

## **SOUTH AFRICA**

### **THREATS TO A NEW DEMOCRACY Continuing Violence in KwaZulu-Natal**

<b>INTRODUCTION.....</b>	<b>2</b>
<b>BACKGROUND.....</b>	<b>3</b>
<b>THE APRIL 1994 ELECTIONS IN KWAZULU-NATAL.....</b>	<b>5</b>
<b>REGIONAL POLITICS SINCE THE ELECTION.....</b>	<b>12</b>
<b>CONTINUING POLITICAL VIOLENCE IN KWAZULU-NATAL.....</b>	<b>17</b>
<b>POLITICAL VIOLENCE ON THE KWAZULU-NATAL LOWER SOUTH COAST.....</b>	<b>19</b>
<b>THE "THIRD FORCE" AND POLITICAL VIOLENCE IN NATAL.....</b>	<b>26</b>
<b>NATIONAL COMMISSION ON TRUTH AND RECONCILIATION.....</b>	<b>35</b>
<b>CONCLUSIONS.....</b>	<b>36</b>
<b>RECOMMENDATIONS TO THE GOVERNMENT OF NATIONAL UNITY.....</b>	<b>37</b>

## INTRODUCTION

For the last decade South Africa's KwaZulu-Natal region has been troubled by political violence. This conflict escalated during the four years of negotiations for a transition to democratic rule, and reached the status of a virtual civil war in the last months before the national elections of April 1994, significantly disrupting the election process. Although the first year of democratic government in South Africa has led to a decrease in the monthly death toll, the figures remain high enough to threaten the process of national reconstruction. In particular, violence may prevent the establishment of democratic local government structures in KwaZulu-Natal following further elections scheduled to be held on November 1, 1995.

The basis of this violence remains the conflict between the African National Congress (ANC), now the leading party in the Government of National Unity, and the Inkatha Freedom Party (IFP), the majority party within the new region of KwaZulu-Natal that replaced the former white province of Natal and the black homeland of KwaZulu. Although the IFP abandoned a boycott of the negotiations process and election campaign in order to participate in the April 1994 poll, following last minute concessions to its position, neither this decision nor the election itself finally resolved the points at issue. While the ANC has argued during the year since the election that the final constitutional arrangements for South Africa should include a relatively centralized government and the introduction of elected government structures at all levels, the IFP has maintained instead that South Africa's regions should form a federal system, and that the colonial tribal government structures should remain in place in the former homelands.

However, the violence is more than the result of competition between two political parties competing, albeit violently, on equal terms. The context of the violence has always been and remains the control exerted by the IFP over local and regional government previously through the KwaZulu homeland and now the still-unreformed structures of the new region of KwaZulu-Natal. Both sides have committed atrocities in the conflict in which over ten thousand people have died in the region over ten years, and both sides maintain "no-go" areas which individuals identified with the other party cannot enter without risking their lives; but, despite the change of government at national level, only the IFP is able to enforce its regional dominance through state mechanisms.

This report falls into two parts. The first examines the conduct of the April 1994 elections in KwaZulu-Natal and concludes that the regional victory for the IFP was sufficiently seriously flawed as to call into question the legitimacy of the new regional government. The second considers the violence that has continued in the region during the year since elections were held. It concludes that there is substantial evidence that members of the IFP holding senior positions in regional and national government and high-ranking officers of the KwaZulu Police (the police force of the former homeland of KwaZulu) were in the past and are still engaging in deliberate efforts to promote violence and that this violence is aimed at maintaining the control over regional and local government structures that was given to Inkatha in the past through its dominance of the homeland government of KwaZulu. Although there is evidence that ANC leaders in some areas have engaged in or encouraged political assassination and other violent activities by their supporters, the evidence of planned hit squad activity and the promotion of violence points overwhelmingly to the IFP. Inkatha has used its control of state mechanisms to insert its supporters into the police and other government structures where they have carried out criminal acts, and to obstruct investigations into such activities. While the KwaZulu Police are most commonly alleged to be involved in the continuing violence, units of the regional branch of the South African Police are also implicated.

Even if the decision of the ANC not to challenge the victory of the IFP in regional elections and to include the IFP in the government of national unity was a political decision made in an attempt to halt further violence, the national government is under an obligation to ensure that this decision was not made at the expense of the human rights of the residents of the region. In particular, it must ensure that citizens are able to exercise their vote freely in local government elections and that they are protected from violence. These two requirements are linked: unless checked, violence will prevent residents of the region from freely expressing their views and choosing a government established along democratic lines.

Although the task of building a new democracy in South Africa requires a policy of inclusiveness and reconciliation between past adversaries, this policy must not be pursued at the cost of ongoing impunity for serious crimes, or the abuses of power that characterized the old regime will continue to be committed under the new. No commitment to reconciliation can justify allowing suspected murderers who have faced no sort of accountability for their acts to continue to hold office. Unless those who have committed serious human rights violations are at minimum removed from positions of power in the government and security forces, South Africa will not see peace. Despite the apparent view of some commentators that the political violence in KwaZulu-Natal is somehow inevitable, given the competition between two opposing political parties in a region known for its "faction fights," there is every reason to believe that it can be largely stopped if proper efforts are made to remove from office, arrest, detain and prosecute both those who are responsible for planning violence at high level and those who have been allowed by their superiors and by the police to commit violent acts with impunity.

## BACKGROUND

In April 1994, South Africa held its first multiracial elections. In a landslide victory, the ANC won 62.6 percent of the vote, to head a new government of national unity. Sharing power with the ANC in the new government are the National Party, the party of government for forty-five years, which won 20.4 percent of the vote, and the Inkatha Freedom Party, led by Chief Mangosuthu Gatsha Buthelezi, which attained 10.5 percent, just sufficient to be included within the new cabinet. An "interim" constitution including a justiciable bill of rights, finally agreed in December 1993 as the culmination of four years of negotiations dominated by the ANC and the NP, came into force on the first day of the elections, April 26, 1994. The constitution established a basically unitary state, as demanded for many years by the ANC, and finally reintegrated the ten "homelands", the foundation of the apartheid system, into the rest of South Africa.<sup>1</sup>

Until just one week before the poll, the IFP had boycotted the election campaign. In August 1993, the IFP, together with the governments of the homelands of Ciskei and Bophuthatswana and several parties of the white right wing, had withdrawn from the multiparty negotiations that were being held to establish a new constitution and regulate the conduct of the elections. The members of this "Freedom Alliance" claimed that the negotiations were ignoring their concerns, and in particular creating too centralized a state in which regions would have no powers. Political violence, which had devastated parts of South Africa for a decade, escalated dramatically in the months of the boycott, culminating in a four week period at the end of March and the beginning of April in which 429 people died in political violence in KwaZulu and Natal, the worst affected area. Serious doubts were expressed as to whether it would be possible to hold the election at all within the province. However, following last minute negotiations, the IFP finally withdrew its objections to the ballot and the elections went ahead.<sup>2</sup> Inkatha won 50.3 percent of the regional vote, and became the leading party in the new government of KwaZulu-Natal.

Political violence decreased dramatically following the IFP's agreement to contest the elections, and the election days themselves were amongst the most peaceful in several years. Nevertheless, violence had an incalculable effect on the election result, since large areas of rural KwaZulu had been off-limits to parties other than the IFP or to officials of the Independent Electoral Commission, the body charged with administration of the elections, throughout the campaign period. Moreover, substantial allegations of fraud and intimidation surrounded the election days themselves.

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<sup>1</sup>The interim constitution was agreed in multiparty negotiations and enacted by the white parliament of the old regime in December 1993 as the Constitution of the Republic of South Africa Act (Act No.200 of 1993). The new national assembly sits also as a constitutional assembly to draft a final constitution, which must be adopted within two years.

<sup>2</sup>The other parties opposing the election had already capitulated one by one: the government of Bophuthatswana fell in March, following widespread popular demonstrations, an "invasion" of the homeland by members of the right wing paramilitary Afrikaner Resistance Movement, and the sending of South African troops to restore order (see Africa Watch, *Impunity for Human Rights Abuses in Two Homelands: Reports on KwaZulu and Bophuthatswana*, New York: Human Rights Watch, March 1994); Ciskei, less spectacularly, conceded the appointment of a neutral administrator to run the homeland until reincorporation; and the white right wing split, with a constitutional faction led by former general Constand Viljoen contesting the elections as the Freedom Front.

In last minute changes to the interim constitution, designed to persuade the white and black right wing to contest the elections, important concessions were made to the demands for regional autonomy. In particular, separate regional and national ballots were held, enabling voters to split their support, while additional powers were given to regional governments. A "constitutional principle"<sup>3</sup> protected "a notion of the right to self-determination"; provincial governments were given the right to frame their own constitutions, and to "provide for the institution, role, authority and status of a traditional monarch" — a position guaranteed in the case of KwaZulu. However, the IFP continued to argue for greater powers to be given to the regions in a federal system and for the role of "traditional leaders" to be maintained under new local government structures. An agreement was reached between President de Klerk, ANC president Nelson Mandela, Chief Buthelezi and Zulu King Goodwill Zwelithini that these outstanding points would be referred to international mediation after the election.

However, since it was elected as the majority party in the new government, the ANC has stalled on such mediation, saying that it is not necessary and that outstanding constitutional points should be resolved within South Africa by the constitutional assembly. The failure to agree on mediation provoked a walk-out from parliament by Inkatha MPs in late February 1995, and the threat of a withdrawal from the government of national unity. At a special conference of the IFP in early March, at which it was decided to return to parliament for the time being, a resolution was taken that Inkatha would withdraw from the constitutional assembly unless an agreement on international mediation was achieved within thirty days. The IFP-controlled regional government was also given a mandate by the conference to restore the kingdom of KwaZulu, adopt a new constitution within six months and resist central government interference.<sup>4</sup> On April 8, the IFP national committee announced that the party was suspending participation in the constitutional assembly, until the question of mediation was resolved.<sup>5</sup>

Meanwhile, although nonracial transitional local government structures have been established in urban areas and rural areas formerly falling outside the homelands, pending local elections scheduled for November 1, 1995, there has been no agreement on the appropriate form of local government for the areas formerly falling under tribal authorities. Although registration for the elections is going ahead in KwaZulu-Natal, Inkatha-aligned chiefs in KwaZulu-Natal are threatening to boycott local government elections unless their future is assured, and registration figures are lower than for any other region in the country. Divisions between the IFP and the Zulu king, Goodwill Zwelithini, also threaten the stability of the region. Zwelithini has withdrawn from his previous identification with Inkatha, provoking calls from the IFP for him to return from "spiritual exile." On March 11, an *imbizo*, or "national gathering" held by Inkatha in Durban gave Zwelithini sixty days in which to call a similar gathering on his own account and to restore his relationship with his people.<sup>6</sup>

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<sup>3</sup>The ANC had originally maintained that the drafting of a new constitution should be left entirely to a constitutional assembly; it had conceded, however that an interim constitution should be drafted to govern a transitional period while a final constitution was agreed, and that the constitutional assembly should be bound, whatever the proportions of the vote won by different parties, by thirty-four "constitutional principles" agreed during the negotiation process.

<sup>4</sup>Ann Eveleth, "Just what is Buthelezi up to?" *Weekly Mail and Guardian* (Johannesburg), March 10-16, 1995.

<sup>5</sup>"ANC and NP slam Inkatha's decision to withdraw from assembly," *Business Day*, (Johannesburg), April 10, 1995.

<sup>6</sup>Mathatha Tsedu, "Imbizo warns Zulu monarch," *Sowetan* (Johannesburg), March 13, 1995.

In the face of these continuing disputes, political violence in KwaZulu-Natal, which continued to decline in the months following the election, rose again in January 1995 to what a few years ago would have been regarded as crisis levels. Although January's regional death toll of 116, as monitored by the Human Rights Committee of South Africa (HRC), a non-governmental organization reporting on human rights abuses and violence, has again declined, there is every reason to believe that it will rise again in the period leading up to local government elections, unless steps are taken now to prevent that escalation.<sup>7</sup>

## THE APRIL 1994 ELECTIONS IN KWAZULU-NATAL

Not surprisingly, given the turmoil in the province before the IFP announced that it would contest the elections, polling in KwaZulu-Natal was marred by multiple allegations of irregularities. Across the KwaZulu-Natal region, four percent of the votes cast were officially disputed by one or other of the parties (the great majority by the ANC), and there were many more complaints of fraud or intimidation that were not officially lodged with the Independent Electoral Commission (IEC), the body established to run the election. Moreover, the lack of free political activity during the election campaign meant that even where there were no complaints with the mechanics of the vote, there were large parts of the province where only one party had been able to campaign. In most cases, the dominant party in rural KwaZulu was the IFP.

As finally announced by the IEC, the IFP won 50.3 percent of the vote in the provincial elections in KwaZulu-Natal; the ANC won 32.2 percent, the National Party (NP) 11.2 percent and the Democratic Party (DP) 2.2 percent. In the new regional assembly, these votes translated into forty-one seats for the IFP, twenty-six seats for the ANC, nine seats for the NP, two for the DP and one each for three minor parties (the Pan African Congress (PAC), the African Christian Democratic Party (ACDP) and the Minority Front).<sup>8</sup> With eighty-one seats in the regional assembly, the ANC was therefore one seat short of the one-third voting bloc needed to prevent legislation being passed that requires a two-thirds majority.

Two main areas of dispute existed surrounding the election results: on the one hand, the extent to which violence and intimidation had prevented free political activity in the province before the vote; and on the other, fraud, intimidation and logistical disruption on the polling and counting days themselves.

### Violence and intimidation during the election campaign

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<sup>7</sup>The Durban office of the HRC recorded regional death tolls of seventy-six and fifty-seven for February and March 1995.

<sup>8</sup>A total of 3,703,693 votes were cast in the elections for the regional assembly. Turnout was 80.8 percent of the estimated total eligible voters. 1.06 percent of the ballots were spoilt. Independent Electoral Commission, *Report of the Independent Electoral Commission: The South African Elections of April 1994*, (Johannesburg: IEC, October 1994), (hereafter IEC Official Report), Map 6.

During the election campaign, most parts of South Africa contained at least a small number of "no-go" areas, where it was not possible for one or more parties to campaign freely. According to an internal report compiled by the IEC's analysis department, KwaZulu-Natal was by far the worst affected of the nine regions, containing seventy-nine "no-go" areas, affecting up to 6,030,219 potential voters.<sup>9</sup> While conceding that a limited number of election gatherings were actually affected by violence, even in magisterial districts containing no-go areas, the report concludes that in many cases this was simply because parties chose not to try to campaign in areas closed to them, and therefore that "significant sections of the electorate were barred to particular parties".<sup>10</sup>

Forty-four percent of all voters in KwaZulu-Natal (compared, for example, to twenty-nine percent in the PWV region<sup>11</sup>) were reported in a February opinion poll as saying that people not supporting the dominant party in their area felt "frightened or worried."<sup>12</sup> In rural KwaZulu the UDF and ANC had been effectively banned from operating by the tribal authorities since the UDF was founded in 1984; while in many of the formal townships attached to most of white Natal's towns, the ANC held a similar monopoly. During the period that its boycott was still in effect, the IFP announced nationally that people were entitled to vote and that polling stations could be established within KwaZulu; but in practice Inkatha-supporting chiefs (the majority) refused to give permission for buildings in their localities to be used for polling stations and effectively denied even IEC officials or other neutral parties access to their areas.<sup>13</sup> Many IFP election events were not monitored by the IEC because of threats to IEC staff.<sup>14</sup>

### **Creighton massacre**

On February 18, 1994, fifteen ANC youths (twelve of them under eighteen years old) were killed in the village of Mahlele near Creighton in the southern Natal Midlands. They were sleeping at a derelict house after putting up posters advertising a voter education workshop. Four IFP officials — Ixopo IFP organizer Dumisani Khuzwayo, Richmond IFP

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<sup>9</sup>IEC Analysis Department *Final Report: A Free and Fair Election? Criteria and Analysis* (undated), p.17 (hereafter IEC Analysis Department Report). The report defined three levels of "no-go" areas: "(a) a hard no-go area, where a rival party or group of parties are completely denied physical access to the area; (b) an intermediate no-go area, where a rival party or group of parties has limited physical access but is subject to major disruption and/or obstruction; (c) a soft no-go area where a rival party or group of parties has physical access but is subject to non-violent denial of venues and/or suffers minor disruption and obstruction." All three categories were included in the estimates of population affected by restriction of political activity. The report qualified the dramatic figures, however, by stating that the population estimates were for the entire magisterial district (that is, one of the administrative areas into which the whole of South Africa is divided, according to the jurisdiction of an individual magistrate) in which the no-go area is situated, and therefore might represent an overstatement of the population actually affected by the denial of access.

