, 1992.

The courts have provided numerous further evidence of such behavior, including the Trust Feeds case (see cases 23, 33 and 34 above) and the inquest into the assassination of Bheki Mlangeni (see case 15 above).

#### **4. Police Investigation of Train Attacks.**

Train attacks have resulted in approximately 300 deaths in the past two years, with 204 deaths occurring in the first seven months of 1992 alone. (See Train Attacks above for a description of attacks on commuter trains.) The SAP's response to the attacks is another reflection of the unwillingness of the police to halt violence against black South Africans. In its report on train attacks covering the period July 1990 to January 1992, the IBIR noted that no convictions had resulted from 48 attacks.<sup>55</sup> What was believed to be the first conviction was secured only in February 1993, of an Inkatha supporter found responsible and sentenced to death for an attack in November 1991.<sup>56</sup> In 1992, the number of attacks and deaths resulting from train attacks increased. The SAP's indecision, irresponsible delegation of duty, and reliance on ineffective methods of investigation have contributed greatly to these increases.

In September 1990, after train attacks had already claimed many lives, the police met with the South African Rail Commuters Corporation (SARCC), the state-owned provider of rail commuter services, and Spoornet, the commuter railway operator, and announced there would be an increased security presence on the trains. Later that week, the police offered a reward of more than \$16,000 for information leading to the arrest or conviction of those responsible for train attacks. In June 1991, however, the police stated that Spoornet was primarily responsible for commuter safety. The next month, a police spokesman announced that police were manning stations around the clock. In August 1991, the police announced plans for massive search operations on the trains to prevent attacks. Commuters welcomed this step, although the searches did not take place during rush hours when attacks usually took place. In late October, three days after another search, the police announced that searches would not become regular policy and that patrolling peak-hour trains was too dangerous. Commuters and opposition political groups unanimously condemned the decision, and at the end of October police agreed to patrol the trains twenty-four hours a day, though not every train would be patrolled.

Police claimed that attackers smuggled weapons onto the trains by hiding them in umbrellas. However, in January 1992, two priests accused the police of standing by while a group of about 20 men boarded a black commuter train in a Soweto station armed with pangas and axes. The police response was that it was not a crime simply to possess a weapon. Human rights activists disputed this claim, and, at the end of January, Police Commissioner General Johan van der Merwe announced that from January 30, no one would be permitted to board trains carrying an instrument which could cause death or bodily harm other than tools used for everyday work. Several searches have taken place, including one on June 14, 1992, in which the SAP raided a train carrying Inkatha members to a rally at the Jabulani stadium in Soweto. In that search, police seized six AK-47 rifles, 27 other firearms and over 2,000 axes, assegais, pangas, and knobkerries. The SAP acted firmly when the Inkatha supporters initially refused to hand over their weapons. The following day, however, to the dismay of human rights monitors, the SAP returned all sticks and shields to the Inkatha offices in Johannesburg, claiming that they were not dangerous weapons and

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<sup>55</sup> IBIR, "Blood on the Tracks: A Special Report on Train Attacks by the Independent Board of Inquiry."

<sup>56</sup> Susan Smuts, "Inkatha train killer to hang," *The Star* Johannesburg, February 13, 1993.

that the SAP had no right to confiscate them.<sup>57</sup>

Spoornet, the railway authority, has also shown a lack of willingness to end train violence. It acknowledged the seriousness of the violence but looked to the police to prevent further attacks. Then, after the police attempted to shift responsibility to Spoornet, it hired private security firms using inadequately trained guards to provide security. In November 1991, after police had agreed to guard the trains, Spoornet provided police in Soweto stations with 50 hand-held metal detectors, which proved ineffective.

An announcement by the Goldstone Commission in early 1992, that it was going to investigate train attacks, caused police and railway authorities to give greater attention to the problem of violence on commuter trains. Steps taken in 1992 to address the problem included a March 19 blanket ban on the carrying of dangerous weapons at stations and on trains. In April, after a seven-day sit-in by community leaders at Spoornet's offices, police pledged to redeploy personnel urgently at affected areas on the rail system, and the SARCC agreed to stop armed commuters from boarding trains. In early May continuing violence caused commuters to boycott trains for six days.

On May 14, representatives of community organizations, the Minister of Law and Order and the railway authority signed an agreement stipulating that armed commuters would be prevented from entering stations; all stations would be fenced off; added security, including placing TV cameras in all coaches, would be installed; and three working groups would be formed to address the problems of train attacks. Shortly after the agreement was signed, however, hundreds of armed hostel dwellers boarded trains on their way to the June negotiations for democracy at Codesa II.

In June, Spoornet announced plans to escalate its five-year plan to upgrade security at train stations; completion was expected in three years. The Minister of Transport announced that 1,234 police in the Vaal area were being incorporated into special units to provide commuters with security. Police announced the establishment of a regional center in Johannesburg to co-ordinate the policing of trains and stations in the area. This center would have 24-hour contact with the stations at which most incidents had occurred.

Notwithstanding the increased attention, police have made few arrests in connection with these attacks. In October 1991, when commuters subdued an attacker and handed him over to the authorities, the police later released him on bail without charge. He claimed to be a senior member of Inkatha. By June 1992, he had not yet been charged in connection with the attack. Other victims of train attacks claim the police have not investigated incidents adequately. For example, a female commuter who was stabbed in the hand and back during an attack saw two attackers very clearly and was asked to attend an identification parade several weeks after the attack. She identified two of the attackers and was not contacted again by the police. Later she heard the police had dropped the case.<sup>58</sup>

In its interim report on train attacks, the Goldstone Commission did not assign responsibility for

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<sup>57</sup> IBHR Report, June 1992.

<sup>58</sup> John Carlin, "Shades of violence that stalk the township railway tracks," *The Independent*, London, November 11, 1991.

the attacks but noted that victims have repeatedly identified hostel dwellers as attackers. It was able to identify secondary causes, including poor entrance control at stations, overcrowded trains and the carrying of weapons in public. Poor entrance control at entry and exit points from train stations made impossible the prevention of attackers boarding trains and facilitated their escape. The Commission supported a suggestion that a separate guard corp be established to monitor commuter trains and called for the implementation of recommendations made in previous reports concerning security at migrant workers hostels.<sup>59</sup>

In August, the SARCC announced plans to form a security force early in 1993 to protect commuters. Other recommendations made by the Goldstone Commission also apparently will be implemented, including increasing the number of Spoornet guards, providing SAP members to control access to stations, installing communications systems between train drivers and security centers and passengers, relocating entrance and exit control points and reexamining the layout of stations. In November, however, following a series of attacks at the Kwesine Station, the Goldstone Commission convened again to hear evidence concerning train attacks. During the hearing it became evident that a plan which had been presented to the Commission providing for at least 24 security personnel to be on duty during morning and evening rush hours had been altered without consulting the Commission and during the attacks at the Kwesine Station, only two policemen were on duty. Counsel for the ANC suggested that the Commission should make recommendations on steps to be taken to secure stations and should monitor implementation of these steps and report regularly to the public. The Commission will meet to discuss the merits of this suggestion.

