

The Operation of the Criminal Justice System in Dealing with the Violence at Amplats

by

David Bruce



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[David Bruce](#) is a Senior Researcher in the [Criminal Justice Programme](#) at the Centre for the Study of Violence and Reconciliation.

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Abbreviations

BMEAWU	Building Motor Engineering and Allied Workers Union
CIG	Crime Intelligence Gathering (section of SAPS)
CIS	Criminal Investigation Section (units of SAPS based at police stations)
CJS	Criminal Justice System
ICD	Independent Complaints Directorate
JIC	Joint Intelligence Committee
NIA	National Intelligence Agency
NUM	National Union of Mineworkers
POP	Public Order Police (part of SAPS)
SACP	South African Communist Party
SANDF	South African National Defence Force
SAPS	South African Police Service
WMPU	Workers Mouth Peace Union
WPP	Witness Protection Programme

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Executive Summary and Recommendations

[Section 1](#) introduces the report. The report examines the operation of the criminal justice system, specifically the process of crime investigation and prosecution, in relation to the violence (and other acts of criminality) which have occurred at the Amplats mines in the North West and Northern Provinces and in some of the informal settlements which are situated nearby. Some related incidents of violence have also occurred in the Eastern Cape.

In [Section 2](#) the paper discusses the nature of the violence focusing on the planned killings or "hits" which occurred primarily in the 1996 to 1998 period. A definition of the violence is put forward in terms of which the violence is understood not as "conflict" but as being related to the efforts of a particular group of people associated with the Workers Mouth Peace Union (WMPU) to establish their authority as a union on the Amplats mines as well as to establish their authority more generally particularly in the informal settlements in the areas in which the mines are situated. This section also looks at the background to the violence, gives an outline of the areas affected, and provides a chronology and periodisation of the violence. This chronology is based on the list of incidents of violence and other key events which is provided in [Appendix A](#).

[Section 3](#) looks at current manifestations of the violence. From 1999 onwards the union power structure has fragmented into a number of different unions and the organisation is therefore no longer a significant force on the labour relations terrain. While it has been suggested that the union has also been involved in promoting violence in other localities there does not seem to be significant evidence for this. However the power system of which the union was a part continues to exist primarily in the informal settlements in which it has become established. In these areas it exists through a system of vigilante committees which exert control in particular informal settlements. The emergence of this vigilante system can partly be explained in relation to the "power vacuum" which existed in these settlements as the formal criminal justice system was not operating properly in them. However the vigilante system has not simply filled a "vacuum" but has also begun to challenge and displace the older traditional authority system in the areas.

[Section 4](#) starts by examining progress that has been made with investigating and prosecuting the cases related to the violence. These incidents include:

- Four major "clashes" in which 14 people died and 87 were injured (these are listed in [Appendix B](#));
- A series of 27 incidents, many of which appeared to have been planned killings or "hits" in which 33 people were killed. Most of these incidents occurred during the period July 1996 – December 1998 (these are listed in [Appendix C](#));
- A number of other incidents including particularly incidents of intimidation and attempted murder (these are listed in [Appendix D](#));

The section continues with a discussion which focuses primarily on the planned killing or "hits" many of which have been the focus of investigations conducted by two investigators from the Phokeng Murder and Robbery Unit. Of the cases which have been investigated by this and other units, eight have finally been disposed of in court with two of these resulting in convictions and six in acquittals. While there has been little success in terms of obtaining convictions in relation to these killings a large number of suspects have been identified as

linked to the killings. Amongst these are a group of 17 individuals who, according to information received by the police, have been linked to two or more killings or other incidents. Only one member of this group of 17 is amongst the four people who have been convicted and are currently in prison in relation to the killings. Another two are however deceased. While some of the people in this group are likely to have been key perpetrators involved in the killings one of the difficult issues which emerges and around which there is a need for greater clarity is the issue of the role played by "ringleaders" in orchestrating the killings. In particular there is evidence that a number of those who were killed were people who were named at meetings of the WMPU or whose names were placed on alleged hit lists. While "perpetrators" have to some extent been identified, it appears that the "ringleaders" were persons involved in the committees through which the WMPU maintained its power. These may have included some of the perpetrators as well as other persons.

[Section 5](#) looks in more depth at issues which emerge relating to the operation of the criminal justice system in investigating and prosecuting persons responsible for the violence. These include:

- The violence has been manifested through a large number of acts of criminality including acts of murder, attempted murder, assaults, intimidation and extortion. While there has been a centralised unit focusing on the violence it has only focused on incidents of murder. Effectively therefore, in so far as the violence and related criminal activities have been investigated, this has been done through a wide number of different units. This is exacerbated in that the violence falls not only within the North West but also the Northern Province and the Eastern Cape. There is therefore no central unit which is involved in coordinating the investigation of the violence. These issues are also reflected in, and complicated by issues of jurisdiction in the court system.
- While the police have taken steps to coordinate their activities in relation to the violence, this coordination has not directly complemented the investigative effort but rather reinforces a situation where the intelligence structures operate separately from the investigative units involved.
- In general the manner in which the police investigation was conducted was based on the standardised approach to murder and robbery investigations reflecting a lack of flexibility on the part of the CJS in adapting its approach to the needs of the situation. This was reflected in relation to various issues including: the exclusive focus on murder cases, the "case by case" approach followed and language issues.
- While the intelligence mechanisms have enabled the police to put together a picture of who is involved in the violence they have not been able to turn this information into evidence which can be used in prosecuting the perpetrators. A key problem here has been that witness intimidation has been a major problem in the areas affected.
- A number of the issues raised regarding the Witness Protection Programme (WPP) relate to aspects of the programme which may contribute to demoralising or demotivating people on the programme. While these issues need to be attended to, the key issues of concern are issues of witness safety. Potentially measures which

may be of use in preventing the identity of witnesses from being discovered by hostile parties may be of benefit. However it appears that preventing the identity of witnesses from being disclosed is not viable in relation to cases which actually go to trial. This therefore implies that, if there is likely to be a threat to the safety of witnesses after the trial is completed, steps must be taken to provide safety to the witness after the trial is completed. However options other than the traditional "relocation and change identity" formula may need to be explored particularly in relation to witnesses whose families are rooted in a specific geographical and cultural context. While there are not easy solutions to this problem what is necessary is an approach in which there is a detailed focus on clarifying issues to do with providing protection to the witness at the point of his or her entry into the programme. This includes exploring whether the potential exists for suitable protection to be provided. Providing suitable protection is likely to require that options outside of the existing framework of the WPP be examined. Furthermore what is also fundamentally important is the need to tackle the issue of intimidation and witness protection at a more general level. This includes identifying intimidation as a priority crime, taking steps to ensure that it is reported, and taking investigative steps to follow up on reports.

- In addition to the specific problems identified above numerous other allegations have been made against the police and other components of the CJS. These include allegations and complaints relating to complaints not being followed up, to alleged perpetrators being released without action having been taken against them, and allegations of corruption. Problems of this kind are widespread in the Criminal Justice System and strategies need to be put in place to tackle them. However these allegations and complaints also reflect a lack of understanding on the part of many members of the public of the legal and constitutional framework within which the CJS operates.

[Section 6](#) examines more general issues to do with the provision of policing services in the affected areas and particularly in the informal settlements. This is a particular challenge for the police as these areas are geographically dispersed. However the existing police services which which are based on occasional crime prevention patrols and cordon and search operations do not represent an adequate response to the problem. While many have motivated that satellite stations should be established there are also difficulties in relation to this proposal. An additional problem is the lack of community cooperation. In particular in settlements which fall under the control of the vigilante committees it appears that the committees have obstructed efforts by the police to establish Community Police Forums and that community members may place themselves in danger if they are seen to cooperate with the SAPS. The difficult task of building cooperation between the police and communities in these areas however needs to be approach with some caution in these areas as key community "representatives" appear to be the leaders of the vigilante structures who are themselves in one or other way implicated in criminal activities and are associated with the informal network which was behind the killings which occurred in the 1996-1998 period.

Conclusions and recommendations are put forward in [Section 7](#). Key aspects of these conclusions and recommendations are summarised below:

The violence in the affected area

1. While there are a range of factors which contribute to violence in the affected areas this should not obscure the fact that particular groupings and role-players have played a prominent role in the violence that has taken place. These groupings are therefore in themselves a factor which contribute to the problem of violence.

The link between the violence and vigilante/organised crime groupings or networks

2. The available evidence suggests that the system of vigilante committees, particularly in the Rustenburg Section area, is related to the network of persons who were the key protagonists in the violence of the 1996-1998 period. This means that this grouping or network continues to be a key contributing factor to violence in the area even though the series of "hit" style killings does not appear to be continuing.

The nature of the problem and the investigative response required

3. The implication is that one is dealing with a type of criminal network and the type of investigative approach that is appropriate is that appropriate to investigating organised crime or what Osterburg and Ward (1992) call "enterprise crime". Such an investigative approach is different in a number of ways from ordinary criminal investigations. Inter alia it "involves greater coordination and cooperation than for the more traditional forms of crimes". Furthermore components of the criminal justice system "must be well-trained and prepared to be flexible, innovative, and committed to joint efforts". In addition to "standard investigations" and "surveillance and undercover and informant operations" the investigation may also involve "the establishment of task forces or teams from several departments or agencies".

The establishment of an investigative unit

4. A dedicated investigative unit should therefore be established to focus on remaining cases related to the series of killings discussed as well as other criminal activities which the network referred to above is associated with. The unit should be staffed, equipped and structured in such a way as to best equip it to conduct the investigation. Particular issues of difficulty such as the geographically dispersed nature of the violence will have to be addressed. It may be worthwhile for this unit to work in cooperation with other investigative units such as the Asset Forfeiture Unit which falls under the National Prosecuting Authority.

Witness intimidation and protection

5. Tackling the problem of witness intimidation requires first of all that intimidation of witnesses be prioritised as a crime in the affected area. This would include: Motivating members of the public to report instances of intimidation; Familiarising investigative personnel with aspects of the law to do with intimidation; Implementing a policy of taking investigative steps in relation to all reported cases of intimidation, and where possible implementing prosecutions; Implementing a policy whereby complainants and witnesses are requested to notify the investigating officer or other designated person of all cases of intimidation.

6. Where there are threats to the life of a witness it will be necessary to consider whether to place the witness on the Witness Protection Programme. There are a number of issues which should be evaluated in relation to each person who is being considered for the Witness Protection Programme in order to clarify the nature of the protection that needs to be provided. These issues should be clarified with the witness so that, where witnesses do enter the programme, they have a clear understanding of what the implications for them will be.

7. Furthermore, it may not be possible to provide appropriate protection in some cases unless new ways can be found to deal with the issues of providing long-term protection to witnesses in selected cases whether this is through relocation or other measures. The alternative in cases where threats to the witness are likely to continue after the trial is to prevent disclosure of the witness's identity. However where cases go to court it is likely that many such measures would be likely to be held to be in conflict with the provision of the Constitution in terms of which accused persons have the right to "adduce and challenge evidence". Nevertheless the potential to implement steps to prevent disclosure of the identity of the witness should also be explored particularly in relation to situations where the witness is not already known to the accused and his or her associates. Measures which are effective in the latter type of situations may have the greatest potential to conform to the provisions of the Constitution.

8. The effectiveness of efforts to obtain witness cooperation and the potential for the Witness Protection Programme to be used effectively will also be enhanced if measures are implemented to prevent witnesses becoming demoralised particularly if they are on the WPP. This may imply giving more attention to specific needs of witnesses on the programme but is motivated "fast-tracking" cases through the system particularly in cases where witnesses are on the WPP.

9. If there is more confidence that intimidation and witness protection are being tackled properly, this will encourage others to come forward and contribute to community cooperation more generally.

Policing services in the informal settlements and the issue of community cooperation

10. In addition to the investigative unit referred to above a task team should be established within the SAPS police to deal with the provision of policing services in the informal settlements and to tackle issue of community participation and cooperation.

11. There is a need for adaptation in relation to recent changes in population settlement patterns in the area. What is first of all needed is an analysis of the distribution of settlement and of likely settlement patterns in the coming period as well as an identification of settlements with key security problems. This analysis should be used as a guideline for building new police stations in the area at one or more "forward" location in this area so as to dramatically enhance public access to the police and the police presence in these areas. Appropriate resources will need to be made available for this purpose.

12. The issue of community cooperation presents a general problem which is an obstacle to effective policing in the area. However the issue is not simply one of winning community support and cooperation but also of taking appropriate steps against those who have been

responsible for violence and other forms of criminality in the area. The vigilante committees are not only the key obstacle to community cooperation but are also associated with a network of persons who have played a key role in contributing to violence in the area. The establishment of the investigative unit referred to above therefore needs to be seen as complementary to the general strategy of establishing CPFs or other mechanisms for consultation and communication.

13. In addition public cooperation with the CJS will be enhanced by:

- Public information about the Criminal Justice System.
- Improved structures and mechanisms for communication.
- The establishment of proper channels for complaints to be lodged, whether these are complaints of "inefficiency" or corruption.
- The need for effective systems to deal with these complaints including both an understanding of how to "mediate" service delivery complaints and to investigate allegations of corruption.

Informal policing systems and the involvement of community members in providing community safety

14. The SAPS faces limitations including limitations of resources and is unlikely single handed to be able to provide effective policing services in all of the informal settlements. If it is possible to begin to establish structures or mechanisms for community consultation (such as CPFs) one initiative which may be undertaken through these mechanisms is to explore ways of involving community members in supporting the police in providing community safety. However this issue needs to be approached with care as any such measures need to be implemented in such a manner as to ensure that they occur within the legal framework.

Public Order Policing

15. While the issue has not been explored in detail in this report it appears that there is a need for improvements to be made in relation to the Public Order Policing units. These would appear to include a need for improve planning and use of intelligence in relation to public gatherings, as well as for improved leadership.

Involvement of the private sector (mining industry)

16. In addition to addressing issues of environmental safety on the mine hostels the private sector, and particularly the mining industry, should be requested to offer other assistance including resources for the improvement of police services and assistance with relocating or otherwise assisting in providing safety to witnesses.

General governance of area

17. Effectively informal systems of control have established themselves in the absence of a concerted initiative by government to deal with the issues in the area. This reflects not only the need for changes and innovations in the investigation of crime and the provisions of policing services but also the need for the broader system of governance to adapt to the demands imposed by changing circumstances.

Section 1: Introduction

The Centre for the Study of Violence and Reconciliation (CSV) is an independent South African non-governmental organisation. This report is one of four which are being produced by CSV as part of the work of the CRC (Conflict Resolution Consortium). The other three reports look at:

- The patterns of victimisation during the conflict;¹
- Environmental safety in the mine hostels;²
- Informal justice systems in the area and their relationship to the conflict.³

The purpose of this report is to examine the operation of the criminal justice system, specifically the process of crime investigation and prosecution, in relation to the violence (and other acts of criminality) which have occurred at Amplats.⁴

The original brief was to examine:

- (a) To what extent the process of crime investigation and prosecution has operated effectively in identifying and proceedings against people involved in criminal acts associated with the conflict at Amplats; and
- (b) Whether there are particular factors which can be identified which have obstructed effective crime investigation and prosecution;
- (c) What solutions are there which may assist in dealing with these obstacles?

It should be noted that, for reasons, which are outlined in [Section 2](#), this report refers to "the violence" rather than "the conflict".

The report is structured as follows:

- The following section discusses the violence which has affected the Amplats mines and examines various issues to do with the violence including whether it should be understood as a "conflict", the background to the violence, its geographical distribution
- [Section 3](#) examines the system of vigilante justice in the area as the key current manifestation of the violence.
- [Section 4](#) looks at the cases which have been investigated by the SAPS relating to the violence, the progress which has been made with prosecutions focusing on 14 key suspects who are apparently linked to 2 or more cases. Following this it looks at what is known about how the killings were planned and what this says about whether there are a group of people who orchestrated the violence who are potentially untouched by investigations which focus on the perpetrators.
- [Section 5](#) looks at how the Criminal Justice System has approached the task of dealing with the violence. It looks at how the investigation of the violence has been structured, issues to do with coordination and cooperation within the CJS, how the investigation has been conducted, and the difficulties faced in generating evidence.

Issues to do with witnesses and the witness protection programme are also examined here. The section concludes by discussing various allegations that have been made against the CJS relating to the violence.

- [Section 6](#) looks at the general policing services provided in the informal settlements and the issue of community cooperation.
- Conclusions and recommendations are provided in [Section 7](#).

The attached appendices present a chronology of the violence and contain details of cases related to the violence.

Methodology and limitations of the report

The methodology for this report involved the following:

- The design and creation of a MS Access database intended as a means of collecting data concerning killings and other incidents of violence including information regarding progress with investigations and prosecutions relevant to these incidents. Sources of data included various lists of killings and other incidents deriving from inter alia the SAPS and other sources. At the end of the research process letter of inquiry were also sent to the main investigating officer in order to obtain up to date details (as of mid- February 2001), regarding progress that had been made with these cases. The database was used firstly to put together a chronology of the violence providing details of the key incidents. It was also used to collect details as to progress that had been made in the investigations.
- Initially it was unclear as to what was the scope of the research to be conducted. In particular mines in the Rustenburg area have also been affected by killings that are believed to be related to, Mfelandawonye, a vigilante type organisation originating in the Transkei, which employs methods similar to those that were used in the violence at Amplats. However following clarification of the scope of the project by the CRC the number of cases was narrowed down in consultation with Janine Rauch who has been responsible for conducting the analysis of patterns of victimisation. During the course of completing this work the main Investigating officers and members of Amplats Protection Services were also consulted;
- In addition to the above a series of interviews were conducted over July and August 2000 primarily with members of the SAPS and prosecutors and a magistrates involved with Amplats violence related cases. Interviewees also included members of Amplats Protection Services and a former member of the Network of Independent Monitors which had earlier conducted research into the violence. All interviews were conducted on a confidential basis and so the source for specific quotes is not reflected anywhere in the report. Permission for interviews with members of the SAPS was granted by Commissioner Beetha, the Provincial Commissioner for North West Province.
- Other documents consulted included an earlier report on the violence by the

Network of Independent Monitors as well as reports relating to the violence put together as part of research associated with the CRC. Some of the consortium and stakeholder meeting were also of relevance to the issues covered in this report and have also been drawn on, partly through notes collected by the author when attending the meetings but also by way of minutes of meetings distributed by the CRC.

- The Internet was also used to find news stories related to the killings as well as information about Amplats mining operations.

While it was initially hoped that the research process would include an analysis of police dockets relating to the violence this did not prove to be possible. The docket analysis would potentially have been useful in gaining more information relating to the exact nature of the evidence available as well as in evaluating to what extent investigations, and perhaps prosecutions, have been carried out effectively. The obstacles to the docket analysis, including difficulties in clarifying which were to be regarded as relevant cases. In addition difficulties in securing approval for analysis of the dockets reflect the problems of jurisdiction referred to in the report.

The report then is an overall analysis of the functioning of the Criminal Justice System (understood primarily as the policing and prosecutorial system) in relation to the violence at Amplats and does not evaluate the investigation and prosecution of individual cases.

Section 2: The Violence at Amplats

The nature of the violence

The work of the CRC (as is implied by its name) was initially understood to be focused on a "conflict" involving the Workers Mouth Peace Union (WMPU) and the National Union of Mineworkers (NUM) at Amplats. Persons familiar with the history of the "conflict" may agree that this term does not necessarily fully capture the nature of the violence which has occurred at Amplats.

While there was a conflict between the two unions this was only one aspect of a broader process which took place during the period in question (1996 to the current period) in the affected areas. This process may be described as one in which persons associated with the WMPU (initially the 5 Madoda) were involved in establishing their power and authority in some of the mine hostels and informal settlements in the Rustenburg area and in areas of the North West and Northern Provinces around Amandelbult and Union Section/Swartklip. This system of power and authority is partly based on a system of informal (or vigilante) justice and also serves certain economic interests.

What is then usually described as "the conflict" is actually then a broader process in terms of which the WMPU power system established itself in areas that are inhabited by employees of the Amplats mines. Thus one of the obstacles to the establishment of the system of power was the NUM and thus members of the NUM came under attack from the WMPU and were involved in retaliatory violence. But the victims were not restricted to persons who were involved in "the conflict" between the two unions. Any person who was

seen to obstruct the WMPU in establishing its power was liable to become a victim. Thus, for instance, the first people who were killed by persons associated with the 5 Madoda (the structure out of which the WMPU developed), were not members of the NUM, but were a security guard and headman, who for different reasons incurred the anger of 5 Madoda members.

It needs to be emphasised that what we are talking about here is therefore the establishment of a type of criminal organisation (or network). This criminality potentially takes a number of forms:

- Firstly, as reflected in "the conflict" and other incidents of violence which took place, the WMPU was associated with a whole string of murders and other incidents of violence which appear to have been undertaken so as to eliminate and intimidate opponents of the WMPU as well as with the purpose of intimidating people in the affected area into being afraid of, and obeying the authority of, the WMPU.
- Secondly the WMPU operates a system of informal (or vigilante) justice in the areas in which it has established itself. This system has been able to establish itself because the formal Criminal Justice System does not operate effectively in the area in question. This system therefore is in some ways functional to the area as it is the de facto system in terms of which order is maintained in particular settlements. At the same time this informal justice system is an unlawful system that operates by intimidation, extortion and physical violence and is often highly arbitrary in the way in which it functions.
- Thirdly it appears clear that the MPWU system of power supports and is supported by certain economic interests. On the one hand it appears that the WMPU is based on membership fees received by members (who are often coerced into becoming members). On the other hand it appears likely that the WMPU also receives income from other sources some of which may be irregular. It may be the case that these types of income are not declared in terms of official procedures.

