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BRIEFING MEMORANDUM

THE ROLE OF THE POLICE IN RELATION TO THE VIOLENCE IN
PIETERMARITZBURG

Prepared by COSATU

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1. INTRODUCTION:-

This document is to express our concern regarding the performance and actions of the South African Police (SAP) in the Pietermaritzburg townships. We believe this conduct is not a consequence of the actions of individual members of the police, but that it manifests a policy which appears to find support at the highest level. It is our belief that the conflict would never have reached current proportions had the police acted energetically and impartially at the outset.

We are convinced that a resolution of the conflict cannot be achieved if the police continue to perform their role as they have done over the past two years. As you are aware we have taken several initiatives in this regard, including the remission of our concerns, duly substantiated, to all levels of the South African Police. This seems to have had little impact.

We stress the importance of action to deal with this problem. In our opinion greater pressure must be placed on the State to take action to regulate the conduct of its forces in the townships of Natal.

This document draws from and refers directly to occurrences in the Pietermaritzburg townships. It should however be noted that the phenomena which are identified in this document are by no means restricted to Pietermaritzburg. The aspect of police collusion with protagonists of the violence finds expression throughout the townships of Natal. This will be more fully discussed under section of this document.

2. THE EXTENT OF THE PIETERMARITZBURG VIOLENCE:-

Over 1 300 people have been killed in the Pietermaritzburg area since the violence erupted two years ago. Several thousands have been injured, assaulted, threatened, intimidated or rendered homeless during this period. Monitoring groups estimate that 3 000 homes have been destroyed and that an excess of 30 000 people have become refugees as a result of the social disorder. To place this shocking situation in context it should be noted that over twice the number of persons died in Pietermaritzburg in 1988 than died in Beruit during the same period. (312 Beruit, 682 in Pietermaritzburg; Centre for Adult Education UNP). The

monthly death rate has since June 1987 exceeded more than 1 violent death a day.)

3. THE NATURE OF THE VIOLENCE, AND THE PERPETRATORS THEREOF:-

The violence has been of a particularly brutal and violent nature. Contrary to the popular perception, the violence is not the work of "gangs" from opposing factions who pit themselves against one another in bloody conflict. Our research indicated that in the majority of identifiable incidents the aggressors are persons, directly or indirectly, under the control of the "warlords".

These "warlords" are well-known in the townships, and have been identified as responsible for countless acts of violence. This information is often relayed to the police, yet the "warlords" are seldom, if ever, subject to arrest or charged.

Of great concern is the long term effect that the violence will have on these communities. Apart from the destruction of the communities social fabric the violence has long-term implications violence and revenge are rapidly becoming the only effective mode of self protection and political organization. This is all the more so because of the failure of the police and Courts to offer any effective protection.

4. THE ROLE OF THE POLICE:-

An overwhelming feature of the conduct of the SAP has been their failure to investigate and prosecute perpetrators of the violence, and in particular, the "warlords".

- 4.1 Despite over 1 300 violent deaths and the commission of a great deal more lesser violent crimes, only a few prosecutions and only a handful of successful convictions have arisen from the crimes.

The ratio of deaths to prosecutions is so overwhelming that the only conclusion is that the South African Police are unable or unwilling to address the violence. It is inconceivable to imagine that the police would have been allowed to act so ineffectually had 1 300 people been killed in white Pietermaritzburg or Johannesburg suburbs.

It appears the failure of law enforcement or its partisan application has had the effect of encouraging the "warlords" in their campaign to suppress those perceived to be in opposition to Inkatha or to themselves.

4.2 The following characteristics of the police's performance have been identified:-

4.2.1 The police have on occasion discouraged the laying of charges against certain individuals and in particular the "warlords". Complainants have been denied the right to lay a charge, and are turned away.

