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Independent Board of Inquiry

PO Box 32293
Braamfontein
2017
Johannesburg
South Africa
Phone (011) 403-3256/7
Fax (011) 403-1366

REPORT OF THE INDEPENDENT BOARD OF INQUIRY FOR THE MONTH OF

NOVEMBER 1991

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I. INTRODUCTION

The most important development in the field of informal repression this month was the start of the Commission of Inquiry into public violence and intimidation headed by Mr Justice Goldstone. Legal teams attending the Commission are optimistic about the long term affect it could have on political violence. The Board will be working very closely with the Commission and information gathered will be continuously forwarded to its officers.

On the negative side, there are indications that members of the South African Police (SAP) are still operating with a "total onslaught" philosophy. The findings of the Daveyton Inquest indicate that there is still much work to be done on police training especially as regards their attitude to township residents.

II. STATE INSTITUTIONS

1. The South African Police

The Appellate Division has reserved judgement in the appeal against sentence brought by former security police Sergeant Almond Nofomela.

Nofomela, whose revelations about the activities of the CI unit of the security police based at Vlakplains lead directly to the Harms commission, was appealing against a death sentence given to him for the murder of a white farmer, Johannes Hendrik Lourens, on September 11 1986. The murder had no political motive. His co-perpetrator, Johnny Mohane has been successful in his plea for clemency.

Counsel for Nofomela, Advocate Denis Kuny SC and Advocate De Wet Marais, argued that the reason that Nofomela had resorted to violence was that he had, through his activities for the State, become conditioned to its use. Miss ECT Walt, appearing for the State, argued that evidence about these activities would probably not be accepted as true as there were serious problems with Nofomela's credibility. She said further that, even if Nofomela's allegations were accepted, then this showed that Nofomela had been involved in nine murders and there was little chance that he could be rehabilitated.

The president of the National Union of Metal Workers of South Africa (NUMSA), Maxwell Xulu, who has also served as the Congress of South African Trade Unions' (COSATU) treasurer, was suspended from his job on November 14 following allegations that he had worked as a police spy for the past seven years. NUMSA General Secretary, Moses Makiiso, said that investigations into these and other allegations about police spies were still continuing. Law and Order spokesperson, Brigadier Leon Kellie, stated that it was not police policy to identify people who supplied them with information. He added that whilst the police used informers to assist in criminal investigations, the SAP was not involved in spying on legitimate trade union activities.

Xulu has denied all the allegations. In an interview with the Vrye Weekblad he claimed that he had not yet seen the incriminating documents or heard the incriminating tapes, but expected to do so at a NUMSA tribunal which he is demanding be constituted to investigate the matter. He believed that the entire matter was a misunderstanding arising out of numerous meetings and briefing sessions which he had had with a "wide variety of people". (Vrye Weekblad 15/11/1991)

Five of the eleven suspended police men attached to the now disbanded Welverdiend Unrest Unit in Carletonville have been provisionally charged with attempted murder. The five will also face charges of assault with intent to do grievous bodily harm as well as charges of common assault. These charges arise out of an investigation by the Board's researchers (see previous reports).

Another member of the unit, Ephraim Fente Rampete, has been found criminally responsible for the death of an Ikageng schoolboy, Collin Bongi Nyokong. The Magistrate who presided at an inquest into the boy's death, Mr Piet Myburgh, found that the boy had been shot by Rampete whilst he, Nyokong, had been hiding under one of his teacher's beds. The Magistrate could not find whether Rampete had fired negligently or intentionally but recommended that the matter be referred to the Attorney General's office for investigation.

2. The South African Defence Force (SADF).

The Weekly Mail of November 11 reported that 80 Iscor hostel dwellers from the Sebokeng areas had received call up notices from the local SADF Commando.

The notices ordered the men to report for a one day training camp at the local Commando headquarters and included a provision to the effect that failure to report would constitute an offence in terms of the Defence Act. According to SADF spokesperson Brigadier S Mulder the "notes" were an "invitation" to attend a session at which the "advantages of being a member of the Vaal Commando would be explained to the men, with the ultimate objective being to recruit a platoon from the Iscor workers."