Definition of the violence

The violence which we are concerned with here is specifically

Violence and acts of intimidation which affected employees of the Amplats mines, and other persons, following the unbundling of JCI in 1995, and which was related to the establishment of Workers Mouthpiece Union (WMPU) as a recognised union on the mines, and the establishment of WMPU authority in mine hostels and surrounding informal settlements. This would include retaliatory violence which was engaged in by people who saw themselves as being threatened by the WMPU and includes incidents of public violence and disorder (known as 'clashes') as well as violence occurring in other circumstances.

Following from the definition it should therefore be emphasised that the violence which we are dealing with did not occur exclusively on the Amplats mines and did not only affect

Amplats employees.

Background to the violence

In section four this report will explore in more detail issues to do with the nature of the relationship between the system of committees established in informal settlements in the area by the WMPU and the perpetrators of the violence. However while the purpose of this report is not to explain the violence it is worthwhile to make note of a number of factors which help to explain why this violence happened where and when it did, in the way that it did.

i) The Transkei origins of sections of the Amplats workforce

The labour force on the Amplats (or RPM) mines, as well as other mines in the North West Province, had for many years been recruited from the Transkei. According to one of the interviewees, previously, while the Amplats mines had been part of JCI, recruitment was conducted by the TEBA (The Employment Bureau of SA). But in about 1975 JCI decided to establish its own recruitment arm making use of De Lange and Company as recruiting agents in the Transkei. There were also traditions in terms of which, for example when a person retired, his son would take his job.

ii) The mushrooming of informal settlements

With the end of influx control, and particularly during the early 1990s, workers also started bringing their wives to live with them. A number of informal settlements sprang up, often situated very close to mine hostels though just outside of mine property. As the informal settlements grew larger, they also began, increasingly, to accommodate people from the Transkei who were not Amplats employees (or their wives) but lived within the broader economy of these settlements. Thus by the mid-1990s, not only sections of the hostels, but also important sections of the informal settlements, were predominantly Xhosa in character. Prior to the emergence of these settlements, the main areas inhabited by the mineworkers had been the hostels, which had at least a rudimentary form of policing in the form of the mine security. However the emergent settlements had no established policing system. Furthermore the formal policing structures of government essentially failed to adapt to this new development, with the result that, initially at least, these settlements had no formal policing structures. The proximity of the settlements to the hostels, and the low level of security maintained in the hostels, also meant that the settlements could serve as a type of springboard for attacks on persons staying in the hostels. The violence when it emerged therefore affected both the hostels and the informal settlements.

iii) Vigilante organisations in the Transkei area

One factor which seems particularly important to recognise is the social background of the Xhosa speaking people who worked on the mines and inhabited these settlements. It appears that these people most came from areas of the rural Transkei, which until the early 1990s had operated as an "independent homeland" within South Africa and which is now part of the Eastern Cape. One characteristic of the rural areas of the Transkei was the existence of various vigilante type organisations, often formed in relation to concerns about stock theft. While the emergence of WMPU is in some ways a unique phenomenon, the

practise associated with WMPU, such as the use of hit men and assassinations, is more general to the vigilante organisations of the Transkei area. Thus similar killings have also occurred on the Lonrho mines which lie to the east of the Amplats mines around Rustenburg, which also have a large Xhosa element in their workforces, even though the WMPU has not established a presence on the Lonrho mines. It appears that another aspect of the Transkei is the presence of former members of the "homeland" defence forces and Self Defence Units, many of whom may not be in formal employment, and who may have links to the vigilante associations (though it should be noted that of the suspects allegedly linked to the Amplats killings only one, now deceased, is specifically identified as having been a former member of the military). What this seems to suggest therefore is that the areas where many of the Amplats workforce come from are relatively militarised in the sense that firearms are available and there is a familiarity with their use and a tendency for power and authority in the area to be based on the willingness to assert authority through force.

iv) The "traditional" character of Xhosa miners

Not only is the area in some ways characterised by its vigilante militarist nature but these appear also to be areas which maintain a "traditional" character. Thus one characteristic of the WMPU violence is that people who an interviewee described as "traditional" appear to have played a significant role with "'muti' being used to make guys invincible". This "traditional" element in the workforce (according to one of the reports they were known as "Amaqaba" meaning "uneducated members")⁵ was potentially more accessible to persons who spoke to them from within their own traditions rather from a more "modern" perspective. Thus one of the interviewees suggested that those who supported the 5 Madoda were seen as "illiterate" and thus their concerns were not taken seriously by the union leadership. This factor appears to be relevant to understanding how it was possible to mobilise these people around what might be seen as "irrational" demands. Furthermore aspects of identity, language and culture also feed into a situation where, for instance, communication within the group takes place to the exclusion of outsiders.

v) The National Union of Mineworkers

By the early 1990s the National Union of Mineworkers had established itself as the strongest union in the mining sector. While it was initially excluded from organising on the Amplats mines in the (then) Bophutatswana by 1995 (apparently it had signed a recognition agreement with Amplats in 1989) the NUM had established itself as a major force on these mines. Historically the NUM had been the major opposition to employers and it appears that, when an alternative force emerged within the workforce, sections of Amplats management and/or Amplats security services may have interpreted this as an opportunity to undermine the power of the NUM. At the same time however, by the mid-1990s the NUM, which was established in 1982 and had been involved directly in militant opposition to the apartheid system, operated within, and accepted the procedures of the formal collective bargaining framework. It seems that the NUM may therefore have failed to recognise that a grouping of people who did not have a proper understanding of this framework or how to operate within it, could pose a challenge to it on the labour terrain. The NUM may therefore have failed to engage properly with the whole provident fund issue as the miners understood it.

vi) The provident fund issue

Apparently some years prior to these events there had been a change of ownership at the mines in question where the settlement involved retrenchment and the pay out of everything owed to employees. During 1995, JCI, the company under which the Amplats mines had fallen was involved in an unbundling process (date is 15 May 1995) with Amplats being established as the Platinum arm. The unbundling may have been understood by elements in the workforce as similar to the change of ownership. According to an interviewee when the unbundling process started, members of the workforce, many of who were NUM members, started saying that the same thing would happen. The senior NUM members were however saying that it was just a name change and didn't engage with the issue.

vii) The 5 Madoda and the mass dismissal of workers

Initially there was a demand for the payment of provident fund contributions at Amandelbult though the first strike was at Union Section. Management then paid out the provident fund and then more mines went on strike and the provident fund was paid out on these mines. Whatever the motives for the provident fund payout by management might have been, its result was likely to have been that it gave enormous credibility to the 5 Madoda group, the people who were leading the strike action. The Five Madoda were described by an interviewee as the "natural leaders" of the more traditional element of the workforce. The 5 Madoda then initiated a strike over further demands including the payment of: death benefit payouts; long service bonuses; platinum bonuses; PAYE contributions; and UIF contributions. The conflict ended with the dismissal, and eviction from the hostels, of 28 000 workers. While some returned to the Transkei, many however remained in the informal settlements. Most of these workers were re-employed though it is claimed that an effort was made to identify those who had been involved in intimidation. According to one of the participants in one of the stakeholder meetings, when they were reinstated employees were re-instated as non-union members. Therefore by mid-1996 the entire workforce was effectively "up for grabs" and not affiliated to any specific union.

viii) The People's Assurance Brokers – Workers Mouth Peace link

The final contributing factor was the involvement of a group of people associated with a Carletonville based company called "People's Assurance Brokers" (PAB). Thus it appears that the formation of WMPU in early 1997 represented an attempt by persons associated with the PAB, in cooperation with persons associated with the 5 Madoda, to take advantage of the fluid and volatile situation on the Amplats mines. The link with PAB was reflected in the fact that a number of the people who became executive members of WMPU, including the Joubert brothers and Peter McLeod were all members of PAB while Caesar Bungane, the union's lawyer, was also the lawyer for PAB.⁶ Furthermore the PAB and WMPU had their head offices, apparently at shared premises, in Carletonville. According to one report on the violence "the Joubert brothers claim that their insurance brokerage, the People's [Assurance] Brokers was selling insurance policies to mine workers and that during the 1996 strike, dismissed workers ... approached them seeking advice. The Joubert brothers then referred these workers to their family friend and attorney Caesar Bungane who then took up their case".⁷ According to an article in the *Mail and Guardian*⁸ following the mass dismissal of workers "Amplats rehired most workers, but those who remained sacked found

a helper in Bungane, whose legal work for the NUM ended when the union decided he was charging too much. Bungane knew the Jouberts and McLeod, the Five Madoda became the Workers Mouthpiece, and the organisation began to recruit". It is not entirely clear what was the relative contribution of the 5 Madoda and the PAB group to the formation of the WMPU. Thus at least one interviewee suggested that while the initial success of the 5 Madoda was based on their "tribal roots and influence", once the conflict erupted it was the PAB group, who lead the formation of the WMPU. Another interviewee suggested that McLeod and the Joubert were effectively the main people in charge of the union while Mpiyakhe was appointed as President "to make cover – so that guys on ground wouldn't know what was happening". Whatever the truth might be about the relative contribution of the two groups it would appear that the influence of the PAB members would not have been primarily focused on taking forward the interests of workers on the Amplats mines. Thus according to the *Mail and Guardian* article WMPU was selling insurance policies to new recruits, but allegedly cancelling the policies while still collecting premiums. "The men are said to tie recruits into policies with a mixture of strong-arm tactics and extravagant promises of future benefit pay-outs. A "disciplinary tribunal", headed by McLeod, imposes fines. "Unusually for a trade union" the article continues, "recruits must pay R500 to join, a higher-than-normal subscription fee, and take the insurance policies". In the words of one interviewee then "These people saw the gap – said lets form a union – it became stronger and stronger – because of its militancy but also through relying on intimidation. If someone gave someone lip they'd say I'll put you on the hit list". While the link with the PAB was therefore important to the formation of WMPU what is not entirely clear is quite what the relationship was between the formal structures and processes of the union and the actual acts of violence. (This issue will be discussed further in [Section 4](#)).

South African society is currently plagued by crime and an understanding of factors that have contributed to these high levels of criminality is no doubt of relevance to understanding the violence at Amplats. These factors include South Africa's history of apartheid as well as the influence of factors associated with the period of transition from apartheid to democracy. Nevertheless the eight factors listed above provide a substantial part of the explanation for the origins of the specific violence which originated on the Amplats mines.²

Affected areas

A rough outline of the "geography of the violence" needs to be based on an understanding of the geography of the Amplats mines in the North West and Northern Provinces. Amplats (now Anglo Platinum) has mines situated in North West, Northern and Mpumalanga provinces. The mines affected by the violence were however the Rustenburg, Union and Amandelbult Sections of Rustenburg Platinum Mines (RPM). These are the three mines that produce the majority of the Anglo Platinum Group mill feed tons:

- Rustenburg Section lies on the north and northeast side of the town of Rustenburg in North West Province. It is the largest of the mines being spread over 19000 hectares and the reef is exploited via eight shafts that include Townlands shaft, Turffontein Shaft, Frank Shaft 1 and 2, Paardekraal Shaft (also known as Siza mine), and Brakspruit.
- Amandelbult section covers an area of over 7 500 hectares in the vicinity of the

town of Northam. Northam is situated approximately 100 kilometres north of Rustenburg and is in the Northern Province;

- Union Section lies near the town of Swartklip which lies roughly 20—30 kilometres to the West of Northam in the Northern Province near the border with North West. Union Section covers over 5000 hectares.

The main settlements, hostels and mine shafts which have been affected are set out in [Table 1](#).

Mine hostels are therefore situated on mine property usually in the vicinity of one of the mine shafts. The informal settlements are often situated close to the hostels, but tend to be situated outside of mine property.

The incidents of violence which are discussed in this report have therefore occurred in all of the above three "sections" in hostels, informal settlements and mine facilities (such as change rooms) as well as at other places on the mines. In addition it has also occurred in the Transkei region of the Eastern Cape province, primarily in the Mquanduli district which lies roughly 35 km south of Umtata.¹⁰ One of the incidents, the killings of WMPU hit man Siphso Dzulani, occurred in the Hammanskraal area in North West Province more than 100 km northeast of Rustenburg.

Table 1: Rough outline of Amplats hostels and settlements affected by the violence

Settlement (informal settlements are indicated "IS")	Adjacent hostel	Nearby location on mine (RS – indicates Rustenburg Section)	<i>Present Control of IS</i>
Zondela IS (aka Jabula Sun – latter is actually adjacent area)	Jabula Hostel	Townlands shaft (RS)	MP
Zakhele IS	Entabeni Hostel	Frank Shaft 1 & 2 (RS)	MP
Nkanene/Nkaneng IS	Bleskop	Turffontein shaft (RS)	MP
Ndelele (aka Popo Molefe) IS	Kanana Hostel	Paardekreal Shaft (aka Siza Mine) (RS)	MP
Shasalasa IS (aka Chachalanga)/Kanana Stad (IS is actually an "informal" suburb of Kanana Stad village).		Between Zakhele and Zondela (RS).	
	Phula Hostel	Brakspruit Mine (Shaft) (RS)	

Sefikile (an area where a number of villages are located)	There are three main hostels and shafts (2 in NP)	Next to Union Section	
Smasha Block (aka Snatch Block, Skilpads Nest)		At Amandelbult Section	Now majority BMEAWU

Chronology and periodisation of the violence

A rough chronology of key events is attached in Appendix 1. It should be noted that any attempt to provide a chronology of the WMPU violence is inherently difficult. This is particularly because the incidents identified are selected from a much broader "family" of violent incidents in the area. This list has been compiled using documents provided by the SAPS and other persons involved in dealing with the issue. In relation to some of the killings there appears to be no substantial evidence as to who carried out the killings or what their motives were. However the killings fall in with a pattern in terms of the modus operandi ("hit squad assassinations") and/or the identity of the victims (e.g. by reason of their being union members of office bearers) and/or well as the timing of the killing and/or other factors. Thus, ultimately the fact that particular killings have been included here is based on an assessment on the part of SAPS investigators, or their intelligence sources, that the particular incidents are part of the pattern of violence associated with WMPU or are retaliatory or defensive actions in response to it. It remains possible that cases which should have been included are not listed, and vice versa.

According to the chronology the violence may be periodised roughly as follows:

- Shortly after the mass dismissal of workers in early July 1996 two killings, apparently involving people associated with the 5 Madoda, occurred in the Sifikile area on 31 July and 15 August, The initial killings were related to the fact that, following the dismissal, a group of 5/600 people had stayed on in the Sifikile area which was under the jurisdiction of the Pilane tribe. This caused a problem partly as Chief Pilane apparently was concerned by the fact that they had "more or less taken over" the area. Initially a security guard who was observing the group, but then Chief Pilane himself, were killed. In a subsequent crime prevention operation conducted in the area, the police encountered armed resistance from the new residents and a number of people were killed.
- Thereafter, in a context of a wide range of acts of intimidation 13 people were killed in 9 incidents in a 3 month period starting on the 18 June 1997 and culminating on the 5 September. The initial killings occurred at Union Section, Amandelbult, and in the Transkei with the first killing at Rustenburg Section occurring on 12 July. According to one interviewee NUM members initially waited for intervention from the police but then "realised this was futile" and began to retaliate though it is not clear whether this was authorised by the union leadership.
- After a break of two months a further 8 people are killed in 6 incidents over a 7.5 month period starting in early November 1997 and ending late in June 1998. With two exceptions (including the elimination of one of the hit men who has apparently indicated a willingness to give state evidence) the killings are all at Rustenburg

Section.

- After a quiet period of 6 weeks the pace of killings intensifies again with 2 people killed in early August and a total of 8 people being killed in 8 separate incidents in the four month period ending on 4 December 1998.
- From the beginning of 1999 onward, and possibly related in some way to the trial of Kaizer Mpiyakhe in early 1999 (he is convicted and sentenced on the 25 April) there are only occasional assassination type killings (one in August 1999 and one in May 2000) all of them at Rustenburg Section. The major death toll in this period is related to two clashes, one apparently involving WMPU and NUM near Rustenburg Section, and one involving WMPU and BMEAWU members at Amandelbult. According to one interviewee it was also once Mpiyakhe went to jail that conflict erupted within the union leadership, leading to the splintering of WMPU into different unions.
- In terms of the chronology of incidents, depicted in the table that follows, there is no documented violence since the last clash and killings (in March and May 2000 respectively). However committees associated with WMPU now control a number of the informal settlements in areas surrounding the Amplats mines. People associated with the WMPU have therefore now established their authority over these areas. The violence which they are associated with therefore now primarily takes the form of vigilante "justice" which is dispensed in these communities. Most of this violence is entirely undocumented probably because the victims in general fear that worse consequences will follow if this violence is reported to the police.

It needs to be acknowledged then that this attempt at periodising the violence raises questions that are unanswered as to the reasons for specific trends. Thus it appears relatively clear that the initial killings were directed at persons perceived to threaten the 5 Madoda group in one way or another while the intensification of the violence after over the June – September period in 1997 was related to efforts by WMPU to establish itself on the mine. However why the violence then declined in pace and then re-intensified in the latter part of 1998 is not at all clear.

Finally it needs to be noted that the small number of "hits" or assassinations subsequent to the end of 1998 seems to reflect, not the "end of the violence" but rather that WMPU had now established its authority in certain areas with the result that the status quo which currently prevails is based on the fact that people in the affected areas live in fear of the WMPU related structures.

Section 3: Current Manifestations of the Violence

The Fragmentation of WMPU

During the more recent period there has been something of a decline in WMPU in terms of its role as a union on the mines. One aspect of this has been the fragmentation of WMPU into a number of unions including Tofusa, BMEAWU and another union called CUSA.

Associated with the emergence of these new unions have been "new" forms of violence (or conflict) in the form of violence between WMPU members and these breakaway unions. One case of this violence was a major clash in March 2000, apparently between WMPU and BMEWAU, in which four people were killed.¹¹

A key factor in the fragmentation of WMPU, and possibly in the apparent decrease in killings apparently involving hit-squads or at least "hit-men" is likely to have been the arrest and imprisonment of Kaizer Mpiyakhe, the WMPU National President who in terms of available evidence was linked to as many as 5 of the killings. When Mpiyakhe's conviction was overturned and he was released in August 2000, some anticipated that this would lead to a resurgence of the violence. These concerns once again dissipated when Mpiyakhe died in a car accident soon after his release.

In speculating about the link between Mpiyakhe's arrest and imprisonment and the decline of killings by hit-men in the area it should be noted that this does not necessarily imply that Mpiyakhe was the only person orchestrating the killings. What appears to be important is that, prior to Mpiyakhe's imprisonment, the WMPU operated with a sense of their own invulnerability. Once Mpiyakhe was imprisoned this illusion was shattered. Furthermore the persons associated with the killings were aware that the killings were attracting attention to them. Thus one of the interviewees observed that once they started contacting persons associated with MPWU as part of the peace process, the killings have declined.

The death of Peter McLeod in 1999 (also apparently in a road accident), another one of the key role-players in WMPU, may also have been a factor in the unions loss of status as a union on the Amplats mines. Thus as one interviewee put it, the loss of these key figures means that WMPU no longer has a "communicator to give force to the union in talks with management or to appease workers".

However the interviewee suggested that the beginning of the decline of WMPU predated Mpiyakhe's death. He suggested that tensions initially emerged within the union due to the fact that Mpiyakhe was enriching himself at the expense of other senior union members and that persons linked to the union might have even been responsible for disclosing Mpiyakhe's whereabouts enabling him to be arrested by the police.

Another factor that has contributed to the loss of status by WMPU may be that the NUM has taken the initiative to regain the support of the workforce. Thus the NUM led industrial action in the latter part of 2000 would appear to reflect an attempt by NUM to regain the support of workers through a more militant style of unionism.

WMPU violence on other mines

Some of those who have been affected by the violence or have been involved in one way or another in efforts to investigate or address it have suggested that WMPU has been linked to violence on other mines, with particular mention being made of mines in the Free State (apparently at Welkom) and the mines around Carletonville, the town where WMPU has its head office.

Thus for instance in one of the stakeholder meetings reference was made to the various

killings which have occurred on mines in the Carletonville area. However, one person who was contacted, and who worked in the Carletonville area during the period during which one of these killings occurred suggested that in this case the killing appeared to point to internal conflicts within the NUM and did not appear to be related to the WMPU who did not appear to have a significant presence in the area at the time.

Thus, while it is not implausible that the WMPU related violence has been carried over to other mines, this is something that at the very least cannot be confirmed by this report, particularly as no substantial evidence in this regard came to our attention.

The general socio-economic and crime situation in the area

Any discussion of the current manifestations of the violence needs to confront the problem of how to distinguish these from the general problems of crime and violence in the area. In fact the current manifestations of the WMPU related violence cannot be directly distinguished from the general situation in the area but rather needs to be understood as intricately related to it.

Thus the informal settlements, which are at the heart of the current problem where described by one interviewee as "no roads, electricity, sewage, refuse removal, nothing". According to the interviewee the biggest crime problems in these areas are assaults, which are often connected to shebeens and which sometimes "snowballs to murder". Another serious problem in the area is rape. The problem of rape, including the rape of young girls, was also acknowledged to be a problem by participants in one of the stakeholder meetings. Other problems identified by them were housebreaking, prostitution, cattle theft and "the stealing of fences and gates and cutting of telephone poles to erect shacks".