<sup>10</sup>*Ibid.*, p.20. Nationally, the report calculated that "of the 165 areas reported, 62 are 'hard no-go areas' in which only one party enjoys access. Dominant parties in these areas are: ANC (39%); IFP (27%); tribal authorities (15%); AWB (9%); Freedom Front (3%); PAC, ADM (2%); AZAPO, NP (1%)" (p.17). Within KwaZulu-Natal, virtually all the areas controlled by tribal authorities were Inkatha-supporting. However, the report also concluded that inability to campaign in certain areas during the campaign period itself probably had minimal effect on the results, since few people in areas dominated by one party for many years would have changed their vote as a result of such campaigning (p.22).

<sup>11</sup>The greater urban area around Johannesburg known before the election as the Pretoria-Witwatersrand-Vereeniging region, and now a new region renamed Gauteng, the SeSotho word for Johannesburg.

<sup>12</sup>R.W. Johnson & L. Schlemmer, *Launching Democracy*, Fifth Report, (Durban: Institute for Multiparty Democracy, 1994), quoted in IEC Analysis Department Report, p.24. In a national opinion poll, 13 percent of respondents indicated that they thought that someone would be able to find out how they had voted (IEC Analysis Department Report, p.42).

<sup>13</sup>IEC Official Report, p. 35. The control of chiefs over suitable venues for meetings in their areas had been used for many years to deny access to these venues for organizations aligned with the ANC.

<sup>14</sup>IEC Analysis Department Report, p.19.

chairperson Paulos Vezi, Bulwer IFP chairperson Gamantu Sithole, and Ixopo IFP Youth Brigade leader Thulani Dlamini — were arrested and charged in connection with the incident. They were initially refused bail, but reapplied after the election, invoking the new constitution, which places the burden of proof on the state to show why bail should be denied, and were granted bail of R.4,000 each on June 27.

At the trial two assistant constables of the KwaZulu Police (KZP), the homeland's own police force, testified that the four accused were involved in preparations for the massacre and that they had accompanied them on the day of the killings when a group of armed men had been picked up at Sithole's house in Bulwer and dropped off near the place where the killings occurred. Nevertheless, on August 25, 1994, the four were acquitted in the Pietermaritzburg Supreme Court. Judge Hugo said that the court had come to the "reluctant conclusion" that the guilt of the four accused had not been proven beyond a reasonable doubt, but that: "The accused must know that we do not find as a fact that they are not guilty... All we find is that their guilt has not been proven. The blood of these children will still speak throughout the lives and consciences of the accused."<sup>15</sup>

### **IFP rallies at Umlazi and KwaMashu**

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<sup>15</sup>HRC, *Natal's Total Onslaught*, Durban: HRC, June 1994; HRC, *Monthly Report*, Johannesburg: HRC, August 1994.

On two consecutive Sundays in March, Inkatha occupied stadiums in the townships of Umlazi and KwaMashu outside Durban in order to prevent ANC rallies from going ahead.<sup>16</sup> On the afternoon of Saturday March 13, IFP supporters began to move in to the King Zwelithini stadium in Umlazi, in what was described by the IFP information center as an "act of defiance" against the election. The ANC eventually held a much-reduced rally in the highway. Three deaths and five injuries occurred in the course of the confrontation, and violence escalated in the township for the rest of the month. In a police raid on April 12, instituted by the Goldstone Commission,<sup>17</sup> an arms cache including AK47, G3 and R1 rifles, hand grenades, rifle grenades and various ammunition was seized in T section of the township, an IFP supporting hostel complex.

The IFP was fined R.100,000 (\$27,500) in connection with the Umlazi occupation by the Electoral Court established to hear complaints in relation to the campaign. The IFP argued that the occupation was not its responsibility but a spontaneous act by Zulus opposed to the elections. The court rejected this argument and stated that the occupation was a well coordinated plan by the IFP.

The following weekend, a similar confrontation occurred when IFP supporters occupied the Princess Magogo stadium in KwaMashu, which had been booked for an ANC rally. At least one person was killed and eight injured in incidents directly related to the occupation, and again violence erupted in the area after the crowd dispersed: at least four people were killed in KwaMashu on the Monday night. Approximately three thousand people fled the township.

Again, the IFP claimed that the occupation was a spontaneous gathering of "Zulus." However, present at the stadium were regional IFP organizer Senzo Mfayela, IFP leader Michael Zulu, and IFP Midlands leader Philip Powell. Powell in particular played a leadership role in directing the crowd, and was heavily armed.

### **Ndwedwe killings**

On April 12, eight employees of a private company hired by the IEC to distribute pamphlets explaining voting procedures were killed in Ndwedwe, north of Durban. Eleven people employed by the non-partisan commercial enterprise Natal Pamphlet Distributors were allegedly ordered into a school classroom by the local chief, accused of being ANC supporters and brutally assaulted over a period of some hours by a group of Inkatha supporters. They were eventually taken to a nearby gorge, where eight were shot and hacked to death while three others escaped. The driver of the vehicle in which the distributors had come alerted the KwaZulu Police, who failed to assist, and then the Internal Stability Unit (ISU) of the South African Police.

Five men were detained under the emergency regulations in connection with this incident, including the chief, Chief Shangase. Four of them, excluding the chief, were then charged, together with two others. However, charges were later dropped against two of the six, who then became state witnesses. The case is with the Attorney-General, who will decide whether to proceed with the prosecution.<sup>18</sup>

### **Ulundi attack**

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<sup>16</sup>The information in this section is largely derived from HRC, *Natal's Total Onslaught*, and from conversations with monitors of the events.

<sup>17</sup>See footnote 97.

<sup>18</sup>HRC, *Natal Focus*, April 1994, and further information supplied by the HRC Durban office.



On April 23, 1994, three ANC activists were killed in Ulundi, the capital of the KwaZulu homeland.<sup>19</sup> They were part of a group of ten ANC canvassers accompanied by four IEC monitors who traveled to Ulundi, following the announcement by Buthelezi that the elections would go ahead in KwaZulu, to carry out the first ever open campaigning on behalf of the ANC in the area. As they began handing out election leaflets, they were surrounded by a crowd. Shots were fired and two ANC supporters were hit: one was killed immediately or then beaten to death, the other burnt to death in his vehicle. According to ANC accounts, the KwaZulu Police present either did not attempt to stop the attack or actively participated. The rest of the group — eight ANC members and four IEC monitors — fled to the Ulundi police station, staffed by the KwaZulu Police, where they stayed for several hours while a mob remained outside. Alerted by the IEC office in Empangeni, which was in radio contact with the group, ANC president Nelson Mandela contacted King Goodwill Zwelithini, who arranged for Chief Buthelezi to divert the plane he was in to Ulundi. Chief Buthelezi arrived in the evening and persuaded the crowd to disperse.

After Chief Buthelezi spoke to the group of ANC and IEC monitors, John Wills, an ANC lawyer who had traveled to Ulundi from Empangeni when the crisis developed, negotiated for safe transport for the party from Ulundi in police armored vehicles. As they were preparing to leave, a shot was heard from the police station. When Wills checked who was already in the vehicles, he discovered that Msizi Julian Mchunu, an ANC member who had accompanied him from Empangeni for security, was missing. He returned to the police station, where he found blood in the corridor. Wills appealed for help to the police and to Chief Buthelezi, but his requests for assistance in discovering the fate of Mchunu were ignored and Buthelezi's bodyguards pushed him away. The KZP first stated that the blood came from a drunk who had come into the station off the street after being stabbed, and then alleged that Mchunu had committed suicide with his own gun. SAP officers present at the station said that they could not guarantee Wills' protection if he traveled to the hospital to look for Mchunu. Fearing for their own safety, the group therefore left.

The autopsy revealed that Mchunu had died of a bullet wound in the back, fired from more than a meter away, and it was later learnt that Mchunu had been shot and had died whilst being taken to hospital by the KZP. In October 1994, Thokozani Alvaston Sithole, a KwaZulu prison warder, was sentenced to nine years in prison, after pleading guilty to the killing of Mchunu. He claimed that he was aggrieved because his cousin had been among those killed outside the ANC headquarters in Johannesburg, Shell House, on March 28. No arrests have been made in connection with the earlier killing of the two ANC canvassers, nor has the possible role of Chief Buthelezi and his bodyguards in the death of Mchunu and in obstructing his companions' efforts to trace him been investigated.

### **ANC intimidation**

The ANC was also guilty of intimidation of members and campaigners for other parties. For example, in a report to the International Republican Institute (IRI), a US-based organization affiliated to the Republican Party which published a report on the conduct of the elections, the Democratic Party (DP) detailed numerous cases of intimidation against its members in the Natal Midlands.<sup>20</sup> Some members and canvassers were assaulted, and four members in Pata, west of Pietermaritzburg, were allegedly taken to the regional ANC offices and interrogated about their allegiance to the DP. The DP claimed that the regional secretary of the ANC had tried to shoot an ANC member who had visited a friend at the DP office. This had taken place in the presence of the bodyguards of Harry Gwala, local ANC leader. A number of similar cases were reported, and the DP said that as a consequence its organizers had been forced to cease operating, and in many cases had left the area. The report stated that therefore "the DP was effectively prohibited from campaigning freely in the black areas in the Midlands."<sup>21</sup>

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<sup>19</sup>Information derived from an interview with John Wills on January 29, 1995 and from HRC, *Natal Focus*, April 1994.

<sup>20</sup>The ANC in the Midlands is under the leadership of Harry Gwala, who in June 1994 was suspended for six months from his high ranking position in the South African Communist Party, in connection with allegations that he had been involved in hit squad attacks on fellow ANC and SACP members.

<sup>21</sup>Appendix 11, Campaign and Election Complaints, in International Republican Institute, *South Africa: Campaign and Election Report April 26-29, 1994* (Washington DC: IRI, October 1994).

### **Election day fraud and confusion**

Because KwaZulu-Natal was the only area of the country that gave significant support to Inkatha, it was also by far the worst affected by the administrative chaos caused by the late entry of the IFP to the election campaign. Although the regional IEC had contingency plans for the establishment of polling stations around the edge of the areas controlled by tribal authorities in KwaZulu, it had virtually given up any attempt to establish polling stations within the homeland itself. When Inkatha announced its late entry, 549 polling stations were established in rural KwaZulu at one week's notice, with chaotic results.<sup>22</sup> Because little or no voter education had been carried out, since chiefs had denied voter education groups access to their areas, voters did not necessarily know which sites had been designated as official polling stations, and some were moved at the last minute by election officials, allowing allegations of "pirate" voting stations to abound.

On the voting days themselves, IEC control was poor in many areas, and deployment of IEC monitors fell short by about 500 throughout KwaZulu-Natal, about twenty percent of the planned total.<sup>23</sup> International monitors were largely deployed in the urban areas, where in fact there was less need for them. In other cases, IEC monitors were not allowed to do their job by hostile election officials. Electoral officials in rural KwaZulu were often KwaZulu government officials, heavily supportive of Inkatha: evidence of partiality by electoral officials affected nineteen districts, or thirty-two percent of the provincial total.<sup>24</sup> Because of logistical problems, KwaZulu was one of the areas where voting was extended for one day. Irregularities appeared to be particularly serious on that day, but could not be evaluated because neutral monitoring was virtually absent.<sup>25</sup>

In addition, the poor communications in rural Natal, where polling stations were often without telephones or vehicles, meant that administrative defects could not quickly be corrected. Perhaps most serious was the lack or late arrival of the IFP stickers to be affixed at the bottom of each ballot paper, which meant that in some polling stations presiding officers allowed voters to write in Inkatha as a voting option. The majority of IFP complaints at the conduct of the election related to the absence of such stickers and/or of sufficient ballot papers at rural voting stations.

Irregularities also affected the counting of votes: again, most disputes relating to counting came from KwaZulu-Natal, where 140 ballot boxes and 185,115 ballot papers were affected, amounting to 4.1 percent of the province's 4.5 million voters.<sup>26</sup> Of the disputed papers, 87.3 percent were marked in favor of the IFP.

### **Elections in northern Natal**

Human Rights Watch/Africa has obtained a copy of a report and supporting documents compiled by the Empangeni sub-provincial office of the IEC which provides an overview of the elections in the north coast region of KwaZulu-Natal.<sup>27</sup> An accompanying memorandum dated May 1, 1994, from the senior local IEC monitoring official to the regional head of the IEC, states:

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<sup>22</sup>IEC Official Report, p.25.

<sup>23</sup>IEC Analysis Department Report, p.28.

<sup>24</sup>Eleven districts, or forty-six percent, were affected in this way in the PWV region; *Ibid.*, p.34.

<sup>25</sup>*Ibid.*, p.27. Voting was also extended for one day in the former homelands of Ciskei, Gazankulu, Venda, Transkei and Lebowa.

<sup>26</sup>*Ibid.*, p.40; by contrast, only 6,959 votes were disputed in the PWV region.

<sup>27</sup>IEC, *Overview of Elections*, dated May 6, 1994.

"In light of the information that we have received and the fact that ballot papers issued cannot be accounted for by the Electoral Administration Department together with the gross irregularities that have surfaced I suggest that the Commission seriously consider declaring this election null and void in the interests of stability in this region."

The document listed twenty types of complaint about the conduct of the election, amongst them "interference with voters," "intimidation," "unguarded ballot boxes," "canvassing at polling stations," "pirate voting stations" and "violence at counting stations." Nine districts within the subregion falling under Empangeni (including Ulundi, the capital of KwaZulu) were affected by sixteen of the twenty types of complaint. In addition, they were affected by a range of administrative problems, including late or missing ballot papers, or ballot papers without the IFP sticker; ballot boxes not sealed properly or not properly kept or "lack of control of voting material." At several polling stations in rural areas controlled by tribal authorities, IEC monitors were intimidated and polling was conducted under the sole supervision of representatives of the local chief or of IFP agents.

Several polling stations in the region visited by IEC monitors had no number or had numbers that were not recorded with the IEC: these were none the less functioning as regular polling stations, with further irregularities (such as ballot boxes being delivered by unauthorized personnel) discovered when IEC monitors attempted to check on their running. At one polling station, an IEC monitor found an *induna* (headman) of the local chief addressing the voters and telling them to vote IFP; the next day the presiding officer there was reported by a U.N. observer to be "under the influence of liquor," and the ballot boxes had not been properly sealed. Later, at the counting station, ballot papers in boxes from that polling station were observed to look as though they had been "packed by hand by one person." The report from that station went on to say:

According to ... one of the voting officials at the station, the voters were coerced in various ways to vote for IFP by the *indunas*. The presiding officer had very little control of the voting process. It is the *indunas* and their supporters who ran the station. They instructed the voters where and for whom to vote. "Phansi, ubhekani phezulu!" [Down! You are looking at the top!] they would shout when the voter did not immediately put the X mark at the bottom of the ballot paper.<sup>28</sup> The *indunas* even went to the extent of placing the mark for the voters without any IEC official witnessing.

At another voting station, the principal of a local school, who was not the presiding officer, nevertheless seemed to be largely running the election. The IEC monitor witnessed him voting for an old lady: "He just took the ballot paper and inserted the X for her without asking her who she wanted to vote for." When the monitor intervened, the principal "became very rude towards her." At some stations, IEC monitors were not allowed to enter until after voting had finished, precluding any check on improper activities.