NUMSA General Secretary, Moses Mayekiso, condemned the move, especially in the light of the fact that the men live at KwaMadala Hostel. In the local community the perception is that KwaMadala is used as a launching pad for attacks on Sebokeng and the surrounding townships. Mayekiso pointed out that these perceptions could be increased by the SADF's move. The African National Congress (ANC) called on the SADF not to recruit at hostels describing such campaigns as highly irresponsible and provocative in the light of existing tensions between hostel dwellers and township residents. The SADF response was to describe the event as an "administrative bungle".

III. THE RIGHTWING

1. Links between the Orde Boerevolk (OB) and State Agencies.

OB members, Henry Martin and Adriaan Maritz, have come to light in the United Kingdom. They maintain that all their actions (see previous reports) were carried out on the orders of either Military Intelligence (MI) or the Civil Co-operation Bureau (CCB). They also claim to have evidence showing that the SADF continued to supply Renamo with arms after 1984, in contravention of the provisions of the Nkomati Accord and that the SADF gave the Inkatha Freedom Party (IFP) 10 000 AK 47 and R4 assault rifles.

ANC spokesperson, Carl Niehaus, said that the ANC was prepared to facilitate indemnity from prosecution for the men so that they could give evidence before a commission of inquiry. Niehaus said that it was especially important that any information which the men had about the CCB should come to light.

IV. ATTACKS ON INDIVIDUALS

1. General

Over 60 ANC and IFP activists and leaders have been assassinated by unknown gunmen this year. According to Kim Hodgson, head of the Inkatha Institute's Violence Study Unit, over 25 IFP leaders had been assassinated since the signing of the peace accord. The Human Rights Commission (HRC) stated that 30 ANC office bearers, as well as youth and community leaders, had been killed since January 1991. Whilst the IFP blamed the ANC for most of the killings, the ANC held government agencies responsible.

2. Phumzile Mbatha

An ANC activist and COSATU organiser, Phumzile Mbatha, was shot and killed on November 5 in Thokoza. She was returning home from a rally which had been held to protest against the imposition of value added tax (VAT).

3. Tsietsi Miya

The body of Tsietsi Miya, a former exile who had recently returned to South Africa, was found in the open veld near Soweto on November 5. He had been shot several times in the head. Three black policemen have been arrested in connection with the murder.

They have been released on a bail of R5000 each.

4. Tokyo Sexwale

Mr. Sexwale, Chairperson of the Pretoria, Witwatersrand, Vaal (PWV) region of the ANC and former Umkhonto we Sizwe (MK) operative, narrowly escaped death when he overturned his car on November 6. He was trying to escape from a group of gunmen at the time.

V. THE REEF VIOLENCE

1. Train Attacks.

These attacks, which are one of the most horrifying manifestations of the Reef violence, continued in November, although no fatalities were reported this month. On November 13 five people were injured in a shoot out between people waiting to board a Soweto bound train and the passengers thereon. On November 17 another fourteen people were injured on a Soweto bound train after being attacked by a group of men wielding pangas and other sharp instruments.

Some debate surrounds the effectiveness of the SAP's efforts to deal with the spate of these attacks.

So far at least 80 people have died in these attacks and there has not yet been a single conviction. In late October the SAP announced that they were unable to patrol the trains because it was unsafe for them to do so.

This announcement was derided by most political parties. The IFP and the Conservative Party (CP) said that if this was true it was a sign that South Africa was close to being ungovernable. The Democratic Party (DP) said that proper patrolling of the trains was essential and the ANC called the excuse "feeble" and pointed out that it was far more dangerous for ordinary commuters than armed policemen.

Partly in response to such criticism Spoornet announced that metal detectors would be made available for all stations. The police, however, believe that these detectors can be bypassed by hiding weapons in umbrellas, which is what possibly happened in the case of the November 17 attack. The SAP introduced what promises to be a more effective response when they stopped trains between stations on October 30 and in conjunction with the SADF searched each train. A similar operation was carried out on November 19.

Despite the ongoing violence on trains suspected train attacker, Albert Dlamini was released on R2000 bail. Dlamini is facing 3 counts of murder and several of attempted murder for a train attack on the East Rand. Dlamini had been arrested by commuters (see October Report). NUMSA organiser Alfred Woodington said that the low bail would discourage commuters from taking similar action in future. In an interview with the Saturday Star of November 16 Dlamini claimed to be an IFP member and said that he would be meeting with the IFP central committee to discuss his case. The IFP denied the meeting but could not confirm or deny Dlamini's membership.