Another characteristic of life in the informal settlements which itself feeds into violence appears to be the proliferation of an informal micro-loan industry and other money making schemes relying on fraud and extortion. Thus in one relatively recent (June 2000) murder case the deceased person was apparently running a type of money making scheme where people would pay to get jobs, but then failed to deliver on the jobs as promised.

A further aspect of the problems in the area is that tensions often appear to play themselves out on ethnic lines. Not only are there a large number of Xhosa speaking people in this, originally Tswana, area but, due to the use by the mining industry of migrant labour, there are also a large number of people from other ethnic/language groups. Thus any dispute between two people from different ethnic groups has the potential to play itself out in terms of "clash" or other conflict between such groups.

As one interviewee expressed it however the problem in the informal settlements is not simply a by-product of the social conditions. It is "not from poverty" he said, "but from a lack of policing and the need for people to show power and have impact and a controlled environment".

Informal settlements controlled by persons aligned to the WMPU¹²

While there has been a decline in the status of WMPU as a union, the violence continues to

manifest itself in the informal settlements through the vigilante committees and warlords who control these settlements. Many of these informal settlements are under the control of vigilante committees, which are formed of Xhosa speaking people who are associated with the WMPU system of authority.

Informal settlements that were identified by one interviewee as being under the control of people associated with WMPU included Nkanene (by Bleskop), Ndelela (by Siza Mine); Zakhele (next to Entabeni); and Sondela (next to Jabula). In addition to these settlements in the Rustenburg areas another interviewee also identified areas in the Amandelbult, Northam, Swartklip and Sifikile areas as being under the control of people or committees associated with WMPU.

It appears that these settlements are controlled by a type of committee that is constituted by Xhosa speaking people who are aligned to the WMPU system of power and authority in the area. While these committees may be structured fairly informally one interviewee indicated that in a number of cases the people who head these committees, in addition to being WMPU members are also persons who have been identified as suspects by the police.

It appears that the vigilante committees play a dual role in the settlements that they control. Thus on the one hand they maintain some form of order in these communities, establishing their own system of rule and punishing rule-breakers. Thus one aspect of the rule imposed by vigilante is the maintenance of curfews, in the informal settlements, which have been instituted since 1998. As a result many of the informal settlements, which are controlled by WMPU associated persons, are in many ways highly regulated. It appears for instance that this regulation extends to a strong intolerance of immigrants. One police interviewee commented for instance that when the police do go for a search in these settlements "if you arrest 3 illegal immigrants that's strange".

On the other hand it appears that these groups also control what might be described as the informal economy of these settlements. Thus a number of interviewees indicated that it is people associated with these committees who control the shebeens and thus the trade in liquor, and apparently dagga, in these settlements.

An understanding of this "dual nature" of the WMPU aligned power structure is necessary in order to understand the way in which these committees represent a type of organised crime. Thus on the one hand these committees form a type of vigilante authority structure and their criminality is associated with steps that they may take to maintain order and their own system of authority in the informal settlements that they control. Thus where people are involved in breaking "the law" (as defined by the committees) they may be called before an informal court and fined or alternatively physically punished (caned).

The other type of criminal activity associated with these committees relates to their involvement in the "informal economy" of the settlements. On the one hand they generate income through imposing fines on community members and others. As indicated it has been suggested that the committees are linked to the control of trade in liquor and possibly in dagga as well. It has also been suggested that the committees may also be linked to other aspects of the "informal economy" such as prostitution and the informal micro-loan industry.

These committees therefore potentially represent a form of organised crime firstly in the sense that the type of "justice" which they enforce represents a form of criminality but also potentially in the sense that their links to the informal economy involves forms of criminal activity. This type of organised crime is therefore mainly based on exercise of power and control of the economy of the settlements rather than on activities outside of the settlements.

The extent of their authority is also reflected in the fact that people are afraid to challenge them. Thus the committees may be seen as in some ways keeping the areas, which they control, relatively crime free. At the same time people who have been victimised by them are unlikely, to lay charges with the police against committee members, as this may lead to even more severe consequences for them.

Thus the power structure which is represented by MP represents a form of racketeering which, was initially based on selling insurance to the miners, but now is based primarily on the extraction of fines from community members, the "informal economy" of the settlements and possibly on the micro-loan industry.

It is important then to understand how the present power structure is related to the violence that occurred in the area primarily during the years 1997 and 1998. Firstly the violence, which took place during that period, enabled the power structure to establish its authority in the area and thus its control over the informal economy.

Secondly however the power structure is only able to maintain its ongoing authority through its willingness to continue to carry out acts of violence where this is seen to be necessary. Generally it may be imagined that such violence is not "necessary" due to the fact that people living in these areas already regard these power structures with fear. However in certain instances individuals may fail to "cooperate" despite the reputation of the vigilantes for being willing to resort to violence. While in many cases such violence is likely to take the form of beatings/canings or other physical punishment, if we consider the recent history of these power structures, it is reasonable to believe that in certain circumstances such violence may extend to more severe actions including killing.

One problem which the police have pointed to is that in a sense there appear to be no clear cut grounds for action against the vigilante power structures. This is partly because there is no clear indication of dissatisfaction with the committees from within the communities that they rule over. Ultimately while they may generate a level of orderliness within communities and thus residents are not necessarily unhappy with the state of affairs in these communities, the extent of grassroots support cannot be ascertained, as there is no space allowed for grassroots expressions of dissatisfaction.

Displacement of traditional authority

Informal settlements that have been established have often been established on land that formally falls under the authority of the traditional power structures. Effectively traditional land is "occupied" by people establishing informal settlements. While the traditional authorities have expressed their dissatisfaction with regard to this issue in relation to the fact that they receive little compensation or payment from people living on their land, it

appears that the primary issue here is simply the fact that the traditional authorities are powerless to do anything about the situation.

Thus the participants in one of the stakeholder meetings observed that the squatters are now moving into Bafokeng villages and it is very difficult to remove them as "the law affords protection to people against evictions as alternate housing must first be provided.

At its worst the problem extends to people "being chased out of their houses by people living in their backyards" as well as the problem of cattle theft where it is believed that the people primarily responsible are from the informal settlements.

Thus the minutes of the stakeholder meeting note that "the squatters that are settled on Bafokeng grazing fields, slaughter Bafokeng cattle and then sell the meat in these squatter camps. As these squatter camps are situated far from the business area, the people buy this meat for convenience and because it is cheap."

While they are opposed to the informal settlements the traditional authorities feel powerless to do anything about the problem. As stated at the stakeholder workshop "Although there is a tribal court in place, it is ineffective, as it cannot arrest people and bring them before the tribal court. They need the assistance of SAPS for that."

Thus it is no longer the traditional authorities but those who run the informal settlements who now have authority in the area. This was acknowledged at the stakeholder workshop where it was stated that while the tribal court is ineffective "Bafokeng people are being tortured at kangaroo courts in the squatter camps".

Thus the key current manifestation of the violence which occurred during 1997 and 1998 is that it has enabled a new system of authority, that of the vigilantes, to be established in the area.

While there is effectively a major conflict between the traditional authority structure and the new vigilante authority system, this conflict has not been manifested in violence. This appears to be primarily because of the reluctance of the traditional authorities to respond to the aggression of the vigilantes in similar terms. The new authority system, which has been established in the area, is therefore one that operates because of the fear that it inspires in those who oppose it. It is only when people directly challenge the authority of the new power structure that this is likely to lead to violence.

The continuation of the violence

At the beginning of [Section 2](#), the violence, which is the focus of this report, was defined in part as,

Violence and acts of intimidation which affected employees of the Amplats mines, and other persons .. which was related to the establishment of Workers Mouth Peace Union (WMPU) as a recognised union on the mines, and the establishment of WMPU authority in mine hostels and surrounding informal settlements.

During the 1996-1998 a large number of incidents of violence occurred, some of which involved "clashes" but most of were killings that were apparently carried out by "hit-men". Through this process, a particular system of power, associated with the WMPU, established itself in the area where the Amplats mines are located. Currently this structure of power no longer operates primarily through the formal structures of the WMPU but through the "informal" vigilante committees that are based in a number of the informal settlements.

As one interviewee said "it is possible that the violence is reduced because one side has won". While there continues to be a problem of clashes between WMPU members, or members of one of the unions which splintered from WMPU, the currently violence which occurs in the area which is related to these informal structures does not primarily take the form of "conflict" between the WMPU and other groups. Rather the violence which occurs (in the form of various steps taken to "discipline" people) is primarily an expression of the authority of the WMPU in these areas, and is how the WMPU related structures maintain their authority. However there are no groups who are in open conflict with these WMPU related structures due to the fact that other groups fear the violence which may be unleashed against them if engage in challenges to it.

Section 4: The Investigation and Prosecution of Persons involved in the Violence

The cases

In its previous sections this report has provided an outline of the violence which, very roughly, may be understood as having occurred over two main periods:

- In the 1996-1998 period high levels of violence occurred apparently related to the emergence of the WMPU and its attempts to establish itself as a recognised union, and to establish the domination of its system of power in the area;
- In the second period, which may be understood to have started in early 1999, the WMPU begins fragmenting as a union, but the power system associated with WMPU is established, and continues to operate in a number of the informal settlements.

It needs to be emphasised that the cases, which have been the focus of police investigations related to the violence, are primarily related to the first period. Thus in the second period it appears that, apart from "clashes" where a number of people have been killed, and one or two other "hit" style killings, the violence associated with the WMPU is not really documented and is not the focus of a centralised investigation. There would appear to be two contributing factors which underpin this.

On the one hand, the new status quo that has emerged, is one where the authority of the WMPU power system is not challenged in the areas where it has established itself. Even those who are opposed to the system are too afraid to do anything that might be seen to challenge it. The power of the system is maintained largely because of the level of fear in the area, but also through the vigilante justice system. However this justice system operates in a way where the type of violence that is used usually falls short of killing. It appears that those who were involved in the killings have realised that the killings were drawing a lot of

attention to them. Thus they appear to have adapted their style of operation in a way that enables their actions to avoid police attention.

On the other hand police investigations relating to the violence have been focused almost exclusively on incidents where people have been killed. Thus the present investigative focus doesn't engage with the forms of criminal behaviour that are currently occurring. Furthermore where people are victimised by the people associated with the WMPU related power system they are generally unlikely to report this to the police as they fear further victimisation. Most of the incidents of victimisation, which are currently occurring, are not recorded by the police. Thus even if the police extended their focus to all forms of criminality associated with the vigilante power system, many of these incidents would still not be recorded by them.

The cases, which are the focus of this section, are therefore primarily cases, which occurred during the 1996-1998 period. As discussed in [Section 2](#) in discussing these cases it needs to be emphasised that, even if we can agree on a common understanding of the violence and its current manifestations we will not be able to necessarily achieve clarity on which incidents or activities are related to them. Thus the list of cases which is the focus of this section is based primarily on various lists of cases which have been compiled by the SAPS, which include only instances of murder and do not record non-murder related cases

While information from other sources has been used there is however no single source of data that may be seen to provide a comprehensive list of cases that formed part of the violence. Furthermore many of the cases that are included are included not for substantial reasons that are known to the authors of this report, but merely because, those involved such as the SAPS, or Amplats Protection Services, believe that these cases form part of the violence. These cases may be seen to fall into three categories:

- i. The clashes – four major clashes have occurred related to the conflict with, one between the police and residents of an informal settlement in August 1996, one between WMPU members and both the NUM and police at a roadblock in July 1997, one between WMPU and NUM members in June 1999, and one between WMPU and BMEAWU members in March 2000. In these incidents a total of 14 people have died and 87 people (including two SAPS members and an SANDF member) have been injured. **These are listed in [Appendix B](#).**
- ii. Planned killings or "hits" – 33 people have died in 27 incidents most of which resembled planned killings or "hits". **These are listed in [Appendix C](#).**
- iii. Other incidents of violence and intimidation and other criminal cases – 16 other incidents, which include amongst them other incidents of "mob" violence, incidents of malicious damage to property, incidents of assault, incidents of incitement (to murder), and incidents of attempted murder. **These are listed in [Appendix D](#).**

Section 4: Progress made with investigations and prosecutions

i) Investigation and prosecution regarding "clashes"

The status of investigations and prosecutions relating to the clashes is summarised in [Table](#)

2.

In relation to the cases regarding clashes it should be noted that in the one case where convictions were obtained a large number of people (22 or 23) were apparently convicted. Furthermore there appears to be a reasonable prospect that prosecutions will be instituted in 2 of the other cases.

Table 2: Status of investigations and prosecutions regarding "clashes"

Status	No of cases
Convictions obtained	1
Details of prosecution still to be finalised	2
Case withdrawn against accused	1
Total	4 cases

ii) Investigation and prosecution regarding planned killings or "hits"

The status of investigations and prosecutions regarding the planned hits or killings is summarised in [Table 3](#)

Table 3: Status of investigations and prosecutions regarding planned killings or "hits"

Status	No. of cases	Database no.
Case filed undetected	10	43, 44, 48, 28, 56, 30, 68, 33, 35, 72
Case closed (suspect deceased)	1	49
Investigation still in progress	1	81
Awaiting decision of DPP	2	46, 73
Prosecutions instituted but case not finalised	2	34, 76
Case withdrawn at court	1	21
Acquitted	4	65, 32, 70, 71
Acquitted on appeal (Conviction obtained but overturned)	2	15, 18
Conviction obtained	2	67, 22
Unclear	2	16, 86
Total	27	

In relation to the cases regarding planned killings or hits, it should be noted that:

- Of the 27 cases the status of two is unclear. (These are both Transkei cases. The investigating officer is still to reply to queries regarding the outcome of these cases). This means that we have 25 cases in relation to which we have information on the final disposal.
- Of these 25 cases, 19 (76%) have been finally disposed of in one way or another. Of the remaining 6 cases: there is one where the investigation is apparently still in progress; 2 cases are with the director of public prosecutions and in 2 cases are on the court role. The remaining case is one where the case was withdrawn at court. This may mean that the case has been closed and therefore added to the list of final disposals (bringing the total to 22 or 88%) or that the investigation is still continuing.
- Of the 19 cases that have been finally disposed of, 10 (or 40% of the total of 25 cases) have been filed undetected. While this may seem to be a high number these figures are not substantially higher than those for South Africa as a whole. According to Schönreich (1999) for instance the national figure for murder cases filed undetected in 1998 was 34% with another 9% being withdrawn at court. Thus in many cases which the police have to deal with there are simply no leads. Even where there are witnesses present, for instance, these witnesses cannot necessarily identify the killers or provide the police with other useful evidence (this appears to have been the case for instance in Temba CR 228/06/98). However the cases which were closed in this way were not necessarily cases where there were no significant leads. Thus in Tlhabane MR 22/08/98 for instance it is stated that the witness "declined to give a statement and to testify as the suspects are known to him". While this may point to the effect of intimidation it also suggests that full use has not necessarily been made of witness evidence in all cases where it might have been possible. Similarly in relation to Rust CAS 471/10/98 the investigators have noted that the witness evidence was contradictory in relation to the identity of the suspects. What is not clear however is whether one of the witnesses' evidence appeared to be more reliable than the other. Effectively therefore while there may be difficulties which may mean that they are not good cases to take to court, a number of the cases which have been closed are cases where there are leads.
- A further 1 case has been closed because the sole suspect has died.

There are therefore 8 cases which have gone to court and been completed at court. For these cases, 2 (25% of cases completed in court) have resulted in a conviction and 6 (75% of cases completed in court) have resulted in acquittal.¹³ These cases are summarised in [Table 4](#).

In relation to [Table 4](#) it may be noted that:

- It would appear that the two cases in which convictions have been obtained, and four of the cases which have resulted in acquittals, have all been investigated by the Phokeng Murder and Robbery Unit. The two cases on which a conviction was initially obtained, but which were overturned on appeal were investigated by the Thabazimbi Murder and Robbery unit and were prosecuted simultaneously;

- All cases that resulted in acquittals have been heard in the jurisdiction of the Transvaal Director of Public Prosecutions in Pretoria. However these have in fact been heard in three different courts located in Rustenburg, Pretoria and Thabazimbi. The two cases that were heard in Thabazimbi formed part of a combined charge sheet and a conviction was initially obtained. However this was overturned on appeal in the Pretoria High Court.
- The two cases that have been heard in the jurisdiction of the Director of Public Prosecutions in Mmabatho have resulted in convictions. They have however, it appears, been heard in two different courts.

Table 4: Cases finally disposed of by means of conviction or acquittal

Database no.	Outcome	Police Jurisdiction	Specialised unit	Court	DPP jurisdiction
65	Acquitted	Boitekong	Phokeng M&R	Rustenburg High Court	Pretoria
32	Acquitted	Rustenburg	Phokeng M&R	Pretoria High Court	Pretoria
70	Acquitted	Boitekong	Phokeng M&R	Pretoria High Court	Pretoria
71	Acquitted	Boitekong	Phokeng M&R	Rustenburg High Court	Pretoria
15	Acquitted on appeal	Northam	Thabazimbi M&R	Thabazimbi Regional Court	Pretoria
18	Acquitted on appeal	Northam	Thabazimbi M&R	Thabazimbi Regional Court	Pretoria
67	Convicted	Mogwase	Phokeng M&R	Mogwase High (Circuit) Court	Mmabatho
22	Convicted	Tlhabane	Phokeng M&R	Mmabatho Supreme Court	Mmabatho

While the cases have not been examined in detail to ascertain the reasons for the high proportion of acquittals in relation to case 70 (Boitekong CR 110/02/98) the investigators have noted that "the witness refused to testify in fear of their lives in open court after court declines application for case to be heard in camera". In relation to 65 (Boitekong CR 103/10/98) the investigators have noted that while "the evidence was convincing for conviction", the case failed on a "technicality on inspection in loco".

While issues to do with witnesses and witness intimidation are clearly a problem, this

suggests that other issues, to do with the "technical" aspects of evidence, have also contributed to problems in achieving successful prosecutions.

iii) Investigation and prosecution regarding other incidents of violence and intimidation and other criminal cases

Available information regarding the status of the investigations and prosecutions regarding the 16 other incidents is summarised in [Table 5](#).

Table 5: Status of cases relating to other incidents of violence and intimidation

Status	No. of cases
Case withdrawn	2
Unclear	14
Total	16

The absence of clear information about other cases related to the violence points very clearly to one of the key failings of the approach that has been taken to dealing with the violence by the SAPS. This is that the focus of investigative efforts has been purely on killings.

However the type of investigative approach that is required is one that attempts to make maximum use of available evidence in order to develop as much leverage as possible relative to persons who have information about the violence. While issues of obtaining cooperation from the community need to be addressed in diverse ways it is clear that one way through which this needs to be done is through making optimum use of related cases so as to generate as much information as possible relating to the cases.

The suspects

In discussing the issue of suspects it is important to note that this report is not assuming that the evidence linking particular individuals is strong *in all* cases. Thus in some cases people may, for instance, have been identified as suspects by people who are trying to mislead the investigators.

A number of suspects have been identified in relation to at least 3 of the "clashes" with a number of them having been convicted in one of the cases.

If we exclude the "clashes" from our analysis then it would appear that there are in the region of 58 different persons who have been identified as suspects, or at least implicated in some way, in 24 of the cases relating to the violence. This means that suspects were identified in:

- At least 16 of the 27 cases involving planned killings or "hits"; while
- There appear to be identifiable suspects in at least 9 of the 16 cases of "other violence and intimidation".

Most of the suspects have only been linked to a single case but at least 17 of them have been linked to more than one case. These suspects are listed in [Table 6](#).¹⁴

A number of the cases to which the above suspects were linked have gone to trial. Thus:

- Six of the seven (excluding Suspect N) suspects listed above as linked to case 65 (Boitekong CR 110/02/98) were acquitted in November 1999 (due to the witness refusing to testify);
- One of the accused in case 65, Suspect B, was also acquitted with Suspect F, in relation to case 32 (Rustenburg CAS 117/08/98) in August 2000. Suspect H, and two other suspects, were not brought to trial in this case;
- The available information does not make it clear if Suspect N or Suspect P were either amongst the two one of the two (of a total of 6 identified suspects) who were eventually brought to trial and acquitted on case 70 (Boitekong CR 103/10/98) in November 2000;

Table 6: Suspects allegedly linked to 2 or more cases

Suspect	Database number of planned killings or hits to which suspect allegedly linked	Database number of other (Appendix D) cases to which suspect allegedly linked	Cases in relation to which individual has been prosecuted
Suspect A	46, 65		65 - acquitted
Suspect B	46, 65, 32	50	65 - acquitted, 32 - acquitted
Suspect C	46, 22		
Kaizer Mpiyakhe (deceased September 2000)	15, 16, 18, 49, 43 (87)		15, 18, (87) – conviction overturned on all three cases
Mgcineni Sokhase	18, 22		18 – conviction possibly overturned, 22 – sentenced to 55 years
Suspect F	32	50	32 - acquitted
Suspect G	22, 33		
Suspect H	32, 46, 65	50	65 - acquitted
Suspect I	65	50	65 - acquitted
Suspect J	34	41	
Suspect K	76	13, 20	

Sipho Dlulane (deceased)	18, 22		18 – conviction apparently overturned; 22 – apparently indicated willingness to give state evidence but was killed.
Suspect M	65, 46	50	65 - acquitted
Suspect N	65, 46	50	(70? – not clear if suspect N was one of two suspects acquitted in this case)
Suspect O	46, 65	50	65 - acquitted
Suspect P	70, 32		
Suspect Q	34, 35		

- It proved fairly difficult to establish on which cases exactly Kaizer Mpiyakhe (who died in a car crash after being released from jail in August 2000) was convicted, and subsequently had his conviction overturned. According to Inspector Minnaar of Thabazimbi Murder and Robbery Unit, Mpiyakhe was convicted on 3 counts of murder relating to the deaths of Eric Rixi (case 18), Roadwell Diale (case 15) and Morriat Blayiyo (CR 40/11/97).¹⁵ According to Minnaar the dockets are unclear but it appears that Mpiyakhe received 10 years each on 2 of the cases and 8 years on the third of which three years were suspended. The docket also appeared to indicate that Mgcineni Sokhase and Sipho Dlulane were also convicted for the murder of Eric Rixi (case 18) and both received 10-year sentences. However Sipho Dlulane was murdered roughly 10 months prior to the date in April 1999 when this case was apparently finalised so this particular piece of information appears also to be inconsistent.