At the counting station for the Lower Umfolozi region in Empangeni, IEC observers noted further discrepancies, including non-sequentially or irregularly numbered ballot boxes from the same station, and incorrect procedures for ensuring that the location of the boxes was known at all times. An ANC representative was on at least one occasion threatened by a member of a prominent white family running the counting station when he attempted to dispute certain irregularities, and IEC monitors were also treated with hostility. One IEC monitor claimed to have picked up "a document written by the Inkatha office advising the counting office to appoint as counting officers the Inkatha people."

Other reports of serious irregularities too numerous to detail were reported from all over northern Natal, including Nongoma (the district of the royal household), Eshowe (the home area of Prince Gideon Zulu, a member of the royal family and prominent Inkatha leader implicated in promoting violence in his very troubled region<sup>29</sup>), and in

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<sup>28</sup>Because of its late entry to the election, the IFP was not included on the original ballot paper. Stickers were therefore to be added to the bottom of every paper before they were handed to a voter.

<sup>29</sup>See below, in section on the Gcina Mkhize trial.

Empangeni itself. For example the regional IEC office reported, in documents accompanying the memorandum to the regional headquarters, that:

- At Nongoma, "9 boxes were not sealed although 12 seals were available;"
- At Mahlabatini, "60 ballot boxes were unmarked and could not be identified to any polling station. 20 boxes were unsealed and these came from Mahlabatini to [be] counted at Nongoma;"
- At Inkandla, "26 disputed ballot boxes were found. Official ballot boxes were not sealed, 24 boxes had plastic covers and it was suggested that they would be counted separately. It was alleged that the Voting Officers as well as Presiding Officers were forcing people to vote for the IFP and in certain instances Voting Officers made crosses for people without the voters prior concerned [*sic*];"
- At Ulundi, the District Electoral Officer was the public relations officer for the KwaZulu government, who later made claims for salaries to the IEC in respect of polling stations and polling officers who could not be traced in the regional IEC records.

In the Empangeni sub-region, fifteen polling stations did not appear in the national list of polling stations published in the Government Gazette. Ballot boxes were not properly sealed nor accounted for during transportation from polling stations to the counting stations. Objections were eventually raised in regard to 176 ballot boxes, relating primarily to improper sealing and the lack of proper identification of the polling stations from which they came.

International observers confirmed these reports; for example:

- At Sundumbili in Eshowe district, two international observers (British and American) reported ballot boxes left under the sole guard of the KwaZulu Police,<sup>30</sup> improperly sealed ballot boxes, incomplete "tally sheets" for ballot papers, and a presiding officer who had refused to take any action to remedy these defects until the international observers insisted that the boxes be resealed and a note to that effect inserted in the newly sealed boxes. The observers concluded by requesting that the IEC "exercise extreme caution in considering the ballots from the Sundumbili School."<sup>31</sup>

Another report described irregularities in the Natal Midlands (along the main road between Johannesburg and Durban) on the basis of information received from district electoral officers and presiding officers at individual polling stations:

- In the Pietermaritzburg region, objections were lodged against 270 boxes from the Msinga district. Some had broken or damaged seals and in others the papers were neatly stacked as though they had been inserted at one time. There were large discrepancies between original ballot paper count and the reconciliation count. Further irregularities of the same type were noted in ballot boxes from the nearby Mphophomeni voting station.<sup>32</sup>

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<sup>30</sup>Major O.Y. Zama, station commander at the KZP police station at Sundumbili, has been implicated repeatedly in promotion of violence in the region. On the first day of voting he arrested and detained an ANC party agent for "obstructing the course of justice" when the agent inquired why he had arrested another youth. See below, for further details.

<sup>31</sup>*Election Observer Incident Report*, April 30, 1994.

<sup>32</sup>*Adjudication Secretariat Memorandum*, May 3, 1994.

In many districts of northern KwaZulu voter turnout was spectacularly higher than the estimated figures for voting population. Although population estimates in South Africa are notoriously unreliable, while the lack of a voters' register and the consequent possibility for voters to vote at any voting station meant that reconciliation counts were often impossible, the figures appear to confirm the allegations of stuffed ballot boxes. Examples of unexpectedly high turnout included: Camperdown (357 percent); Dundee (235 percent); Eshowe (855 percent) and Estcourt (213 percent). In other areas, the vote for one party was so low as to support allegations of a high level of coercion: for example, in Mahlabatini and Inkandla ANC support was only about 1 percent. However, although in KwaZulu-Natal such examples overwhelmingly favored the IFP, in some areas the converse was true: in Mount Currie, IFP support was only 0.6 percent.<sup>33</sup>

Human Rights Watch/Africa spoke to a number of individuals monitoring the elections in Natal on a formal or informal basis. Although those posted to northern Natal reported the worst abuses, virtually every one described incidents at individual polling stations that call the validity of the regional election result into question.

## Conclusion

Although the national decision by the ANC not to contest the election results in KwaZulu-Natal was taken on the basis that the need to include Inkatha in the government of national unity outweighed the concerns of election fraud and intimidation, the regional election result cannot be taken as a fair reflection of the opinions of voters within KwaZulu-Natal.<sup>34</sup> Despite the certification of the election as free and fair by the IEC, independent monitoring by the IEC and others was not sufficient to prevent serious irregularities. The official IEC report, published in October 1994, admitted that it could not investigate all allegations of abuse. For example, in the context of allegations of "pirate" voting stations, it stated that: "Directly contradictory allegations of fact relating to events that had taken place at inaccessible points in rural KwaZulu simply could not be resolved by the Commission with the means and in the time available to it."<sup>35</sup> The IEC Analysis Department Report concluded that, nationwide, "there were significant irregularities which appear to have materially affected the outcome of the election. It is impossible with the data available to establish the precise effect."<sup>36</sup>

## REGIONAL POLITICS SINCE THE ELECTION

Regional politics have been dramatically affected by the election and the reincorporation of the KwaZulu homeland into Natal. Despite the continuation of many aspects of the homeland government — most notably the KwaZulu Police and the chieftainship system — the dynamics of political competition between the ANC and Inkatha have changed. Perhaps most noticeable of these changed dynamics is the split that has developed between the Zulu king, Goodwill Zwelithini, and Chief Buthelezi. More important in the long run, though closely linked, is the struggle to preserve the chieftainship system within KwaZulu-Natal despite the national drive to install democratic local government structures.

### The constitutional position of the former homelands

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<sup>33</sup>IEC Analysis Department Report, p.45.

<sup>34</sup>In the immediate aftermath of the election, the regional ANC stated that it would challenge the election results in court. After meetings with national ANC leaders, this threat was dropped.

<sup>35</sup>The identification of polling stations at such a late stage meant that there was considerable confusion about the final authorised list; in addition, because sites were chosen in haste some turned out to be unsuitable and electoral officers moved them on their own initiative. IEC Official Report, p.70.

<sup>36</sup>IEC Analysis Department Report, p.39. An unpublished report prepared by the European Union election monitoring team and leaked to the press concluded that the voting suffered from "major problems" and that the general chaos was "an invitation to cheat or at least leads to the assumption that cheating might have taken place." It concluded that it was likely the final result had been negotiated between the parties. Richard Dowden "Report on SA poll fixing is suppressed," *The Independent* (London), March 20, 1995.

The "self-governing territory" of KwaZulu was, with the implementation of the new constitution on the first day of elections, merged with the "white" province of Natal within which it had formed a number of enclaves. The new region, one of nine under the interim constitution, is known as KwaZulu-Natal, as a result of another last minute amendment which had changed the proposed name from Natal. The regional assembly is currently sitting alternately in Pietermaritzburg, in the former Natal midlands, and in Ulundi, the former capital of KwaZulu, although the final location of the new capital is the subject of dispute.<sup>37</sup>

Despite the formal reincorporation of KwaZulu into South Africa many aspects of the former system of government remain in force. Most notably, perhaps, local government in the rural areas which were previously within the homeland boundaries is still through the medium of "traditional leaders". Although at national level transitional local government structures have been established in urban areas, pending the holding of local government elections scheduled for November 1, 1995, rural areas are left in a limbo. Chiefs and headmen still exercise the powers granted to them by the KwaZulu Amakhosi [chiefs] and Iziphakanyiswa [headmen/traditional leaders] Act of 1990, itself largely a reenactment of the Natal Code of Zulu Law established by the British colonial authorities.<sup>38</sup> Under this law, chiefs have virtually unlimited powers to forbid gatherings or other political activity within their territory, and may collect taxes or levies of various types from their "subjects." These powers conflict with internationally guaranteed rights to freedom of association, assembly and expression.

In addition, the KwaZulu Police (KZP), the police force of the former homeland, maintain their former powers and duties pending the establishment of an integrated regional police force.<sup>39</sup> The KZP now fall under the political authority of the new regional minister for safety and security, Celani Mtetwa (formerly minister of justice in the KwaZulu homeland and deeply implicated in hit squad allegations). Chief Buthelezi, previously KwaZulu minister of police as well as chief minister, is now minister of home affairs at national level in his role as president of the IFP, and does not hold office within KwaZulu-Natal. Following the retirement as commissioner of the KZP of General Roy During, a seconded South African Police (SAP) officer, no new commissioner of the KZP was appointed, and KZP officers General Sipho Mathe and Brigadier C.P. Mzimela, both alleged to have been involved in illegal hit squad activity, have successively been appointed as acting commissioners. Allegations of the partiality of the KwaZulu Police towards the IFP continue unabated. A new regional commissioner for KwaZulu-Natal, Lieutenant-General C.P.J. Serfontein, was announced by new national police commissioner George Fivaz, shortly after he took up office in March 1995, and assumed office on April 1. Serfontein takes command of all police forces in the region, and is responsible for implementing the integration of the KZP and SAPS to form a new regional police force, under the command of the national commissioner.<sup>40</sup>

### **Conflict between King Goodwill Zwelithini and Chief Buthelezi**

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<sup>37</sup>The IFP asserts that the new capital should be in Ulundi. Pietermaritzburg is one hour from Durban, the former capital of Natal, on the main road from Durban to Johannesburg. Ulundi is several hours drive from Durban, in the hinterland of northern Natal. A commission of inquiry headed by a former Natal administrator Radclyffe Cadman, was appointed to determine the final location, but recommended in March 1995 that sitting continue to rotate until a final decision could be reached by the parties. Farouk Chothia, "No decision on capital," *Business Day*, March 29, 1995.

<sup>38</sup>See Africa Watch, *"Traditional" Dictatorship: One Party State in KwaZulu Homeland Threatens Transition to Democracy* (New York: Human Rights Watch, September 1993). All homeland legislation remains in force until explicitly repealed or amended.

<sup>39</sup>Policing is jointly a responsibility of central and regional government under the new constitution. A draft new national Police Act was published in July 1994 for comment, and it is anticipated that it will be presented to the national assembly in July or August 1995. It is therefore not likely to come into force before the end of the year. However, the integration of regional police forces will go ahead independently, in accordance with the South African Police Service Rationalisation Proclamation, published in January 1995 (Government Gazette No.16239).

<sup>40</sup>*Ibid.*, article 9(2); "Fivaz names provincial police commissioners," *Weekend Star* (Johannesburg), March 4-5, 1995.

Since the establishment of the KwaZulu homeland in the early 1970s, there has been tension between the Zulu king, Goodwill Zwelithini and Chief Buthelezi. As a result of lobbying by Chief Buthelezi, and in contrast to the other homelands established at around the same time, the KwaZulu constitution provided for a constitutional monarchy, in which the real power was exercised by the Chief Minister. For the entire period of the homeland's existence, the post of Chief Minister was held by Chief Buthelezi, who claimed the position on the grounds that his family had always held the title of "traditional prime minister" to the Zulu kings. This claim was hotly contested,<sup>41</sup> although Chief Buthelezi's position was not effectively challenged until the KwaZulu homeland was dissolved into the new province of KwaZulu-Natal with the coming into force of the interim constitution on April 26, 1994. Until that date, the king also remained a firmly Inkatha figure.

During the run up to the elections, one of the principal points of contention for the IFP was the status of the Zulu king in the new constitutional dispensation.<sup>42</sup> In last minute amendments to the interim constitution agreed in April 1994, in an attempt to persuade Inkatha to contest the elections, provision was made for recognition of the Zulu king in a new dispensation.<sup>43</sup> Immediately before the election, on April 25, 1994, President de Klerk assented to a secret act, the Ingonyama Trust Act, whose terms only became known some weeks later.<sup>44</sup> Under the act, a trust was established under the sole control of the Zulu king, or Ingonyama, into which was transferred ownership of all land previously held by the KwaZulu government. The effect of the legislation was therefore to prevent the new governments at regional and national level from having any control over what was previously government land.<sup>45</sup>

However, the Ingonyama Trust Act, together with the abolition of the homeland government, also had the effect of freeing the king from his links to the IFP. Despite the close political and rhetorical links between the IFP and the Zulu monarchy, relations between the royal family, including Zwelithini, and Buthelezi had been strained for some time. Once the elections were over and the KwaZulu homeland consigned to the trash can of history, together with the other nine homelands (the four "independent" black states and five other "self-governing territories"), King Zwelithini began to test the limits of his new independence from the financial control of the Inkatha-dominated homeland administration. In September 1994, the king announced the previously unthinkable: that he did not regard Buthelezi as his "traditional prime minister" and was appointing as chief adviser Chief Israel Mcwayizeni, a senior member of the royal family, ANC member of the new National Assembly and member of the ANC's National Executive Committee.<sup>46</sup>

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<sup>41</sup>Mzala *Gatsha Buthelezi: Chief with a Double Agenda* (London & New Jersey: Zed Books, 1988); Gerhard Maré & Georgina Hamilton, *An Appetite for Power: Buthelezi's Inkatha and the Politics of "Loyal Resistance"* (Johannesburg: Ravan Press, 1987).

<sup>42</sup>As early as 1992 Inkatha had walked out of multiparty negotiations, at that stage known as the Convention for a Democratic South Africa (Codesa), demanding that not only the IFP but also the Zulu king should have representation at the talks. The IFP was already the only homeland-based political party allowed to participate in the negotiations for a transition to democracy.

<sup>43</sup>The Constitution of the Republic of South Africa Second Amendment Act (Act No. 3 of 1994), amending the Interim Constitution, section 160 and schedule 4, principle XIII. The amendments allow regional governments to "provide for the institution, role, authority and status of a traditional monarch in the province" and require such provision in the case of KwaZulu-Natal. The final constitution must "recognise and protect" regional constitutional provisions that have been adopted with respect to traditional monarchs.

<sup>44</sup>The KwaZulu Ingonyama Trust Act, 1994, Act 3 of 1994, G.N. 26 of 1994 dated 24 April 1994.

<sup>45</sup>When the existence of the act was discovered, a compromise was reached with the new national government regarding its interpretation, to limit the powers of the king to some extent. On this understanding, the ANC did not challenge its validity.

<sup>46</sup>At the ANC's national congress in December 1994, Mcwayizeni did not run for re-election to the NEC, stating that this was as a result of the king's desire not to be seen to be overtly aligned with party politics. However, he retained his parliamentary seat.

A further confrontation developed over the annual "Shaka Day" celebrations on September 24. When Zwelithini invited President Mandela to attend the festival, previously an exclusively Inkatha affair, Chief Buthelezi objected. The helicopter transporting Mandela to the king's palace at Nongoma was stoned, and the palace itself attacked by Inkatha supporters. Zwelithini then cancelled the celebrations and announced that he was breaking off ties with the Inkatha leader, only for Buthelezi to go ahead without him, attracting a crowd of some 10,000 to 15,000 Inkatha supporters at Shaka's tomb in Stanger on the Natal north coast. The day following the rally, Chief Buthelezi burst into a television studio in Durban and threatened a spokesman for the king, Prince Sifiso Zulu, who was being filmed live for the nightly news program *Agenda*.

As the split between King Zwelithini and Buthelezi has deepened, chiefs in the former area of KwaZulu have largely aligned themselves with Inkatha, and the King himself has increasingly come to be identified with the ANC by Inkatha, although he maintains his desire to hold a nonaligned position as symbolic head of the Zulu people. Inkatha, backed by the majority of the amakhosi (chiefs), is demanding stronger powers for regions in their relations with central government; the continuation of the chieftainship system at local government level, in place of elected local government authorities, and a regional House of Traditional Leaders with a powerful role. The king has stated that these positions have been taken without proper consultation with him as Zulu monarch.