In December 1992, SARCC finally unveiled two prototype train coaches, featuring an array of security features including a video surveillance system, which would go into operation in 1993. It was stated that all 40 train sets operating on the Soweto lines would eventually be converted, although this would take place gradually.<sup>60</sup>

## **5. Covert Activities by the SAP**

There have been persistent allegations over the last two years that, despite the unbanning of the liberation movements in February 1990, the security branch of the SAP is continuing to make use of secret units to carry out covert operations aimed at fomenting violence and at undermining the ANC. During the late 1970s and 1980s, one such unit was led by Jac Buchner, later promoted to General and made Commissioner of the KwaZulu police. The unit interrogated captured ANC guerillas, recruited some of them to be double agents, and used these agents, known as "askaris," to discover intelligence information on ANC military activities. President de Klerk has claimed that funding for such operations has ceased, but the indications are that illegal covert operations are still mounted by the SAP as well as by the SADF (see *Complicity by the Defense Forces*, below).

In July 1991, after revelations in *The Weekly Mail* quoting a secret police memorandum, the government admitted that payments had been made by the security branch of the SAP to Inkatha, to fund

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<sup>59</sup> South African Press Association, July 28, 1992.

<sup>60</sup> Robyn Leary, "Security Features in Soweto Trains Described," Johannesburg *Engineering News* December 4 to 10, 1992.

rallies in November 1989 and March 1990. The press reports provided detailed information of the funding, identifying which rallies were funded, which individuals were involved, and which accounts were used. In conceding that it had provided funding to Inkatha, the government claimed that the rallies advanced its strategy of combatting international sanctions. President de Klerk claimed all covert funding to Inkatha had been terminated in March 1990. In November 1991, however, following new disclosures by *The Weekly Mail*, the government admitted that the police had funded an Inkatha Youth Brigade rally in January 1991. Inkatha refunded more than \$63,000 to the government at the end of July 1991 although the pro-Inkatha trade union, United Workers Union of SA (UWUSA), was unable to account for the \$500,000 it had received.

In January 1992, researchers at the IBIR took an affidavit from a Daniel Kolisang, who claimed that a group attached to the Transvaal Provincial Administration, the regional government, had attempted to recruit him to carry out covert operations, including gathering information and bombing ANC, SACP and MK targets in the PWV area. The operatives named by Kolisang in his affidavit were all members of the SAP. The IBIR gave the affidavit to *The Weekly Mail*, which established that the house to which Kolisang was taken for recruitment was a police "safe house" used as a base for covert operations. In May, the police applied to the Supreme Court for an interdict to stop publication of details of the bases by *The Weekly Mail* and *Vrye Weekblad*, but reached an out-of-court settlement, allowing publication of more general claims.<sup>61</sup>

When the matter became public, Minister of Law and Order Hernus Kriel said that an investigation into these allegations should be referred to the Goldstone Commission. The Commissioner of Police admitted to the Commission that a nationwide network of covert bases had been set up by the police in 1988 and that the house referred to by Kolisang in his affidavit was one of eleven such bases in the country; however, he claimed that the bases were used only for criminal investigations. In October 1992, the Goldstone Commission released a report which found that the allegations made by Kolisang were untrue, but that the manner in which covert operations were conducted should be investigated by a non-police impartial agency and that guidelines should be laid down.

In March 1992, a deserter from the British armed forces who had worked for the far-right Afrikaner Resistance Movement (AWB), claimed that he knew of security police involvement in a parcel bomb killing of a white ANC sympathiser in October 1990.<sup>62</sup> In June, an ex-security policeman fled to the U.K. and stated that the security system continued to allow local police to murder political dissidents. Lieutenant-General John Horak had been in the security police for 32 years, and resigned in 1990 with much praise from the police hierarchy. He had been chairman of the Strategic Communications Committee of the State Security Council, itself chaired by the State President. He had been forced to leave South Africa following death threats after he confirmed that he had been involved in smear campaigns against opposition figures.<sup>63</sup>

On June 24, 1992 the Goldstone Commission raided a mine hostel in the eastern Transvaal, following allegations that a secret police unit at the hostel had been involved in the Boipatong massacre (see case 14 above). The Commission found more than 40 police at the hostel, including over 30 ex-members of Koevoet, a notorious anti-insurgency unit used by the SAP in Namibia whose members were

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<sup>61</sup> David Beresford, "SA police go to court to stem 'dirty tricks' claims," *The Guardian* May 15, 1992.

<sup>62</sup> John Carlin, "SA security police implicated in parcel bomb killing," *The Independent* March 3, 1992.

<sup>63</sup> Richard Dowden, "Defector tells of system of murder," *The Independent* June 26, 1992.

supposedly absorbed into the Namibian security forces at independence.<sup>64</sup> The police confirmed that the men had been members of Koevoet, but stated that they were stationed at the hostel to combat stock theft. On July 14, President de Klerk announced that Koevoet would be disbanded.

Although allegations of security force involvement in illegal covert activities are of their nature extremely difficult to prove, it seems clear that such operations are still being mounted by the police as well as by military intelligence (see *Complicity by the Defense Forces*, below). Africa Watch views these allegations with the greatest concern.