Of the group of suspects listed above therefore only one Mgcineni Sokhase, has been convicted and is currently in jail. In addition to receiving a sentence, apparently of 10 years imprisonment, for the murder of Eric Rixi, Sokhase was also subsequently convicted for the murder of Simon and Vuyisa Tshalane (case 22) and sentenced to 55 years imprisonment on this case.

It is not entirely clear whether, in overturning Mpiyakhe's conviction for Eric Rixi's murder, the court also overturned Sokhase's (and Dlulane's) convictions. It is therefore not altogether clear whether Sokhase current imprisonment relates purely to the Tshalane case or whether it also relates to the Rixi case.¹⁶

The other 3 people who are apparently also currently serving prison sentences are not included in the above list. They are:

- Wiseman Wachala who was tried separately from Sokhase on the Tshalane case (case) 22 and received a sentence of 30 years imprisonment.
- T-man Mdiki and Sam Skhumba who both received sentences of life imprisonment

for the murder of Chief Pilane (case 67).

Of the other cases to which the above 17 suspects are linked, it may be noted that:

- Case 46 (Boitekong CR 123/08/97 – the murder of Zibongile Mtebelexi), to which six of the above are apparently linked, has been sent to the Director of Prosecutions for a decision as to whether to proceed;
- Case 34 has been set for trial on the 8th and 9th of March 2001. However in the latest police documents only one suspect is listed as arrested and charged while another suspect is listed as "outstanding". Suspect J Michael is therefore apparently not amongst those being prosecuted on this case.

In addition to Mpiyakhe (who died in a car crash), two other suspects are now deceased. As indicated in the remarks regarding the cases on which Mpiyakhe was convicted, Siphso Dzulane (one of those apparently convicted on case 18 and a suspect in case 22) is also deceased. He had apparently indicated a willingness to give state evidence in case 22 and it is assumed that he was killed to prevent him from giving state evidence, an indication of the seriousness of the threats against witnesses in the WMPU related cases. As indicated above, his case, which is recorded as case 68 in [Appendix C](#), is amongst those which have been closed.

A further suspect who has been killed is Zuzile Mnyaka who was killed on the 1st of May in Rustenburg. Mnyaka was at one point regarded as a suspect in case 54 (the murder of Daniel Maramba, Grace Sekurwane and Patrick Teke) another one of the cases that has been filed undetected. However the fact that the case has been closed appears to not be related to Mnyaka's death as the case was closed prior to Mnyaka's death on the 15th of March 1999.

Mnyaka's death (database number 85) is not regarded by the police as one of the violence related cases and is not being investigated by the Phokeng Murder and Robbery Unit, but by the Tlhabane CID. According to Captain Reyneke at the CID the suspect in Mnyaka's murder was arrested and received bail of R3000 but has subsequently skipped bail. Captain Reyneke says that according to the docket, which appears to summarise a statement made by the accused, the accused sold a firearm to Mnyaka but then Mnyaka did not pay him. The accused then went to get the firearm back and after a fight he got it back but then Mnyaka again retrieved the firearm from him. Accused then went back with a firearm, and he was afraid of Mnyaka and ended up shooting him. The docket makes no mention of this killing being related to the other (WMPU related) violence.

Other links between cases

In addition to being linked by suspects a number of cases are also linked by other circumstances that are summarised in the right hand column of [Appendix C](#) and [D](#). Thus for instance:

- A number of the people who were killed had been victimised previously by persons associated with the WMPU (see cases 11, 27, 50, 36 in [Appendix D](#)). In particular a

number of those who were suspects in the malicious damage to property case brought by Mkosana and Somasethi (case 50) were subsequently charged with the murder of Mkosana (case 65) while one of them, Suspect B was also charged for the murder of Somasethi (case 32).

- In a number of cases people were targeted to be killed by name at meetings (see case 12, 17)
- While at another WMPU meeting a person was abducted and forced to state that one of the people killed had been killed by the NUM (see case 19);
- Firearms are a link between some cases (the documentation is confusing about whether case 41 and 27 in [Appendix D](#) appear to be linked to case 18 – the Eric Rixi murder).

The motivation for and planning of the killings

It appears reasonably clear that many of the killings that took place, particularly in the June 1997 to December 1998 period were related to efforts to establish the authority of WMPU as a union. Thus on the one hand it appears that some of the victims may simply have been targeted because they were not willing to join the union or were seen as obstacles to the establishment of WMPU authority.

Thus an interviewee said that Missionary Chawe Mpeni (case 35) "was seen as a stumbling block to WMPU workers receiving their demands from management. There were meetings and a decision was taken for him to be eliminated, and he was eliminated. That's how it was told to us".

Sometimes killings might have followed allegations that a particular person had been making critical comments about the WMPU. As one interviewee put it "Possibly you'd get information that it was said person was to be eliminated: and then person would be killed; or he'd be called to a meeting (kangaroo court) and fined or if he didn't pay he'd be killed or; he'd be called to a meeting but fail to attend and then be killed.

Many of the killings seem to have been highly arbitrary with people being shot apparent 'disloyalty' of an exceptionally petty kind. Thus Sigwayi Maxini (case 71) was apparently shot because he attended a funeral of a person belonging to Mpheni. It is alleged that the people involved in planning of Maxini murder were involved in carrying out Mpheni murder.

While some of the murders may have been quite arbitrary it appears clear that some of the victims were selected specifically because they were part of the NUM leadership and therefore represented opposition to the WMPU. However the killings appear not to have been simply about removing particular "obstacles" but also sending out a message to people that any opposition was not going to be tolerated. Thus from the beginning the murders were carried out in a manner for what one interviewee described as "intimidation purposes" with the victims being shot a large number of times.

It therefore appears that the killings in some way formed part of an orchestrated programme of violence intended to both remove opposition and intimidate all those who might have been doubtful about compliance with the union.

i) The selection of victims

One aspect of the killings that supports the idea that the killings were part of an orchestrated programme of violence is the belief that many of those who were killed were people whose names had been put on a "hit list" (or one of a number of lists) of people to be killed. Thus according to one of the interviewee's "there was this thing of a hit list – but we never got a glimpse of it. Every time they told you so and so is the next one to be eliminated it happened just like that".

While it is clear that there was talk of "hit lists" but not clear that the killings occurred in terms of any particular list.

Thus a police report of February 1998 refers to a meeting addressed by Suspect C (see [Table 6](#)) where he allegedly listed 17 people who were to be killed. The list included the Minister of Labour, the North West Premier, the President and General Secretary of the NUM and a number of NUM members from the North West Province. Of the people named in the report, at least two and possibly three of them, were subsequently killed. Frances Rixi was killed in September 1998 and Missionary Mpheni was killed in October 1998. It appears likely that the reference to Nicholas Zonkla is probably a reference to Nicholas Zondela who was killed in August 1998.

But while there is some evidence that indicates that the victims who were targeted were people who had been listed on formal "hit list" it appears that this was not necessarily the case in relation to all the killings. As one interviewee put it "I think that as they went along they identified people". Once a person was "identified" however he was effectively "on the list".

Thus the "hit lists" and therefore the "targets" may have emerged in a fairly ad-hoc, manner rather than reflecting a calculated selection of targets. As one interviewee put it "They would normally hold a meeting. Once they decided you're a sell-out they would put you on a hit list with a price tag to your name".

ii) Identifying ringleaders

Along with the lack of clarity around the significance of "hit lists" in the killings is a lack of clarity as to whether the killings were orchestrated by a central group of people or not. Thus one interviewee emphasised that the murders were the work of a network of people. "They have good networks which are quite organised," he said. "Thy identify people and follow them and kill them".

Associated with the WMPU, are a number of committees based at various hostels and informal settlement. According to an interviewee "Each community used to call meetings out of the blue. They were just calling meetings within their squatter camps. Most decisions which resulted in killings were just taken by the community and the committee itself".

The meetings might have included the "committee" or all WMPU members at the informal settlement. According to one interviewee it was therefore at this type of meeting that "I think this is where the whole thing was discussed of who is the enemy and what should be done with him. It was rare that Head Office would come down and say this is what should be done".

Thus, while the WMPU President, Kaizer Mpiyakhe appears clearly to have been linked to a number of the killings, and while other members of the senior leadership may have been linked to planning the killings, it is not clear that the WMPU head office formally orchestrated the killings. As an interviewee stated "We couldn't link them to murders – we can't say they were issuing instructions for crimes to be committed on ground".

Similarly another interviewee suggested that even though some of the senior union leadership might have been involved in the union with a view to the opportunities it presented for financial enrichment "but the killings I'm not sure – I don't know that [they] said – kill this and that person".

It therefore appears that, in so far as the killings were orchestrated, this was in some way linked to the meetings of one or more committees of the WMPU. The people leading the meeting would probably have been the key persons involved in making decisions about killings. However the interviewees with whom this question was discussed did not appear to have clarity on whether there was a single "central" committee that took these decisions, or whether these decisions were taken fairly randomly within a number of different committees that might have included committees based in the hostels and informal settlements as well within the central WMPU structure.

Thus of the two persons who appear to be most clearly indicated as "ringleaders" Mpiyakhe was apparently running the branch in Swartklip and on the NEC and one of the WMPU "principals". On the other hand Suspect C was apparently one of the key members of a branch committee in the Rustenburg area.

The interviewees, who included key members of the intelligence and investigative agencies involved in dealing with the violence, appeared unable to clarify whether the persons responsible for orchestrating the violence might be from within a single central group, or a number of different "committees". Asked if a Mafia Scenario (involving "bosses" and "hit men") could be applied one interviewee replied that "if you talk like that it sounds structured. They are structured informally. That's the way things happen there".

In relation to this issue another interviewee suggested that the "Mafia scenario" couldn't always be applied. All that known was that there were meetings, and that soon thereafter there were often killings, but there was no clear information that instructions were given. However the implication appears to be that some type of system of delegation or hiring was in operation. Another interviewee said that all that could be established was that "meeting has been called". It was to be presumed that "some people would then go and secretly speak to people to do the dirty work" and that they had received information that these people were paid.

Again there was a lack of clarity as to how the process from "identification" to killing

might have worked. Thus one interviewee suggested that 'it was not necessarily the case therefore that specific individuals are hired to do the job' and that it was "more to do with how important you are deemed to be". Killings might have been carried out, he suggested, by self-appointed gunmen on the basis that a particular "price" was being offered for the killing. Similarly another interviewee pointed out that not all of the killings had been carried out by "hit men". Sometimes, as in the case of Mpiyakhe, they would "do the stuff themselves".

However there was some level of agreement from interviewees that there were specific persons such as Suspect C who was "believed to be one of those who would identify people" while others would go and do the killings.

Similarly while at least one of the interviewees listed the names of a group of four key people (one of whom was Suspect C) who he said were implicated as being the key persons behind the killings another interviewee said that "You know truly speaking we cannot say who those people are".

Thus while the available information points to fact that the violence involved not only "hit men" but also a number of people who in one way or another directed the violence those who were interviewed were divided as to whether there was clarity on who the "bosses" or "ringleaders" were and did not express confidence that prosecution could be made to succeed against these 'real perpetrators'. As one interviewee said "its normally very difficult to build a case against the person who gave the instructions. We have a lot of names and information regarding the activities of Mouthpiece – but mainly don't have the evidence to prosecute".

Similarly a senior police member said that there was no clear evidence that those orchestrating or conducting the current vigilante violence were the same people as those people who had been involved in the orchestrating or carrying out the killings.

Thus while there is a network of committees associated with the WMPU, and these committees are believed to have been linked to the killings, and known to be in control of the current system of vigilantism, current police information is unclear as to what the link may be between the persons who orchestrated and conducted the series of killings, and those who are responsible for the current vigilante violence.

iii) Retaliatory violence

One issue has not been explored in much depth in the research conducted thus far has been the contribution of retaliatory violence by the NUM. Thus while this analyses rejects the idea of the violence as having been essentially a "conflict" between the two unions but, based on the evidence, sees the violence as overwhelmingly having been generated by the WMPU, it is still acknowledged by a number of people that there was violence by members of the NUM, though this may be seen as primarily defensive or retaliatory in nature.

While no arrests were made, one example of a case, which is believed to have been retaliatory in nature, is Tlhabane CR 160/7/97 (Case 42 in [Appendix D](#)) in which four people were injured when shots were fired and a hand grenade thrown at four WMPU members at Nkanene informal settlement.

But while retaliatory violence appears to have played a role the available evidence appears to indicate that the bulk of violence was generated by the WMPU. Thus even in a number of the cases where WMPU members were killed the available evidence appears to indicate that this was done by other WMPU members. This appears to be the case for instance both in relation to the death of Zibongile Mtebelexi (case 46 in [Appendix C](#)) in August 1997 and the death of Gunshayikali Mquewuka (case 49) in November of the same year.

Section 5: Issues in the Process of Investigation and Prosecution

The investigative and prosecutorial functions in the affected areas

The Rustenburg area, and other areas of North West which have been affected by the WMPU violence, fall mainly into the Marico Policing area whose headquarters are situated at Tlhabane, just outside Rustenburg. This includes the Sifikile area (scene of a number of the earlier incidents of violence and killing) which is situated close to Union section but falls physically in North West province. Union Section itself, and Amandelbult, on the other hand, are located in the Bushveld policing area of Northern province.

The Phokeng Murder and Robbery Unit which has been dealing with most of the murder investigations relating to the WMPU violence is therefore based at the Phokeng police station near Tlhabane. However the unit has only been involved in investigating murders related to the violence, which have occurred in the Marico area.

The investigation of murders that have occurred in the Northern Province on the other hand have mainly been conducted by different investigative officers at the Thabazimbi Murder and Robbery Unit (a satellite of Nylstroom Murder and Robbery).¹⁷

This lack of coordination in the investigation function is reflected for instance in the police documents on the killings. Thus there is no single document from the SAPS or any other source (see the list of sources of information in [Appendix A](#)) that contains a complete list of killings relating to the violence. In particular most of the documents that relate to the violence which have been put together by the SAPS in North West contain no records of key killings such as the major Northam cases (e.g. 15 and 18).¹⁸ Even in relation to the killings related to the violence therefore there is no single source which has an authoritative view on which killings are, which killings might be, and which killings should not be, related to the violence.

One aspect of the WMPU related violence has however been that it has not been restricted to incidents of murder. "Less serious offences" including instances of torture (punishable as assault with intent to do grievous bodily harm), other assaults, extortion and intimidation have also been part of the violence.

However the investigation of these types of offences has not been carried out by the team involved in the murder investigations, but rather by the various Criminal Investigation Sections (CIS) located at police stations within whose area of jurisdiction the alleged offences have been carried out. In addition, according to one police interviewee, "those other cases were never dealt with in a way in which records were kept of them. Other cases were dealt with as, for example, ordinary assaults".¹⁹

The effect of all this is that, in so far as it has been investigated at all, the violence at Amplats has been investigated by investigators drawn not only from the Phokeng and Thabazimbi murder and robbery units but also from the Tlhabane, Rustenburg, Mogwase, Boitekong and Marikana police stations in the Marico area and Northam police station in the Bushveld area.

However this is not the end of the matter, in addition to the Murder and Robbery units the area also has a number of other "Specialised Units". Thus in addition to the Murder and Robbery unit, there is also a Firearm unit and a Stock Theft Unit, as well as a Diamond and Gold unit based at the Phokeng Police Station while a Child Protection Unit and branch of the Narcotics Bureau (SANAB) and Vehicle Theft Unit are based at the Rustenburg Police Station. Potentially aspects of the violence, and other unlawful conduct involving people connected to the violence, have been investigated by some of these units.²⁰ Thus one of the interviewees commented that the process of investigating the violence has "never had a representative from the firearm unit" and that it "would be useful to have people" who have a knowledge of how the "supply of firearms is done around the mines".

There is therefore no single unit that has been responsible for investigating the violence or other criminal activities connected to the perpetrators of the violence. Effectively while the Phokeng Murder and Robbery Unit is able to provide details of murder cases related to the violence at least in the North West province, there is no-one who has a real sense of which other cases should be regarded as linked to the violence. There is also no one who has a real sense of to what extent the persons involved in orchestrating and perpetrating violence in the past (the killings) continue to be involved in violence (in the form of vigilantism) or other forms of criminality. (As will be argued below this problem is further exacerbated by the lack of a direct link and cooperation between the intelligence and investigative functions).

Just as the investigative function is divided between a large number of different stations and specialised units, so also with the prosecution function. Thus the areas of jurisdiction of the high courts in South Africa are still defined in relation to the areas of jurisdiction that existed prior to the transition to democracy. Thus incidents which have happened within the jurisdiction of the Rustenburg, Marikana, Northam, Boitekong and Bethanie police stations fall within the area of jurisdiction of the Director of Public Prosecutions in Pretoria. On the other hand incidents that occur in the Tlhabane and Mogwase policing areas fall within the area of jurisdiction of the Director of Public Prosecutions in Mmabatho. However if we focus for the moment on murder cases which have gone to trial (see [Table 4](#) in [Section 4](#) above) we may note that even within these areas of jurisdiction there has been no centralisation of cases and cases have been heard in a number of different courts. Thus the 6 cases which have been heard within the area of jurisdiction of the DPP in Pretoria have been heard in 3 different courts (one in Northern Province, one in North West and one in Gauteng). The 2 cases heard in the area of jurisdiction of the DPP in Mmabatho have been heard in two different courts in North West province. Potentially therefore the 8 cases which have gone to trial may have been prosecuted by five or more different prosecutors.

This means that as is the case with the investigative function the prosecution of cases related to the violence is carried out through a large number of different courts and prosecutorial offices. Thus even if we look at cases which occur in the hostels or informal

settlements at Rustenburg Section we will find that, in relation to the more serious cases such as murder cases, while the bail hearings may take place at one of the magistrate's courts such as the Rustenburg or Tlhabane Court, the actual trial, if it occurs, may take place in Rustenburg, Pretoria or Mmabatho. On the other hand if any of the less serious cases did get to court they would have been tried in one of the Regional Courts such as the Rustenburg or Tlhabane magistrate's court. While in the Rustenburg Court for instance, one prosecutor has primarily been responsible for dealing with the cases, this has not been the case more generally, and a number of different prosecutors have been involved in prosecuting these cases.

Thus even if we look at cases which have occurred in North West Province there are a wide number of investigative units involved and the prosecutions that have been implemented have been implemented in a number of different courts.²¹

The problem is reinforced by the fact that some of the cases have occurred not only in the Northern Province but also in the Eastern Cape and involved investigative units, as well as potentially different prosecutorial teams from these areas.²²

Intelligence gathering and dissemination

While the investigative function in the SAPS is organised into a number of different investigative units, the SAPS also has Criminal Intelligence Gathering (CIG) sections which operates separately from the investigative sections and falls under the crime intelligence function of the SAPS.

This in the Marico area for instance the SAPS has three CIG offices based in Lerutse, Rustenburg and Garankuwa. These all fall under the provincial head of CIG in Potchefstroom, who in turn falls under the Provincial head of Crime Intelligence. The CIG office in Rustenburg has been the primary office responsible for intelligence gathering regarding the WMPU related violence.

While the CIG sections do information gathering the analysis and dissemination of information is carried out at the office of the area head of Crime Intelligence. This office is intended to serve as a coordination point for "all the information from all the units in the police". All the Detective Branches and all the Specialised units have their own crime information managers who are also responsible for sending through information to the Criminal Intelligence office.

According to one of the members of the CIG section they concentrate on all crimes but specifically crimes against the state or the community as well as organised crime (syndicates) such as vehicle theft or firearm syndicates. "We get a lot of info on vehicle and firearm syndicates and drug syndicates, he said. "We basically do the same thing as NIA. We actually work quite well together. There's a good sense that information is shared. We liase with them on a daily basis."

The responsibilities of the CIG section also include monitoring situations where violent actions may occur. Such information may for example be sent through to the Public Order Police (POP). Where killings occur the CIG section may be involved in trying to find out

who was involved.

According to the interviewee information that is collected is sent through to the Provincial CIG head office in Potchefstroom and to the Area Nodal Point who distributes it to relevant units. The CIG section will also send it directly to the unit "that is primarily concerned with the problem". While they've tried to establish a crime information manager at each unit, normally it is the branch commander who receives it. Thus in the case of the Phokeng Murder and Robbery unit, for instance, the information would be received by the head of the unit.

A further problem that was identified in relation to the CIG intelligence function by more than one interviewee, particularly in relation to the violence at Amplats, was that it appeared to have made limited progress in establishing its own independent sources of information regarding the WMPU related violence and appeared to be heavily reliant on a single source of information.