### **KwaZulu-Natal Act on the House of Traditional Leaders**

The most controversial piece of legislation passed by the new KwaZulu-Natal regional assembly — indeed the only piece of legislation of any note in the new region — is the KwaZulu-Natal Act on the House of Traditional Leaders.<sup>47</sup>

The stated objectives of the act are "to provide for certain powers, authorities and functions of Amakhosi [chiefs] and Iziphakanyiswa [headmen/traditional leaders]; the establishment of a House of Traditional Leaders; and for matters incidental thereto."<sup>48</sup>

The members of the House of Traditional Leaders in KwaZulu-Natal are chiefs chosen from the Regional Authorities inherited from the KwaZulu homeland, a nominee of the Zulu king (or *Ingonyama*), and the "Traditional Prime Minister to the Ingonyama" (a position claimed for many years by Chief Buthelezi but in fact without historical precedent in the Zulu monarchy). This composition is similar to the traditional leader component of the KwaZulu Legislative Assembly.<sup>49</sup>

Section four of the act gives the House "the power to advise and make proposals to the Provincial Parliament or Cabinet, and to comment and make recommendations on any draft Bill or proposed executive action in respect of matters relating to traditional authorities and indigenous and customary law, with special regard, inter alia, to (a) the status, powers and functions of traditional authorities, (b) organization of tribal and traditional communities, (c) indigenous land tenure systems and all related matters, (d) Zulu traditional and customary law on inheritance, family and marriage, (e) tribal courts and the system of jurisdiction, enforcement and/or sanction of Zulu traditional and customary law; (f) taxation by traditional authorities and in tribal and traditional communities; and (g) Zulu customs and traditions." No vote of the House of Traditional Leaders has any binding effect unless also adopted by the new regional assembly.

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<sup>47</sup>Act No. 7 of 1994; assented to by the regional premier on November 11, 1994.

<sup>48</sup>Under the interim constitution for the whole of South Africa, each region in which traditional authorities were recognised before the election is obliged to establish a house of traditional leaders. Legislation for this purpose must be introduced within six months of the election of a provincial premier, after consultation with traditional leaders. Existing traditional authorities retain their powers until they are amended. Sections 181-184, Act No.200 of 1993.

<sup>49</sup>See, Africa Watch, "*Traditional Dictatorship*", pp.14-15, for a discussion of the KwaZulu Legislative Assembly (KLA). Following the April 1994 elections, a new organisation *Iso LeSizwe* (Eye of the Nation) was formed to gather together chiefs who had been members of the KLA and "promote the interests of the nation".



Perhaps most importantly, the legislation confirms the powers of the chiefs and the king in KwaZulu as established by the KwaZulu Amakhosi and Iziphakanyiswa Act of 1990,<sup>50</sup> itself based on British colonial legislation setting up the tribal authorities in KwaZulu after the conquest of the Zulu state in the nineteenth century.<sup>51</sup> These powers may be modified only by a resolution passed with a two-thirds majority in the new House of Traditional Leaders. The provincial cabinet is also given the power to veto decisions taken by the national government concerning customary law in so far as they apply to the KwaZulu-Natal region.

The king rejected the legislation, claiming that he had not been consulted; both the ANC and the king launched court applications claiming that the act was unconstitutional.<sup>52</sup> Nevertheless, the formation of the seventy-seven member House went ahead, meeting for the first time in January 1995 and electing Chief Buthelezi as chair of its executive committee.<sup>53</sup>

### **Preparations for local government elections in KwaZulu-Natal**

The national elections of April 1994 established new government structures at regional and national level, but left the old *apartheid* structures in place at local level. Outside the former homelands, the Local Government Transition Act (Act No. 209 of 1993) provided for "transitional local councils" or, in the major urban centers, "transitional metropolitan councils" to be established to run local government elections and take care of local administration until new structures could be put in place. The Local Government Transition Act was, however, silent as to what should happen in the former homelands where, since colonial times, chiefs had been appointed as civil servants by the central government. Always a focal point of conflict, the future role of the chiefs has become the central bone of contention in the competition between the ANC and Inkatha.

In March 1995, options for future local government structures were formally debated in the regional assembly. IFP proposals involve a tripartite division of KwaZulu-Natal, largely along the boundaries established by the apartheid system. In the existing urban areas (but not the squatter camps under tribal authorities that surround the formal townships or suburbs) and in the areas formerly under the Natal Provincial Administration (largely white farmland and so-called "black spots") elected structures will be established. In the former KwaZulu, however, fifty percent of local councillors will be appointed by tribal authorities. Chiefs will retain the powers they held under the KwaZulu government. Under the ANC's model, the region will be divided into districts along functional and geographical lines not related to previous boundaries (so, for example, peri-urban tribal authority areas will be incorporated into the government structures for the towns or cities they surround). Each district will be divided into wards, and district councils in all areas will be elected through a mixture of ward constituencies (sixty percent of seats) and proportional representation (the remaining forty percent). Chiefs will retain some residual powers and will be eligible to stand for office.

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<sup>50</sup>See Africa Watch *"Traditional" Dictatorship*, pp.15-21, for a description of the chieftainship system as encoded in this legislation.

<sup>51</sup>At the beginning of April 1994, chiefs' salaries — paid to them since the establishment of the system of indirect rule during the colonial era — were increased. Chiefs are paid according to their educational qualifications. Under the new scale, chiefs with matric (school-leaving certificate), for example, receive R.18,000 (\$5,000) a year (instead of R.15,747). Chiefs openly opposed to Inkatha claimed not to receive these salaries. Farouk Chothia, "IFP ups stakes in battle for the chiefs," *Weekly Mail and Guardian* December 15-22, 1994.

<sup>52</sup>Ann Eveleth, "Right royal battle for soul of the Zulus," *Weekly Mail and Guardian*, March 17-23, 1995.

<sup>53</sup>The other chiefs elected to the executive committee were Chief Mpiyenthombi Boy Mzimela of Ngoye (alleged by human rights monitors to be responsible for a number of murders and for violence in his area), Chief M.W. Hlengwa of Umbumbulu, Chief M.R. Msibi of Simblangentsha and Chief B.N. Mdletshe of Hlabisa. "Buthelezi elected as chairman of KwaZulu-Natal House of Traditional Leaders," South African Press Association (SAPA) January 9, 1995, as reported in the BBC Summary of World Broadcasts (SWB) AL/2198 A/6, January 11, 1995.

As voter registration got under way nationally, in preparation for local government elections scheduled for November 1, 1995, a boycott similar to that preceding the April 1994 elections seemed to be threatened. On February 10, 1995, a gathering of more than 200 Inkatha-supporting chiefs and traditional leaders at Ulundi stated that they would boycott the poll unless international mediation took place on the outstanding constitutional issues relating to the powers of regions and the powers of traditional leaders. However, voter registration was allowed to go ahead — though at a very slow pace — pending the decision on mediation.<sup>54</sup>

## CONTINUING POLITICAL VIOLENCE IN KWAZULU-NATAL

Although violence has decreased from the pre-election heights, it has remained at what would have been regarded as crisis levels a few years ago and threatens to increase again as local government elections approach. Hundreds of thousands of people have been displaced over the years, and many formerly populous areas remain deserted. The great majority of victims are ordinary citizens, not active in either political party. Most of the displaced are women and children, and large numbers of children are showing the psychological scars of violence which they will bear for years to come. An alarming number have themselves joined youth gangs that perpetuate the cycle of death and injury.<sup>55</sup> Urgent consideration must be given to the means of curtailing violence, in the light of the experience of previous years. The necessary steps must include the removal from power of those in government positions who have promoted violence in the past.

### The State of Emergency

March and April 1994 were the most violent months in the history of political violence in KwaZulu-Natal. The Natal office of the Human Rights Committee of South Africa (HRC)<sup>56</sup> recorded a total of 429 deaths in political violence during the last two weeks of March and first two weeks of April. In response to this crisis, on March 31, 1994, President F.W. de Klerk declared a state of emergency in KwaZulu and Natal under the powers given to him by the Public Safety Act of 1960.

Under the state of emergency, security forces (with the specific exception of the KwaZulu Police) were given extraordinary powers of arrest, detention, search and seizure<sup>57</sup>; military training by non-state parties was prohibited; the public display of weapons was forbidden, and gatherings and processions were required to obtain authorization at least four days before they were held. Deployment of the army (the South African Defence Force, or SADF) in the region was increased from 1,000 to 3,000 (or 14.6 percent of the number of troops deployed nationally).

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<sup>54</sup>Sipho Khumalo, "Zulu chiefs' ultimatum," *City Press* (Johannesburg), February 2, 1995; "ANC and NP slam Inkatha's decision to withdraw from assembly," *Business Day*, April 10, 1995.

<sup>55</sup>See *Violence and Children: the Reality* (Port Shepstone: Practical Ministries, August 1994), for a discussion of the effects of political violence on children in one area.

<sup>56</sup>Formerly the Human Rights Commission, this nongovernmental organisation monitoring political violence was renamed after the elections to avoid confusion with the Human Rights Commission established by the new constitution.

<sup>57</sup>By contrast with previous states of emergency, however, detainees were given substantial protections against illtreatment. Four lawyers were appointed to visit and monitor the treatment of the detainees. Nevertheless, allegations of assault by the police were made, including by forty-six ANC members detained in Marianhill for conducting military training, and by one ANC supporter detained in Empangeni, who stated that he had been tortured by ISU members, including the use of electric shocks. HRC, *The KwaZulu-Natal State of Emergency* (Johannesburg: HRC, September 1994), p.4.

Although the emergency did not make a substantial difference to levels of violence in the KwaZulu-Natal region generally, where troops were deployed in force there was a marked decline in political violence. For example, in Sundumbili, deaths decreased markedly following the redeployment of the SADF.<sup>58</sup> In many cases, however, the powers given by the state of emergency were not effectively used. For example, although substantial numbers of unlicensed weapons were seized by the army, several gatherings went ahead where IFP members, in particular, were publicly armed with both "traditional" weapons and firearms. No weapons searches were carried out of locations known to be used as attack bases: for example, the T section of Umlazi township outside Durban from which attacks were launched by the IFP during March. Nor was there any attempt to confiscate the G3 rifles issued to chiefs by the KwaZulu homeland, with few controls over their use, which had often been connected with incidents of violence. Powers of arrest and detention were also sparingly used, both by the police and the army: a total of 137 people were detained under the state of emergency, five of whom face charges in connection with the murder of eight people handing out TEC pamphlets in Ndwedwe on March 25, 1994.<sup>59</sup> Many of those detained appeared not to be linked to political violence.

An international observer appointed to monitor the security forces during the emergency stated that:

Many of the killings during the first week of the emergency could probably have been prevented by exercising the powers given to the security forces to go ahead with the preventative detention of individuals known to be disposed to kill or to organize killings for political reasons. But the political back lash of this measure could have generated even more violence, for the simple reason that many of those warranting preventative detention are political leaders.<sup>60</sup>

### Violence after the elections

Following the decision of the IFP to participate in the vote, violence decreased dramatically in KwaZulu-Natal, and continued to do so after the elections. The total number of deaths recorded for the year by the HRC nevertheless reached 1,602. Moreover, this figure indicates the minimum numbers of deaths in political violence in the region: accurate figures are almost impossible to obtain, since the boundary between criminal and political violence is often very hard to draw, while individual deaths may often go unreported.<sup>61</sup>

January	172	July	91
February	180	August	74
March	311	September	66
April	338	October	52
May	104	November	60
June	79	December	75

<sup>58</sup>Troops were deployed in Sundumbili in December 1993, with immediate effect in reducing violence, but the troops had later been withdrawn, on IFP insistence. Africa Watch, *Impunity for Human Rights Abuses in Two Homelands*, pp.12-13; see also below, in section on the Case of Major O.Y. Zama.

<sup>59</sup>See above, in the section on the Ndwedwe killings, and HRC, *The KwaZulu-Natal State of Emergency*.

<sup>60</sup>Quoted in *ibid.*, p.4.

<sup>61</sup>Other researchers, for example, argued that deaths in so-called faction fights should be included in the figures for political violence; since — although not necessarily matching the conflict between the ANC or IFP — the continuation of such endemic feuding depended on the same attitudes of indifference or encouragement from the police and other state structures.

Political deaths in KwaZulu-Natal during 1994  
(Source: Human Rights Committee KwaZulu-Natal, *1994 Overview*)

In January 1995, political killings increased again, with a total of 116 deaths recorded by the HRC; in February, the recorded total fell to seventy-six, and in March to fifty-seven, but many observers expressed their fear that violence would escalate once again as local government elections approached.

### **The Implementation of Peace Bill**

In early 1995, draft legislation prepared by the IFP was published, which purported to maintain the system of regional and local peace structures that had been established in Natal in accordance with the National Peace Accord of September 1991.<sup>62</sup> The Implementation of Peace Bill envisages a network of "peace committees" with the task of promoting "peaceful relations among the inhabitants of the province."<sup>63</sup> The peace committee heading the network is to consist of the members of the standing committee on safety and security in the regional assembly and an executive director appointed by a minister in the regional cabinet. This regional peace committee is to have the discretion to dismiss from office a member of a peace committee lower in the hierarchy "if it is of the opinion that there is a valid reason for doing so."<sup>64</sup> In addition, the regional premier is empowered to appoint a "competent person" (who shall be a magistrate), who will have extreme powers of search and seizure and to compel testimony.<sup>65</sup>

The proposed legislation was attacked by human rights groups and by the ANC as giving arbitrary and probably unconstitutional powers to bodies whose members could be dismissed at will. No evaluation of the existing peace structures, many of which had been ineffective or even obstructive in resolving question of violence, had been carried out before drafting the bill. Nor had it taken into account the changed political circumstances since the elections: the original peace accord had been set up to provide channels of communication when no democratic structures were in place, and the appropriate means of resolving disputes should now be through elected government bodies.<sup>66</sup>

## **POLITICAL VIOLENCE ON THE KWAZULU-NATAL LOWER SOUTH COAST**

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<sup>62</sup>In September 1991, in an attempt to address the causes of violence, representatives of various sectors of South African society, including religious groups, labor, business, and major political parties signed a National Peace Accord, which set out 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. The structures of the NPA had varying success, and since the election have largely been wound up, with some local exceptions.

<sup>63</sup>Implementation of Peace Bill, section 2(2).

<sup>64</sup>*Ibid.*, sections 11(3)(b) and 14(3)(b).

<sup>65</sup>*Ibid.*, section 18.

<sup>66</sup>It was reported that a new Provincial Peace Structure (PPS) had already been set up by regional premier Frank Mdlalose on January 1, 1995, pending approval of a budget by the regional legislature. "KwaZulu's new peace body gets into gear," *The Star* (Johannesburg), January 24, 1995. However, it appears that funding is simply being allocated to existing peace committees, under the previous structures, until new legislation is passed.

In February 1994, at the height of the pre-election violence, Human Rights Watch/Africa visited Port Shepstone, on the south coast of Natal Province.<sup>67</sup> We revisited the area in December 1994. Although violence has decreased since the pre-election peak, the lower south coast has continued to be plagued by political conflict since the elections took place.

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<sup>67</sup>See Africa Watch, *Impunity for Human Rights Abuses in Two Homelands*, pp.13-15.

The reasons for the continued violence in the Port Shepstone area are similar to those in the rest of KwaZulu-Natal. Essentially, the April 1994 election did not settle the competition for political and physical territory between the ANC and the IFP. This competition will be unresolved until the future structure of local government in the rural areas is decided. In the meantime, efforts to negotiate peace between the parties are consistently frustrated by attacks that seem to be timed to derail potential talks.<sup>68</sup>

Nevertheless, the role of the police in the conflict remains central. Port Shepstone and its hinterland falls under the jurisdiction of the South African Police Service (SAPS), as the South African Police Force (SAP) was renamed following the 1994 election, rather than the KwaZulu Police. Although in general the SAPS is acknowledged to be more efficient and less biased than the KZP, significant problems nonetheless exist. The failure of police patrols to prevent attacks from taking place, where the army (the South African National Defence Force, or SANDF, previously the SADF) has been successful, has promoted distrust that has not been dispelled by an official move towards "community policing." The lack of successful prosecutions of those who are guilty of carrying out violent attacks has allowed a cycle of violence to develop, whereby vigilante justice is meted out to those who seem otherwise to be able to commit violent acts without fear of consequences.

