

NMO/24/2012/1

INTRODUCTION TO MEMORANDUM ON VIOLENCE IN NATAL

1. The memorandum attached hereto details the specific complaints of members of the African National Congress (ANC), members of the United Democratic Front (UDF), and members of the Congress of South African Trade Unions (COSATU), regarding the political violence in Natal and the action or inaction of the authorities in regard thereto.
2. As the memorandum reveals the violence has been extreme and extensive. It is now occurring throughout all parts of Natal and has so far claimed over 3,800 lives. The violence is cause for grave national concern in that it:
 - 2.1. constitutes a real barrier to the creation of a climate in which the residents of Natal can enjoy a climate of peace, a climate in which they may exercise their political choices freely. In KwaZulu there is definitely no freedom of association. As such the issue is now of national, not merely regional, importance.
 - 2.2. is creating a legacy of bitterness and division that will have longterm political, economic and social consequences that may haunt South Africa for decades;

2.3. our legitimate concern over the violence also derives from the fact that members of our organisations are overwhelmingly the victims of the violence. Of 200 violent incidents recorded in January 1990 and April 1990, 195 were attributed to Inkatha and/or the KwaZulu police. The overwhelming majority of persons killed in those attacks were all non-Inkatha supporters. In the March escalation of violence attacks were made by heavily-armed Inkatha regiments against areas deemed to be non-supportive of Inkatha. Some 14,000 residents fled their homes to evade the violence. Independent monitoring groups recognise that 95% of the internal refugees were either ANC, UDF or COSATU supporters.

3. It is our belief that, although the security forces are not the principal protagonists in this conflict, the actions of the security forces, particularly the South African Police and the KwaZulu Police, have been a necessary condition for the violence reaching the proportions it has. A political resolution will be required to bring peace to the region. However the police constitute a barrier to achieving an effective peace accord. Although the violence is an outcome of a

political conflict, the violence cannot be explained only by political rivalry. Ineffective and biased policing has allowed and/or promoted the escalation of the conflict into a violent form. This comment needs to be explained.

4. We reiterate that effective and impartial policing at the onset of the violence in 1987 would have prevented the escalation to its current proportions. In particular we have informed the Minister of Law and Order that four or five prosecutions in November 1987 may well have saved thousands of lives. As matters stand now, only a handful of successful prosecutions have followed the 3,800 murders in the region.

5. In short, if there is no effective police intervention against acts of violence then the perpetrators of the violence, notably the warlords, understandably believe that they have an immunity from sanction for the consequences of their unlawful conduct. Thus it is a distinct feature of the Natal violence that it has been defiantly public. Inkatha supporters have perpetrated attacks on UDF communities without any apparent fear of security force intervention.

6. On the other side of the violence, if victims have no effective and impartial agency through which they may obtain legal redress they will inevitably resort to

violence to defend themselves, or to obtain retribution. In the course of the conflict those that have counselled police intervention in place of self help have little or nothing to justify the wisdom of their advice.

7. For the reasons set out in the memorandum the stature of the South African Police is at an all-time low. The appearance that the SAP countenances or directly or indirectly supports Inkatha forces, has led to the widespread belief that the SAP has sought to promote the conflict in the belief that it will destabilise the black community in the region. What has been said of the S.A.P. applies doubly to the Kwa Zulu Police.
8. The KwaZulu Police operate in areas under the jurisdiction of the KwaZulu Legislative Assembly. The attitude of the KLA is that in some KwaZulu areas where the South African Police are still operating they should move out and give way to the KwaZulu Police. Where the SAP has withdrawn, the practice has been for the SAP to withdraw completely from the area. Although the Minister of Law and Order, Mr Vlok, is on record as stating that the great proportion of the violence in KwaZulu areas, he has also taken the attitude that his forces have no jurisdiction to deal with acts of violence in such areas as it is the responsibility of KwaZulu.

9. We submit that the SA administration cannot abdicate its responsibility to protect life and limb in every corner of South Africa. KwaZulu is still part of South Africa. The South African Police still have legal authority in KwaZulu in terms of section 5 of the Police Act 7 of 1958. Furthermore, the South African government has power over the administration of law and order in KwaZulu by virtue of the National States Constitution Act of 1971, in terms of which the Minister can set conditions for the control organisation and establishment of police forces by these territories (section 37 of the Act read with Article 21B of Schedule 1).
10. KwaZulu Police are not only perceived to be partisan. Our documentation leaves one with no other conclusion than that they are a party in the dispute between Inkatha and ANC/UDF/COSATU members. This would flow naturally from the fact that the President of Inkatha is the KwaZulu Minister of Police, and that the Deputy Commissioner of Police is a Senior Official of Inkatha.
11. There have been concrete examples of this partiality. The ordinary man in the street has virtually no remedy when faced with a partisan police force. Many policemen attached to KwaZulu have been convicted and others are awaiting trial for alleged violent activities against members of ANC/UDF/COSATU. Where arrests have ensued, it

is the South African Police who have effected them. An increasing number of KwaZulu Police are also mentioned in inquests. Almost invariably, no charges follow the inquest findings.