4.2.2 Should investigation dockets be opened, investigations are extremely tardy. Little effort is made to arrest the accused. For example, we have records of police attempting to effect an arrest on a "warlord" by leaving a message for him to present himself to the local Police Station. In the same matter, a firearm was taken from a "warlord" for ballistics test six months after the shooting. Another tactic frequently encountered is the police simply enter into correspondence with the Complainant's Attorneys stating that new steps must be taken before the investigation can proceed.

4.2.3 Reports were received of the police actively assisting "warlords". We have recorded examples of assistance ranging from transport to state provision of firearms to vigilantes, or the failure to seize firearms after the commission of a crime. For example, Jerome Mncwabe was provided with a shotgun by the Department of Development Aid.

4.2.4 Reports have been received of the "warlords" actively assisting the police. Examples range from "warlords" physically assisting the police in effecting arrests to "warlord" participation in the interrogation of suspects.

4.2.5 The fact of differential treatment is conclusively illustrated by the practice of the SAP of asking potential complainants or witnesses or suspects whether such person is a member of Inkatha or of the UDF.

4.2.6 Over 1 050 UDF/COSATU affiliate members have been detained in comparison to the "handful" of Inkatha supporters. It should be noted that the frequent and express reason for detentions in the Pietermaritzburg area is

the Pietermaritzburg violence. Yet, only one of the parties to the conflict experiences the detention of its members.

4.2.7 Similarly, the police are much more likely to take into custody witnesses and suspects belonging, or suspected of belonging to UDF/COSATU than other persons present or involved in an incident of violence. (See COSATU Report on Imbali Stage One, circulated at Press Conference in May 1989).

5. THE ATTITUDE OF THE POLICE TO THE NATAL VIOLENCE:-

Various letters have been addressed to police officials placing our criticisms of the SAP on record. On 8 March 1989 a detailed letter was forwarded to the Minister detailing our allegations. On 23 March 1989, copies of the Imbali Memorandum, prepared by our lawyers were forwarded to the Minister. To date we have received no reply.

Minister Vlok has chosen to publicly express the view that UDF/COSATU are responsible for the violence and he has absolved Inkatha of any culpability. His views expressed in Parliament are also contained in a letter to Peter Gastrow MP dated 29 November 1988. In the last week of April 1989 he announced that the solution to the violence lies in an iron-fist approach towards COSATU/UDF activists and structures.

The State President has rejected a call by the Lawyers for Human Rights for a Commission of Enquiry into the Pietermaritzburg violence and the police's role therein.

There have been no official investigations into our allegations concerning the actions of the police. Township resident Mandla Mthembu, identified in COSATU's report as one of our informants has himself been subjected to torture and assault shortly after publication of our Report during which he was questioned about the content of the Report. Furthermore, the COSATU spokesperson who addressed the media on the role of the police in the violence, Jabu Ndlovu, was murdered together with her daughter and husband shortly thereafter.

The actions and views of these senior Government Officials must undercut any claim by the SAP to be neutral custodians of law and order. In particular the Minister's comments must strengthen our argument that the SAP can no longer fulfil a policing role in the Pietermaritzburg violence. The scale of police involvement in promoting the Inkatha "warlords" must lead to the inference that police officials are involved at the highest level. Certainly, allegations that senior police officials have sought to intervene

politically, on behalf of Inkatha strengthens this view.

6. ILLUSTRATIVE EXAMPLES:-

Below we set out a handful of incidents to illustrate the points made above.

6.1 MPOPHOMENI KILLINGS:-

During December 1986 an Inkatha meeting was held in the Mpophomeni Township Community Hall, and Inkatha supporters were bused in. During the course of the meeting vigilantes went out and abducted the Chairman of the MAWU-Pietermaritzburg Shopstewards Council and two other people. They were brutally murdered. Inkatha supporters spent the night in the hall and went on the rampage the following morning killing another resident.

An Inquest Magistrate found that certain Inkatha members were responsible for the deaths of the unionists. Nevertheless, no arrests, let alone prosecutions, have been made in the two and a half year period.