Partly this failure is a lack of resources. South Africa, despite being one of the most violent societies in the world, is vastly underpoliced. In addition, personnel and resources are disproportionately devoted to "white" areas, leaving the most troubled regions even more severely neglected. The areas affected by violence in the Port Shepstone area are hard to reach, with few tarred roads and hilly terrain. Partly also, the police are hampered by the difficulty in getting witnesses to come forward to testify in political violence cases. There is no effective witness protection scheme in place, and witnesses are simply too afraid to speak out in public.<sup>69</sup>

However, it is also clear that the police in Port Shepstone suffer at the least from a somewhat patronizing attitude regarding the tendencies of a "tribal" people to fight if their tribal structures are disturbed. The national trend to transfer individuals from the disbanded security branch (previously responsible for "political" policing) to "community policing" has not increased community trust of those involved. There have also been notable failures to investigate thoroughly and bring to book those individuals who have been repeatedly named in connection with violent incidents. Recent successes in the area have been achieved by a team of investigators imported to the sub-region from Durban. In other cases, elementary steps to investigate political crimes have not been undertaken. The perceived close relationship between the local commander of the Internal Stability Unit (ISU) of the SAP (formerly the Riot Unit, responsible for "unrest" situations) and the local Inkatha leadership has contributed to a wholly antagonistic relationship between the ISU and the local ANC which has stood in the way of peace negotiations.<sup>70</sup>

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<sup>68</sup>The IFP has consistently boycotted meetings of the local Peace Committee, regarded as one of the more successful examples of the national peace structures, on the grounds that it is biased towards the ANC.

<sup>69</sup>Witnesses in political trials have often been the target of attack: for example, in November 1994, three witnesses were killed after they had testified in the case of eight IFP members who were convicted of murder in Port Durnford on the Natal North Coast. HRC, *Weekly Report* for November 9-15, 1994.

<sup>70</sup>In July 1994, the local commander of the ISU, Lt.Col. Herman Fourie, was accused by the ANC of providing weapons to Inkatha leader Sgoloza Xolo on the night of May 17, when IFP leader Wilson Xolo was killed in Mvutshini (see below). The affidavit on which the accusation was based was referred to the Attorney-General, who declined to prosecute. "ISU commander accused of providing weapons," *South Coast Herald*, (Port Shepstone), July 8, 1994.

According to information supplied by the Port Shepstone police station, it is responsible for an area of approximately 240 square kilometers, with a population estimated by the police to be more than 366,000.<sup>71</sup> This area is policed by 124 uniformed police, with the assistance of approximately 150 members of the Internal Stability Unit, a combined ratio of approximately 0.75 police to every 1,000 population.<sup>72</sup> The "Unrest and Violent Crime Investigation Unit", responsible for investigating violent and/or political crimes, consists of about twenty-five members. In the area policed from Port Shepstone, 500 murders were reported to the police during 1993, and 708 during 1994, an astonishingly high murder rate of approximately 193 per hundred thousand people.<sup>73</sup> In connection with these murders, 286 arrests were made during 1993 and 285 during 1994; a very small percentage (which the police could not estimate) of these arrests resulted in convictions.<sup>74</sup>

The majority of the violent deaths in the Port Shepstone region, as elsewhere in South Africa, are not related to political conflict, though the line between political and criminal violence can often be hard to draw. However, a total of 195 murder cases for 1993 and 133 for 1994 were investigated by the Unrest and Violent Crime Investigation Unit, giving some idea of the number of deaths thought by the police to be related to political conflict. The Human Rights Committee recorded a total of 237 politically related murders in the whole South Coast region (that is, including a wider area than that policed by the Port Shepstone Police Station) during 1994.

Even in very high profile cases, the clear up rate is very low. Questioned in January 1995 about the main incidents of political violence in Port Shepstone area and nearby during late 1993 and 1994, the police gave the following responses:

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<sup>71</sup>Unless otherwise indicated, the information in the following section is derived from a letter to Human Rights Watch dated January 24, 1995 from Colonel Durandt, Deputy Regional Commissioner at Port Shepstone.

<sup>72</sup>According to Gauteng Witwatersrand Attorney-General Klaus von Lieres, the nationwide ratio is approximately 2.5 per thousand, against an international norm of 3 to 5 per thousand. "Shock murder figures for SA," *City Press*, March 5, 1995.

<sup>73</sup>The murder rate for the whole of South Africa is already a high fifty-three per hundred thousand, according to World Health Organization figures, making South Africa the most violent country in the world, with the exception of those at war. Some put the figures even higher, at ninety-four per hundred thousand. *Ibid*; "SA gets 'most violent' label," *The Star*, March 27, 1995.

<sup>74</sup>The lack of progress, for whatever reason, in apprehending criminals has led to popular protests in an attempt to get the police to take urgent action. For example, on Monday March 7, 1994, more than 1,000 people barricaded the main highway passing Murchison, a semi-urban settlement close to Port Shepstone, for eight hours, in protest at police failure to take action against gangs terrorising the area. The next day, seven youths suspected of being members of the notorious AmaSinyora gang were arrested and charged with the attempted murder of a Bhoboyi man in February, though a police spokesperson said that the arrests could not be connected to current violence in the area. "Man dies while protesters block Harding road: Police arrest seven suspects," *South Coast Herald*, March 11, 1994.

- 1993
- 5 April: Massacre of 10 youths in Murchison.<sup>75</sup>  
"No arrests as yet."
- 2 November: Killing of Reverend Richard Kgetsis.<sup>76</sup>  
"No arrests as yet."
- 31 November: Bombing of Port Edward Hotel.<sup>77</sup>  
"No arrests as yet."
- 30 December: Shooting of Chief Everson Xolo.<sup>78</sup>  
"No arrests as yet."
- 1994
- 16 February: Killing of George Mbele.<sup>79</sup>  
"No arrests as yet."
- 27 February: Bombing of Sey Shells Restaurant, Port Shepstone.  
"5 arrests were made."<sup>80</sup>
- 20 March: Killing of the wife of Isaac Nhlumayo.<sup>81</sup>  
"No arrests as yet."
- 8 April: Killing of nine members of the Mselemu family in an attack on a house in Nkulu ward, Gamalakhe.  
"One person was arrested but the Attorney General declined to prosecute."<sup>82</sup>
- 17 May: Killing of Wilson Xolo.  
"No arrests as yet."
- 18 May: Killing of acting chief Angel Mkhize.  
"No arrests as yet."

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<sup>75</sup>This massacre in a semi-urban settlement close to Port Shepstone was of particular significance because it ended a long period of peace in the region that had been brokered by the Commonwealth Observer Unit in South Africa following bitter conflict during 1991 and 1992. The youths murdered were ANC aligned.

<sup>76</sup>Reverend Kgetsis was a well known minister based at Practical Ministries, a nonaligned Christian nongovernmental organization based in Port Shepstone that has been the most important coordinator of relief efforts to the affected areas.

<sup>77</sup>In November 1993, a bomb exploded at the Port Edward Hotel, further south along the Natal South Coast. The Afrikaner Weerstandsbeweging (AWB), an extreme right-wing paramilitary group, was due to hold a conference at the hotel, but the circumstances of the bombing suggested that it might in fact have been carried out by right-wingers aiming to sow fear amongst the white population.

<sup>78</sup>See below for the details of the attack on Chief Xolo and the conflict in his area of KwaXolo that followed.

<sup>79</sup>George Mbele was the chair of the South Coast branch of the ANC, and the principal of a school in Umzumbe, a region that had been relatively unaffected by political violence.

<sup>80</sup>See below, for information as to the arrests in this case.

<sup>81</sup>Isaac Nhlumayo is a local IFP induna, and the attack was launched on a vehicle in which he was traveling. The attack occurred after the IFP decided to boycott a peace meeting.

<sup>82</sup>The Mselemu family were ANC-aligned. Local IFP leader James Zulu was questioned in connection with the attack.



7 July:	Killing of Mdaphuna Xolo. <sup>83</sup> "No arrests as yet."
31 August:	Killing of five in an attack on a house in Mvutshini, KwaXolo. "3 were arrested. Docket at the Attorney General for his decision." <sup>84</sup>
27 October:	Killing of fifteen in attack on Gcilima. "5 persons arrested and appeared in court." <sup>85</sup>
19 November:	Killing of five in Bhoboyi/Murchison when buses travelling to an IFP rally passed through the area. <sup>86</sup> "No arrests as yet."

On February 16, 1995, a local ANC activist, Michael Nsimbi, was stabbed to death outside the ANC offices in Port Shepstone. It did not appear to be a political killing. A man was arrested and charged in connection with the attack and released on R.300 (approximately \$85) bail. Several days later, the suspect was shot and killed, together with two other men, in Gamalakhe township outside Port Shepstone. The ANC condemned the revenge attack.<sup>87</sup> It is this type of vigilante justice that has been encouraged by the failure of the criminal justice system to deal with sufficient apparent seriousness with those who are accused of violent crimes.

### **KwaXolo**

The KwaXolo area south of Port Shepstone, near the seaside holiday resort of Margate, was particularly badly affected by violence during 1994. KwaXolo is within the boundaries of the former KwaZulu homeland, and falls under the nominal authority of Chief Everson Xolo: however, in early 1994 Chief Xolo fled the area, following an attack on him on December 31 in which he was shot and seriously wounded.<sup>88</sup> Chief Xolo was a member of the KwaZulu Legislative Assembly and of the Inkatha Freedom Party, and the attack on him was condemned by both the IFP and the ANC in the region. Since he has been out of the area, a power vacuum has led to a bloody struggle for dominance of his area, estimated by the police to house roughly 150,000 people. KwaXolo is policed from the Margate Police Station, staffed with a complement of sixty-three uniformed members. Approximately sixty members of the SANDF are also stationed at Margate, as well as about thirty members of the ISU.

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<sup>83</sup>Wilson Xolo and Mdaphuna Xolo were both IFP leaders in the Izingolweni sub-area of KwaXolo; Angel Mkhize, also IFP-aligned, became acting chief after Chief Xolo fled the area following the attack on him in January 1994, and had been regarded as committed to peace.

<sup>84</sup>Those arrested included Sgoloza Xolo, a notorious Inkatha leader described by the ANC as a "warlord." He and his co-accused were released on R.500 (\$140) bail. "Call for inquiry into Mvutshini murders," *South Coast Herald*, September 16, 1994.

<sup>85</sup>See below for details of these arrests. One of those arrested was Sgoloza Xolo, out on bail for charges relating to the five killed in Mvutshini on August 31 and also suspected in connection with an attack at a taxi rank in Margate in September.

<sup>86</sup>Five buses traveling from Izingolweni in the KwaXolo area passed through Bhoboyi and Murchison, largely ANC-aligned areas previously devastated by political violence, on the way to an Inkatha rally in Durban to be addressed by Chief Buthelezi. As they passed through the area, Inkatha supporters descended from the buses, and a shooting incident resulted in which five people died. The police had made no attempt to disarm the heavily armed passengers at the time that they boarded, and in fact were accompanying the buses as they traveled through the Bhoboyi/Murchison area. Following the incident, weapons were not confiscated from the buses for ballistic tests. Information supplied by the Port Shepstone Peace Committee.

<sup>87</sup>"Margate councillor dies after stabbing: Killer shot dead in 'revenge' attack," *South Coast Herald*, February 24, 1995.

<sup>88</sup>According to the SAPS at Port Shepstone, the attack on Chief Xolo followed a school meeting addressed by the chief in the Izingolweni area and attended by approximately 250 people. As his vehicle left the schoolyard, it was attacked by four unknown men. Nobody could, or alternatively, nobody was willing, to identify the attackers. Letter dated November 10, 1994, from Brigadier Schoeman of the Port Shepstone Police to Mary de Haas of the Department of Social Anthropology of the University of Natal.

According to individuals working in the peace structures and residents of the area, the attack on Chief Xolo took place as a result of the Chief allowing the youth in his area to hold meetings and openly support the ANC. (In many areas in Natal, conflict first started when ANC youth were prevented from holding meetings by chiefs upholding support for the IFP.) The IFP, on the other hand, stated that the attack on Chief Xolo was another example of the ANC's assault on traditional authorities.

During July and August 1994, several attacks were launched on the Gcilima and Mvutshini areas of KwaXolo from Izingolweni, an IFP stronghold. The great majority of the victims were ANC youth or the families of ANC youth who had not driven them away. Several hundreds of people fled the area as a result of the attack, some of them to a camp for displaced people established near the main coast road at Margate, and others to friends and relatives in nearby areas. In early December this camp still held at least 600 people; most of them had been there in July or August, but some were victims of more recent fighting. Another camp was established in October in Gcilima itself, though away from the "border" area with Izingolweni, where the worst attacks had taken place. These camps remain in place to date.

On October 27, an *impi* (traditional fighting formation of the Zulu army) of IFP *amabutho* (warriors) from the Izingolweni area attacked Gcilima, running amok through the area and killing indiscriminately. Sixteen died in the attack, many others were injured, and numerous homes were burnt down. It appeared that the attack had followed a build up of tension during which a school had been attacked, then IFP houses burnt in retaliation. Inkatha spokesperson Ed Tillet stated that the IFP attack had been launched in retaliation after the ANC "launched a massive pre-dawn military offensive on sleeping residents. ANC bandits burnt eight houses belonging to IFP-supporting families and indiscriminately attacked women and children. *While every death is regrettable, we can only praise the men for having fearlessly protected their families from enemy attack. Their courageous actions certainly led to many more lives being saved.*"<sup>89</sup>

An investigation team from Durban was appointed to investigate the attack in place of the local crime investigation unit at Port Shepstone. On December 22, four men appeared in Port Shepstone Magistrates Court in connection with the attack: well known Inkatha leader and "warlord" Sgoloza (Muziwandile) Xolo (already charged in connection with an August attack in Mvutshini, KwaXolo, in which five youths had been killed), Simondeni Jula, Gayi Sikobi, and Khinoshe Khuse. Bail was initially denied, when the accused appeared in court in December 1994, but the application was taken on appeal to the Durban Supreme Court and bail was set at R.2,000 (\$550) each. Witnesses who were due to appear to oppose the bail application were reportedly intimidated, and an inexperienced prosecutor was appointed to handle the case, despite its high-profile nature. The four accused, implicated in many other attacks for which there has not been sufficient evidence to bring charges, are consequently once again at liberty.

The KwaXolo and Izingolweni areas remain tense. On January 12, the home of Mrs Salima Nyoko, one of the witnesses to the October massacre, was attacked with an M26 hand grenade. There were no injuries, but the house was badly damaged. On January 18, eight people were killed in an attack on the house of the Nyawose family in Izingolweni. Two members of the family are prominent ANC activists in Durban. Those favoring the return of those displaced by previous violence appear also to be the target of violence: five people were killed on January 22 in an attack on the home of induna Norman Cele, who had supported the return of refugees. Four IFP supporters were arrested in connection with the killings.<sup>90</sup>

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<sup>89</sup>Cyril Madlala, "Terrified residents flee carnage in rain," *Sunday Times* (Johannesburg), October 30, 1994 (emphasis added).

<sup>90</sup>"Hand grenade attack," *South Coast Herald*, January 20, 1995; HRC, *KwaZulu-Natal January 1995*; other information from Mary de Haas.

Although the majority of refugees from the KwaXolo and Izingolweni areas have been ANC supporters, while senior IFP leaders appear to be responsible for planning serious attacks, both sides must share the blame in political violence of this type. In April 1994, four ANC leaders from Port Shepstone, including Cyril Shezi, regional chair, were arrested for being in possession of an unlicensed firearm.<sup>91</sup> The case is still pending. In February 1995, the Pietermaritzburg Supreme Court turned down an appeal lodged by Sandile Majola, an ANC supporter convicted of murdering an IFP supporter in Izingolweni on October 2, 1993. Majola was sentenced to twenty years for the killing of Funyuzise Ndwalane.<sup>92</sup> Both the IFP and ANC claim that they are merely responding to attacks from the other, and it is therefore essential that all allegations of criminal violence are effectively and speedily investigated.