### **Complicity by the KwaZulu Police**

Human rights organizations, political and church leaders and others have repeatedly reported that lack of confidence in the police, particularly in those parts of the KwaZulu homeland policed by the KZP, has prevented meaningful progress in peace efforts in Natal. Chief Buthelezi, the president of Inkatha, is also the chief minister of KwaZulu and the minister of police for the KZP. Residents repeatedly report instances of bias by the KZP in favor of Inkatha, of KZP assistance to Inkatha supporters in their attacks on supporters of the ANC, of KZP members attacking non-Inkatha supporters and a consistent failure by members of the KZP to investigate complaints made by ANC supporters. A representative sample of the incidents reported since January 1991 includes the following:

43. On July 21, 1991, the *City Press*, a weekly South African newspaper with a largely black readership, published an interview with a member of the largest township gang in the Durban area. The gang member claimed that the South African army, Inkatha and the KZP had provided the gang with arms, training and direction to combat the spread of the ANC in the area. Following the report, the SAP and KZP opened a joint investigation into the activities of the gang, the amaSinyora. In November 1991, the Black Sash Repression Monitoring Group reported that members of the gang continued to evade prosecution.<sup>65</sup>
44. On November 9, 1991, the KZP arrested three ANC supporters after an ANC meeting in KwaMashu. The police took the three to the police station where they verbally abused them, threatened them with a gun and told them that the police intended to shoot everyone in L-Section of KwaMashu. It was reported that the police quoted extracts from a speech Chief Buthelezi gave shortly before the incident in which he accused "comrades" (ANC supporters) of being dogs. The three were later released without charge after police confiscated minutes and the attendance register of the meeting.<sup>66</sup>
45. On February 16, 1992, eleven residents of the Uganda squatter camp, a pro-ANC area, were injured when members of the KZP and residents from Unit 17 (an Inkatha area) surrounded the camp and opened fire while residents were still asleep. The Unit 17 residents withdrew when members of the

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<sup>64</sup> David Beresford, "ANC links police team to killings," *The Guardian* June 26, 1992.

<sup>65</sup> Black Sash Repression Monitoring Group, November 1-15, 1991.

<sup>66</sup> HRC, ARR, November 1991.

**SAP and the SADF tried to stop them from attacking. Reports by the Human Rights Commission, however, indicate that the South African security forces did not attempt to interfere with the KZP. On February 23, the KZP again attacked residents of the Uganda squatter camp although there were no injuries.<sup>67</sup> On March 13, 18 people, including 15 women and three children under the age of five, were killed and 22 were injured in another attack on the Uganda settlement. Residents reported that the attack began at 5:00am when between 100 and 200 members of the KZP led about 300 Inkatha supporters from Unit 17 into the area and fired at homes. A second attack was launched at 9:30am when two KZP vehicles escorted a group of Inkatha men into the camp. Residents claimed the SAP did nothing to prevent the attack. The Uganda camp falls under SAP jurisdiction.<sup>68</sup>**

- 46. On February 16, 1992, at least twelve people were killed, 22 were injured and 17 homes were damaged when 13 bus-loads of Inkatha supporters attacked three predominantly ANC-supporting hostels in Esikhaweni in northern Natal at 10:30am. Residents reported that members of the KZP, the SADF and the SAP arrived at about 2:00pm and attacked the hostels after the hostel residents had fought off the Inkatha attackers. While the security forces were attacking the hostels, members of Inkatha were looting and damaging homes of ANC supporters in the area. Shortly after this, members of the security forces again opened fire on the hostel dwellers and assaulted them as they fled the hostel. The ANC supporters but not the Inkatha supporters were disarmed by the security forces.<sup>69</sup>**

**Pro-ANC KwaZulu residents have made many reports of KZP abuse and slow reaction when they have requested KZP assistance. Although appeals are still made to the KZP for action, in some areas local residents have given up attempting to gain police attention. For example, in November 1991, the Black Sash, an independent human rights organization, reported that in the Umbumbulu-Folweni area south of Durban, residents no longer report incidents of unrest to the local KZP members because of repeated allegations of KZP members and men in camouflage being involved in the attacks.**

**A joint *Legal Resources Centre - Human Rights Commission* report on the KZP was released in November 1991, and updated in June 1992, which documented, on the basis solely of information known to the two bodies without further research:**

- o 155 cases of KZP members carrying out unlawful shootings, assaults, threats, arson or intimidation against people seen as non-Inkatha. 102 people died as a result of these incidents.**
- o The death of 117 people in 60 documented cases of KZP collusion with vigilantes against people seen as non-Inkatha.**
- o 40 instances of KZP interruption of non-Inkatha meetings, marches or funerals.**

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<sup>67</sup> HRC, ARR, February 1992.

<sup>68</sup> Centre For Socio-Legal Studies, South African Conflict Monitor, March 1992.

<sup>69</sup> Ibid.

- o **15 Supreme Court orders since 1987 restraining the KZP from assaulting or harassing residents in KwaZulu areas.**
- o **51 instances in which members of the KZP refused to accept complaints at a KZP station, to respond to calls for help or to take steps to investigate a complaint.**
- o **23 cases of KZP confrontation with the SAP or the SADF.**

**According to the report, members of the KZP involved in unlawful shootings or assaults generally were not arrested or charged. Any effort to prosecute members of the KZP was made by the SAP, not by the KZP. The report found an entrenched pro-Inkatha bias and a consistent failure by the KZP to enforce laws restricting the carrying of dangerous weapons before those laws were repealed in 1990 and 1991. It concluded that the KZP was a "barrier to achieving a lasting peace." There was no official response to the report from the KwaZulu government.**

**A study of violent incidents between January and June 1991, carried out by the Natal University Centre for Social and Development Studies and the government-funded Human Sciences Research Council, reported that the KZP played an aggravating and negative role in 55 percent of the events at which they were present.<sup>70</sup> In July 1991, the then-head of the KZP, Jac Buchner, publicly admitted that the KZP were biased in favor of Inkatha "to a certain extent." The following day he was contradicted by Chief Buthelezi who denied that the KZP was biased in any way.<sup>71</sup> Residents, however, continue to report instances of bias to human rights monitors.**

**In a March 1992 report on the violence in Natal, the Black Sash Repression Monitoring Group stated:**

**"In most areas where [the KZP] operate, the community has no confidence that their role is one of professional policing or protectors and upholders of justice. The KwaZulu police have a notorious reputation in all of the areas in which they operate for their overt criminal activities and blatant bias in favor of Inkatha... However, repeated campaigns to focus upon the KZP as a primary aggravating factor of the Natal violence, and to call for their incorporation into one command structure have fallen on deaf ears."<sup>72</sup>**

**The report found certain common features in the violence in the Durban area in 1992;**

- o **Key individuals, including local chiefs, local councilors, KwaZulu MPs and local warlords, who are well-known instigators of the violence, consistently evade arrest or prosecution.**
- o **In many cases they receive special protection from the KZP.**

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<sup>70</sup> "Monitoring Conflict in Natal," *SA Indicator* Vol.9, No.1, Natal University, Durban.