Coordination and cooperation

One interviewee also said that while the CIG section would feed information to a unit and that unit would possibly "maybe three months later ... have success working with information we have given them ... there is a problem of us getting no feedback from people that we give information to".

Another member of the CIG section described similar concerns "It would seem that we as different branches in the service – we are not cooperating closely". For example, he said, "we have asked Murder and Robbery, when they conduct an arrest they should involve us and maybe we can interview or interrogate these people. However all we get is a list".

The problem that he pointed to appears not just to be one of communication, territoriality and mutual suspicion but also of an absence of reciprocity in the exchange of information. Effectively it would appear that while certain units may make use of the information gathered by CIG, when this information bears fruit in the form of an arrest for instance, the CIG section will not also be provided with the opportunity to "reap the benefit" by for instance being allowed to question the suspect.

These problems are possibly reinforced, rather than addressed, by the Joint Intelligence Committee (JIC) which was specifically established for mine violence.²³ While a representative of the Phokeng Murder and Robbery Unit does attend the meetings, the meeting is primarily a meeting of the intelligence community (NIA, CIG) with the mine security and the SAPS crime prevention section also playing an important role.

While JIC feeds information through to the investigative team however a senior member of the committee described it as having a "lot of influence on crime prevention" but added that he "won't say that JIC have really supported the investigation side". The same interviewee also stated that he thought it unlikely that the violence could be addressed through crime prevention.

One interviewee expressed a number of reservations about JIC. While he accepted that

mine security could make useful inputs at these meetings, he felt that they "shouldn't be there at the decision phase". Furthermore he said that JIC had been ineffective because what was needed was a proactive approach involving providing visible policing in the area but JIC had primarily been reactive.

Finally he said that there was a problem with JIC as "people of various ranks and structures are sitting together" and "channels of command and information get mixed up". Instead he suggested that there should be two structures. On the one hand JIC should continue as a structure of chiefs in strategic command (M&R, CID, CIG, Intelligence, Crime Prevention) for the sake of having a weekly discussion and information sharing.

A second team he suggested would include Investigators and CIG people. This fitted in with what he saw as one of the major problems with the investigations, the fact that M&R and Intelligence (CIG) people "don't work together closely enough".

Thus while there is an extensive machinery devoted to gathering and analysing information it appears that this intelligence gathering function has not been directly linked to the investigative one. This is likely to have had the result that the work of these different functions has not been "complementary" in a way that it could have been. Thus the key investigators involved in investigating the violence do not necessarily have access to what one interviewee described as the "bigger picture". Similarly where progress is made or leads generated in the investigation, these are not adequately communicated to those involved in intelligence gathering.

The conduct of the investigation

As has been argued above therefore the investigation of the violence and other criminal activities involving those persons connected to the violence, has effectively been carried out by a number of investigative units including both specialised units (including a number of Murder and Robbery units and other specialised units) and Criminal Investigation Sections based at a number of police stations.

The impression may therefore be created that no effort was made to coordinate or centralise the investigation relating to the violence. However some senior SAPS interviewees were emphatic that this had not been the case. In explaining how the investigation was coordinated in North West one interviewee described it as follows. All cases, he said, are being given to the same Investigating Officers who have been involved from the beginning. Secondly he said that all information on the investigation is "channelled to them" from JIC. Thirdly forensic support and vehicles have been made available to them. The investigating officers were also apparently supported by being sent to seminars and courses "to beef up their knowledge".

What needs to be emphasised first of all here is that, if we look at the North West specifically, the only cases that were centralised were the murder cases. All murder cases that appeared to be related to the violence were referred to the Murder and Robbery Unit at Phokeng. In some ways this reflects the standard procedure followed in the SAPS anyway in that murder cases (or at least those involving firearms) are referred to the Murder and Robbery unit.

However the unit was not responsible for dealing with other cases that were related to the violence, or the perpetrators or orchestrators of the violence, and was not even responsible for investigating cases of attempted murder related to the violence.

There appear to have been fundamental limitations to this approach. This was partly because of the exceptional difficulties in securing witness evidence in these cases (the issue of witness intimidation and protection is discussed below). The investigation of the violence therefore required an investigative approach which could maximise other potential sources of evidence. In the absence of willing witnesses the most likely sources of information, and potentially evidence, might therefore have been persons who had a potential "interest" in giving evidence due to the fact that they themselves faced potential criminal prosecution. In a context of "high level" (life threatening) intimidation of "non-participant witnesses" it is essential that the investigative process do everything possible to maximise alternative sources of information. One such potential source might have been "suspect witnesses" who might have included persons involved in the violence or other acts of criminality. Particularly in relation to the witness problem which was encountered there was clearly a need for optimal use to be made of other leads. The way in which the mandate of the key investigative unit was defined, however, appears to have undermined the potential for such leads to be identified.

This issue of the "investigative approach" being limited to a focus on cases of murder was further exacerbated by the geographically dispersed nature of the killings and other violence. Thus in the case of Msizeni Mxhamli he was first tortured by members of the WMPU at Union Section and then killed with two of his family members 8 weeks later at his home in the Transkei. Neither of these two incidents, which were key incidents in the early stages of the violence, occurred in the North West, and therefore neither was investigated by the main investigative unit involved. But even if they had occurred in the North West, only one of them, the murder, would in fact have been investigated by the main investigative unit.

In addition to the problem of failure to develop other possible leads and cases through the investigation of other cases related to the violence, there appear to have been other key aspects of the investigation which undermined the problem of effectiveness.

- One aspect of this relates to coordination between the units involved in different provinces. Thus one of the interviewees who had been in touch with police who were involved in investigating some of the cases in the Eastern Cape formed the impression that "they way that they were dealing with matter – it was clear that there was no coordination with "[the Phokeng Murder and Robbery Unit]. One of the issues that clearly emerges is whether an investigative team primarily based in one province would ultimately be able to investigate the violence effectively. While the ideal response would therefore probably have been a national investigative unit with teams based in both the Eastern Cape and North West/Northern Province, at the minimum it would appear that the investigation called for high levels of communication, cooperation, and mutual assistance between the investigators in different regions. However it is not clear that such communication and cooperation ever took place.
- A further aspect of the investigation process, which appears to have undermined the

potential for the investigation to be productive, is that the investigations have been conducted in terms of a "case by case" approach. As one interviewee stated the cases appear to have been investigated almost as "arbitrary murders". Even though the murder cases in the North West were investigated by a single investigative team, the approach remained one of investigating individual cases and were it appeared that the evidence might support a prosecution, forwarding that individual case to court.²⁴ The manner in which the investigation was conducted effectively restricted the CJS to this kind of approach and did not support other type of prosecutions which might have been possible if a different approach, sometimes used for investigating cases of organised crime, had been used. In general the manner in which the investigations and prosecutions was conducted, would have been appropriate to a series of isolated incidents, but not to dealing with a network of people involved in criminal activities.

- During the research process there was never any indication that the main investigators involved did not view the investigation with a high degree of seriousness, and approach the task with utmost diligence. At the same time at least one of the interviewees suggested that a further factor which has limited the potential for the investigation to be conducted successfully is that of the skills and experience of the main members of the investigative team. As he put it "the basic issue is whether they've got the right people doing the job". The skills that the interviewee referred to were not however simply basic investigation skills but also the skills of, for instance, communicating effectively with the prosecutor(s) involved and presenting evidence in court. The issue clearly overlaps with that of whether more investigators should have been involved in the investigation. For instance one of the senior SAPS members interviewed suggested that the investigators had hardly been overextended and that in fact their case load was significantly less than that of many police investigators whose "normal case load is over 100 cases". The issue is however not simply one of the number of cases but that the cases here presented considerable difficulties, and that the type of investigation required a more flexible and creative approach than the one that appears to have been applied.
- A further obstacle to the potential effectiveness of the investigation was one of language (and possibly cultural factors as well). As demonstrated in [Section 2](#) the "context" in which the violence has taken place has been that of newly emerged Xhosa communities in the North West province. This has the consequence that SAPS members in the North West who are not fluent in Xhosa are effectively at a disadvantage in trying to operate within these communities. Thus "warlord" type elements within the communities share a common language and culture with those people living in these communities while the police effectively come in to the communities as outsiders who are immediately recognised as "foreigners". Within the context of the other problems that faced the investigation, the language issue appears to have been one that exacerbated the difficulties faced by the police. The effect was that the police were playing on an "uneven playing field". Attempts to "level the playing field" would have meant that the language issue would have been addressed. This would have involved bringing Xhosa speaking members of the SAPS into the investigation.

- At the end of the day it appears that the entire process of investigation and prosecution has been characterised by a lack of flexibility. While the violence reflects changing dimensions of the South African situation, the investigation and prosecution process has followed established ways of doing things and there has been little attempt by the CJS to adapt to new circumstances. One interviewee gave the example of an attempt which was made to arrest a key suspect at nighttime. The police are apparently accustomed to conducting certain arrests at night where it is assumed that the elements of surprise may be maximised. However in this case the arrest involved approaching the area in a heavy vehicle and thus the suspect received ample advance warning of the approach of the police. The potential for this arrest to be carried out effectively reflects the need for a more clearly thought through approach that was specifically adapted to the needs to this particular situation. The violence reflected the emergence of a new criminal network that took advantage of various aspects of the changing situation in South Africa. In order to effectively meet the challenge presented by this group of people, the CJS had to adapt its ways of operating. However in the manner in which it dealt with the investigation it appears to have failed to do so.
- It needs to be recognised that the problems, which have been encountered in investigating the violence, have occurred within a context of major problems facing the CJS. These have included problems of resources, morale, a case overload, major delays in the operation of the criminal justice system, and corruption (suspicions of corruption will be discussed later in this section). One key issue that has potentially had a major impact on the investigations and prosecutions conducted, has been that of the delays in the criminal justice system. Delays have a wide range of impacts that undermine the potential for effectiveness in the process of crime investigation and prosecution. On the one hand where there are willing witnesses who are able to cooperate, delays might undermine the potential for such witnesses to give a clear account of the evidence in question when they do appear in court. In addition, particularly where witnesses are placed on the witness protection programme, the length of the delays is also likely to mean that they become increasingly demoralised and demotivated. Delays also have implications for accused persons particularly where they are denied bail.

From information to evidence

The key "resource" which the investigation has relied on has been intelligence information provided by informers. As one interviewee put it "we use informants to find witnesses and suspects – its all the same process".

It has often been difficult for intelligence sources to get this kind of information and often the information wasn't confirmed or verified. Often therefore there has been uncertainty about the accuracy and completeness of the information received.

The way that the investigation has worked has primarily therefore been that once information has been received they have sent it to the investigative unit involved, in this case primarily the Phokeng Murder and Robbery Unit.

While there were doubts about the accuracy of the information received there was some

sense amongst the interviewees that the intelligence information had enabled a number of the persons involved to be identified. As one interviewee put it the police had been "good at getting information about who is responsible. I think everyone has been identified," he said. "The problem is the evidence. Without evidence you can do nothing."

Being able to identify suspects is therefore not good enough. In order for successful prosecutions to be launched the criminal justice system needs to be able to use this, or other information, in court as evidence to prove the case against the suspects.

Witness intimidation

The intelligence systems that were available were therefore able to provide a certain level of information about the identity of alleged killers. As one interviewee put it, "its easy to get a source to talk to you because he's paid and protected".

These informers were frequently able to assist the police in identifying suspects and also with identifying witnesses in a number of circumstances. However here the investigation encountered a serious problem. Thus many of the witnesses who were identified were not people who had willingly come forward but people who had been identified through the informer network. As one interviewee described it "Eventually you'll get one or two witnesses. Usually they are very scared."

There were a number of problems that appear to have contributed to the high levels of fear that the police encountered amongst potential witnesses and the community generally. As indicated in [Section 4](#) the murders were carried out in a manner that frequently appeared to be intended to maximise the element of fear in the affected areas and thus contribute to promoting the broader aims that the killings appear to have been intended to serve, that of the intimidation of the people in the area. Furthermore many of those in the affected settlements and hostels would have been aware that there was an entire network of people behind the killings. It may have been apparent from early on therefore that a person giving evidence against one or two of the perpetrators would continue to be vulnerable to other persons associated with the criminal network.

In addition it appears that the problem of intimidation may be a general characteristic of these areas. On this issue there were slight differences of opinion amongst interviewees. One interviewee thought that the difficulties in obtaining cooperation were to some extent specific to the Xhosa community in the area and that it was a "Xhosa tradition" that people "don't talk". Thus he said, "Getting information out of the Xhosa community is one of the biggest problems". However another interviewee indicated that the problem of intimidation was general to the area. "It is not only with these murders that there is a problem for people to come forward. These criminals – they intimidate the people. The problem of people not coming forward is a general problem – not restricted to Xhosa's."

A further problem, which has reinforced the difficulties experienced, is that identified earlier of the fractured nature of the investigation. Thus acts of intimidation supposedly form part of a type of criminal behaviour that may be classified as "less serious". Thus the way in which the investigation was structured was one in which the main investigative unit was only responsible for investigating murder cases while no coherent strategy was adopted

with respect to investigating other "less serious" cases including cases of attempted murder and intimidation. Effectively therefore the Criminal Justice System had no strategy for responding to the extremely high level of intimidation in the area.

Intimidation has in fact been so extensive that it has included not only witnesses but also the investigating officers themselves. As one of the investigating officers commented "When these guys phone us – you will find that if its from a cell phone you cannot identify the number – or you follow it up and find the call was made from a call-box". Even in relation to their use of intimidation the people behind the violence have therefore shown a level of sophistication that presents difficulties in terms of an effective response.

It appears likely therefore that the lack of witness cooperation and the intimidation problem may to some extent be multi-dimensional. Thus on the one hand the historical situation in South Africa in one of hostility between communities and the police. Building up public confidence and trust in the police is not only about public relations exercises but requires that the police deliver effective policing to the areas in question and thus win public confidence. But, as will be discussed further in the next section, there has been limited progress in terms of improving police service delivery in the communities in question.

In addition however in relation to the violence there have been particular dimensions that have added to the levels of witness intimidation. Firstly as discussed above in relation to the issue of language the killings in particular took place within a specific ethnic community and thus within a group of people bound together by cultural ties and other links related to familial and other relationships between them in the Transkei area.

Secondly however not only where the killings carried out in an exceptionally brutal manner which appears to have been designed to intimidate, but the network of persons involved in the killings appear to have built up a sense of impunity around them. Thus during the initial two year period during which the killings took place, the fact that none of the killers was convicted, contributed to a widespread sense that the persons involved in the killings were in many ways invincible.

Thirdly there was a clear sense that witnesses were in mortal danger. Thus the killings were primarily intended to eliminate and intimidate actual and potential opponents of the WMPU and any person offering to give state evidence would have been strongly conscious that they were simply putting themselves in the front line of opponents and thus likely to be targeted for elimination. The alacrity with which opponents were targeted is reflected in the fact that some of the victims were complainants and/or witnesses in cases against WMPU members. Thus Solomzi Somsethi who was killed in August 1998 (see case 32) was a complainant in one case and a witness in another in which WMPU members were implicated. Similarly France Rixi who was killed in September 1998 (case 34) was also a complainant in a case in which WMPU members were implicated. In another case (case 68) in June 1998 the victim, Siphon Dzulane, was a suspect in one of the case and had offered to provide state evidence. Thus as one interviewee put it "if the witness of today is the deceased of tomorrow" it is not surprising at all that the investigators encountered difficulties in securing witness cooperation.

At no point was there any sense that either the informal settlements or the hostels in which people lived offered any protection against marauding gunmen. While intimidation was

rife, no strategy was developed within the CJS to deal with the general problem of intimidation. Thus there appears to have been no decision taken to, for instance, for a specific unit to follow up cases of intimidation or for other measures to be implemented to counteract the intimidation problem.²⁵

At no point therefore was any real confidence created that the Criminal Justice System, or other parties (such as the mine management) were motivated to and able to provide proper protection to people who offered to give evidence, other than through the Witness Protection Programme. But, as is discussed below, the Witness Protection Programme itself suffers significant limitations in terms of the level of protection that it is able to provide.

The witness protection programme and the management of witnesses

It is apparent that one of the main obstacles that has affected the investigation (and prosecution of alleged perpetrators) of the violence has been the difficulty that has been experienced in finding witnesses who have reliable evidence and who are willing to testify in court.

Many of those who have been involved in dealing with the issue, particularly persons from outside the criminal justice system, have been inclined to identify the problem here as being one of "inadequate witness protection" and of problems with the witness protection programme.

However there has been little clarity from those voicing concerns about the Witness Protection Programme (WPP) about what their criticisms of the programme are, and particularly what should be done to rectify these shortcomings.

i) General problems with the Witness Protection Programme

Some of the issues identified are problems in the programme that may contribute to persons who are on the programme becoming demoralised and demotivated, and possibly choosing to abandon the programme. Thus:

- One of the apparent shortcomings would appear to relate to whether it properly meets the needs of persons on the programme, partly in relation to issues of personal taste, but also potential in relation to "cultural" concerns or preferences. Thus, according to one police interviewee one of the problems with the programme was that it didn't take into account the Xhosa cultural background of some witnesses. Thus the interviewee said that "the Xhosa have a different culture. They don't want to eat fish and chips every day". The implication would appear to be that the WPP must deal with cultural or other preferences of people on the programme if people on the programme are not to become dissatisfied and disillusioned.
- Another problem relates to payment made to persons who are on the programme. The WPP is supposed to provide persons on the programme with an income which is the same as that which they received immediately prior to joining the programme. In the case of one of the individuals however it appears that he terminated his employment shortly before he joined the programme. Immediately prior to joining

the programme he was therefore "unemployed". An interviewee suggested that in dealing with the situation the WPP had been overly bureaucratic and did not take the general circumstances relating to the witness and the termination of his employment into account. Inter alia this included the fact that the witness had apparently left work partly to help with the case. The WPP therefore dealt with the situations "bureaucratically" rather than examining the actual circumstances of the person. Thus the witness was paid at a rate for an unemployed person rather than relative to the rate of payment that he had been receiving shortly before joining the DPP.

Another factor, which has potentially contributed to demoralisation of witnesses on the programme, is the length of time that they have to spend on the programme. While this is a serious issue which impacts on the effectiveness of the WPP it is part of the general problem of delays in the CJS and does not point to specific shortcomings of the WPP.

Thus during the investigation of the violence some of the witnesses on the programme have left the programme. The reasons why they have left the programme may have a lot to do with the above type of issues.

ii) Witness safety

However while the above problems might have discouraged witnesses from participating in the WPP, the main obstacles to the process of crime investigation and prosecution have related to the issues of witness safety, the key issues which the Witness Protection Programme is supposed to address. The key problems here appear to have been the following:

- The one key issue relates to the actual persons whose lives were in danger. Thus there appears to have been a risk that family members of persons on the programme would also have been killed and thus potentially a need to place not only the witness but also members of the witnesses family on the programme as well. A problem here however relates to the fact that, in the context of extended family networks, this would have potentially implied placing a large number of people on the programme, in order to simply "protect" a single witness.
- Many of the people who would then have been placed on the programme would therefore have to have been uprooted from their homes in the rural Transkei. Thus at least one interviewee observed that persons on the programme wanted their "whole family and cows" to be placed on the programme with them. Effectively therefore many of the people who were potential witnesses were connected to families rooted in rural livelihoods in the Transkei. While the WPP offers a certain level of protection to individuals, the types of threats which witnesses faced might have extended to their whole families. Protecting these persons appeared to require that entire families be uprooted, with their property, from rural livelihoods in the Transkei.
- A third aspect relates to the basic framework for the provision of witness protection in South Africa. The image of witness protection that many people have is one where people are relocated to different areas or even countries and their identities "changed" once they have given evidence in court. However the WPP in South

Africa only provides protection to people until the witness gives evidence in court. Thereafter they are supposed to resume their "normal" lives in the community.

Preventing disclosure of the identity of the witness

Potential it would not be a problem for witnesses to resume their lives in the community if there was a way of preventing the accused persons and their associates from discovering the identity of witnesses. While prosecutors have sometimes tried to protect the identity of witnesses during the initial stages of proceedings (by for instance withholding the names of witnesses, when the witness statements are forwarded to the defence) it appears that it is exceptionally difficult to prevent the identity of witnesses from being disclosed if the case actually goes to trial.

Thus in one of the stakeholders meetings it was suggested that "witnesses should be protected by allowing them to testify in camera, or to testify in a court fitted with one-way mirrors so that the witness are not seen by other people present in the courtroom. This may reduce intimidation and encourage people to testify more freely and confidently which may lead to successful convictions".

Even if it may be possible to prevent the witnesses name from being disclosed there are potentially a range of issues here and the question of whether particular measures will be sufficient to prevent the identity of the witness from being disclosed would depend on the specifics of the case. Thus depending on the case it may be that:

- The witness's identity will be "disclosed" by the nature of the evidence which he or she gives as the accused will be able to deduce who the witness is because only one or two specific persons, who are known to him/her, have knowledge of the facts which are given in evidence;
- The witness's identity will be "disclosed" by the nature of evidence as other persons (particularly the accused persons "supporters" in court) are likely to "recognise" the witness from the evidence.
- The witness's identity will be disclosed if the accused person sees the witness.
- The witness's identity will be disclosed if other persons in the court see the witness;
- The witness's identity will be disclosed if the accused hears the witnesses voice;
- The witness's identity will be disclosed if other persons hear the witness's voice.