The maintenance of law and order in the KwaXolo area, as elsewhere in KwaZulu-Natal, is hampered by the perceived political divisions between the various responsible security forces. The ANC maintains that the Internal Stability Unit of the SAPS is biased in favor of the IFP, and therefore supports patrols by the SANDF. The IFP, on the other hand, claims that it is harassed by the army, into which ex-members of the ANC's armed wing have now been integrated, and supports the ISU. The two security forces generally patrol separately, and each party protests the presence of the force it believes to be biased. However, it does seem to be the case that the SANDF has been more effective in preventing violent attacks. Their effectiveness is at least in part due to the fact that the army patrols on foot through the houses, while the ISU remains in armored vehicles on the roads.

#### **Local connections between the IFP and AWB**

The Port Shepstone branches of the IFP and AWB have been openly linked for some years. In addition, there have been persistent allegations of AWB assistance to IFP *impis* in attacks on ANC supporters. Prior to the election, training camps for Inkatha members were alleged to have been set up on certain white farms in the area.

Soon after the bombing of the Sey Shells restaurant, a man saying that he represented the "Natal Liberation Army" (a previously unknown group) claimed responsibility for the blast in a phone call to the *South Coast Herald* and, in a separate call, for the killing of George Mbele, chair of the South Coast branch of the ANC and ex-Robben Islander. He claimed that the members of the "army" were members of either the IFP or the Conservative Party (an extreme right wing party that did not contest the elections), and that some had received training from the Irish Republican Army or were ex-SADF members.

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<sup>91</sup>"ANC members arrested," *South Coast Herald*, April 1, 1994; "Detained ANC members on bail," *South Coast Herald*, April 8, 1994.

<sup>92</sup>HRC, *Monthly Report*, February 1995.

On March 9, 1994, more than 5,000 Inkatha supporters, led by Chief Calalakhubo Khawula<sup>93</sup> and IFP leader James Zulu, marched through Port Shepstone in support of demands made by King Goodwill Zwelithini for a Zulu kingdom in Natal. A memorandum addressed to President F.W. de Klerk was handed to Major Jan Botha of the South African Police on behalf of the "South Coast AmaKhosi". It had been planned that Morton Christie, local commander of the AWB,<sup>94</sup> would also hand over a memorandum, but, as a result of high feelings over allegations of right wing involvement in a train derailment near Durban, the right-wingers were told that they could not join the march. AWB members who were present at the march claimed that they had been training IFP supporters on their farms for over a year. One of the speakers was Pat Hlongwane of the Returned Exiles Committee, who was seen traveling with AWB members.<sup>95</sup>

Following the attack in Nkulu ward near Gamalakhe on April 2, 1994, in which nine people were killed, the home of James Zulu was raided for weapons. Morton Christie was present in the house at the time of the raid. An international monitor based in Port Shepstone on behalf of the Network of Independent Monitors claimed that police knew the attackers in the incident, but, though one arrest was made, the Attorney General declined to prosecute. Members of the local police had been photographed at a flag-burning at an AWB meeting in June 1993.

On 1 December 1994, four well-known right-wingers from Port Shepstone, including Morton Christie, and a prominent IFP leader were arrested in connection with an armed attack in March 1994 on the police station in Flagstaff, in the former Transkei, and the February bombing of the Sey Shells restaurant in Port Shepstone, a well-known haunt of the local ANC leadership. A few days later, James Zulu was also arrested and charged, with two more right wingers.<sup>96</sup> All were released on bail ranging from R.1000 to R.10,000 (\$275 to \$2,750).

## THE "THIRD FORCE" AND POLITICAL VIOLENCE IN NATAL

For many years, allegations have been made from many different quarters that a greater or lesser proportion of the political violence that has troubled South Africa for the last decade has been caused by a "third force" other than the two main rival groupings, the ANC and the IFP. Although some saw the third force as a cohesive group with state backing at the highest level, especially during the 1980s, the most widely believed interpretation assumed that maverick individuals or small groups within the security forces, often with close links to the white right wing,

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<sup>93</sup>In March 1995, Chief Khawula was named as one of those who had been present at meetings in which hit squad attacks were planned in Esikhawini on the north coast: see below, in the section on the trial of Gcina Mkhize.

<sup>94</sup>Morton John Christie, from Scottburgh, is commander of the AWB on the South Coast and a "Community Development Officer" employed by the Natal provincial administration. Christie was amongst those alleged to have been involved in training Inkatha "self-protection units" at the Mlaba camp during the run-up to the election. The previous commander of the Port Shepstone AWB, "General" Nick Fourie (a former policeman), was one of the three rightwingers killed during the "invasion" of Bophuthatswana in March 1994.

<sup>95</sup>HRC, *Monthly Report*, March 1994. The Returned Exiles Committee is headed by Patrick Hlongwane, an ex-member of MK (Mkhonto we Sizwe, the armed wing of the ANC) who claims to have been tortured in ANC camps, and has been linked to violent anti-ANC activities on a number of occasions. During the run up to the April election, Hlongwane allegedly worked closely with Thomas Mandla Shabalala, an IFP leader from the Lindelani squatter camp north of Durban who has been linked to many violent activities in the area.

<sup>96</sup>In connection with the Sey Shells Restaurant bombing, those arrested were: Morton Christie from Scottburgh; Harry Jardine from Hibberdene; Roy Lane from Port Shepstone; Andrew Howell from Margate, and Robert Lane. Those arrested in connection with the Flagstaff attack were: Morton Christie, Harry Jardine, Roy Lane, Andrew Howell, Robert Lane, Siphon Ngcobo, James Zulu, Chris Brand and Robin Shausmith. Zulu has a previous conviction for murder in connection with political violence. Letter dated January 25, 1995 from Port Shepstone SAPS to Human Rights Watch.

were responsible for provoking at least some of the violence in order to derail negotiations, and acted with a degree of state protection because of their contacts in the command structures of the security forces. In KwaZulu and Natal, however, the dynamics of the violence were determined rather by the IFP's control of the KwaZulu government and its determination, backed by elements of central government, to resist efforts by the ANC and its allies to establish support within the homeland. Despite the dissolution of the homelands, including KwaZulu, the IFP's control of the regional government has preserved this context for violence in KwaZulu-Natal. In addition, evidence has emerged over the last year supporting the concept of planned efforts to destabilize black communities at a national level.

During 1994, reports published by the Goldstone Commission<sup>97</sup> and by a special investigative task force appointed to look into the operation of hit squads in KwaZulu by the Transitional Executive Council (TEC)<sup>98</sup> appeared to confirm the "third force" explanation for the virulence of much of the violence. On March 18, the Goldstone Commission published a report confirming that senior Inkatha officials had been involved in gunrunning to the troubled East Rand townships of Katlehong and Thokoza and to Natal, with the active assistance of members of the South African police. On March 22, the TEC task force published a report concluding that "hit squad activity in Natal and particularly in the area of jurisdiction of KwaZulu is rife. ... The number of deaths caused by these hit squads is unquantifiable but would represent a significant proportion of those who have died in political violence in Natal/KwaZulu."<sup>99</sup> On March 29, the TEC task force issued a second report, not initially published but later leaked, which identified senior KwaZulu Police officers "whose conduct warrants investigation and, in some cases, suspension pending such investigation."<sup>100</sup>

Immediate suspension was recommended for the following officers:

- Major-General Siphon M. Mathe, Deputy Commissioner of the KwaZulu Police (later Acting Commissioner, following the retirement of SAP secondee General Roy During<sup>101</sup>).

Mathe's name has consistently been linked to allegations of "third force" activity in the KwaZulu Police. Highlighted by the TEC Task Group report was Mathe's evidence to the Goldstone Commission inquiry into the Caprivi trainees,<sup>102</sup> criticized as self-contradictory and incredible. In particular, Mathe failed to

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<sup>97</sup>The Commission of Inquiry regarding the Prevention of Public Violence and Intimidation, headed by Mr Justice Richard Goldstone and established in October 1991 under the Prevention of Public Violence and Intimidation Act of 1991 and in accordance with the terms of the National Peace Accord of September 1991.

<sup>98</sup>The TEC was established in January 1994, in accordance with an agreement by the multiparty negotiations that were completed the previous month, as a jointly run body to govern South Africa during the period leading up to the election in April.

<sup>99</sup>*Preliminary Report of the Transitional Executive Council Investigation Task Group into the matter of hit squads in the KwaZulu Police, flowing from the Fourth Interim Report of the Goldstone Commission, dated 6 December 1993* (Pretoria: TEC, March 22, 1994), para.17.

<sup>100</sup>*Second Interim Report of the Transitional Executive Council Investigation Task Group into the Matter of Hit Squads in the KwaZulu Police* (Pretoria: TEC, March 29, 1994), p.1.

<sup>101</sup>At his retirement in July 1994, During supported allegations of hit squads within the KZP, saying that he had been prevented from investigating.

<sup>102</sup>In 1991, following the "Inkathagate" scandal in which it was revealed that the Security Branch of the SAP had made secret payments to Inkatha, President de Klerk was also forced to confirm that 200 Inkatha recruits had been sent to the Caprivi Strip in Namibia in 1986 for training by the Military Intelligence branch of the South African Defence Force (SADF). It was maintained that the trainees were merely part of a "VIP protection unit," and the Goldstone Commission failed to find evidence that their training was for an improper purpose. However, Caprivi trainees were repeatedly implicated in violence and

produce any documents relating to the integration of the trainees into the KwaZulu Police, which was alleged by the IFP to have been a legitimate and regulated process. The Task Group went into the case of KZP Constable B.M. Ngubane, a Caprivi trainee found in possession of an AK47 on August 29 1991, in some detail. The report found that Mathe failed to conduct a proper investigation into allegations that the gun had been supplied for the purpose of assassinating opponents of Inkatha by three other Caprivi trainees (Daluxolo Luthuli, Joyful Mthethwa and Peter Msane), and indeed appeared to have attempted to conceal any role the three may have had. In several other cases, similar cover-ups seem to have been conducted by Mathe.

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hit squad activity, and in December 1993, the Goldstone Commission reported that at least one hit squad had been operating in KwaZulu, in which the leading figure was a Caprivi trainee: see below, in the section on the trial of Geina Mkhize.

- Major M.L. Langeni, member of the KZP Commissioner's VIP protection team in 1986, at the time the Caprivi trainees were recruited and deployed, and later stationed in the office of the Chief Minister where he was second in command of the unit responsible for the security of members of the KLA. The Task Group stated that it had information that Major Langeni "is deeply implicated in hit squad activity and has been for some time." Langeni was named in court in March 1995 as being present at meetings at which assassinations had been planned.<sup>103</sup>
- Lieutenant-Colonel Siphon Meshack Mdluli, currently District Commissioner of Esikhawini, near Empangeni. Mdluli was the officer in charge of investigation at Esikhawini at the time of the arrest of Constable Ngubane, and failed to carry out any real investigation. He is also alleged to have collaborated with Captain Hlengwa (see below) in covering up other hit squad activities.
- Brigadier Como Patrick Mzimela, District Commissioner at Esikhawini at the time of the hit squad activity that resulted in the Gcina Mkhize trial (see below). Mzimela is currently Acting Commissioner of the KwaZulu Police, following the retirement of General Doring and in the absence on sick leave of General Mathe. During the time that Mzimela was District Commissioner, Esikhawini was ravaged by political violence, much of it now linked to hit squad activity. Several detectives applied for transfers from the station, saying that they feared for their lives. Mzimela also failed to insure that any investigation was carried out in the Ngubane case, despite playing a supervisory role. He is further implicated in the cover up in the notorious Trust Feeds massacre of 1988.<sup>104</sup>
- Captain Dlamini, formerly a Lieutenant based at Esikhawini, where he was the officer who found Ngubane in possession of the AK47, but failed to arrest him. He also failed to investigate adequately another suspected hit squad case.
- Brigadier B.L. Ndlovu, District Commissioner at Nqutu police station at the time of the murder of eleven people at the house of Chief Elphas Molefe.<sup>105</sup> When the investigating officer, Lieutenant Westleigh Mbatha, arrested two men and discovered links to hit squads operating from the East Rand under the command of IFP leaders Themba Khoza and Humphrey Ndlovu, Brigadier Ndlovu removed Mbatha from the case, and subsequently denied that he had done so.
- Major Nyasula, officer in charge of investigations at Nqutu, who made false entries in the file relating to the Nqutu massacre indicating that there were no suspects in the case.
- Captain V.J. Ngcobo, investigating officer at Nqutu who took over after Mbatha was removed from the case. Charges against the suspects arrested by Mbatha were withdrawn.

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<sup>103</sup>See below, in the section on the trial of Gcina Mkhize.

<sup>104</sup>On December 3, 1988, eleven people attending a night vigil were killed in the Trust Feeds area near Pietermaritzburg in the Natal Midlands. Five policemen were eventually convicted of murder in connection with the attack. The court found that the massacre had been carried out by a unit created specifically to act against the UDF, as the "final event in a planned operation to disrupt a community, oust the residents' association and give Inkatha control of the area;" that police had assisted Inkatha to take over other areas, and that an extensive cover-up had been attempted by the original investigating officers. Counsel for four of the defendants, who were special constables, stated that the attack had been planned in order to provoke a reaction from Inkatha against the UDF. Deneys Coombe, "Of murder and deceit: The Trust Feed Killings," in Anthony Minnaar (ed) *Patterns of Violence: Case Studies of Conflict in Natal* (Pretoria: Human Sciences Research Council, 1992); see also, Matthew Kentridge, *An Unofficial War: Inside the Conflict in Pietermaritzburg* (Cape Town and Johannesburg: David Philip, 1990), pp.84-89.

<sup>105</sup>See Africa Watch, "*Traditional Dictatorship*", p.21-23, and *Impunity for Human Rights Abuses in Two Homelands*, pp.11-12.

- Captain Msahwenlosi David Mbhele, Station Commander Madadeni Police Station. Mbhele failed to take any action when prominent ANC and COSATU member Professor Sibankulu came to Madadeni police station in November 1992 to complain about shots fired at him from a KwaZulu Police vehicle. Sibankulu was found murdered shortly after.

Further investigation was recommended in respect of:

- L.A. Hlengwa: formerly a captain in the KwaZulu Police based at the Bureau for Security Intelligence (BSI) in Ulundi, he retired in 1991 and was then employed at the IFP head office in Ulundi.

Hlengwa has been repeatedly linked to hit squad activities; in particular, to the activities of Mandla Mchunu, wanted in connection with several murders in Mpumalanga in the Natal Midlands in 1988.

- Daluxolo Madladuna Luthuli: A former member of MK (Mkhonto we Sizwe, the armed wing of the ANC), he was the commander or "political commissar" of the Caprivi trainees and has been linked to numerous hit squad allegations and to the training of the "five rand battalion" in late 1993 and 1994. He was later allegedly involved in training of MK deserters as Inkatha "self-protection units" at the police training camp near Ulundi.<sup>106</sup>
- Major M.I. Manzini, formerly a District Investigation Officer at Esikhawini, implicated in the Ngubane and other hit squad cases.
- Brigadier van Zyl, District Criminal Investigation Officer at Esikhawini at the time of the Ngubane case.
- Captain Mziyanke Allison Sikakhane, formerly station commander at KwaMashu police station and at Esikhawini police station, implicated in an attempted cover up of evidence relating to murder charges against KwaZulu Deputy Minister Samuel Jamile, and in hit squad activity in KwaMashu.
- Lieutenant Siphon Jerome Makatini, station commander at KwaMashu police station during 1991, and implicated in the Trust Feeds massacre cover up.
- Captain O.Y. Zama, station commander at Sundumbili police station. Captain Zama has been the subject of numerous allegations in connection with political violence in the region (see below).