<sup>71</sup> Black Sash Repression Monitoring Group, July 1-15, 1991.

<sup>72</sup> The Black Sash Repression Monitoring Group Final Report, March 1992.

- o The KZP continues to be a consistent perpetrator of violence in the area.**
- o In areas along the coast, the SAP has improved as far as providing immediate assistance to residents in KwaZulu areas, but it does not investigate cases of abuse.**

**Although the report noted that some KZP members were being prosecuted for murder, this takes place only in the minority of cases. Meanwhile, violence in the region has reached epidemic proportions and nothing short of a thorough independent investigation into all KZP activities can foster public confidence and trust in the KZP. In its second interim report released in April 1992, the Goldstone Commission noted the "widely held view by a large number of people in KwaZulu and neighboring areas that the [KZP] are a private army of [Inkatha]," and that allegations of wrongdoing by senior members of the KZP were under investigation by the Commission.<sup>73</sup>**

**The Goldstone Commission is investigating the violence in Natal, including the role played by the KZP in the violence. In its submission to the Commission, the Legal Resources Centre discussed the aggravating role played by the KZP. It said:**

**"The evidence supports the view that the conflict would never have reached current proportions had the security forces, and in particular the KZP who are charged with policing KwaZulu had acted energetically and impartially from the outset... The failure of the KZP to act and to be seen to be acting impartially has led to a lack of faith and trust on the part of the ordinary citizens in the State's institutions which are supposed to uphold law and order. Furthermore the relatively small number of successful criminal investigations and prosecutions emanating out of KwaZulu encourages many to believe that it is better to take the law into their own hands and to turn to acts of retribution rather than to rely on the police for protection and justice. It would be true to say that large sectors of township populations do not refer even the smallest complaints to the KZP because of the perceived bias of the KZP and because of the perception of gross inefficiency and indifference that the force displays to their problems... It seems that the general attitude of large sectors of township populations displayed to the KZP is one of fear."<sup>74</sup>**

**In its response to the Legal Resources Centre submissions, counsel for the KwaZulu government and the KZP claimed the allegations were unfounded and, pointing to the lack of cooperation with the KZP by witnesses alleging abuse by KZP members, asserted that these allegations were merely propaganda by the ANC to discredit the KZP.**

**In March 1993, the Goldstone Commission announced that it would conduct an investigation into the activities of the KZP.**

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<sup>73</sup> **Second Interim Report of The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation, April 29, 1992.**

<sup>74</sup> **Submissions and Recommendations Concerning the Investigation of Unrest Related Offences, the Administration of Justice and Other Aspects relating to the Violence in Natal - 1 December, 1992, of the Legal Resources Centre (Durban).**

## **Complicity by the Defense Forces**

**For years, the government denied complicity by the defence forces in the political violence, in the face of repeated allegations linking the SADF to abuses of ANC supporters and preferential treatment for Inkatha supporters, some of which have been substantiated in court or by judicial enquiries.**

**A 40-day investigation conducted by Judge Eddie Stafford into allegations of SADF misconduct in connection with the shooting of four protesters in Sebokeng in September 1990, found that a rifleman, John Booyesen, was responsible for intentionally killing one of the protesters. The judge found that Rifleman Booyesen intentionally fired the first shot which was followed immediately by a volley of fire from the other soldiers. In all, 162 rounds were fired from 23 guns in 22 seconds. Earlier, 38 people had been killed when an Inkatha war-party had attacked Sebokeng hostel residents. The judge found that the crowd had presented no immediate threat to the soldiers before the first shot was fired; nor had the soldiers received orders to fire. Judge Stafford sharply criticized the conduct of the SADF and described the internal SADF inquiry as a "total whitewash" of the events. He described the soldiers as "semi-literate and not professional." Those persons recommended for prosecution by Judge Stafford have not yet been brought to trial and no prosecution appears to be contemplated.**

**Many recent allegations also accuse the SADF of covert activities, similar to those of the SAP (see above, Covert Activities by the SAP), aimed at undermining ANC efforts to organize as a political party. The Goldstone Commission and government-appointed investigators have begun investigations of some of these allegations, but claims of risks to national security by the military frequently frustrate commissions of inquiry in their attempts to obtain information.<sup>75</sup> As a result, few prosecutions of security force members for acts involving political violence have occurred and in only a few isolated instances have the courts found the security forces to be responsible for killings. The SADF still wields a great deal of power and remains unaccountable for virtually all of its secret projects. Only in December 1992, after investigations by the Goldstone Commission produced irrefutable evidence, did State President de Klerk finally acknowledge that Military Intelligence had conducted "dirty tricks" to obstruct political reform (see case 52), and dismiss some of those said to be involved.**

**Among the most serious incidents that have come to light demonstrating SADF complicity in fueling the political violence are the following<sup>76</sup>:**

**47. On December 6, 1991, *The Weekly Mail* revealed covert funding of organizations by the Military**

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<sup>75</sup> On November 18, 1992, Professor Ellison Kahn, head of the advisory committee set up to investigate state covert operations following the disclosure of state funding for Inkatha in July 1991, said that his committee had been deliberately misled by senior security force officers. He said that because his brief required the committee to delve into sensitive and secret areas, he had to rely on the heads of departments and other high-ranking officials to provide necessary information and documents. As a result, the investigation was largely under the control and dependent on the officials who determined what materials the committee could see. HRC, HRU, November 1992.

<sup>76</sup> In some of these cases, proof of SADF involvement has yet to be verified from other independent sources. While not conclusive, these examples reveal a consistent pattern of SADF bias against anti-apartheid groups and complicity in fueling the violence.

Intelligence (MI) division of the SADF. The newspaper alleged that a corporation called Adult Education Consultants (AEC) had paid more than \$4 million to the South African Christian Cultural Organization (SACCO) and its affiliates, most of whom work in the mixed race community, and that AEC had given training courses to SACCO personnel. Those who participated in those courses said they had a "total onslaught" bias.<sup>77</sup>

On December 13, *The Weekly Mail* published further allegations of covert military activities from a senior source in Inkatha who claimed that AEC was a front for MI. According to the source, AEC set up another company, Creed Consultants, in Durban to facilitate contacts between MI and Inkatha which provided money for the training and support of 200 Inkatha personnel trained by the SADF. In July 1991, the government had admitted training 200 Inkatha personnel in Namibia in 1986. Creed had financially supported the 200 trainees for three years after their training stint. *The Weekly Mail* claimed it had traced more than \$2.3 million that had been funneled to Inkatha from Creed. Neither Inkatha nor the SADF would comment on the allegations.