6.2 "WARLORD" SICHIZO ZUMA:-

Between August and October 1987 it is alleged that an Inkatha "warlord", Sichizo Zuma was involved in the commission of a number of crimes. Among these were the murder of Rhee Ngubane (19 August 1987); the murder of Mduduzi Madlala and attack and arson damage to the Myaka and Madlala homes (first week of September 1987); the theft of stock and setting of fire to the home belonging to the Mkhize family (5 October 1987), the abduction of Jaminah Mthiyane (9 October 1987).

These matters were reported to the police who failed to prosecute Zuma. Thereafter, in order to protect these people, an application was made by our Attorneys for an Interim Interdict against Zuma, which was granted by the Supreme Court (Natal Provincial Division). Case No. 2894/89.

These matters were once again reported to the police. The following progress was made:-

6.2.1 Murder of Rhee Ngubane - CR588/08/87:-

The witnesses, together with their Affidavits were taken to Pentrich Corner on 9 May 1986. The

witnesses were not even questioned and were sent away after five minutes. As far as we have been able to establish, no further progress has been made since that date.

6.2.2 Damage to Myaka Home - CR42/09/87:-

The witnesses were taken to see the Investigating Officer for a pre-arranged meeting on 29 April 1988.

The Investigating Officer was not present, and copies of statements were left with an officer who felt that they were "sufficient". There had been no progress since that date.

6.2.3 Murder of Mduduzi Madlala and Arson - CR28/09/87

Witnesses were taken to see the Investigating Officer on 29 April 1988. The Investigating Officer failed to arrive. Once again statements were left, after being declared to be "sufficient" by an Officer.

A witness was called on to make himself available. On the first occasion he presented himself to the identification parade did not take place, and on the second occasion the witness did not arrive.

6.2.4 Stock Theft and Arson - Mkhize Property-CR121/10/87:-

Witnesses were taken to see the Investigating Officer on 3 May 1988. They were asked if they abided by their Affidavits and thereafter dismissed. A further witness was requested, and was taken to the Investigating Officer on 9 May 1988.

No progress was made until over a year later when the Complainants were asked if they still wished to proceed with the matter. The Complainants declined to proceed, indicating that they had little faith in the criminal justice system because of the undue delay, and that they feared that if they were to proceed after such a long time old hostilities would be rekindled against them.

6.2.5 Kidnapping of Jaminah Mthiyane:-

Witnesses were seen by the police on 3 May 1988.

No progress was made since that date.

6.2.6 No prosecution has been launched following the killing of Simon Mthembu.

As can be seen from the above, the whole exercise seems to have been a waste of time from the witnesses' perspectives. It is easy to understand why the complainants lose faith in the police when nothing appears to arise out of their complaints.

6.3 THE DUMA FAMILY:-

The Duma Family, residents in Imbali, have been subject to repeated incidents of harassment at the hands of the police.

During the latter part of 1988 the Duma's were subject to attack and harassment by Inkatha members. These included the abduction and murder of the head of the Duma household, the attempted murder of his son, Nicholas, and a number of incidents of arson.

Despite reports to the police these attacks did not abate, and instead the Duma's began to be harassed by the police, who on numerous occasions would arrive in the early hours of the morning to search the Duma house extensively for firearms. During January 1989 alone, the family were raided some three times by the police. This continued to happen and despite no firearm being found the Duma's continued to be searched and they were inter-alia:- abused, threatened; assaulted; and arrested without charge.

Three male members of the Duma family have been killed, the most recent being Nicholas Duma who was murdered after giving evidence against the very "warlord" he claimed killed his father. The "warlord" was later arrested, charged for the murder, and released on R800,00 bail.

Since that date the Duma family have been obliged to leave Imbali and settle in another, safer area.