A key issues here would appear to be whether the witness is known either to the accused or to other persons who may be in court who are linked to the accused. Thus, depending on the nature of the situation, measures such as screens, or even the giving of evidence "in camera" may or may not actually be sufficient to prevent the identity of the witness from being "revealed". However if the witness it not known to the accused or to other associates of the accused then the potential for such measures to be of value would be far greater.

While there may potentially be steps that can be taken which may minimise threats to the witness in specific cases, what is not clear is to what extent the courts have specific leeway to introduce such measures. Thus in the trial of the six suspects accused of killing Richard Mkosana (case 65) the witness was apparently given an assurance by the police or prosecution that he would be allowed to testify in camera. However the judge refused permission for the case to be heard in camera and the witness then refused to testify on the

grounds of threats to his or her personal safety.

It appears that here the situation is primarily governed by section 35(3)(i) of the Constitution which provides that, in terms of an accused persons right to a fair trial, that the accused has the right "to adduce and challenge evidence". It appears that the issue of the implications of this provision have not been fully explored in our law in relation to situations where the witness believes that his or her life will be placed in jeopardy if they testify in open court.

Thus while provision has been made that children be allowed to testify in camera, and with the assistance of an intermediary, South African courts appear reluctant to permit hearings in camera in other circumstances.

Similarly while it has been recognized that the accused's right to "challenge evidence" may be in conflict with the complainants right to dignity in rape cases, the issue of the rights of witnesses whose lives are placed in jeopardy by appearing in court, has not been dealt with in the South African legal system.

However, in some ways these issues are fairly distinct from each other. The interests of children or rape victims, in being prevented from further traumatising, present particular types of challenges.

However the issue of witness safety is somewhat distinct as it implies that potentially the witness may need to be protected from any disclosure of his or her identity, whether this is to the accused, the accused's legal representative, or the general public.

While the issue here is one which should potentially be explored further within the South African legal system, it is not one for which there are immediate solutions available.

Providing long term safety to witnesses

It would therefore appear that the current situation does not allow for the identity of the witness to be concealed from the accused. If, subsequent to giving evidence, the witness is likely to continue to be in danger of losing his or her life, then this would appear to imply that issues to do with providing the witness with further protection may need to be explored.

It is widely assumed that the "obvious" solution to the problem is therefore to place the witness on a witness protection programme that entails relocating the witness as well as changing the "identity" of the person so that they cannot be tracked down. However, as has been argued in a number of British studies on the subject these "high-level" protection schemes are not suitable for most witnesses due to the fact that:

- They are expensive;
- They require major life changes (such as moving to a new area and severing all contacts from the past) by witnesses, which could be viewed as penalising them; and
- Most witnesses would not be willing to make such drastic changes to their lives. (Elliott, 1998; Maynard, 1994).

There are two issues that might add to the difficulty of implementing "high-level" protection in the context of this particular investigation.

- First of all, as indicated, in the context of extended families, there might be a risk to members of an extended family and not merely to the witness;
- Secondly, when dealing with people who are linguistically, culturally, socially and economically tied to a particular area, the issues of relocation become far more complex. Witnesses who are culturally linked to a particular area and semi "traditional" lifestyle may present far greater challenges in terms of relocation than is the case with, for instance, persons from a modern urban cultural milieu. In particular when one is dealing with people who speak a language that is associated with a particular geographical area (such as isiXhosa) there may not be readily available options in terms of relocation.

There are therefore a range of issues that should potentially have been considered in dealing with the issue of witness protection in the investigation of the violence. These include:

- The nature of the evidence which the witness is able to provide and how important this is to the investigation and prosecution process;²⁶
- The type of threats to the witness and whether these threats extend to the family and/or extended family of the witness;
- Whether these threats are likely to continue after the person gives evidence at the trial;
- Whether measures, such as the erection of screens in court, or hearing the witness evidence "in camera" may be of any value, and whether the court is likely to consider applications for these measures to be implemented in a sympathetic light or not;
- Whether the possibility exists of providing long term protection to the person who is at risk (including his or her family);
- Whether such protection is likely to off-set the key threats, or whether it is likely that for instance, other family members will then be targeted, and the objectives of providing witness protection thereby be rendered redundant;
- Whether the importance of the particular case in question and the relative value of the witnesses evidence, merits the type of financial investment that the provision of such "high-level" protection will entail.

In developing clarity around the question of whether it is possible to provide long-term protection to the person (including his or her family) issues to do with the nature of the protection that is to be provided will need to be explored. Thus for instance, speaking about one of the witnesses on the programme one of the interviewees said, "If he gets work it will be in same industry". The individual in question would therefore only really be able to have been relocated within the mining industry in South Africa and there would therefore be a high risk of his coming into contact with a former colleague or other person who would "leak" information about his new whereabouts.

Alternatives to the "traditional "relocation and change identity" formula might therefore have to be looked into. Thus in the context of the investigation of the violence one option have been (and might still be) that a particular "security village" be established where the

person and his family might establish residence. Strict measures in terms of access control would have to be implemented. Furthermore considerations relating to the security of the individuals in question when they leave the "security village" (such as when they go to work) would also have to be addressed.

In evaluating the issues of witness safety a further issue that would have to be addressed is that of the length of time for which such protection would have to be provided. Thus where it is identified that the person will need to receive protection after the completion of the trial it might still be asked whether this needs to be life-long protection or whether, for instance, protection over a shorter period will be likely to suffice.

A further question, that may need to be explored, concerns the relationship between the threats perceived by the witness and the actual threats (in so far as these may be clarified) that exist. Thus one of the interviewees argued that in the investigation and prosecution of cases of violence there has not been a "history of people being attacked after case is completed". However he said that the "fact that people have to leave the programme after the cases are completed undermines confidence in the system".

Thus at the end of the day it is crucial that in dealing with issues of witness protection in relation to each individual a number of questions be clarified. These include:

- The importance of the witnesses evidence;
- The witnesses understanding about the nature of the threat which her or she faces;
- An evaluation of whether, on "objective" grounds the threat which the witness faces is different in nature or less (or more) serious;
- The potential nature and duration of the protection that can be provided and the type of sacrifices that this is likely to entail for the witness.

It is imperative that these issues be explored with the witness so that, where witnesses do enter the programme, they have a clear understanding of what the implications will be for them.

iii) Other measures to protect witnesses and counteract intimidation

As indicated above there is a general problem not only of witness intimidation but also of generalised intimidation of members of the public in the affected area. Furthermore the WPP itself is a disruptive and expensive way of dealing with the problem of intimidation and is inappropriate for most witnesses. In addition it has been suggested that measures to prevent the identity of witnesses from being disclosed are not likely to be condoned by the courts as they would appear to conflict with the Constitution.

It needs to be emphasised therefore that the engagement of the criminal justice system with the problem of witness intimidation and witness protection should not be restricted to attempts to place people on the witness protection programme. It should also include other measures designed to discourage intimidation and to protect witnesses against attempts to intimidate them, as well as threats to their safety. Such measures should include:

- Taking reports of intimidation seriously. Thus for instance as part of a strategy to counteract witness intimidation, witnesses in particular, should be requested to report

all cases of intimidation. When such reports are made the police should urgently follow them up. This should include steps to identify, interview, arrest and/or prosecute possible perpetrators.

- Other measures to protect witnesses, who are not on the Witness Protection Programme, against intimidation and threats to their safety such as special waiting rooms, people to accompany them at court, and other rigorous security measures. As stated above, in any situation where witnesses at court are intimidated, the police should follow this up, and where possible, institute charges.²⁷

Witness intimidation and protection: concluding comments

It needs to be recognised that the problems in addressing the issue of intimidation and of witness safety reflect the broader problems with the investigation – in particular the failure to treat the cases in question as being related to the activities of a criminal network and therefore the investigation of the cases on a "case by case" basis.

The primary consequence of this has been a general "climate" in the entire process in terms of which, even when key suspects are being held in custody, the prevailing sense is that many of the main persons who are involved are unaffected and are effectively free to plot the demise of witnesses, and other persons, associated with the investigation.

The key issue therefore has been that an entirely different approach has been required to this investigation, one that engages directly with the fact that what is being dealt with is a network of persons involved in criminal activity and able and willing to intimidate and kill persons who are believed to pose a threat to them.

General problems and accusations and suspicions against persons involved in the CJS

While the issue of witness intimidation and protection is the paramount issue around which concerns were raised, members of the public and of organisations, who have raised concerns about criminal justice performance in dealing with the conflict, have also identified other issues which, they have suggested, reflect or contribute to the poor performance of the Criminal Justice System. These have included include:

- Instances where crimes are reported or information is given to the police, or forms of criminality which occur which are highly visible, and where nothing happens;
- The release of arrested persons without anything happening to them including situations where bail is granted inappropriately;
- Allegations of corruption.

It is difficult to evaluate many of these allegations. On the one hand it is widely known that there are major problems being experienced in the Criminal Justice System and that there are many cases where clients of the CJS are left dissatisfied. Thus some problems may reflect what may be regarded as legitimate grievances. Thus for instance people complain that in real situations of violence and intimidation the police often do not respond. However whether the underlying problem, which contributes to the lack of performance, is one of poor performance on the part of criminal justice officials, or simply reflects other problems such as a shortage of resources, is not necessarily very clear.

On the other hand many of these complaints may also reflect a failure, on the part of members of the public to understand the way in which the criminal justice system operates, and the constraints and rules of procedure that it is bound by.

Thus, for instance, a complaint that "nothing is being done about prostitution" in a specific area may be essentially true. At the same time it might reflect the fact that the police have chosen to ignore prostitution, on the basis that it does not present a serious threat, and that they have chosen to focus their limited resources on dealing with more serious cases, or alternatively their experience that charges of prostitution are difficult to prove and that, considering the available resources, it is more likely to be productive to focus on other types of crime.

Similarly in relation to the alleged release of arrested persons there may be a number of issues involved. On the one hand, one member of one of the investigative units himself supported the idea that in the case of Mpiyakhe in particular, the issue of bail had been dealt with badly by the court. Thus he suggested that, in the particular case concerned, "the advocates who make the applications" were "high profile members of the bar and the Department of Justice is afraid of them". Thus when he was granted bail "there was also a requirement that he could only go to certain places or leave certain areas if the investigating officer is given notice, but this amounted to a loophole which he exploited". Subsequently when Mpiyakhe broke all his bail conditions there were no repercussions for him.

However at the same time that the release of arrested persons might reflect inappropriate decisions made within the Criminal Justice System it might also reflect the fact, once again, that members of the public have a limited understanding of the processes of the CJS. Thus, it was suggested that, sometimes when a person had been taken in for questioning, and not actually arrested, there would be a public perception that the person had been arrested, and questions would be raised about why the person was subsequently seen on the street.

Such perceptions might thus reflect ignorance of the fact that in principle a person can only be arrested if charges are to be placed against them. If however allegations have been made against a particular person, but there is not actually evidence which is likely to ground a case against the person, then it may not actually be correct for the police to place the person under arrest. Furthermore if arrested, he or she may potentially still be granted bail. Even if the person is arrested, and even if denied bail, charges may subsequently be withdrawn against them on the basis that there is a lack of credible evidence against the person.

In a number of interviews and stakeholder meetings a number of allegations were made of police involvement in corruption. These included allegations that:

- "Dockets go missing and evidence is destroyed", that "bribery is taking place" and that while "hardened criminals are known to the police" no arrests are being made;
- That when members of the SAPS go out on special crime prevention operations, members of the SAPS will phone people in the community where the search operation is to take place to warn them that the police will be arriving.

It needs to be emphasised that most of the allegations that were made were general allegations about the functioning of the SAPS (or other components of the Criminal Justice

System). Thus no specific allegations were at any point made directly against the investigative unit that had the main responsibility for investigating murder cases related to the violence.²⁸

Sometimes those who were interviewed suggested that the greater problem was one of inefficiency. Thus in one meeting the participants are quoted as having stated that the SAPS are "inefficient". They gave the example of a case of car theft. While the car was recovered, no charge sheet was drawn up, and no docket and thus no case was opened. At the same time they stated that "only people that are part of the syndicates are safe" which appears to suggest that these people are protected in some way, possibly as a result of corrupt practises.

Similar to the complaint of inefficiency, another interviewee suggested that part of the problem was a shortage of "competent cops" as well as one of "poorly trained prosecutors".

At the same time the interviewee stated that the "police are under-staffed and resourced. Similarly another interviewee stated, "There have been perceptions that the police have been incompetent, or that they have been corrupt, but the main problem is that they are overstretched".

As has been observed above the Criminal Justice System is currently facing a wide number of problems that include problems of inefficiency, a loss of skilled personnel, shortages of staff and resources, and thus one of personnel being "overstretched".

It is difficult to say to what extent these problems should be seen to have impacted on the investigation of the violence. On the one hand it has been argued that the police investigators involved carried a "lighter" case load (in terms of the number of cases) than many other police investigators. Furthermore senior police have also argued that they were supported in terms of resources in the form of vehicles and for instance forensic support. There is also no explicit evidence of corruption having been a factor, particularly in the investigation of the main murder cases in North West Province.

At the same time it needs to be acknowledged that the investigation of these cases presented considerable difficulty and that in some ways a more well thought through investigative approach based on strategies for investigating organised crime would have been appropriate. This, it appears would have required an investigative team larger than that which was deployed in the investigations. It would also have required other skills, including a capacity for strategic and tactical thinking which does not appear to have been present in the investigation that was undertaken.

At the same time however the complaints made by, for instance, the various participants in the stakeholder meetings, point to broader problems. These include a lack of public understanding of the operation of the Criminal Justice System, and the absence of channels of communication around these issues. They also suggest a belief that there are major problems of corruption in the Criminal Justice System.

In addition to raising issues to do with the conduct of the investigation and the general policing situation in the area these complaints therefore also reflects the need for:

- Public information about the Criminal Justice System.
- Improved structures and mechanisms for communication.
- The establishment of proper channels for complaints to be lodged, whether these are complaints of "inefficiency" or corruption.
- The need for effective systems to deal with these complaints including both an understanding of how to "mediate" service delivery complaints and to investigate allegations of corruption.

Section 6: The Provision of General Police Services in the Affected Areas

Policing the hostels and informal settlements

Security inside the hostel is primarily the responsibility of Amplats's own security service or other security companies hired by the mining company. The SAPS therefore does not do patrols inside the hostels. Where searches of the hostels are conducted the SAPS will accompany mine security. As one police interviewee said "if you don't have support of security in hostels – you can't find the rooms or the people". If a stolen item is found the police will take over, but they will not usually actually lead the search activities. Where specific people are sought by the police the mine authorities and mine security will usually also assist the police in finding them. The general policy is therefore that the mine security is responsible but once a crime has occurred the SAP takes over.

While the mine security is responsible for security in the mine hostels, the informal settlements mainly fall outside of mine property. The responsibility for policing them therefore falls to the SAPS. As is the case in many areas of South Africa, there have been complaints about the slowness of police response times in areas affected by the violence. Thus one of the interviewees referred to a case where he had arrived at a murder scene and the police only arrived 21/2 hours later.

A more fundamental problem appears to be however the general issue of police access to the informal settlements. This is partly related to the fact that there are no real roads in these areas. However this is not the only part of the problem. Ever since 1996, when a police crime prevention operation in Sifikile came under attack there have been perceptions that in order to enter WMPU aligned areas the SAPS needs to put on a show of force. Thus one of the SAPS members interviewed stated that to go into Ndelela and Nkanene, "one must mobilise and have a lot of manpower".

Crime prevention patrols and cordon and search operations

It is partly for this reason, but also apparently for reasons to do with the general availability of personnel and other resources, that the provision of policing services takes the form that it does. This would appear to amount primarily to occasional patrols by SAPS Crime prevention or Public Order Policing (POP) units. According to 1 interviewee the SANDF also conducts 1 or 2 patrols per month.

Where murders have occurred the number of patrols has sometimes been increased. However a police interviewee indicated that this had not appeared to be an effective response to the murders as these "jumped around". "There is no way that through crime

prevention you can protect people", he said.

In addition to the patrols the SAPS conducts occasional cordon and search operations in the informal settlements. These sometimes involve the SANDF cordoning off the area while the SAPS goes in to search. According to one police interviewee during last year (2000) cordon and search operations had been conducted in all of the informal settlements "to indicate that there are no "no go zones" where we can't police". When these operations are conducted the approach is to try and get as much intelligence as possible so that the operation is as effective as possible.

While slightly contradictory information was received on these questions it appears that the police are reluctant to go into many of the informal settlements, particularly if it is after dark, unless they are travelling in armoured vehicles or enter "en masse" as part of a cordon and search operation.

Where information is received of large gatherings, such as union meetings, the Public Order Police (POP) will be deployed to avert potential clashes or confrontations. However at least one of the interviewees indicated that there had been problems with the way in which the Public Order Police dealt with one of the incidents, on June 16 1999, which resulted in six deaths. Thus according to the interviewee the Public Order Police arrive at the scene before the killing but then left again. According to the interviewee the POP leadership "seemed very indecisive" and didn't appear to have the confidence or skills to manage the situation. Furthermore the small number of members present indicated that they had not prepared properly for the situation.

Satellite stations

Most of the informal settlements were established after the existing police stations in the area were built and they therefore generally are not situated close to a police station. One idea, which has been put forward by a number of people, is the establishment of satellite police stations in a number of the informal settlements. One interviewee suggested for instance that such stations should be established at Nkanene, Sifikile, Smasha Block, and between Zakhele and Zondela. The establishment of these satellite stations should be combined with a more "overt" style of visible policing.

However the interviewee's emphasised that, in talking about a satellite police station, he was not just talking about "a caravan". While there are a lot of assaults, rapes and thefts in these areas, currently for the police they are "no go" zones.

While according to police interviewees the SAPS does not have the personnel or logistics to have satellite police station the interviewee quoted in the previous paragraph stressed that the SAPS "must give justice and protection to the people". A permanent structure would be safer for the police as well as providing an area to operate from closer to the scene of many incidents. It would be necessary to have someone at each of these places "with the authority to take command". In response to the issue of insufficient resources he suggested that the mine or business community should be approached to sponsor the establishment of these stations. On the issue of human resources he said that one would need to transfer police from the existing stations in order to have a more equitable allocation of human resources.

Furthermore members of the service should be "retrained" on aspects of basic policing skills such as the guarding of crime scenes.

Overall then the interviewee commented that it was easy to understand why, "the community are losing faith in the police" as "they are not protected". The lack of policing in areas could not be accepted, as these are highly volatile areas where the provision of proper police services should be prioritised.

Community cooperation

While the SAPS have begun to establish Community Police Forums at some of the informal settlements it appears that they have had little success in this regard in areas aligned to the WMPU. Thus one interviewee mentioned that when police had gone into one of the predominantly Xhosa speaking areas to talk to people about CPFs, the responses which they received were very negative and they were told that "we must first approach the community leaders".

Thus in general it appears that in these settlements people are unwilling to be seen to interact with the police unless this is authorised by the community leaders. (The operation of the vigilante system was discussed earlier in [Section 3](#)). As one police interviewee stated, "the people there are more afraid of those people than the police". Effectively therefore the police receive little in the way of information about the settlements other than through their informer network. Even people with crime related complaints are more likely to approach community leaders than the police, if they are to approach anyone at all.

While one SAPS member argued that the "community leaders" have an interest in creating the impression that the police are ineffective, it needs to be emphasised that the problems of service delivery by the police, reinforce the problem of community confidence and cooperation in these areas.

This serves to neutralise the police in terms of providing them with the authority to act. Thus while there is a complaint that the police do not come when called for, the police also face a situation that, when they do arrive to deal with some problems, the community members appear not to want them to be there.

As the interviewee stated the police "need people to come forward". Particularly if they are to take action against the community leaders they "can only do something if that specific community is rejecting them or complaining about them". However due to the existence of the vigilante groups people are afraid to come forward and to be seen to be cooperating with the police. Thus effectively it appears that, whatever other factors may play a contributory role, it is the community leadership who prevent people from cooperating with the police.

The situation in the informal settlements is therefore fairly complex:

- On the one hand the provision of policing services by the SAPS is inadequate with the result that there is little chance of the communities developing confidence in the police;

- The community leaders and the vigilante groups that fall under their control exploit this situation. Thus they are able to claim that the reason why order and a level of security is maintained in communities is because of their efforts;
- At the same time, as is argued in [Section 3](#), these community leaders are involved in forms of criminal activities themselves. Thus the system of vigilante justice is used as a system of income generation by extortion from those who are punished. In addition they are also involved in criminal activities through their use of violence;
- As is suggested at the end of [Section 4](#) it is also likely that some of those who are connected to the committees, which control some of the informal settlements, were in various ways linked to the violence that occurred in the 1996-1998 period.
- However, both because they have little confidence in the SAPS, as well as because they are afraid of the community leadership structures, community members are unlikely to lodge complains or to offer information to the police regarding the activities of these structures.
- Thus because people are afraid of these committees there is also little in the way of clear information about the violence, in the form of "vigilante justice" that is occurring.

The task of establishing community cooperation is therefore fraught with potential pitfalls. In particular the one difficulty that has to be faced is that the key community "representatives" appear to be the leaders of the vigilante structures who are themselves in one or other way implicated in criminal activities.

Section 7: Conclusions and Recommendations

i) The violence in the affected area

The violence in the affected is part of a broader problem of violence and criminality that is prevalent in South Africa. Thus there are a wide number of factors which are may be seen as contributing to current levels of violence which include:

- The history of violence and conflict and existence of systems of informal justice in South Africa;
- The context of transition in South Africa;
- Poverty and inequality and urbanisation;
- The breakdown of systems of informal social control;
- The widespread availability of firearms;
- Problems experienced in the criminal justice system.