On December 19, *The Weekly Mail* revealed that five of the men trained in Namibia by the SADF in 1986 were wanted by the SAP on charges of murder and attempted murder.

On January 3, *The Weekly Mail* published an interview with Ben Conradie who claimed to be one of six regional directors of AEC and to have documents showing that MI used front companies, mostly posing as educational institutions, to train, support and assist organizations that would foster "black on black" conflict. The organizations all operated under the umbrella of AEC. Conradie's claims that payments had been made to amaAfrika, one of the groups to receive funding, were supported by a document from the head of AEC indicating that the funding was aimed at undermining the UDF (the United Democratic Front, an organization of anti-apartheid activists operating in South Africa during the 1980s. Violent conflict between amaAfrika and the UDF broke out in 1986 and 1987).

On January 10, *The Weekly Mail* revealed that its Inkatha source was Mbongeni Khumalo, who claimed to be a former national organizer of the Inkatha Youth Brigade and member of the Inkatha Central Committee. The Inkatha newspaper claimed that Khumalo was an ANC agent who was paid to leak damaging information; Chief Buthelezi denied that he had held such senior positions in Inkatha.

On January 14, Judge Goldstone announced that the Commission would investigate allegations of covert funding by the SADF.<sup>78</sup> He indicated, however, that his investigation would be confined to examining evidence of current or recent funding. Under the law establishing the Commission, it may only investigate events occurring after July 17, 1991. The Commission heard evidence from M.Z.

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<sup>77</sup> This is a reference to the military strategy, developed during the 1980s, to maintain the apartheid system. The strategy required the government: (a) to grant certain concessions to conservative and other groups in South Africa whom it could then rely on for support, and (b) to devote all other resources to combatting the anti-apartheid groups who preached violence and insurrection. In "total onslaught" thinking, the whole society, including the civilian population, is a legitimate military target.

<sup>78</sup> IBHR Report, December 1991 - January 1992.

**Khumalo, a former assistant to Chief Buthelezi who resigned after the funding scandal in July 1991, to the effect that the 200 trainees had been gradually incorporated into the KZP. Two members of a notorious gang, the Black Cats, operating in the Wesselton area in the eastern Transvaal, also told the Commission that they had been trained by MI in hit-squad techniques and were told during training that their enemy was the ANC. The gang was involved in numerous incidents of violence directed against members of the ANC in Wesselton until December 1991. After its initial inquiry, the Commission concluded it could find no evidence of recent or continuing funding but indicated that it would investigate the activities of the 200 Inkatha supporters trained in 1986. The Commission is continuing its investigation into the activities of the 200 trainees and the Black Cats gang.**

- 48. In April 1992, the press reported that a former member of the SADF's 111 Battalion claimed that he was an Inkatha member and had been personally involved in the training of members of the Black Cats gang. He said that he had been trained at a secret camp in Mkhuze, in northern Natal, and in the Caprivi strip in Namibia before being recruited to join 111 Battalion. Following his recruitment, he had been involved in the training of the gang at a secret camp and in acts of violence against residents of Wesselton. He alleged that members of the SAP and the KZP, whom he named, were directly involved in attacks on residents in August 1990.<sup>79</sup>**
- 49. Until 1990, the South African military was generally not deployed in the black townships. In the past two years, however, SADF troops have assisted the police in maintaining order in the townships and now about 10,000 troops are deployed daily to assist police in troubled areas.<sup>80</sup> When they have patrolled the townships, members of the SADF have often resorted to repressive measures. In April 1992, members of 32 Battalion raided the Phola Park squatter camp in the East Rand, a pro-ANC area, killing two women, raping three and injuring more than 100. The raid lasted twelve hours. The 32 Battalion, composed of black Angolan troops under white officers, was used by South Africa in fighting in Angola and Namibia. At least 43 people were assaulted, many severely, during the raid.<sup>81</sup>**

**The Goldstone Commission investigated reports of abuses committed by members of 32 Battalion during the April raid and found that the battalion had used more than 200 rounds of ammunition. It found that the battalion had acted in a manner "completely inconsistent with the functioning of a peacekeeping force and, in fact, became perpetrators of violence."<sup>82</sup> The Commission noted the attitude of the unit head, who claimed that the troops had only acted in a "heavy handed" manner but had not assaulted residents and who discussed the battalion's deployment in the townships in terms of a war situation. The Commission expressed concern that the unit head's attitude might prevail throughout the SADF and recommended that 32 Battalion not be used for peacekeeping duties in the townships in the future. The SADF reaction to the Goldstone recommendations was**

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<sup>79</sup> HRC, HRU, April 1992.

<sup>80</sup> "Future army must be apolitical," *New Nation*, February 12-18, 1993.

<sup>81</sup> IBHR Report, May 1992.

<sup>82</sup> Report by The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation on the conduct of members of 32 Battalion at Phola Park on 8 April 1992, released June 10, 1992.

troubling in a number of respects. First, the SADF praised the actions and valor of the unit for past service as if that could excuse unlawful behavior. Second, it asserted that only the SADF could determine the deployment of SADF units. Third, and perhaps most troubling of all, was the absence of any comment by the SADF on the warlike attitude of the unit commander. Only after the Boipatong massacre and the ensuing international outcry in June 1992 did the government announce that 32 Battalion would be disbanded. In February 1993 the head of the army, Lieutenant-General Meiring, announced that the battalion would be disbanded on March 6, but that its members would be absorbed into other army units rather than being dismissed.

50. In May 1992, the *New Nation*, an independent South African newspaper, reported that it had received a memorandum written in 1985, suggesting that several anti-apartheid activists, including Matthew Goniwe, a UDF leader in the Eastern Cape, should be "permanently removed from society as a matter of urgency." Two weeks after the memorandum was written, the charred bodies of Goniwe and three colleagues were found. The memorandum implicated General C.P. van der Westhuizen, the present head of South African Military Intelligence, in the deaths. The news report alleged that the memorandum was seen and approved by members of the State Security Council, a body composed of members of the South African cabinet and senior military personnel.