During March 1989, Ndodo Duma was charged with the attempted murder of Dumisani Khumalo. Duma was arrested in the early hours of 17 May 1989 and was released on bail two days later.

The matter came to trial in the Regional Magistrate's Court, Pietermaritzburg, 13 July 1989, under case no. RC419/89. Duma was acquitted—without—him being—required—to give—evidence.

During the evidence of the complainant and his witness it

emerged that:-

- 1) The Complainant had not seen who shot him;
- 2) The Complainant had never laid a charge against Duma.
- 3) There appeared to be no signed statement from the Complainant in the Police Docket.
- 4) The Complainant's brother was unable to indicate who shot the complainant, and indicated that he had never told the police that he was able to do so. He further denied making any statement to the police.

These allegations were put to the police in a letter dated 20 July 1989. To date our lawyers have yet to receive a reply.

6.4 THE MKHIZE INQUEST:-

On the night of 9 October 1987, a number of "warlords" entered the Mkhize family house looking for the male family members who they believed to be "comrades". When they were unable to find those they were looking for they cold-bloodedly shot and killed Angelica Mkhize and her 11 year old daughter.

Once again, despite a finding against "warlords" by an Inquest Magistrate, on 27 February 1989, no arrests have been made.

6.5 THE MTHEMBU FAMILY:-

The Mthembu family have been subject to a campaign of harassment and intimidation at the hand of the "warlords". Notwithstanding the shooting of four Mthembu family members, and the subsequent death of two, no arrests have been made. The Mthembus themselves were in fact arrested when they threw rocks to drive off their attackers. They have had to flee their Imbali house to a safer area.

Unable to find relief in the criminal process or through the police, the Mthembus were forced to approach the Supreme Court for a Court Order restraining individuals from attacking them. During preparation for this trial, Ernest Mthembu was assassinated.

The situation of a family having to approach a Court for civil protection is so strange that the International

Commission of Jurists sent out observers to monitor the trial. (The trial is still currently in progress, and our Attorneys have advised us not to comment on the merits of the case until the matter is finalized.

6.6 THE MPOPHOMENI INTERDICT:-

Since 19 March 1989 the community of Mpophomeni were subject to a variety of attacks from other communities. The police failed to intervene, and when residents felt obliged to protect themselves the police promptly arrested, shot and harassed them.

Thereafter followed a period of assault, harassment and torture of Mpophomeni residents at the hands of the SAP. Incidents are as senseless as the sjambokking of a young girl who happened to be outside hanging up washing, or the assault of a cripple as he failed to "get inside" his house quickly enough.

Residents approached the Supreme Court for an Order interdicting the SAP from threatening, assaulting or harassing them in any way and ordering the police to protect them. The Order was granted by consent.

The case is significant in that it was an application brought by the whole community, and more importantly, because residents were obliged to seek protection from the very people who were meant to be protecting them!

7. ATTEMPTS MADE THUS FAR TO REGULATE THE CONDUCT OF THE POLICE:-

Through our attorneys we have made a number of attempts to get the police to behave in a proper and impartial manner. Inter alia, our attorneys have:-

7.1 Assisted complainants in laying charges against the perpetrators of the violence. Evidence has been provided to the police and the Attorney-General, including statements, maps and exhibits. It has however become apparent that police investigations were tardy, prosecutions unsuccessful and lack-lustre, and "warlords" appeared immune from detention.

7.2 Used the Civil Courts to obtain restraining interdicts against the "warlords". These were undermined by the harassment and murder of several witnesses, and the failure of the police to provide protection to those witnesses. Thus residents approaching Courts, whether as applicants or witnesses, placed their lives in danger and we can no longer guarantee their safety.