In addition particular historical factors to do with the growth of the platinum mining industry in the North West and Northern Province are also relevant to understanding the context of the violence.

At the same time the fact that there are "general factors" which contribute to the problem of violence should not obscure the fact that particular groupings and role-players have lead a prominent role in the violence that has taken place. These particular groupings are therefore in themselves a factor that contributes to the problem of violence.

ii) The link between the violence and vigilante/organised crime groupings or networks

During the past years, and in particular during the period 1996 to 1998 roughly 33 people died in 27 "hit" style killings. While these killings were distributed over the Amplats mine and nearby settlements in the Northern Province, and also occurred in the Transkei, they primarily occurred on the Amplats mines and informal settlements in the Rustenburg area. In addition to the killings there were a number of other acts of violence, including acts of attempted murder and assault GBH as well as numerous acts of intimidation.

The police have identified a large number of suspects who appear to have been involved in carrying out these killings. In two cases convictions have been obtained and as a result four of the perpetrators of these killings are currently in jail serving long sentences. In addition Kaizer Mpiyakhe, the original National President of the Workers Mouth Peace Union (WMPU) was convicted in relation to two of the killings but was subsequently released, and subsequently died in a car accident. In four other cases prosecutions have been instituted but have resulted in acquittals. In addition to Mpiyakhe two of the other alleged hit men are also dead.

Of the suspects who have been identified by the police, 17 were linked to at least two of the killings by at least some of the information that was received by the police. While not all of this information was necessarily accurate it appears likely that this group of 17 individuals (which includes Mpiyakhe, and another of the deceased Siphon Dzulane as well as one of the persons currently in jail, Mgcineni Sokhase) may include many of those who may be regarded as the "core group of perpetrators".

However what is also apparent is that the series of killings formed part of a campaign to establish the authority of the WMPU as a trade union on the Amplats mines, as well as to establish its authority within the informal settlements. The WMPU operated not only through a central Executive Committee but also through a number of other committees that were based largely in the informal settlements. It appears clear that many of the killings were not simply carried out by the "hit men" but were initially authorised by some of these committees, or at least some of the individuals associated with them. However, (with notable exception such as the police intelligence report dealing with the meeting addressed by suspect C),²⁹ the intelligence information and investigations which have been conducted by the police have generally not managed to clarify how this took place. Nevertheless it appears that in addition to the "hit-men" there was also a group of people, associated with some of the WMPU committees, who played a role in orchestrating the violence. In some cases there also may have been an "overlap" between these categories with the "ring-leaders" possibly also directly involved in carrying out these killings.

It should be noted that this same network of committees in the informal settlements is effectively the structure through the system of vigilante justice in the area operates and amounts to the de facto system of authority in many of the informal settlements. It also represents a major obstacle to the police being able to work with the communities in these settlements, as community members are afraid of incurring the wrath of these committees if they are seen to be cooperating with the police. Because of this level of fear there is also little information about the operation of these committees but nevertheless it appears clear that at the very least their activities are to a certain degree criminal and that they are financed partly through "fines" which they extort from people using the threat of violence,

as well as direct violence. It has also been suggested that these committees are possibly linked to other types of illegal activities such as running the dagga trade as well as possibly other more serious criminal activities.

It appears that the violence, which took place during the 1996-1998 period, played a key role in enabling these committees to establish their authority in the area. It is however not clear that the individuals who were the "ringleaders" in the killings are the same as the "key role-players" in currently running the vigilante committees though it is likely that there are at least one or two individuals who form part of both groups. It may for instance simply be the case that the committees share a common culture of authoritarianism combined with a readiness to resort to violence. At the same time it is clear that these committees, and the network of people which they form part of, both historically and in the present period, have been a key contributing factor to violence in the area. They represent an element in the area that is belligerent in its attitude to other role players in the area, including the police and the traditional authorities, and represent an obstacle to efforts to establish a cooperative approach to dealing with the difficult issues of governance in the area.

While there may be room for "incorporating" some components of this network within the system of governance it is clear that this would be inappropriate in relation to those elements who are, or have been, most directly involved in criminal activity. As one of the interviewees suggested "taking out the mafia and warlords would give us some time to put police structures back in place". Thus a concerted effort to investigate and prosecute the key role-players in the history of violence in the area needs to be part of an approach to establishing effective systems of policing and governance.

iii) The nature of the problem and the investigative response required

The problem identified here therefore appears to conform to what Osterburg and Ward (1992) term "enterprise criminality" which encompasses the "broad range of crimes including but not limited to organised and white-collar crime" and "incorporates a much broader range of criminal activity than what is commonly thought of as traditional organised crime (p. 751). Inter alia Osterburg and Ward state that:

- "Enterprise crime" is characterised by "criminal networks and illegal relationships". (p. 751)
- The primary goals of individuals involved in enterprise criminality are: "propagation of the group; financial or economic gain. The advancement of power and influence". (p. 751)
- In order to achieve these goals the group may engage in both legal and illegal activities, be willing to corrupt or intimidate, and – in the case of many groups – to use extreme violence or the threat of violence. (p. 752)
- Enterprise criminals "are much more difficult to investigate and bring to trial and conviction". (p. 752)
- "Investigation of the criminal activity associated with enterprise crime involves greater coordination and cooperation than for the more traditional forms of crimes. Experience has shown that all components of the criminal justice system – police, prosecution, courts, and corrections – must be well-trained and prepared to be flexible, innovative, and committed to joint efforts". (p. 752)
- "Not all investigations can be handled in the same manner" and "prosecution may

- require greater knowledge than currently exists within most investigative units".
- "Most groups are hierarchical. In some of the newer groups, however, investigators are finding shared leadership, sometimes involving a loose confederation of groups".
- "At the centre or core of the leadership one usually finds old friends, and frequently family members. (p. 754).
- Groups may employ various tactics to establish and maintain their influence including corruption, "threats and other fear tactics" and blackmail. Individuals who do not cooperate may find family members kidnapped or killed, or they themselves may be assaulted or even killed" (p. 755)
- "The means by which a group attains its goals represent its modus operandi or method of operation. Knowing how the group work provides the basis for building a criminal case" (p. 755).
- A common problem for the investigator is the use of "middle-men" or low-level persons to carry out the actual crime. (p. 756).

In illustrating approaches to the investigation of "enterprise criminality" Osterburg and Ward focus on drug-related investigations. They argue that such investigations generally involve a number of specific areas:

- Standard investigations – these usually occur where there is a complainant, victim or witness who provides information. Key issues here include the "need to protect witnesses". (p. 767)
- Surveillance and undercover and informant operations – inter alia they state that "surveillance and undercover investigations .. are perhaps the most dangerous in police work today". On the other hand the use of informants "necessitates a high degree of care, both to protect the informant and to ensure that the information being provided is accurate and truthful" (p. 768);
- Cooperative investigations involve "the establishment of task forces or teams from several departments or agencies". However they require that clear lines of "responsibility and authority" be established (p. 769).

iv) The establishment of an investigative unit

The centralised investigation, which has been conducted up to this point by the Phokeng Murder and Robbery Unit, has however focused only on incidents of murder and not on other incidents of criminality. It has therefore not developed a "total picture" of the criminal activities of the network of people involved in the violence and their ways of operating. In addition

- The investigation has been on a "case-by-case" approach using "standard investigations" and has not adapted its approach significantly in relation to the fact that the violence is being generated by persons who form part of a criminal/vigilante network;
- While informer networks and intelligence systems are used these have tended to rely on a single key source of information, and have not worked directly, and in a complementary manner, with the investigative team;

- The coordinating structures have been established by the police this has not focused on the coordinating and managing the work of the key investigative unit;
- Furthermore this investigation has been located in the "serious and violent crime" command structure when what appears to be needed is a type of "organised crime" investigation.

There is therefore a need for a dedicated investigative unit to be established whose task is to focus on criminal activities associated with the Xhosa ethnic network of persons which exists in the informal settlements surrounding the Amplats mines. The investigative unit should focus on:

- Remaining cases related to the series of killings have been discussed in this report as well as other killings which may be related to this network;
- Other offences which are related to the activities of this network including incidents of attempted murder, assault and assault GBH, extortion, intimidation, firearm related cases and other possibly criminal activities which they may be associated with

The core investigative unit should be under effective leadership and should include an appropriate number of investigators and includes investigators with direct knowledge of the area, Xhosa speaking investigators, and investigators with appropriate experience.

Investigations of this type usually involve input from prosecutors who are generally regarded as key members of the team and who can assist in ensuring that solid cases are developed.

It may be worthwhile for the investigation to be conducted in cooperation with other investigative units such as the Asset Forfeiture Unit that falls under the National Prosecuting Authority.

The investigative would have to start by using available information in developing an overall assessment of the problem and a strategy for tackling it including evaluating the type of cases that might be built using available evidence. The one key issue would be to clarify who is implicated in terms of available evidence and whether these people could be persuaded to cooperate in prosecuting any of the "ringleaders" or other key perpetrators. The strategic objective would therefore not only be to bring key perpetrators to account but also to disable the network.

It may be assumed that such an investigative unit should be based in the Rustenburg/Tlhabane area. Other issues that would have to be addressed would include:

- Centralising appropriate cases for investigation. Certain categories of murder cases have historically been dealt with by specialised (murder and robbery) units while other are dealt with by other specialised units or by ordinary station based units. In addition the affected area not only falls under different police stations.
- The fact that that the incidents are dispersed over a number of provinces, including

not only the Northern Province but also the Eastern Cape.

- The fact that even within the North West the cases fall under the jurisdiction of a number of courts including courts falling under the jurisdiction of the Directors of Public Prosecutions in both Mmabatho and Pretoria. If at all possible therefore cases should be centralised within a single jurisdiction and dealt with by a single prosecutor or prosecutorial team.
- Furthermore key cases which are prosecuted should be prioritised on the court role in order to ensure that progress through the criminal justice system is expedited.

v) Witness intimidation and protection

It is likely that an intensification of investigative efforts will lead to an increased level of threats and violence against witnesses. A general strategy for dealing with the problem of intimidation and safety of witnesses and members of the community more generally will therefore be needed.

This first of all requires that intimidation of witnesses be prioritised as a crime in the affected area. This would include:

- Motivating members of the public to report instances of intimidation;
- Familiarising investigative personnel with aspects of the law to do with intimidation;
- Implementing a policy of taking investigative steps in relation to all reported cases of intimidation, and where possible implementing prosecutions;
- Implementing a policy whereby complainants and witnesses are requested to notify the investigating officer or other designated person of all cases of intimidation.

Furthermore other measures to protect witnesses, who are not on the Witness Protection Programme, against intimidation and threats to their safety should be implemented. These should include special waiting rooms, arranging for people to accompany them at court, and other security measures. As stated above, in any situation where witnesses at court are intimidated, the police should follow this up, and where possible, charges instituted.

Where prosecutions are being implemented it may be advisable to place some witnesses on the Witness Protection Programme. The following issues should be evaluated in relation to such witness:

- The nature and reliability of the evidence which the witness is able to provide and how important this is to the investigation and prosecution process;
- The type of threats to the witness and whether these threats extend to the family and/or extended family of the witness;
- Whether measures, such as the erection of screens in court, or hearing the witness evidence "in camera" may be of any value, and whether the court is likely to consider applications for these measures to be implemented in a sympathetic light or not;
- Whether threats are likely to continue after the person gives evidence at the trial;
- Whether the possibility exists of providing protection to the person who is at risk (including his or her family) after the trial and the length of time for which it will be possible to provide such protection;

- Whether such protection is likely to off-set the key threats, or whether it is likely that for instance, other family members will then be targeted, and the objectives of providing witness protection thereby be rendered redundant.
- Whether the importance of the particular case in question and the relative value of the witnesses evidence, merits the type of financial investment that the provision of such "high-level" protection will entail.
- As suggested above specific cases should be prosecuted in terms of "fast-track" procedures. This should be applied specifically to cases where persons are on the Witness Protection Programme.

It is imperative that these issues be explored with the witness so that, where witnesses do enter the programme, they have a clear understanding of what the implications for them will be.

There is therefore a need for issues to be explored further to do with:

- Preventing disclosure of aspects of the identity of witnesses where there is significant evidence that the witnesses life may be placed in danger if his or her identity is revealed;
- Providing long-term protection to witnesses in selected cases whether this is through relocation or other measures.

This suggests that there may be a need for a general evaluation of issues regarding the status of witnesses to be conducted within the Criminal Justice System.

The effectiveness of efforts to obtain witness cooperation will also be enhanced if measures are implemented to deal with delays, which contribute, to demoralisation. This is therefore a key motivation both for the establishment of a team and for "fast-tracking" cases through the system.

If there is more confidence that the process is being tackled properly, this will encourage others to come forward.

vi) Policing services in the informal settlements

The issues raised in this report raise several issues to do with the general provision of policing services particularly in the informal settlements surrounding the Amplats mines in North West and Northern Provinces.³⁰

- Most importantly it is clear that there is a need for adaptation in relation to recent changes in population settlement patterns in the area. What is first of all needed is an analysis of the distribution of settlement and of likely settlement patterns in the coming period as well as an identification of settlements with key security problems. This analysis should be used as a guideline for building new police stations in the area. While some have argued that the implication may be that police stations are needed in all informal settlements what is clear is that is that, at minimum, a police station should be established at a "forward" location in this area which will dramatically enhance public access to the police and the police presence

in these areas;

- Secondly it is clear that the issue of community cooperation presents a general problem that is an obstacle to effective policing in the area. The one obstacle to community cooperation is the system of vigilante committees. While there may be a temptation to simply try and incorporate these committees into a system of community consultation it is clear that, in the light of their history of involvement in violence in the area, this would not be an appropriate response. The general strategy of establishing CPFs and other systems of communication and consultation needs to be combined with strong measures against those who oppose the establishment of policing within the legal framework. However the issue of winning community support and cooperation needs to itself be the focus of attention.

It is therefore proposed that an area task team should be established within the SAPS police to deal with the provision of policing services in the informal settlements and to tackle issue of community participation and cooperation.

In addition public cooperation with the CJS will be enhanced by:

- Public information about the Criminal Justice System.
- Improved structures and mechanisms for communication.
- The establishment of proper channels for complaints to be lodged, whether these are complaints of "inefficiency" or corruption.
- The need for effective systems to deal with these complaints including both an understanding of how to "mediate" service delivery complaints and to investigate allegations of corruption.

vii) Informal policing systems and the involvement of community members in providing community safety

While it is recommended above that measures be implemented to improve community access to the SAPS and improve the presence of the SAPS in informal settlements it needs also to be acknowledged that the SAPS does face limitations including limitations of resources and that it is unlikely single handed to be able to provide effective policing services in all of the informal settlements.

This therefore raises difficult questions about the existing informal systems for policing in the area. Thus the participants in one stakeholder meeting suggested that these systems in some way "do good work" but that "their powers should be limited or restricted as they later become the law themselves.

Thus while it is emphasised above that the vigilante committees should be investigated in relation to their involvement in criminal activities, a different strategy should potentially be adopted in relation to community members who have been involved in informal policing type activities.

Thus, if it is possible to begin to establish structures or mechanisms for community consultation (such as CPFs) one initiative, which may be undertaken through these mechanisms, is to involve community members in supporting the police in providing

community safety.

This is however a difficult area particularly as questions will need to be addressed as to how to deal with there is a strong need to regulate such activity in order to ensure that it occurs within the legal framework.

viii) Public Order Policing

While this issue has not been explored in any depth in this report, from the history of the large number of people who have been killed in "clashes" following public gatherings, as well as from the comments of some of the interviewees, it appears that there is a need for improvements to be made in relation to the Public Order Policing units. These would appear to include a need for improve planning and use of intelligence in relation to public gatherings, as well as for more effective leadership.

ix) Involvement of the private sector (mining industry)

Issues to do with the safety of persons in mine hostels are dealt with in another report.³¹ However potentially the private sector, and particularly the mining industry, should be requested to offer other assistance resources for the improvement of police services and including assistance with relocating or otherwise assisting in providing safety to witnesses.

x) General governance of area

The basic issues of concern relate not only to the functioning of the Criminal Justice System, but also to the basic governance of the area concerned. In particular it would appear that some of the informal settlements exist outside of formal state authority with the police unable to enter the areas in question other than in armoured vehicles, and the idea of satellite police stations having been rejected because of concerns about the safety of the police.

Along with the fact that the criminal justice system has been relatively ineffective in dealing with the perpetrators of serious crimes the absence of an effective police presence no doubt contributes to a sense of the impunity of the perpetrators which itself feeds into the difficulties being experienced in prosecuting the perpetrators due to the inability to secure the cooperation of witnesses and the community more generally.

The systems of control, which have established themselves in many of the informal settlements, are run by people who originate in the rural Eastern Cape. Thus one of the issues, which has to be addressed, is that, in a context where the authority of the formal structures of government, including structures of traditional government, has generally not been questioned, a new group of persons have established their presence in the area.

Effectively informal systems of control have established themselves in the absence of a concerted initiative by government to deal with the issues in the area. This reflects not only the inadequacy of measures implemented by the SAPS but also the inadequacy of general system of governance (which include the CJS) to adapt to the demands imposed by changing circumstances.

Sources of Information

A. Documents consulted

1. Memorandum to North West Premier on behalf of NUM from Cheadle, Thomson and Haysom (16/10/98) – contains list of incidents of violence to 12/10/98
2. Letter dated 10/12/98 from the minister for Safety and Security to Cheadle, Thompson and Haysom;
3. Draft letter from the NUM President (Motlatsi) to Deputy President Mbeki.
4. Attendance register and minutes of a meeting held on 18 October 1999 at the Rustenburg District Council Chambers.
5. Untitled document including list of incidents from 22/03/1997 to 12/10/98, list of "police actions to contain the situation", list of names and other details of suspects, statistics on violence by organisation, time of day at which violence has occurred and list of suspects. (19 pages)
6. Document ref s32/5/2/1(12) headed "Confidential - threat analysis 1997-1998" dated 1998-02-22, compiled by Capt Makaudi and Sgt Mabogola and signed under the name of Sr Supt Solomon.
7. Document headed "Report of Murder/Attacks on mine Workers – MPWU and Mfelandawonye- Marico Area Threat Analysis Murder and Robbery Unit Phokeng as on 1999-10-12. Part 1 details 23 murder cases. Analysis of problems in investigation, ballistic results. Part 2 details "murders involving Xhosa people from Gumba and Tsolo-Transkei. 16 murders are listed. Concludes with investigators comments.
8. Document headed "PROFIELE – AANVALLE OP MYNE: AMPLATS: MARICO AREA MPWU, NUM en MFELANDAWONYE". Lists persons arrested, suspects being sought, deceased persons, witnesses sought first under (A) MPWU/NUM sake and then (B) Mfelandawonye:TQ Sake. Concludes with notes on "Algemene inligting: rondom ondersoek van sake".
9. Document same as 7 except includes inserted 2 pages of hand written notes and excludes last page (16)
10. Document (dated 200-01-27 on second page) under SAPS fax cover sheet (dated 15-2-2000). Document is addressed from D/Insp Chomela to Cheadle, Thomson and Haysom and headed "Progressive Report: Mouth Piece Violence". After page 4 the document has various hand written affidavits or notes.
11. Document same as 10 under SAPS letterhead addressed to Provincial Commissioner. Includes 5th page that is not included in 10.
12. SAPS letterhead on front page of document headed "Progressive Report: Mouth

Peace – NUM Cases: Together Tsolo-Qumbu (Mfelandawonye Case Surrounding Amplats/Rustenburg). Dated 08. June 2000 (6 pages)

13. Document headed "Strictly confidential: murders and attacks on NUM, MPWU and other members" – hand-writing at top right hand corner says "from Amplats Security". (18 pages)
14. Document faxed under SAPS letterhead addressed to CSVR and headed "Result of Cases Regarding Mine Violence (Conflicts) NUM –MPWU. Fax imprint indicates date as 9 February 2001. (3 pages including covering letter). Document is a response to a list of queries sent through to Inspector Chomela at Phokeng Murder and Robbery.
15. Document titled "Report on Violence on the Amplats Mines" and dated November 1997. The document is a report compiled by the Network of Independent Monitors (NIM) compiled at the request of the National Union of Mineworkers (NUM).
16. Document titled "Investigative Report Into Eastern Cape Origins/Connections of Amplats Mine Killings". The report was produced in October 2000 by consultants in the Eastern Cape on behalf of the Centre for the Study of Violence and Reconciliation (CSV) as part of the work of the CRC.
17. Document titled "SSG Report for October 2000" by Prof. H. O. Kaya, Prof S. A Materechera and Dr B. K Mbenga.
18. Document by the Centre for the Study of Violence and Reconciliation, "A report on informal justice in the conflict at the Amplats Rustenburg mines".
19. Document by the Centre for the Study of Violence and Reconciliation titled "Patterns of Victimisation in the Amplats Conflict: an analysis of deaths.
20. Impasse at Amplats, *Mail and Guardian*, 5 July 1996.
21. Whether JCI's unbundling will unlock hidden value, *Mail and Guardian*, 12 May 1995.
22. JCI's unbundling gets lacklustre response, *Mail and Guardian*, 3 March 1995.
23. Insurance scheme behind mine wars, *Mail and Guardian*, July 18, 1997.
24. Key to spate of mysterious mine union assassinations? *Mail and Guardian*, 25 July 1997.
25. Union's reign of terror, *Mail and Guardian*, 10 October 1997.
26. CRC Report on Meeting with Bakgatla Ba Kgafela
27. CRC Report on Meeting with Cosatu

- 28.CRC Report on Meeting with BMEAWU
- 29.CRC Report on Meeting with Mouth Peace Workers Union
- 30.CRC Report on Meeting with African National Congress
- 31.CRC Report on Meeting with Amplats Mine Management
- 32.CRC Report on Meeting with Royal Bafokeng
- 33.CRC Report on Meeting with NUM
- 34.CRC Report on Meeting with ICD

B. Other books and reports

Elliott R. (1998) "Vulnerable and Intimidate Witnesses: A Review of the Literature" in Home Office. (1998): Speaking Up for Justice. Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System. London: Home Office Procedures and Victims Unit, pp. 99 – 208.