12. We submit that it is abundantly clear that the KwaZulu Police are incapable, as a force, of being impartial in the current climate. They can therefore not play an effective role in ending the violence.
13. Any peace pact or reconciliation will be fragile in its initial stages. A hot-head or agent provocateur can derail a peace initiative by a single act of violence if there are no effective forms of self-protection, or retribution. In these circumstances peace cannot last. Accordingly it is absolutely imperative that there be an effective policing presence in Natal. An important and effective policing policy will also give an incentive to the 'warmongers' to opt for peace.
14. Unilateral attempts to bring peace to the region by asking our own members to disarm will also have no effect if Inkatha remains' and is allowed to remain armed and belligerent.

15. The necessity of effective and impartial policing as a foundation for a durable peace accord is illustrated by the failure of the peace initiatives, largely initiated by either the UDF or COSATU in 1987, 1988, 1989 and 1990.
16. If the security forces are to recover some of their lost stature, dramatic steps are required which would indicate a serious intention on the part of the security forces to act effectively and impartially. Such steps must include:
 - 16.1. the arrest and prosecution of noted warlords, in respect of whom numerous complaints have already been lodged with the police;
 - 16.2. the expedited prosecution of all perpetrators of violence;
 - 16.3. the police prosecution and/or suspension of those within their own ranks who have acted improperly. A public and full inquiry into alleged police misconduct would assist in exposing such misconduct. Alternatively the appointment of an independent, mutually acceptable and professional ombudsman to investigate complaints should be considered;

16.4.

a sensitivity and responsiveness to the demands and complaints of community leaders in the townships and rural areas;

16.5.

the disbandment of the KwaZulu Police, alternatively, the removal of the KwaZulu Police from any area or role in which they are used to 'police' the conflict.

17.

In our view the Emergency powers have not assisted in resolving the dispute. They are not required on a legal basis for intervention. Common law and statutory law are sufficient if used properly. Indeed, to the extent that the Emergency powers permit greater police discretion, and have been used only against our people, these powers have contributed to the problems described fully in the attached memorandum.

18.

Every day that the conflict persists deepens the wounds in our communities and makes peace more difficult. The steps that need to be taken should be taken as a matter of urgency.

2/8/90

Plus Langa

Nicholas Haysom

A VIEW OF VIGILANTE VIOLENCE

There was a time when the word vigilante was used (if it was used at all) to mean quite simply a member of a vigilance committee — an American concept described by the Oxford English Dictionary as "a self-appointed committee for the maintenance of justice and order in an imperfectly organised community".

"Justice and order", however, are the last things on the mind of the latterday South African vigilante.

In the past decade in this country, the word has acquired the most sinister of overtones, denoting as it does murder and violence and deliberately induced chaos.

In the '80s, the concept seemed to be the property of the country's black townships in which gangs of "mabangalala" roamed, intent, it appears, on intimidating, injuring or killing anti-apartheid activists.

With the advent of the '90s, the term has, ironically, also been picked up by the white right wing.

The two groups have nothing in common but they are linked by one thread — the apparent ease with which they evade identification, capture and conviction.

Murder

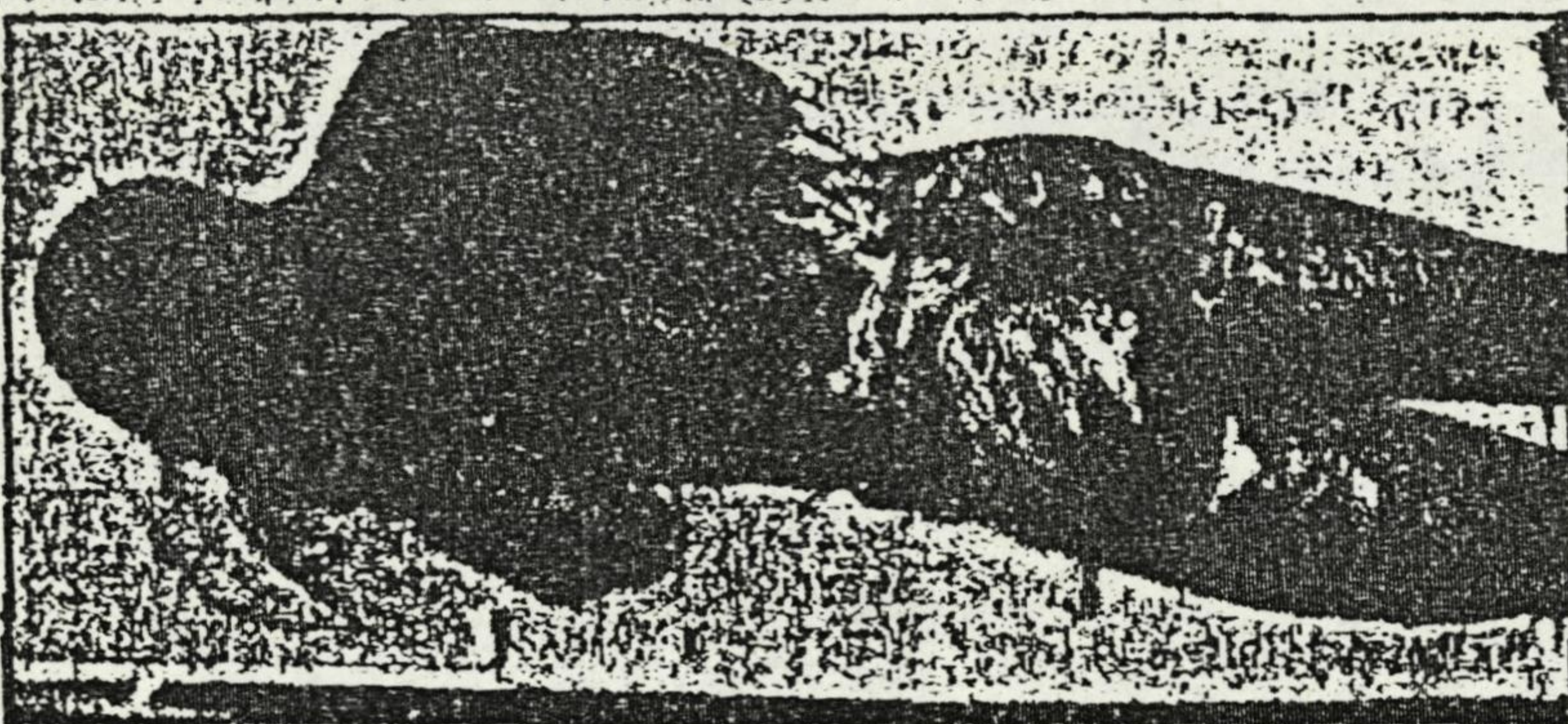
In an essay entitled "Sub-Contracting the Dirty Work" in a recent published book, "Policing and the Law", attorney Clive Plasket looks at the phenomenon in the townships and suggests some reasons why vigilantes manage so often literally to get away with murder.