- 7.3 Created an alternative complaints resolution process, the Complaints Adjudication Board, to enforce the responsibility of regulating the conduct of wrongdoers on the relevant organizations shoulders, regardless of who they might be. This has been undermined by attacks on witnesses and the refusal of certain Inkatha respondents to participate. Participation has been suspended since the killing of Nicholas Duma.
- 7.4 Conducted intensive research into allegations against the police. These findings confirm our assertions above.
- 7.5 Using this research we have attempted to make the media aware of the level of the conflict in Pietermaritzburg and the Role of the Police in relation thereto.
- 7.6 Written numerous letters to senior police officials, including the Minister of Law and Order, detailing our allegations. These have been met with very little response, and many are unanswered.
- 7.7 We have publicly endorsed the call for an independent commission of enquiry into the complaints described in this memorandum. This has been refused by the State President himself.

To date these methods have proved inadequate. Indeed, as mentioned above, since COSATU released its Report on the police's role in the violence, Jabu Ndlovu, COSATU spokesperson, has been murdered.

8. CONSEQUENCES OF THE ACTIONS OF THE POLICE:-

It is important to note that it is extremely unlikely that peace can be achieved in Natal under the conditions as set out above. We would point out that:-

- i) Our attempt to break the cycle of violence through assisting the police, using the civil courts, establishing the Complaints Adjudication Board have been undermined by the failure of the police to either protect witnesses or prosecute suspects.
- ii) Faith in the legal process and in our capacity to afford victims of violence any protection has been hampered by the dangers which our informants face.
- iii) The detention of local leaders has sabotaged peace negotiations in the past.

- iv) If the prevailing situation continues the same cynicism that our clients display towards legal institutions will be extended to include the negotiating process, and the efficacy of peace accords.

9. OTHER AREAS OF NATAL:-

While the majority of our research has been drawn from the Pietermaritzburg townships, we have been able to ascertain that the phenomena referred to above are prevalent throughout Natal.

As an example we might mention Mpumalanga where reports have been received of armed and uniformed policemen jumping out of private vehicles driven by known "warlords" and firing at onlookers with pump-action shotguns.

The presence of KwaZulu policemen does not, as has been suggested by the Press, alleviate the situation. In KwaMashu, numerous reports have been received of malfeasance by members of the KwaZulu police, among them reports of "group" arrests, where very often large groups are arrested and thereafter released, most often without charge.

We have received reports from places as far as Isithebe and Ezakeni. At Trustfeeds, near Wartburg, our Attorneys have statements recording incidents where large groups were randomly arrested and taken to the local stadium. There they were led past a combi with one way windows and an informed separated them into groups of Inkatha and non-Inkatha persons. Those aligned to Inkatha were released, and the others were assaulted and then released.

10. CONCLUSION:-

The patterns, referred to above are not merely the product of our perceptions. Our Attorneys have numerous well-documented instances of police collusion with "warlords", and the collusion has in fact taken many forms.

The problem is not limited to the examples given. An alarming recent trend is the use by police of unmarked taxi-combis. Between the 10 th March and end of August we have recorded 12 separate examples of unlawful activities by police officers while patrolling the Imbali Township in a Red Husky combi. Most of these incidents involve the same police officers who use the pseudonyms "Rambo", "MacGyver" and "Boss", and almost always involve unlawful activities as part of investigation techniques.

Local communities have been so outraged at partisan police behaviour that there are numerous instances where women in local communities have spontaneously marched into Pietermaritzburg to protest. Local newspapers have, in the editorials, called for

enquiries into police behaviour, and questions have been asked in Parliament on the subject.

It appears that, at the very least, a wide-spread perception has arisen that the police are failing to perform their duties adequately and impartially.

The conflict in the Natal townships appears to be to the short-term advantage of the State. The conflict is confined to the townships and for whites appears remote and abstract. Yet, residents of the townships are captives of the violence. Such persons are politically disorganized, trade union disorganization is hindered. The State is not only able to create "violent stability" but is able to exploit the label of "black on black violence." By focusing attention on the States contribution into the cycle of violence COSATU will not only expose the States' complicity but may be able to contribute to the circumstances in which peace would be possible.