2. The East Rand.

A number of attacks took place in this area in November but the area has definitely been much quieter than in previous months. This may be due to the peace conference which was held in Thokoza and which will be dealt with infra. On October 30, six people were shot at and wounded when a gunman opened fire on a taxi driving past Phola Park squatter camp in Thokoza. In nearby Vosloorus seven people were killed and six injured when an unknown number of gunmen attacked a party on November 17.

A possible major breakthrough for peace in the area was the holding of an all party peace conference early in the month. The conference was chaired by Professor Nicholas Haysom and Advocate Paul Pretorius and was attended by all political parties in the region as well as by the SAP and the SADF. As a result of the conference a dispute committee is to be set up comprised of representatives from virtually every political party in Thokoza.

3. The Goldstone Commission

The Commission of Inquiry into the Thokoza violence began in Pretoria on November 19. The commission is headed by Pretoria advocate Solly Sithole. He is assisted by Lilian Baqwa, an attorney and former Managing Director of Perm SA, Bob Tucker.

Members of the commission, as well as the legal teams, inspected scenes of recent bloodshed in Thokoza on the East Rand. The Commission will concentrate on three main events: the attack on IFP members on September 8 1991 which left 23 people dead; the murder of civic leader Sam Ntuli on September 29 1991; and the subsequent killing of another 23 people who attended Ntuli's funeral on October 7 1991.

At a meeting prior to the Commission's sitting, the IFP said that they might not be able to attend the Commission as they were short of funds. Lawyers for Human Rights (LHR) have agreed to provide bridging finance to the IFP, some civic organisations and individuals needing legal representation.

Thus far the Commission has been hearing evidence from the various investigating officers of the SAP. One of the Board's researchers, Sally Sealey, has been proposed as an independent investigator by some of the parties. A decision on this will come from Mr Sithole. Legal teams at the Commission have remarked on the extent of the co-operation between all the parties. Happily the Commission appears to be entirely unmarked by any kind of adversarial spirit.

4. The Daveyton Inquest

Justice B O'Donovan, the presiding officer at the Daveyton inquest, gave his finding on November 26. The inquest was held to determine who was responsible for the death of a policeman and 12 township residents which followed a clash between township residents and the SAP on March 24 this year (see April Report). Subsequent to the incident the Board's researchers have been assisting the legal team representing the township residents in their investigation.

The Judge found that the policeman, Lance Sergeant Jan Petrus van Wyk, was probably murdered by six unidentified residents. The police then responded by opening fire leading to a "slaughter". The Judge said that, whilst he appreciated the fact that the police were dealing with a crisis situation, the bounds of self defence had been exceeded, which was clearly demonstrated by the fact that more than 250 rounds of ammunition were fired. He ruled that the entire record of the commission be forwarded to the Attorney General and that charges of murder and culpable homicide be investigated against every policeman who fired live ammunition.

5. General

New Nation reporters claim to have made contact with a group of "hit men" at Jeppe hostel who are prepared to kill anyone for R4000, provided the victim is not an IFP member. These men claim that similar "hit squads" exist in hostels throughout the PWV area (New Nation 8/11/1990).

VI. NATAL

The events surrounding the Trust Feed Massacre and the Maphumulo inquest were dealt with at some length in the October Report so only new developments will be dealt with this month.

1. The Trust Feed Massacre

Special Constable Selby Mkhize told the court that after the massacre he and five other Special Constables, four of whom are amongst the accused, were told by Lieutenant (now Captain) Van den Heever (also one of the accused) that they should not come back to work until they were given further instructions. No such instructions were given to Mkhize, nor was he paid again, so he left the SAP and joined the KwaZulu police (ZP). He added that he and Special Constable Bhekithemba Makhatini did not take part in the attack but that their colleagues had told them that they had attacked a house with "terrorists" in it on the instructions of Captain Brian Mitchell. Makhatini testified that he had heard that Mitchell had set fire to a shop in the area shortly after the killing.

The trial continues.

2. The Maphumulo Inquest.

In evidence before the Inquest, Constable Lucky Mntambo claimed that he was a member of the security police and that he participated in a number of unsuccessful attacks against Maphumulo. Crucial differences exist between his versions and those of eyewitnesses who survived these attacks. The SAP claim that Mntambo was never more than a special constable and that he was discharged on December 19 1989.