Shortly after the new government was installed, the national minister of safety and security, Sydney Mufamadi, appointed a new Investigation Task Unit (ITU), to continue the work carried out for the TEC and in addition to act on information gathered, by prosecuting those found to be involved. The ITU is the first such investigation to fall outside police structures, in that it is controlled by a civilian board. It is focusing on hit squad activity in KwaZulu-Natal generally and not only by the KwaZulu Police. In the Natal Midlands, sub-regional ANC leader Sifiso Nkabinde has accused the unit of conspiring to implicate him falsely in killings.<sup>107</sup>

In October 1994, six KZP officers were asked by Minister Mufamadi to show cause why they should not be suspended. They were given fourteen days to provide their reasons, although, for technical reasons further action was not immediately taken against them when they failed to respond and none have in fact been suspended. The six officers were Major-General S.M. Mathe; Brigadier C.P. Mzimela; Lieutenant-Colonel S.M. Mdluli; Major M.L.

<sup>106</sup>In February 1995, it was reported that Daluxolo Luthuli was under witness protection organised by the Investigation Task Unit appointed by the Minister of Safety and Security in connection with hit squad activity in Natal. Enoch Mthemba and Eddie Koch, "Top IFP man turns state witness," *Weekly Mail and Guardian*, February 17-23, 1995.

<sup>107</sup>Drew Forrest, "Police hit squad unit investigates ANC," *Business Day*, March 15, 1995.



Langeni; Captain M.D. Mbhele, and Major O.Y. Zama. Although some now hold different positions, all the officers named in the TEC report, with the exception of Luthuli, remain in positions of authority within the KwaZulu Police.

### **The Case of Major O.Y. Zama**

Sundumbili township, near the Isithebe industrial complex on the north coast of Natal, has been troubled by severe violence for years. Repeated allegations have been made of the involvement in the violence of the KZP station commander at Sundumbili, Major O.Y. Zama. On September 26, 1993, for example, Zama was seen by a marshall assaulting a man attending a rally held by the South African Communist Party at Sundumbili stadium. KwaZulu Police vehicles had allegedly escorted about 200 IFP supporters to the stadium to attack the rally. ISU members who arrived after shooting broke out were refused KwaZulu Police equipment to assist in dispersing the crowd. However, four people were killed and at least eight injured.<sup>108</sup>

On July 14, 1994, a suspension order was served on Major Zama after he had been charged with defeating the ends of justice, contempt of court and fraud. Zama had allegedly tampered with the investigation docket in connection with an incident of public violence in August 1992, in an attempt to implicate a local union official. The unionist was later awarded R.10,000 (\$2,750) damages for wrongful arrest. Zama challenged the suspension order in court, and succeeded in having it set aside on the grounds that Minister Mufamadi acted beyond his power under the KwaZulu Police Act, and only the President had the power to suspend a KZP officer, in the absence of a decision by the KZP Commissioner.<sup>109</sup>

In February 1995, after appearing in court on the earlier charges, Zama was arrested and charged again with attempted murder, assault, intimidation and defeating the ends of justice in connection with an incident in June 1992. Bail was set at R.1,000 (\$275), and a condition of bail was that he seek a transfer away from Sundumbili police station. Although Zama was stated to have reported for duty at Umlazi police station, about 500 Inkatha supporters protested his transfer on March 6, 1995, and houses in the township were later burnt. The SANDF eventually restored order, but originally stated that they could not enter the township unless they were requested by the KwaZulu Police.<sup>110</sup>

### **Inkatha training camps**

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<sup>108</sup>Africa Watch, *Impunity for Human Rights Abuses in Two Homelands*, pp.12-13.

<sup>109</sup>Judgment in the case of *O.Y. Zama vs. Minister of Safety & Security and Acting Commissioner of Police*, dated September 16, 1994; Paddy Harper, "KwaZulu major defied suspension," *New Nation* (Johannesburg), September 23, 1994; other information supplied by the HRC.

<sup>110</sup>"Inkatha protests at transfer of local commander," *The Star*, March 7, 1995; "Tensions after attacks on residents," *New Nation*, March 10, 1995.

During the months leading up to the elections, up to 5,000 recruits were openly trained at camps in northern Natal, under the command of KwaZulu Government official Philip Powell, to form Inkatha "self-protection units" (SPUs).<sup>111</sup> On March 22, 1994, the SPU training was officially transformed into training for "special constables" to be integrated into the KwaZulu Police: in effect, this meant that men who had been recruited through Inkatha structures to form politically aligned SPUs were being turned into supposedly neutral members of the KZP. Other training of Inkatha members was undertaken by extreme right-wing groups such as Leonard Veenendal's *Boerekomando*.<sup>112</sup> Although the IFP claimed that the training was legitimately for self-defense, in terms of the September 1991 National Peace Accord, the indications were that the graduates of these camps were promoting violence in the communities to which they returned. Accordingly, the TEC Task Group conducting investigations into hit squads undertook an investigation of the principal camp openly run by Inkatha.

On May 18, 1994, the task group published a "supplementary report" which reported the results of an investigation into training at the Mlaba camp in northern KwaZulu.<sup>113</sup> On April 26, the task group had raided the camp with the assistance of the SAP. Although most of the trainees and some equipment were able to leave the camp before a proper search was conducted, despite a roadblock maintained by a unit of the ISU,<sup>114</sup> a large quantity of weapons was found at the base, including AK47 cartridges, hand grenades and rifle grenades that are not KwaZulu Police issue. An illegal firearm was found in the vehicle of Philip Powell. The task group concluded that the training taking place at the camp could not be considered bona fide police training, and that "the illegal training carried out at the Mlaba camp seen together with the weaponry which had been allegedly stockpiled may have provided elements within the IFP and KwaZulu Government with the capacity for large scale insurrection."<sup>115</sup> Charges were laid against Powell for illegal possession of a firearm, but later dropped. The Attorney-General for Natal has declined to prosecute anyone in connection with activities at the camp.

The Mlaba camp was closed down following the election. However, Mlaba camp trainees continue to be implicated in numerous cases of political violence throughout KwaZulu Natal.<sup>116</sup>

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<sup>111</sup>See Africa Watch, *Impunity for Human Rights Abuses in Two Homelands*. Under the National Peace Accord of September 1991, communities had the right to establish "voluntary associations or self-protection units in any neighbourhood to prevent crime and to prevent any invasion of the lawful rights of such communities," including the "right to bear licensed firearms and to use them in legitimate and lawful self-defence." However, the NPA also provided that such units may not be established "on the basis of any party or political affiliation, such units being considered private armies" and that "no private armies shall be allowed or formed."

<sup>112</sup>"We're training the Zulus: Veenendal," *The Citizen* (Johannesburg), February 23, 1994.

<sup>113</sup>*Supplementary Report of the Transitional Executive Council Investigation Task Group into the Matter of Hitsquads in the KwaZulu Police* (Pretoria: TEC, May 18, 1994).

<sup>114</sup>The failure to stop the trainees from leaving represented a huge setback to the investigation, since it meant that none of them could be questioned concerning the activities at the camp. The ISU commander in charge of the roadblock, Major Pelsler, is based in Mtubatuba, where a number of allegations have been made of ISU killings and assaults on local residents: HRC *Natal Focus*, August 1994. The TEC task group recommended that the failure of the ISU to prevent the trainees from leaving the camp be investigated.

<sup>115</sup>*Supplementary Report of the TEC*, p.9. According to the report, Major-General Siphso Mathe gave instructions, dated December 30, 1993, for the transfer of thirteen KZP officers to the KwaZulu Legislative Assembly (KLA) protection unit, under the command of Major M.L. Langeni. Eight of the thirteen were former Caprivi trainees; at least two of them, one a Caprivi trainee, became instructors at the Mlaba camp.

<sup>116</sup>For example, in eBuhleni, in the area of Chief Boy Mzimela of Ngoye in northern Natal, Mlaba camp trainees have allegedly been involved in recent attacks on the home of the Nkwenyana family. Mlaba camp trainees were also involved in the violence in Umlazi and KwaMashu in March 1994, and members of the notorious AmaSinyora gang in KwaMashu were reportedly sent to Mlaba for training.

In October 1994, yet further allegations of Inkatha hit squad activity came to the fore, when right-winger Riaan van Rensburg alleged that he had been paid by the KwaZulu government to train IFP hit squads before the elections. Rensburg, a "security adviser" to the right wing Freedom Alliance and closely associated with ex-General Tienie Groenewald, had previously been alleged to have received covert payments from the government of the former homeland of Ciskei.<sup>117</sup> Rensburg claimed that he had been instructed by Walter Felgate, close adviser to Chief Buthelezi, to train sixty Inkatha recruits, including Caprivi trainees and members of the anti-ANC Returned Exiles Committee.<sup>118</sup> He was asked to see to the "removal from society" of several ANC leaders, including Jacob Zuma and Harry Gwala. The training, carried out at a base in the northern Transvaal, eventually terminated because of Felgate's failure to pay costs; Rensburg was eventually paid R.387,000 (\$107,500) by Stan Armstrong, secretary-general in the department of the Chief Minister in the KwaZulu government, but claimed that a similar sum was outstanding.

In response to these allegations, Chief Buthelezi stated that he was "appalled that yet again another unfounded statement about the Inkatha Freedom Party having been involved in hit squad training has been made."<sup>119</sup>

Walter Felgate admitted that he had hired Rensburg to train self-protection units, but denied that any illegal military training had been carried out.<sup>120</sup> Colonel Jan Breytenbach, ex-commander of the infamous SADF 32 Battalion in Angola, confirmed Rensburg's statement that he had been involved in training on behalf of the KwaZulu government, but that the training had been only for self-defense, with no question of training hit squads.<sup>121</sup>

On November 1, 1994, a briefing document prepared by the police for the cabinet committee on Security and Intelligence Affairs considered the security situation in South Africa, with a particular emphasis on KwaZulu-Natal.<sup>122</sup> It concluded that amongst the factors contributing to the violence were the activities of those trained as IFP "self-protection units" at the Mlaba camp and elsewhere. The document stated that the SPUs had allegedly been promised integration into the SAPS or SANDF by KwaZulu government officials, leading to discontent among their ranks (including a protest at the KwaZulu government's executive council building on September 15). Some SPU members had been implicated in "organized crime and acts of intimidation and violence to ensure control over certain areas. As a result of the power entrusted to them, the procurement of illegal firearms and the forming of smuggling syndicates are within easy reach of those who choose to abuse their positions. It is also possible that these same elements may have been involved in a number of 'hit and run' incidents in the past."

### **New Recruits for the KwaZulu Police**

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<sup>117</sup>Farouk Chothia and Chris Louw, "I trained IFP hitsquads," *Weekly Mail and Guardian*, October 21-27, 1994.

<sup>118</sup>See footnotes 95 & 102.

<sup>119</sup>"Buthelezi denies hit squad claim," *The Citizen*, October 21, 1994.

<sup>120</sup>Steve Matthewson, "Rightwinger thought of plot — IFP," *Weekend Star*, October 22-23, 1994.

<sup>121</sup>Stefaans Brummer, "KwaZulu would have paid SDUs," *Weekly Mail and Guardian*, October 28 to November 3, 1994; Sam Sole, "SPU plan scuttled," *Sunday Tribune* (Durban), October 23, 1994.

<sup>122</sup>*Briefing: Cabinet Committee on Security and Intelligence Affairs*, compiled by the Crime Intelligence Service of the South African Police, dated November 1, 1994. The document is marked secret, and came with a preface stating "This document is subject to the Protection of Information Act (Act 84 of 1982). It may not be copied or distributed and must be treated strictly in accordance with the security classification thereof. As soon as the document is no longer needed, it must be destroyed by means of burning or shredding." Despite this fearsome warning, the document was distributed, it appeared inadvertently, at a press conference. Its contents did not seem to merit the security classification.

In August 1994, a group of 600 new recruits began training at the KwaZulu Police college in Ulundi.<sup>123</sup> In November 1994 Mufamadi blocked the graduation of the 600 recruits, pending completion of enquiries by the Investigative Task Unit. It was eventually revealed that only fifty-four of the group in fact fulfilled all the criteria for graduation, and that forty-five of them had criminal records and four were fugitives from justice.<sup>124</sup> One of the fugitives, wanted in connection with attempted murder, was a Caprivi trainee. In January 1995, Acting KwaZulu Police Commissioner C.P. Mzimela<sup>125</sup> announced that, under the instructions of regional Minister of Safety and Security Celani Mtetwa, the graduation parade would go ahead on February 3, despite the order of Mufamadi that it be put on hold. Finally, on February 2, following the intervention of new national police commissioner George Fivaz, the graduation was cancelled, and the recruits dismissed from the college to return to their homes.<sup>126</sup> The ITU later recommended that the fifty-four who had fulfilled the graduation requirements should be deployed outside the KwaZulu-Natal area and that the remainder should be dismissed from the force.

### **Esikhawini: The trial of Gcina Mkhize and others**

In February 1994, four KwaZulu Police members and a civilian appeared in Mtunzini Magistrates Court on the Natal north coast, charged in connection with six counts of murder. The five had allegedly been part of a hit squad operating during 1992 and 1993 in the Esikhawini township outside Empangeni. Three of the five, Romeo Mbambo, Gcina Mkhize and Israel Hlongwane, were tried in November 1994 and found guilty on all six counts. Gcina Mkhize, a KZP constable, was a Caprivi trainee.<sup>127</sup>

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<sup>123</sup>In late 1994, 150 ex-members of Mkhonto we Sizwe (MK; the armed wing of the ANC) who had deserted from the Wallmanstal army base, where they were being integrated into the new SANDF, were also reported to be staying in KwaZulu government housing in Ulundi. The MK deserters had been recruited by the Returned Exiles Committee, and were allegedly to be trained by Daluxolo Madladuna Luthuli, the leader of the Caprivi trainees. "MK deserters camped in Ulundi," *Weekly Mail and Guardian*, November 25 to December 1, 1994.

<sup>124</sup>"Hundreds of KZP trainees face boot," *The Star*, April 5, 1995.

<sup>125</sup>Mzimela was one of those whose suspension was recommended by the TEC Task Group. He was District Commissioner at Esikhawini at the time of hitsquad activity in the township (discussed below).

<sup>126</sup>See, in particular, Cyril Madlala, "Crime probe could derail costly police training programme," *Sunday Times*, January 8, 1995; Ali Mphaki, "Minister at odds with KZP brigadier over constables," *City Press*, January 22, 1995; "IFP defies Mufamadi's order," *The Citizen*, January 26, 1995; Edyth Bulbring, "Mufamadi gets tough on trainees," *Sunday Times*, January 29, 1995; Ismail Lagardien, "Parade off but recruits defiant," *Sowetan*, February 3, 1995.

<sup>127</sup>In the report "*Traditional Dictatorship*," Human Rights Watch described the extreme violence during 1992 and 1993 in the township of Esikhawini near Empangeni on the north coast of Natal. One of the incidents described was an attack in August 1992 on the house of Bheki Ntuli, the chair of the local ANC branch. Although the situation in Esikhawini improved dramatically following the suspension, arrest and conviction of Gcina Mkhize and his colleagues, described in this section, Ntuli has remained a target. For several months in 1994, his house was under surveillance by men in a suspicious car with an unregistered license plate. On January 18, 1995, his mother Grace Ntuli and brother Thulani Mbatha were gunned down at their home in the Mtubatuba area. Ten days previously Major Pelsler of the local ISU had raided the house and arrested Ntuli's younger brother and seven others for possession of illegal firearms, although they had a letter stating that they were authorised to be in charge of ANC weapons. The house had been raided again by the ISU several days later. A man was charged with the murder of Grace Ntuli and released on bail. On February 11, the same house was again threatened by a group of IFP supporters, and the KZP later came and raided the house. On Saturday February 25, twenty people were arrested by the ISU at the Ntuli house for illegal possession of firearms and an arms cache was displayed on television news that night — although only two licensed weapons had been found at the house. In October 1994, Lucky Mbuyaze, a notorious criminal also linked with hit squad activity in Esikhawini was shot dead by the KZP, allegedly in self-defense. An associate of Mbuyaze, Nhlakanipho Mathenjwa, had died in police custody in March 1993. It appeared that both may have been killed to silence them about other killings in Esikhawini. Information supplied by Mary de Haas, John Wills and the HRC; see also, Africa Watch, "*Traditional Dictatorship*, pp.25-27 & 32-36, and *Impunity for Human Rights Abuses in Two Homelands*, pp.9-10.