Historically, the emergence of vigilante groups coincided with the continuing unrest which began in September 1984, since which the state has faced "its most severe crisis of control".

During this period, many activists were jailed, creating a vacuum in the townships in which vigilantes could thrive.

Since then, Mr Plasket contends, vigilante activity has become institutional and the State "derives

In this country, "vigilante" conjures up visions of murder and chaos, and horrific injuries such as those inflicted on the man below, who was flogged by vigilantes. PAT SCHWARTZ examines the role of these groups in South Africa.



He cites three:

- The destabilisation of communities.
- The use by vigilantes of "a far more chilling level of violence than that which the State could ever bring to bear without suffering immense damage, both locally and internationally".
- The fact that because vigilante activity can be depicted as "black-on-black violence", the impression is created that "the State and its security forces are playing a peace-keeping role and that the black community is tearing itself apart".

One of the more horrific and highly publicised episodes of sustained vigilante violence was the destruction by "Witdoek" vigilantes of thousands of homes in Cape Town's Crossroads squatter camp while the police looked on, apparently helplessly.

It is in Maritzburg, though, Mr Plasket writes, "that vigilante violence has been most unbridled, vicious and protracted".

He argues that "violence of this intensity cannot be sustained in vacuo. It requires some form of State involvement to continue".

from which reasonable inferences can be drawn and even, at times, more direct evidence of the State sub-contracting its repressive functions to vigilantes".

The apparent inability of the security forces to deal with the problem (a phenomenon termed by Wilfried Scharf, director of UCT's Institute of Criminology as "blind-eye policing") has resulted in a huge loss of life.

Attorney Nicholas Haysom believes that had vigorous and effective prosecutions been instituted in late 1987, "well over a thousand lives might have been saved".

Solutions

It has also led to a search for solutions through a variety of means. These have included applications for interdicts and restraining orders, attempts to obtain criminal prosecutions and the establishment of a Complaints Adjudication Board which would hear complaints of misconduct and make recommendations as to disciplinary measures to the relevant organisations.

None of these methods has worked; some have resulted in an

which makes legal institutions useless".

Among the practical reasons for the failure of court actions is the problem of identification. Even when that is overcome and applicants have been granted an interdict, vigilantes appear to have no problem avoiding complying with the interdict.

As Mr Plasket points out, "the sanction of contempt of court for contravening an order carries no deterrent value for someone who is prepared to murder".

Attempts at criminal prosecutions have also largely failed and "doubts have been expressed about the willingness or ability of the police to investigate properly allegations of criminal conduct on the part of warlords".

"It is significant that, after the death of so many over the last two years, only a handful of criminal matters has come to court in connection with those killings and still fewer convictions have been secured."

The result of failure, writes Mr Plasket, is that residents of the Maritzburg townships "have, to a large extent, lost faith in the criminal courts and in legal institutions generally as a means of curbing the violence".

"This loss of faith carries with it the inherent danger of persons resorting to self-help, which, in turn, contributes to a spiral in the violence."

It is clear, he concludes, that police conduct, "whether through active collusion or mere omission, is fuelling the conflict in that a free hand is being given to the warlords to continue with their campaign of violence... Surely even-handed policing could have stopped or at least limited the slaughter?"

As an increasing number of activists die violently, as innocent people fall victim to random actions, as the contagion spreads through more

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