Two police witnesses, Warrant Officer Warber and Captain Arnold Vosloo have also given evidence. Warber, who had been implicated in the events surrounding Maphumulo's murder by Siphso Madlala, testified that on the night of the murder he had dropped of his son at a military base and that he had eyewitnesses to prove it. Vosloo admitted that Maphumulo's movements were being monitored, that his phone was being tapped and that the security police kept a file on him. The police have handed the file in with a request that its contents not be made public. Judge NS Page will decide wether to grant the request or not.

VII. CISKEI/BORDER

The region has been dominated by the 19 day state of emergency (SOE) in Ciskei and related worsening of relations between the key players in the region. Although the emergency has been lifted, the crisis is not over.

1. ANC and PAC clashes

There has been some tension between the ANC and the Pan Africanist Congress (PAC) in the region. One of the possible reasons may be the fact that the PAC is moving closer to the Ciskei military government.

On October 5, SABC news reported that the PAC had held talks with Brigadier Gqozo and various chiefs in Bisho.

Subsequently the PAC joined Gqozo in calling on the ANC to stop coming between the government and the people of Ciskei.

2. Ciskei

2.1 State of emergency.

The SOE was announced by Gqozo on SABC on October 29 and he agreed to lift it following a meeting with ANC President, Nelson Mandela, on November 17. The SOE was apparently declared by Gqozo without consultation with any of his ministers or advisors and no documentation was available throughout the first day. This led to lawyers questioning its legality. It was widely condemned in the region and South African officials said that it was "regrettable" that a SOE was seen to be necessary

The SOE followed several months of increasingly violent resistance to the re-imposition of the unpopular headman system of local government. The SOE seemed to be aimed specifically against the Border Civics Congress (Bocco) and its affiliates. Civics were banned during the emergency.

The crisis has widely been regarded as being between the South African government, working through the Ciskei military rulers and the ANC. South Africa has resisted this view.

Embassy officials said that they would intervene if asked, but this was clearly a reference to the Ciskei government as requests from the ANC, church leaders and others were ignored.

The Ciskei government claimed that the SOE was necessary because other groupings were breaking the National Peace Accord. "The Ciskei government is completely not going to sit and fold its arms while its people are being massacred, are being destroyed, are being intimidated and are being trampled on by the ANC," said Gqozo, citing a list of 16 incidents of violence over the previous two months. In response, the ANC called the SOE "the return in the Ciskei to old-style repressive rule".

A few days after the the end of the SOE, a meeting of the Ciskei government, the ANC alliance, Bocco and other organisations was held in East London under the chairmanship of National Peace Accord chairman, John Hall. A Border Peace Committee was set up and it is hoped that this will become a regional dispute resolution committee in terms of the National Peace Accord.

2.2 Incidents during the state of emergency

30 October: South African ambassador to Ciskei, Peter Goosen, said that if the SA government were asked to intervene in the crisis in the Ciskei it would consider the request "most favourably". Subsequent appeals for intervention by the ANC were ignored.

1 November: The South African Council of Churches (SACC) called on State President FW de Klerk to intervene in Ciskei and appoint an administrator general.

1 November: The ANC office in Alice was the target of what appeared to be an attempted arson attack. A window was broken and inflammable spirits poured into the building but not ignited.

4 November: Ciskei officials, excluding Gqozo, met with the National Peace Accord chairman John Hall in Pretoria and committed the region to the Peace Accord.

12 November: The Border Peace Conference steering committee met with various South African government ministers to discuss the possibility of replacing Gqozo's government with an interim administration.

South Africa responded by saying that "under no circumstances" would such a proposal be discussed.

13 November: The Ciskei government claimed that it had documentary evidence that a coup was being planned by a recently unbanned organisation.

17 November: The Ciskei government agrees to lift the SOE. In exchange the ANC agreed to suspend the war of words with the Ciskei government.

VIII. CONCLUSION

It is unfortunate to note that November has been considered a "quiet" month on the Reef because the number of people killed in political violence has been "only" about twenty. The drop in violence could possibly be due to the fact that the structures envisaged by the Peace Accord are slowly coming into operation. An example of this is the Thokoza peace conference. For the accord to operate will require genuine commitment and hard work from all parties. Unsubstantiated allegations by political parties, "administrative bungles" by the SADF and excessive force of the type used by the SAP at Daveyton, will not assist the peace process in any manner.