Following a public outcry, President de Klerk ordered the reopening of an inquest into these deaths, but did not suspend General van der Westhuizen.<sup>83</sup> In August 1992, Minister for Correctional Services, Adriaan Vlok, who was a member of the State Security Council in 1985, admitted that it had discussed the activities of Goniwe and the question of his reinstatement as a state teacher but denied that it had ever authorized his murder. Other disclosures that emerged concerning this inquiry, included claims by Colonel Gert Hugo, who had been in the SADF and the Ciskei intelligence service, that he had leaked the original document sparking the inquiry, and claims by Jennifer du Plessis, a police informant, that John Scott, a member of the Eastern Cape Command "Hammer" Unit had been responsible for the murder of Sparrow Mkhonto, one of those killed with Matthew Goniwe. She complained that she was required to give information concerning these claims to MI, the very organization that she alleged was responsible for the killings. Another former "Hammer" member also came forward and offered to help in the investigation but withdrew after only one and a half weeks claiming the investigation was going nowhere. Investigators complained that their telephones were tapped and that they were followed. Several months after the investigation was initiated, no interviews had been conducted with General van der Westhuizen or with the military person who confirmed he had written the memorandum that sparked the inquiry. In addition, when investigators from the Attorney-General's office reviewed documents at the offices of the Eastern Cape Command, they found that MI had already gone through the documents, allegedly to investigate how the original document had been leaked.

The inquest into the Goniwe killings resumed in March 1993. Documents were made available to the inquest by Major-General Bantu Holomisa of the Transkei that confirmed the original revelations. Furthermore, in the course of the inquest it emerged from testimony by a former MI member that the assassinations were part of a broader conspiracy to replace the then ruler of the Ciskei homeland, Lennox Sebe, with his brother Charles, to lay the blame on Transkei, and to create a "Greater Xhosaland" in the eastern Cape. A new party, the Xhosa Resistance Movement, modeled

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<sup>83</sup> "Death Squad Dispute Deepens in South Africa," Reuters, May 15, 1992.

on Inkatha, would then be set up by the SADF to counter the influence of the ANC in its heartland. The outlines of the plot were alleged to be known to members of the State Security Council, including both ex-president P.W. Botha and current president de Klerk.

51. In April 1992, two Military Intelligence agents were arrested in London on suspicion of being involved in a plot to kill Dirk Coetzee (Coetzee had given evidence to the Harms Commission in 1990 indicating that the Civil Co-operation Bureau<sup>84</sup> had engaged in assassinations of ANC members). The two agents were subpoenaed to give evidence at the Mlangeni inquest because it was accepted that the bomb which killed Mlangeni had been intended for Coetzee (see case 15 above). Pamela du Randt, one of the agents, testified that the purpose of their visit was to investigate links between the military wing of the ANC, MK, and the Irish Republican Army (IRA). The SADF produced documentary evidence outlining an operation codenamed "Echoes," run by MI whose purpose was to discredit the ANC by exposing links with the IRA. The documents indicated that the army head, Lieutenant-General Georg Meiring, had personally authorized the operation. Neither the government nor the army would comment on the operation.<sup>85</sup> In February 1993, a BBC documentary was broadcast that claimed that MI had been involved during the 1980s in arms smuggling to Protestant paramilitary forces in Northern Ireland. Meiring denied that any such links existed.<sup>86</sup>
52. In November 1992, the Goldstone Commission carried out a dramatic raid on premises operated by Military Intelligence, and reported that the evidence it discovered showed that from May to December 1991 the SADF had hired a convicted murderer, Ferdi Barnard, to lead a covert operation aimed at compromising members of the armed wing of the ANC by using prostitutes, homosexuals and drug dealers. The Commission found that the team, many of whom were former members of the CCB, had access to government files, including police records, and had used a telephone bugging team. Following this report, President de Klerk again denied that the SADF was attempting to undermine the ANC but conceded that there could exist isolated individuals in the SADF who pursued such a policy. In response to the Commission's request that it be given greater powers to investigate the various south african security forces, however, the government opened an internal investigation into allegations that the SADF conducted a smear campaign against the ANC and refused to grant the Commission additional powers. As a result of this internal investigation, President de Klerk publicly admitted that SADF members had conducted a covert campaign to undermine the ANC and engaged in illegal activities, including murder. He dismissed 23 officers, including six generals, and several civilians. The President claimed that those dismissed were acting as individuals and not on behalf of the SADF. The President did not disclose the names of the civilians involved or the details of wrongdoing by the officers and civilians, nor did he indicate that a full-scale independent investigation into SADF activities would be launched. Several senior SADF

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<sup>84</sup> The Civil Co-operation Bureau (CCB) was a group of operatives working within the SAP whom it was alleged had engaged in various illegal activities, including murder aimed at undermining the ANC. The 1990 Harms Commission investigated these allegations but no member of the group was found directly responsible for wrongdoing. The CCB was disbanded following the Harms Commission inquiry. Many of its members were then placed on the payroll of Military Intelligence, an arm of the SADF.

<sup>85</sup> IBHIR Report, November 1992.

<sup>86</sup> Philippa Garson, "SA up to its `dirty tricks' in Ireland, *The Weekly Mail*, February 19 to 25, 1993.

officers, previously implicated in illegal covert activities, however, remain in place, including Chief of Staff of Military Intelligence, Christoffel van der Westhuizen, deeply implicated in the Goniwe affair (case 50).

53. In November 1992, the SADF admitted that it had funded a Botswana-based newspaper to spread disinformation about the ANC. According to the *Weekly Mail*, which published an affidavit by a South African businessman who was taking legal action against the SADF to recover millions of rands he claimed to have lost in the project, General Kat Liebenberg had recommended expansion of the project the day after Nelson Mandela was released from prison. The newspaper was closed down in August 1991.
54. In February and March 1992, the *New Nation* reported that SADF reservists and soldiers at Hartebeesfontein Commando, near Klerksdorp in the Transvaal, had been implicated in supplying weapons to Inkatha supporters and in giving para-military training to youths in the area who had been recruited for operations against ANC "comrades." *New Nation* revealed that Joshua Mojaki, mayor of Tigane township and Inkatha chairperson in the western Transvaal, was recruited to the unit. The newspaper claimed that the SADF had paid the recruits from \$33 to \$500 to carry out hit-squad activities in the area. Recruits allegedly carried out a taxi ambush in January, killing a driver and passenger. A police spokesperson confirmed that the four reservists named were attached to the Hartebeesfontein Commando but claimed that if they were involved in the violence it would not have been on official instructions from the SADF. Inkatha confirmed that several of those mentioned in the report were members but denied that they were ever involved in the violence.<sup>87</sup>
55. On April 28, 1992, it was announced that the inquest into the death of Dr. David Webster, a prominent anti-apartheid activist, would be reopened. Dr. Webster was shot dead outside his home in Troyeville on May 1, 1989. The Harms Commission inquiry had heard detailed evidence that the CCB was responsible for Dr. Webster's death (see Investigations of Police Misconduct above). In his findings, Judge Harms had not assigned responsibility for Webster's death; he noted only that many suspected the CCB's involvement.