During the trial, damning information relating to the operation of KwaZulu Police hit squads and the IFP bias of the KwaZulu Police emerged. The District Commissioner in charge of the Esikhawini police station, Brigadier C.P. Mzimela (now Acting Commissioner of the KZP), was alleged to have taken the murder weapon in one of the cases (the killing of KZP Sergeant Solomon Dlamini in June 1993) and "doctored" it, so that ballistics tests would not be successful; he had also earlier attempted to persuade Dlamini to withdraw charges of attempted murder against Mbambo. The court also heard that the car that was used in one of the cases, in which a man had been kidnapped and murdered, came from the office of then Chief Minister Buthelezi, but had been loaned to the office of KwaZulu Minister Gideon Zulu. The investigating officer in one of the murders admitted under cross-examination that he had failed to seal off the murder site or to get a photographer to take pictures before it was disturbed and had taken five days to take a statement from the wife of the deceased, causing the judge to accuse the officer of "waiting for the trail to get cold" and to comment:

Now I understand why the township people in South Africa say that they don't have a police service and that they don't have a police force to protect them.<sup>128</sup>

Later, referring to the disappearance of shell casings found at the scene of one of the murders, the judge accused the officer again expressed his dismay at police conduct:

I am speaking on behalf of the whole bench. We are shocked at the way this case was handled whilst in the hands of the KZP. It is absolutely a disgrace ... and it will not rest. The things that were revealed in this case will not rest and will not die with this case.<sup>129</sup>

The judge referred the case to Minister of Safety and Security Sydney Mufamadi for further investigation by the Investigation Task Unit set up to look into hit squads in the KwaZulu Police.

In March 1995, the case returned to court for sentencing. In their plea in mitigation, the three accused stated that they had been acting under orders, implicating a range of senior KwaZulu Police and Inkatha officials. They had been part of a hit squad which had been given instructions to eliminate ANC leaders by a "syndicate" of Inkatha and KwaZulu government officials including KwaZulu minister for social welfare, now KwaZulu-Natal minister for welfare and pensions, Gideon Zulu; personal assistant to Buthelezi M.Z. Khumalo;<sup>130</sup> KwaZulu and now provincial MP Chief Calalakhubo Khawula of Port Shepstone; former IFP women's league chair and now national MP Lindiwe Mbuyaze; and KwaZulu minister of justice, now regional minister of safety and security Celani Mtetwa. From the KwaZulu Police, Major General Siphon Mathe, KLA guard unit commander M.L. Langeni, and Caprivi trainee Daluxolo Luthuli were also named.<sup>131</sup>

Among the particular allegations were that Hlongwane had spent two weeks in hiding at the Ulundi home of Gideon Zulu, after the arrest of Mbambo and Mkhize. Lindiwe Mbuyaze had given him money for transport to

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<sup>128</sup>Mr. Justice N. van der Reyden, trial transcript in the case of *S. vs Romeo Mbuso Mbambo, Brian Gcina Mkhize & Israel Hlongwane*, Supreme Court of South Africa, North East Circuit Local Division, Mtunzini; Case No. CC 123/94, October 31, 1994.

<sup>129</sup>Paddy Harper, "KZP Brigadier in hitsquad cover-up," *New Nation*, November 18, 1994.

<sup>130</sup>M.Z. Khumalo, personal assistant to Buthelezi, was responsible for recruiting the Caprivi trainees in 1986 and later forced to resign from his position in the "Inkathagate" scandal when covert funding from the SAP security branch to Inkatha was revealed. He was later reinstated as a close adviser to Buthelezi and has remained central to allegations of violence promotion.

<sup>131</sup>Farouk Chothia, "Inkatha minister linked to hit squads," *Business Day*, March 15, 1995; Ann Eveleth, "The men who farmed the killing fields," *Weekly Mail and Guardian*, March 24-30, 1995.

Ulundi, where he had discussed his job — described as "killing people" — with Zulu. From Ulundi he had traveled to the Mlaba camp for Inkatha trainees, but he had been arrested in December 1993 after leaving the camp to visit his girlfriend. In addition to his activities in Esikhawini, Hlongwane had been involved in training IFP Youth Brigade members from Ermelo in the eastern Transvaal, forming a gang known as the Black Cats responsible for promotion of political violence in that area. Hlongwane gave evidence that IFP leader Philip Powell, currently a senator in the national parliament, had been involved in training hit squads and had "delivered firearms to places where members of the ANC were killed." Powell had prevented the police from raiding the Mlaba camp, where illegal weapons, including AK47s, were kept.

Mkhize claimed that, while he was in Caprivi, the trainees had been visited by M.Z. Khumalo and by Major-General Siphon Mathe. On their return to South Africa, Mkhize said that Chief Buthelezi had taken part in a ceremony to welcome them, in which all the trainees and others attending had washed their hands in a *muti* (traditional medicine) made from the entrails of a slaughtered beast. He and three others had later been drafted to work in the Port Shepstone area under the direction of Chief Calalakhubo Khawula. The court also heard that a statement Mkhize had given to SAP Brigadier Eric du Preez of the Riot Investigation Unit in Pietermaritzburg, on the understanding it would be forwarded to the Goldstone Commission, had been sent instead to M.Z. Khumalo in Ulundi.

Those implicated refused to appear in court to answer the allegations. In a long letter to the court Durban lawyer Patrick Falconer stated that his clients "emphatically" denied the allegations, and that if they did give evidence the hearing would become "a trial of the Inkatha Freedom Party." Responding to press inquiries, KwaZulu-Natal Attorney-General Tim McNally stated that his office had not yet decided whether to call to court the officials named by the accused.<sup>132</sup>

#### **Other reports implicating IFP leaders in third force activities**

Other Inkatha politicians currently holding senior positions in government have also been implicated in "third force" activity. Themba Khoza, Inkatha leader on the East Rand and currently a member of the regional assembly for Gauteng, was also implicated, with IFP PWV leader Humphrey Ndlovu, in gunrunning by the Goldstone Commission, and also in the attack at Nqutu in northern KwaZulu in November 1993 in which ten people died, most of them children.<sup>133</sup> Philip Powell was named in the TEC task group report on the Mlaba camp and named in another Goldstone Commission report as responsible for an attempt to buy guns from the electricity parastatal Eskom to supply to Inkatha trainees.

### **NATIONAL COMMISSION ON TRUTH AND RECONCILIATION**

The ANC proposed before the elections that a "truth commission," along the lines of those established in various Latin American countries after a transition to democracy, should be established to investigate the crimes committed by all sides in the past and publish a record for the future. However, it was forced to water down its original proposals by pressure from the outgoing National Party and the security forces and to link the investigation of the past to the grant of indemnity to those who had committed crimes. After a long struggle during negotiations, the interim constitution agreed in December 1993 included a requirement for amnesty legislation as its last clause.<sup>134</sup>

<sup>132</sup>Paddy Harper, "Top IFP officials refuse to testify in hitsquad case," *New Nation* March 31, 1995; "Inkatha senator linked to hit squads, says paid killer," *The Star*, March 31, 1995; Siphon Khumalo, "Muti for killers," *City Press* April 2, 1995. The case has been adjourned until August 1995.

<sup>133</sup>Gauteng is the former "PWV" region (used informally to refer to the greater metropolitan area incorporating Pretoria, the Witwatersrand and Vereeniging), which became one of the nine new regions after the elections, and renamed itself after the SeSotho name for Johannesburg. See Africa Watch, *Impunity for Human Rights Abuses in Two Homelands*, pp.11-12, for details of the Nqutu attack.

<sup>134</sup>The "postamble" to the constitution states that: "In order to advance ... reconciliation and reconstruction, amnesty shall be

In late 1994, the government of national unity published draft legislation to attempting to deal simultaneously with these two conflicting aims. The Promotion of National Unity and Reconciliation Bill provides for the establishment of a Commission for Truth and Reconciliation, with a mandate to investigate gross violations of human rights committed during the period March 1, 1960 (thus including the Sharpeville massacre of March 21, 1960 and the first state of emergency) to December 6, 1993 (the date of adoption of the interim constitution). The proposed commission will have three subcommittees, charged with the compilation of a record of the past, the administration of applications for reparations, and the grant of amnesty or indemnity.

According to the draft bill released for public comment, individuals seeking immunity from prosecution, or to be released from prison if they have already been convicted, must apply to the subcommittee dealing with amnesty, making full disclosure of the acts for which they seek indemnity. No provision is made for the subcommittee to recommend that any other action be taken against them if indemnity is granted, such as disqualification from office, nor is there a requirement of cooperation with investigations proceeding against other individuals in return for indemnity. If the subcommittee recommends that amnesty be granted to an individual, then amnesty is extended to any other person whose liability might depend on the liability of that individual, whether or not they have made a separate application. Furthermore, it is not clear what the consequences are if an individual who has been given indemnity is later found not to have made full disclosure of the acts for which indemnity has been granted. The original draft of the legislation provided for indemnity hearings to be behind closed doors, but, after strong representations from human rights organizations and others opposing secret hearings, it was reportedly agreed in cabinet that hearings of all committees would be in public, although there would be a discretion to hold hearings in private in some circumstances. In addition, the names of those indemnified and "sufficient information to identify the act or omission in respect of which amnesty has been granted" will be published.

As of early April 1995, the bill was still bogged down in the select committee on justice of the national assembly; however, it is expected to be formally tabled in parliament in late April or early May, with the truth commission coming into operation in July. The IFP and the parties of the white right wing have stated their complete opposition to the idea of a truth commission, stating that it would only result in a "witch-hunt."

Human Rights Watch strongly supports the commitment of the South African government to the investigation and recording of past violations of human rights. We are, however, opposed in principle to the granting of indemnity, and believe that governments are under a duty in international law to prosecute those who have committed the most serious abuses of human rights, including murder.<sup>135</sup>

## CONCLUSIONS

The situation in KwaZulu-Natal holds the potential to derail the remarkable experiment in building a new democracy that is taking place in South Africa today. Although the questionable accuracy of the April 1994 election results in Natal should encourage a conciliatory approach to other political parties, the Inkatha Freedom Party has used its regional victory to continue its dominance of the rural areas through the chieftainship system. It is fighting to preserve the wholly undemocratic and probably unconstitutional powers of the colonial and homeland chieftainship system under a new system of local government. The KwaZulu Police continue their abuse of power, and many of the senior officers in the force and in the IFP as a whole are implicated in hit squad activity and promotion of violence both in KwaZulu and elsewhere in South Africa. While the KwaZulu Police is the most tainted force, a number of senior officers within the SAPS are also implicated in human rights abuses. In some cases, within the KwaZulu Police, members of the force have undertaken what is effectively a planned campaign of political murder. It is likely that these abuses will continue even when an integrated regional police force is created, unless steps are taken to ensure that those who have been involved in criminal acts cannot take up positions in the new force.

Despite the political desire to maintain the government of national unity by keeping Inkatha involved at national level, the need for reconciliation cannot be allowed to prejudice the future peace and stability of the KwaZulu-Natal region. Action must be taken to bring to justice those who have been involved in serious abuse of human rights, and to remove from office immediately those who are implicated in such abuses. Only if this is done will peace be restored to the region.

## RECOMMENDATIONS TO THE GOVERNMENT OF NATIONAL UNITY

- All members of the KwaZulu Police or South African Police alleged by the various official investigations to be implicated in human rights abuses must be immediately suspended, pending further investigation.
- In all cases that appear to involve organized political crime charges must be vigorously pursued. A special team of prosecutors should be appointed for this purpose. Such a team should report directly to the national Minister of Justice, and should be responsible for all decisions relating to the conduct of each case. While having regard to the new constitution, the granting of bail must be vigorously resisted where political murders have been committed, especially by individuals who have a record of committing further crimes while already on bail in relation to previous charges.
- A scheme should be developed whereby in high profile or political cases crime investigation is carried out by police officers from outside the region where the crime has been committed. This should apply to every case in which murders are reportedly perpetrated by police or local officials themselves, or with their acquiescence.

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<sup>135</sup>In October 1992, when the Further Indemnity Act was passed by the former government, Human Rights Watch wrote to President F.W. de Klerk to protest his action and urge accountability for past human rights abuses. This plea was repeated in an open letter to President Nelson Mandela in June 1994. Human Rights Watch maintains that governments are under a duty in international law to prosecute those guilty of gross violations of human rights, including murder. Africa Watch *Accounting for the Past: The Lessons for South Africa from Latin America* (New York: Human Rights Watch, October 1992).



- Consideration should be given to the transfer of KwaZulu and South African Police officers out of the region, where there have been allegations of their involvement in violence and relations with the community are tense but the evidence is not sufficiently strong to justify outright suspension. New leadership in violence-torn areas would allow for the establishment of a relationship of trust between communities and police.
- Urgent attention must be given to the long-standing demand for an effective witness protection scheme. Successful prosecutions depend on witnesses being prepared to come forward and funds must be made available for this purpose.
- The work of the Investigation Task Unit examining hit squad allegations in KwaZulu-Natal should be expanded and fully resourced by central government. The independence of the ITU must be guaranteed in order to maintain its credibility with the public.
- In principle, Human Rights Watch is opposed to the granting of indemnity to the perpetrators of gross violations of human rights, including murder, even if such indemnity is linked to disclosure of the crimes for which indemnity is sought. However, we recognize that the government of national unity is operating under political constraints and the requirements of the interim constitution. On that basis, we recommend that the Promotion of National Unity and Reconciliation Bill should be amended:
  - The proposed Commission for Truth and Reconciliation should be given the power to recommend to the appropriate authorities that those granted indemnity be disqualified from public office, or are subject to other sanctions short of prosecution;
  - Individuals applying for indemnity should be required not only to make full disclosure of the acts for which they seek indemnity, but also to cooperate with investigations into other illegal acts;
  - It should be specified that if indemnity is granted to an individual such indemnity applies strictly to those acts or omissions of which full disclosure has been made;
  - The hearings for the granting of indemnity should be held in public, unless there are compelling reasons why that should not be the case.
- Integration of the KZP and SAPS to create a new unified regional police force should take place as soon as possible, to end the current confusion of jurisdictions. During the merger process, a screening process should be carried out to ensure that individuals whose record is not satisfactory are not permitted to remain in a law enforcement body.
- Urgent attention should be given to the confiscation and destruction of unlicensed firearms and to the review and revision of the system of regulation and control governing the possession of firearms by private citizens. Local authorities responsible for the distribution of arms should be held accountable for the actions of those to whom the arms are given, who are in effect their agents.
- Plans must be put in place for the effective policing of KwaZulu-Natal during the local government elections. Experience has shown that SANDF troops are more effective than the KZP or SAPS in preventing violence. In the most troubled regions, therefore, SANDF troops should be deployed in support of police. Patrols should be conducted jointly, to avoid political divisions between the various forces, and lines of command and responsibility must be clear.
- Efforts must be made to recruit local and international monitors for the local government elections, who should be deployed particularly in rural areas.
- Disputed election results in the local government elections should go through a full process of legal challenge, to ensure that illegitimate structures are not installed at local level. Political compromises should not be allowed to defeat the expression of the will of the people.

- Funding should be provided as a priority for the resettlement of displaced people and the rebuilding of their homes.
- Talks should be urgently held with a view to resolving outstanding constitutional issues between the IFP and the ANC and avoiding further conflict in the KwaZulu-Natal region.

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This report was written by Bronwen Manby, consultant to Human Rights Watch/Africa, and edited by Abdullahi An-Na'im, Director of Human Rights Watch/Africa, and Mike McClintock, Deputy Program Director of Human Rights Watch. Human Rights Watch/Africa would like to thank the following organizations and individuals for their invaluable assistance in preparing this report: the Human Rights Committee of South Africa (Durban office), Practical Ministries (Port Shepstone), the Port Shepstone Peace Committee, the Port Shepstone police, the South Coast Herald, the Network of Independent Monitors and Mary de Haas.

### **Human Rights Watch/Africa**

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