In reaction to renewed speculation in *The Citizen*, a South African newspaper, of the CCB's responsibility for his death, an unnamed police source said that CCB agents had been involved in political murders and that the organization had a "virtual license to kill."<sup>88</sup> In November, the inquest heard evidence from former members of the CCB and others who claimed that the person hired by the SADF to conduct a covert campaign against the military wing of the ANC, Ferdi Barnard, was the person responsible for Webster's death (see case 52 above) and that documentary evidence connecting the CCB to the Webster murder had disappeared during the Harms Commission inquiry. The inquest also heard evidence that the SADF had attempted to cover up alleged CCB involvement in the Webster murder when it conducted its own internal investigation.

In January 1993, Mr. Justice Stegman who presided over the inquest, concluded that the court had

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<sup>87</sup> "NEW NATION Exclusive: The Force Behind Inkatha," *New Nation*, February 27 - March 5, 1992. "HELP! Inkatha Lawyers' Plea to Nat MP," *New Nation*, March 6 to March 12, 1992.

<sup>88</sup> IBHR Report, May 1992.

**not received any evidence establishing beyond a reasonable doubt who was responsible for the murder of Dr. Webster. Human rights advocates protested that the appropriate burden of proof for the inquest was merely the balance of probabilities, and that the more stringent standard should only apply to criminal proceedings.**

## **THE ROLE OF THE GOVERNMENT**

### **1. General**

**While the violence in the black townships continues, the government insists that only the ANC and Inkatha have the power to bring peace to the townships. This assertion ignores the reality that control of the SAP and the SADF, whose policing activities have a significant effect on the incidence of violence, rests with the government. Moreover, as discussed above, there is extremely concerning evidence of the continuing involvement of at least some elements of the security forces in covert activities aimed at undermining anti-apartheid groups and inciting violence. Unless trust in the security forces can be established, peace is extremely unlikely.**

**The most important step for the government to take in this regard is to ensure accountability for current and past abuses. The setting up of the Goldstone Commission in 1991 was a welcome step, but its role is limited. It is charged not with the task of establishing guilt or innocence but with recommending to the government measures to halt the violence. As a result, much of the evidence received by the Commission pointing to clear misconduct or unlawful behavior has not led to prosecutions or convictions. Moreover, the government has been slow in some cases to implement the recommendations of the Commission. It is essential that steps are promptly taken to ensure both that criminal charges are brought against state officers where there is evidence of abuse, and that the recommendations of the Goldstone Commission are carried out.**

**In two particular areas, the government itself has direct responsibility for the failure to take certain obvious steps; that is, with regard to the carrying of dangerous weapons, and the control of hostels for migrant workers.**

### **2. Regulation of Dangerous Weapons**

**The South African government's lack of resolve to end the violence is demonstrated in part by its actions concerning the regulation of dangerous weapons, especially the so-called "cultural weapons," such as spears, pangas, knobkerries or sharpened sticks. Despite the shocking number of deaths and injuries caused by these and other weapons in the factional violence, the government has been indecisive and half-hearted in its efforts to regulate the carrying of dangerous weapons in public. In 1990, President de Klerk issued a proclamation applicable only in the province of Natal that amended a century-old ban on the carrying of dangerous weapons to permit the carrying of spears and knobkerries. In December 1991, a South African Supreme Court judge overruled the proclamation and in his decision said "It is a notorious fact ... that black people of Natal have been exposed during the past four years to internecine violence on a scale far exceeding anything else in modern times, and that they have suffered atrociously as a result."<sup>89</sup> Given the rising level of violence in Natal at the time, the relaxation of the weapons restrictions was not only unjustified but grossly negligent. Only in 1992, after 19 months of continuous attacks on commuter trains, did the government finally prohibit the carrying of dangerous weapons on trains.**

**The efforts to ban the carrying of dangerous weapons in public became highly politicized in 1991. In April 1991, following a number of massacres of its supporters, the ANC called on the government to ban**

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<sup>89</sup> "South African Judge Overrules De Klerk on Weapons," AP, December 13, 1991.

**the carrying of dangerous weapons in public. Inkatha has always vigorously opposed such a ban and claims that Zulus have traditionally carried "cultural weapons," including, in the case of tribal chiefs, battleaxes. Instead of taking a firm position on the matter, the government sought to reach a compromise but, following demonstrations by the ANC and its supporters, it finally banned dangerous weapons in public places, but did not include "cultural weapons" in the ban. In May 1991, the government banned all dangerous weapons, including spears, in unrest areas.<sup>90</sup> "Cultural weapons" could still be carried to cultural events providing permission was obtained 48 hours in advance. Inkatha supporters often carry these cultural weapons to rallies and funerals. Since Inkatha claims to be a cultural as well as a political organization, efforts to prevent Inkatha supporters from carrying weapons have repeatedly been frustrated because of claims that supporters are attending cultural gatherings. Inkatha strongly encourages its supporters to defy the ban, and they have flaunted spears, sticks and axes at public rallies and other gatherings since the ban was introduced.**

**In practice, police have generally not confiscated dangerous weapons under these regulations. Police claim the ban is difficult to enforce and that few officers understand when they may legally confiscate weapons. Two Catholic priests signed affidavits claiming that on November 21, 1991, they saw policemen stand and watch while a group of about 20 men armed with axes and pangas boarded a train at the Mayfair Station in the Johannesburg area.<sup>91</sup> When questioned about the incident, the SAP spokesperson said that it was not an offense per se to possess a dangerous weapon. However, the Lawyers for Human Rights regional chairperson disputed their claim and pointed to a Johannesburg Municipal by-law making it an offense to carry or have in one's possession any weapon in a public place. In an incident on January 29, 1992, in which black policemen attempted to disarm a group of Inkatha supporters at the Jeppe train station, a senior Inkatha official reportedly approached white policemen, who then instructed the black policemen to permit the armed Inkatha supporters to board the train. Black policemen said they were told that Inkatha members had permission to carry arms.**

**At the end of January 1992, police announced a ban on the carrying of dangerous weapons on trains. In February, the government announced a ban on the carrying of dangerous weapons and firearms in public and at political gatherings. However, traditional cultural gatherings or any ceremonial gatherings were specifically excluded from this ban. According to the law, if a person could prove that a weapon was not intended to be used aggressively, it may not be seized. Inkatha rejected "with contempt" the new regulations on carrying dangerous weapons. In June 1992, police confiscated a large number of weapons from a group of Inkatha supporters on their way to a rally. The following day, however, they returned the sticks and spears to the head office of Inkatha in Johannesburg, claiming they had no right to confiscate such weapons.**

**In its July 1992 report on the policing of public demonstrations, a panel of South African and international experts strongly recommended a universal ban prohibiting demonstrators carrying weapons or replicas of weapons.<sup>92</sup> The Goldstone Commission has repeatedly called on the government to outlaw**

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<sup>90</sup> Unrest areas are those areas which the Minister for Law and Order has designated as "unrest areas" under the Public Safety Act. In "unrest areas," police have extraordinary powers of search and seizure, may restrict entry and exit, may impose curfews and receive indemnity from prosecution for alleged misconduct.

<sup>91</sup> IBIR Report, December 1991 to January 1992.

<sup>92</sup> Testimony of Multinational Panel Regarding Lawful Control of Demonstrations in the Republic of South Africa

**the carrying of dangerous weapons in public. In an interim report on its investigation of the Boipatong massacre, the Commission complained that the government had ignored previous recommendations, and had "partially but inadequately implemented" a recommendation requesting the government to ban the carrying of dangerous weapons in public.<sup>93</sup> In July and August 1992, the government granted an indemnity from prosecution to all persons who turned in their illegal weapons before July 31 and enacted harsh measures for the further possession of illegal weapons, including stiffer sentences. The government also banned all dangerous weapons, including cultural weapons in 20 designated "unrest areas." Following the new regulations, ANC leaders in Natal, without the support of the ANC central leadership, began calling on their supporters to carry dangerous weapons to rallies. While not excusing this incendiary action, the government's piecemeal and reactive regulatory approach has certainly served to prolong the controversy surrounding this issue.**

**In an effort to respond to domestic and international pressure following the massacre of 28 people in Ciskei in September 1992, the government agreed to adopt stricter regulations on the carrying of dangerous weapons, but continued to insist that exemptions would be included to permit the carrying of "cultural weapons," despite the overwhelming evidence that they have been repeatedly used in township violence. On two separate occasions in October, thousands of Zulus marched through the streets of Johannesburg and Durban carrying spears and clubs in open defiance of the proposed regulations. Police did not disarm them for fear of causing a riot. Videos of the first march were taken to enable police to bring prosecutions against senior Inkatha officials who had organized and led the march. No prosecutions have yet been brought and none appear to be contemplated.**

### **3. Government Inaction on the Hostels**

**Under apartheid policy, blacks who lived in the rural homelands were obliged to leave their wives and families behind when they worked in the cities. They were considered only to be temporary residents of white South Africa even though they lived there for eleven months of the year. Huge barracks-like structures were built on the edges of black townships to house these migrant workers.**

**With the abolition of influx control in the 1980s, thousands of blacks began to pour into the urban areas seeking employment. Many moved into the hostels where accommodation was cheap. Gradually, the hostels became shelters for the unemployed. Growing poverty provided advocates of violence a willing reception and over the latter years of the 1980s, political mobilization of hostel dwellers increased. Many hostel dwellers, with their roots in rural areas where tribal structures are strong, were more conservative and traditional in their political beliefs than their neighbors in the surrounding townships who frequently supported the outlawed ANC. Inkatha, the ANC's chief black political rival, seized on these differences and in recent years, hostels have increasingly become Inkatha strongholds. As political rivalry between the two groups increased, hostels often became the focus of their violent struggle for power in the areas around Johannesburg. At first, violent incidents were confined to the hostels themselves but gradually the violence has fanned out into the townships and confrontations between township residents who support the ANC and Inkatha-supporting hostel dwellers have become common occurrences.**

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**before the Commission of Inquiry Regarding Prevention of Public Violence and Intimidation, July 9, 1992.**

<sup>93</sup> Tom Cohen, "Commission Finds No Evidence of Government Involvement in Massacre," AP, July 6, 1992.

**From time to time, the police have conducted raids on the hostels and have confiscated dangerous weapons, including AK-47 automatic rifles. In April 1991, following a period of escalation in township violence, the ANC demanded that the government either phase out migrant workers hostels or convert them into family units. The government finally agreed to spend millions of dollars converting and upgrading the hostels. Almost two years later, however, although money has been budgeted, the government has made no effort to discuss methods of implementing its promises with township authorities, and few concrete steps have been taken to implement the agreement.**

**In the preliminary report on its investigation into the Boipatong massacre, the Goldstone Commission complained that the government had ignored a recommendation made in previous reports to fence off migrant workers hostels and to provide tight police security to ensure that persons entering and leaving the hostels were not carrying arms. The report noted that President de Klerk had promised the equivalent of approximately \$95 million to upgrade the hostels but by July, the government had not yet taken steps to implement its promise. In September, following the deaths of at least 24 people in Ciskei during a demonstration, the government agreed to a number of ANC demands, including one that hostels in the most violent areas be fenced and that security be upgraded to provide more policing and random searches and that entry and exit controls be put in place to prevent hostel dwellers carrying weapons into or out of hostels. In November, the government announced that fencing of hostels was not practical because of Inkatha opposition. The September agreement has yet to be implemented.**

**In September 1992, the Goldstone revised its original recommendation that all hostels be fenced, and stated that only those hostels that have been associated with violence should be fenced. The Commission also announced that it had requested the Human Sciences Research Council, a government-funded think-tank, to undertake a study of the issues surrounding future hostel development.**

**In February 1993, the Human Rights Commission reported that peace committees set up by residents of some of the hostels in the PWV area had contributed to a decrease in violence between hostel dwellers and township residents. Other factors included an agreement between the ANC and the Transvaal Hostel Residents Association focusing on issues of violence, while many commentators expressed the perception that the focus of the struggle between the ANC and Inkatha had returned to Natal.<sup>94</sup> Fencing of hostels has still not been carried out, nor have weapons been systematically confiscated. While the decline in violence is welcome, there is still an urgent need for the government to adopt a long term strategy to deal decisively with problems resulting from past and potential future tensions between township residents and hostel dwellers.**

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<sup>94</sup> Alex Dodd, "New hope as Reef violence abates," *The Weekly Mail*/February 26 to March 4, 1993.