Injobo Ne Blandla (2000): Testifying Without Fear: A Report on Witness Management and the National Witness Protection Programme in South Africa. Report for the Centre for the Study of Violence and Reconciliation.

Maynard, W (1994): Witness Intimidation: Strategies for Prevention. Police Research Group. Crime Detection and Prevention Series Paper 55, London: Home Office.

Osterburg, James R and Ward, Richard, H (1998) Criminal Investigation: a method for reconstructing the past. Anderson Publishing Co. Cincinnati.

Schönteich, M (1999) Assessing the Crime Fighters: the Ability of the Criminal System to Solve and Prosecute Crime. ISS Paper 40. Institute for Security Studies.

C. Interviews conducted

No.	Organisation of interviewee	Date
1	Cheadle, Thompson and Haysom	19 July
2	SAPS	11 August
3	SAPS (telephonic discussion)	18 August
4	SAPS	22 August
5	SAPS	22 August
6	NIA	23 August

7	Department of Justice	23 August
8	SAPS	23 August
9	Department of Justice	24 August
10	SAPS	24 August
11	Department of Justice	24 August
12	Amplats Protection Services	28 August
13	Former member of Network of Independent Monitors	31 August
14	Sociology of Work Programme (telephonic discussion)	February 2000

Appendix A: Rough chronology of incidents of violence and related events

Date or time period	Events (IS – informal settlement; RS – Rustenburg Section; AS – Amandelbult Section; US – Union Section)
March 1994	Bophutatswana is re-incorporated into South Africa not much more than a month ahead of the April 27 election
15 May 1995	Unbundling of Johannesburg Consolidated Investments (JCI) comes into effect. Anglo American Platinum Corporation (Amplats) is created. Its main interests are the Rustenburg Platinum mines.
February – April 1996	Illegal strikes at US and AS following which Amplats pays out on the provident fund to workers represented by the 5 Madoda
Late June – early July 1996	28 000 workers dismissed following pay out following strikes around demands for payment of death benefits, PAYE deductions, UIF, long service money and a Platinum bonus.
31 July – 23 August 1996	Series of incidents in Sifikile area in vicinity of US. <ul style="list-style-type: none"> - Cornelius de Beer killed 31 July - Chief Pilane killed 15 August - Four killed and 48 injured (including one SAPS and one SANDF member) in first of major clashes when police conduct crime prevention operation in Sifikile on 23 August.
March 1997	First meeting of WMPU at informal settlement in Sifikile (Union is registered on 17 August 1997).
May – September 1997	First campaign of intimidation and killing (13 killed in 9 incidents in 3 month period) initiated by WMPU at Union, Rustenburg and Amandelbult Sections and in Transkei and continues despite efforts to "peace" initiatives: <ul style="list-style-type: none"> - Various NUM and SACP meetings disrupted by WMPU members during May; - Mxhamli and Qakathayo abducted and tortured by MP

	<p>on 14 May at informal settlement in Amandelbult;</p> <ul style="list-style-type: none"> - Various cases of intimidation and meetings where people are identified to be killed; - Roadwell Diale (NUM) killed on 18 June in Swartklip B Hostel (US); - Vukili Mfanti killed on 21 June in Transkei; - Eric Rixi killed on 23 June in change rooms at training centre (AS); - Peace Summit held at Hunters Rest Hotel near Rustenburg on 30 June at which peace agreement is signed; - Msizeni Mxhamle and two family members killed at home in Transkei on 8 July; - Simon Tshalana and his son Vuyisa killed on 12 July at Bleskop Hostel (RS) 12 July; - Mveli Tshalalala and Nomtsumbu Mnoumeni (both WMPU members) killed in Transkei on 13 July (apparent retaliatory violence); - NUM meeting disrupted and police roadblock fired on by WMPU members on 15 July at (AS); - Four WMPU members injured when shots fired and hand grenade hurled at them at informal settlement near (RS)(apparent retaliatory violence); - Mtheteley Lugomo killed on 6 August in Nkanene IS (RS); - Attempted murder of Templeton Njumba on 19 August at (RS); - Zibongile Mtebelexi (an WMPU member) shot and stabbed to death on 31 August after WMPU meeting at Ndelele IS (RS); - David Magadla (a WMPU member) killed on 5 September at Bleskop Hostel (RS).
November 1997 - June 1998	<p>At least 8 more killings in 6 incidents (8 month period):</p> <ul style="list-style-type: none"> - Gunshayikali Mqhwuka killed on 9 November at Smasha Block (AS) though body dumped in North West province; - Mawethu Maditsha killed on 10 January 1998 outside Bleskop hostel at (RS); - Richard Mzodweleni Mkosana killed on 22 February at Ndelele IS (RS); - Daniel Marambe, Grace Sekurwane and Patrick Teke killed on 29 March on Bleskop Hostel road (RS); - Thebalani Sibhodlwana killed on 7 May at (RS); - Alleged MP hit man Siphso Dzulani killed at Hammanskraal on 19 June 1998.
August – December 1998.	<p>Eight more killings in just over four months:</p> <ul style="list-style-type: none"> - Solomzi Somasethi killed on 3 August outside kitchen at Kanana hostel (RS); - Nicholas Zonela killed on 5 August at Turffontein shaft change house (RS); - France Tekana Rixi killed on 14 September at Kanana Hostel (RS); - Missionary Mpheni killed on 12 October near change house at Townlands (RS); - Isaac Ntselemané killed on 28 October at Ndelele IS (RS);

	<ul style="list-style-type: none"> - Sigwayi Maxini killed on 9 November at Shasalasa (Kanana village) (RS); - Sisa Gcokwana killed on 22 November in Ndelele IS (RS); - Mlindeleni Xalisas killed on 4 December near Zondela IS (RS).
25 April 1999	Kaizer Mpiyakhe convicted of murder of Roadwell Diale and Eric Rixi and another person and sentenced to 25 years imprisonment.
16 June 1999	Six killed and 13 injured in clash between WMPU and NUM at Nkanene IS (RS).
1 August 1999	Templeton Njumba killed at Jabula Hostel (RS).
12 March 2000	Four BMEAWU members killed and 14 others injured in a clash between WMPU and BMEAWU supporters at Smasha Block (AS).
11 April 2000	Mgcineni Sokhase sentenced to 55 years for murder of Simon and Vuyisa Tshalane
25 May 2000	Sindile Ncedani (WMPU member) killed at Shasalasa (Kanana village) (RS).
August – Sept 2000	Kaizer Mpiyakhe conviction overturned and released. Dies shortly thereafter in car crash.

Appendix B: The Clashes

No.	Date	Case Number	Persons killed and injured	Progress with case	Nature of incident
93	96-08-23	(Mogwase?) 238/8/96	Four people were killed and 48 injured after police responded to being fired on. One policeman and one SANDF amongst those injured.	The case was withdrawn, as the police could not prove cases against specific individuals from a group who had been arrested en masse.	Crime prevention operation in Sifikile comes under fire.
25	97-07-15	?	12 injured including four (alt 3) people seriously injured.	Managed to convict 22/23 people for public violence using evidence obtained with security	NUM meeting at Amandelbult disrupted by armed Mouth Piece supporters. One NUM member (L

				<p>cameras. Got 2 years each in Northam court but then were released on [presidential birthday] pardon after about 6 months.</p>	<p>Mashwane – see 24) chased by this group and only escaped death because of the arrival of mine security. The armed group reportedly left to go to Northam Platinum. A roadblock is set-up to disarm the group on their return to Amandelbult. Confrontation in which stones and rocks hurled, one police injured, police fire with live ammo and birdshot.</p>
<p>Appendix B: Clashes 84</p>	99-06-16	Thabane 113/09/99	<p>Six killed and 13 injured.</p> <p>Deceased:</p> <ul style="list-style-type: none"> - Luvuyo Sidwell Nokwe - Mdaniswa Zebekile (or reverse) - Mxolisi Majozini - Nicolaas Voti - Simthembile Dungelo - Zwelibalele Silwane 	<p>Temporarily withdrawn. DPP queries being attended to and suspects will be recharged soon.</p> <p>D13 identifies four suspects all on R10 000 bail. D13: (court result) Case withdrawn in district court while docket was at DPP over irregularity of bail given by SPP. (remarks) case still investigated</p>	<p>A clash between MPWU and NUM supporters at Nkanene on 16 June 1999. D13 states "Pondo's - NUM supporters and Bombvana's - MPWU supporters. Information regarding union affiliation of those injured is confusing.</p>

				and directions set by DPP to finalise investigation and suspect will again be arrested.	
83	00-03-12	Northam CR 118/3/2000	<p>Four BMEAWU members were killed. In addition to the four deceased at least 10 mine-employees and 4 non-mine employees were injured. Six of the injured were BMEAWU members while 3 were MPWU members and one was of unknown union affiliation.</p> <p>Deceased: J Kanazana M Jonkilanga M Manipa Z Zathu</p>	<p>Accused to appear again in March/April 2001.</p> <p>31/01/01: Inspector Minnaar says that docket is with DPP who is going to withdraw against some. They will appear again in March/April. D13 lists 14 accused and 5 persons against whom charges had been withdrawn (says that two of the latter are to be re-arrested).</p>	A clash between MPWU and BMEAWU supporters at Smasha Block on 12 March 2000.

Appendix C: Planned Killings or "Hits"

No	Date	Case Number	Deceased	Current status of case	Links to other cases
43	96-07-31	Mogwase CR 307/07/96	Deceased: Cornelius Petrus de Beer (10/99:Johannes)	Inquest held and case filed undetected	Mogwase 308/7/96 relates to same incident.

In relation to the murder charge D7 states that the case was withdrawn against the two suspects on 1997-10-10 due to a lack of sufficient evidence and the AG instructed that an inquest be held. Thereafter further investigation revealed that Kaizer Mpiyakhe was the first to stone the victim who then fell down where he was further attacked by other marshals. On the basis of the new evidence the case was discussed with the Senior Public Prosecutor and a warrant (J50) for Mpiyakhe's arrest issued. This case and 49 (Mogwase CR 129/11/97)

Mpiyakhe also linked to cases on 49 (9 Nov 1997) 15, 16 (21 June 1997) and 18 (23 June 1997) and 87 (November 97)

				were to be put on the role against the suspect.	
67	96-08-15	Mogwase 125/08/96	Deceased: Chief Pilane	Conviction obtained against T-man Mdiki and Sam Skhumba. Both sentenced to life imprisonment at Mogwase supreme court on 23/08/2000.	
15	97-06-18	Northam 45/6/97	Deceased: Roadwell (aka Rudwell) Diale	Conviction (of Kaizer Mpiyakhe) overturned. D13 says Mpiyakhe sentenced to 25 years imprisonment on 29 April 1999. Conviction overturned and set free in August 2000 (see notes re: uncertainty re-Mpiyakhe convictions).	Mpiyakhe also linked to case 49 (9 Nov 1997), 16 (21 June 1997), 18 (97-06-23), 43 (31 July 1996) and 87 (November 97).
16	97-06-21	Locality: Nthabankulu (alt Flagstaff) (E. Cape)	Deceased: Vukili Aaron Mfani (alt Mfanfa)	[unclear]	Kaizer Mpiyakhe listed as a suspect here as well as 43 (96-07-31), 15 (97-06-18), 18

					(97-06-23), 49 (9 Nov 1997) and 87 (November 97). May be unlikely that KM could be linked to murders in Northam on the 18 and 23 and one in Nthabankulu on the 21st (though might have instructed others to carry it out).
18	97-06-23	Northam CR 56/6/97	Deceased: Eric/Rick Rixi	<p>Conviction (of Kaizer Mpiyakhe) overturned.</p> <p>Not clear if Sokhasi conviction overturned as well as Sokhasi also convicted on case 22.</p> <p>Inspector Minnaar (31 January '01): says that Mpiyakhe was convicted with Sokhasi and Dlulane (killed see 68 – 98-06-19) on this case. D14 says that Sokhasi was sentenced to 10 years on this case.</p>	<p>Data is confused as to whether firearm is linked to 27 through Suspect X1 (d13 – p. 7) or 41 through Suspect J (D7 – p.9).</p> <p>D13 lists four accused of whom two (Mveli and Mmqumeni) were killed near Mquanduli on 13 July 1997 (see case 86), the third is Sokasi (who apparently was sentenced to 55 years on case 22) and the fourth is Mpiyakhe.</p>
21	97/07/08	Mapuzi Cr 5/7/97 (alt:	Deceased: Msizeni "teenage"	Case	MM abducted and tortured

		Umtata 5/7/97)	Mxhamle Nopiliti (sister of 1) Oliver -son of 1	withdrawn D13: Case withdrawn against four suspects - no evidence against them.	(case 11)
22	97/07 /12	Thlabane CR 67/07/97	Deceased: Simon Tshalane Vuyisa Tshalane	Mgcineni Sokhasi convicted and sentenced to 55 years imprisonment. Wiseman Wachala separately tried and convicted on this case and sentenced to 30 years imprisonment. D12: Sokhais sentenced on the 11 April 2000 to 55 years imprisonment (to serve 42.5 years). Wiseman Wachala (alt: Maxala) evaded trial and re- arrested on 6 July 2000. Has indicated that he wants to testify against 4 other suspects from Bleskop. D14 indicates that Wachala had indicated	Sokasi, and apparently Dlulane, also a suspect in case 18. Suspect C also a suspect in 46. Suspect G also a suspect in 33. Suspect Dlulani was shot dead on 98-06-19 (case 68)apparently after having indicated willingness to give state evidence. He was shot dead at Hammanskraal. (D7). Docket at Attorney General

				willingness to testify against Suspect C and four other suspects.	
86	97-07-13	Mquanduli CR 49/7/97	Mveli Tshabalala and Nomtshumbu Mnoumeni	There have been no arrests	
44	97-08-06	Thlabane CR 42/08/97	Mtheteley Lugomo (alt Mthethelene, Mtheteleli)	No suspects. Filed undetected.	He was also victim in 23 (97-07-15).
46	97-08-31	Boitekong CR 123/08/97 or Thlabane CR 123/8/97	Zibongile Mtebelexi (alt: Zigobile Mtebezezi)	<p>Sent to DPP for decision as to whether to proceed.</p> <p>Altogether 8 suspects identified in various documents. D13: only lists Suspect C (arrested), Suspect M (jail/released), Suspect X2 (to be charged again) and suspect H (jail/released) as suspects. Docket at DPP for decision and trial date. D14 says case docket sent to DPP, ready for trial. All suspects were traced but not charged. Only statements</p>	<p>Some suspects same as 65 (98-02-22). - Suspect B suspect in 46, 32, 50 and 65</p> <p>- Suspects O, I, H, and M in 50 and 65.</p> <p>- Suspect A in 65 and 70.</p> <p>- Suspect C suspect in 22.</p>

				obtained from them. No response as yet received from DPP.	
48	97-09-05	Thlabane CR 44/09/97	David Magadla (alt: Magadia)	Perpetrators unknown. Filed undetected.	
49	97-11-09	Mogwase MR 129/11/97	Deceased: Gunshayikali Mqhwewuku	Suspect (Mpiyakhe) is deceased. Thabazimbi murder and robbery awaiting death certificate after which case will be closed. D14 indicates that DPP from Mmabatho decided that Mpiyakhe (now deceased) and others be traced and charged in jurisdiction of Pretoria DPP as case occurred in Northam district.	Mpiyakhe also suspect in 16 (21 June 1997), 18 and 43 (31 July 1996). D7: facts are unclear but it appears that deceased was killed in attempt to kill Siphon Dzulane (suspect in 22 and deceased in 68) which was authorised by Mpiyakhe as Dzulane had demanded his reward for murders committed on behalf of MP. Deceased was either (i) other resident of Dzulane's house or (ii) one of the hit team sent to kill Dzulane.
28	98-01-10	Thlab CR 49/1/98	Mawethu Majola Mditshwa	Perpetrators unknown. File undetected.	D7: Same firearm used as in 65 (98-02-22).

65	98-0 2-22	Boit CR110/02/98	Deceased: Richard Mzodweleni Mkosana	Six suspects all acquitted on 22/11/99 due to witness refusing to testify in fear of their lives in open court after court declines application for case to be held in camera.	Seven suspects all common to case 46. - Suspect B suspect in 46, 32, 50; - Suspects O, I, H, and M in 50 and 46. - Suspect A in 46 and 70. Same firearm used as in 28(98-01-10).
56	98-0 3-29	Rust CR 1415.03.98	Daniel Marambe (alt. Maramba) Grace Sekurwane Patrick Teke	Inquest held and case dismissed as undetected 1999-03-15	
30	98-0 5-07	Marikana CAS 35/05/98	Thembalani Sibhodlwana @ Bollolana	Filed undetected. Unknown suspects.	D7: Ballistics results show connection with Katlehong CAS 28/08/97 - violence between ANC and UDM at Mandela Squatter Camp in Katlehong.
68	98-0 6-19	Temba CR 228/06/98	Deceased: Sipho Dlulani	Finalised as inquest. Police are waiting for the papers from the inquest court before closing the case. 1 March 2001: Inspector Jerry (082-809-190	Dlulani was suspect and had indicated willingness to give state evidence in case 12 July 1997 (22). Also (according apparently also named in docket for 18). Case 49 (97-11-09) was allegedly an

				7) says that there were witnesses but none of them could identify the hit men. They just knocked on the door and went in and killed Dlulane.	attempt to kill Dlulane – though motive is given as being Dlulane's demands for payment.
32	98/08/03	Rust CAS 117.08.98	Deceased: Solomzi Somasethi (or Somaseth)	<p>Two accused, Madlamba and Dubula, acquitted in Pretoria High Court, 22-24 August 2000.</p> <p>Different lists of suspects given in different documents. D12 lists only Madlamba and Dubula as suspects. Dubula not listed in other documents that list other 3 suspects. (D7: lists 5 other "additional suspects to be arrested".).</p>	<p>Deceased was a complainant in Boitekong CR 101/02/98 (case 50 of 22 Feb 1998) and vital witness in murder case Boitekong CR 110/02/98 (which is case 65). Suspects in these cases were released on bail. In addition to murder charge there is charge of defeating the ends of justice.</p> <p>Suspect B suspect in 46, 50 and 65. Suspect H suspect in 65, 50 and 46. Suspect P is also suspect in 70. One of the above is also chairman of WMPU at Kanana Hostel.</p>
33	98-0	Tlhabane	Deceased: Nicholas	Finalised as	Suspect G also a

	8-05	MR 22/08/98	Zonela Attempted murder: - Notaka Mzondeki - Lerato Paul Mankhoenyane	inquest. D12: Case filed undetected. Witness VIA (1) decline to give statement and to testify against suspects as known to him.	suspect in 22. Deceased was one of two people named to be killed at meeting on 97-06-01 (see case 12).
34	98-09-14	Rustenburg CR 648/9/98	Deceased: France Tekana (TF)	Trial date set for the 8th and 09th of March 2001 at Supreme Court in Rustenburg. Only Suspect Q is listed as arrested and charged. D12: Lists Suspect Q as arrested suspect and another Doni as "outstanding" suspect. No reference to Suspect J as suspect in this case.	Was complainant in 36 (08-98) - laid charges of intimidation against WMPU. Deceased shares surname with Rick who is complainant in 17 and deceased in 18. Suspect Q is also suspect in 35. Suspect J (see also 41) listed in some documents
35	98-10-12	Rust CAS 471/10/98	Deceased: Missionary Tshawe (Tembalani) Mpheni	Finalised as inquest and filed undetected. D12: still investigated for clarity J5646/2000. There is contradiction	Suspect Q also suspect in case 34. Allegedly suspects here were involved in planning 71.

				of witnesses pertaining identity of suspects.	
70	98-1 0-28	Boit CR 103/10/98	Deceased: Isaac Ntselemanne @ SandileComputor	Tried on 1 November 2000 at Pretoria Supreme Court. Both suspects acquitted due to technicality on inspection in loco. Evidence was convincing for conviction. D13: lists 6 suspects with four of them each on R1000 bail. No details regarding the other two. Says case at AG.	Suspect: - Suspect A also linked to case 46 and 65. - Suspect N linked to 65 but not in later documents (D12). - Suspect P linked to 32 but not in later documents (D12/13).
71	98-11 -09	Boit CR 36/11/98	Deceased: Sigwayi Maxini (or vice versa)	Accused was acquitted on 12-13 September 2000 at Supreme Court Rustenburg.	Pitsoane (11/8/2000) says: Maxini murdered for attending funeral of Mpheni (no. 35). People involved in Mpheni murder were involved in planning this one.
72	98-11 -22	Boit CR 79/11/98	Sisa Gcokwana	Filed undetected. Suspects unknown.	
73	98-1 2-04	Rust CAS 178/12/98	Deceased: Mlindeleni Xalisas	DPP decision not yet known.	

				D12: Two suspects. Case still in District court and will be despatched to DPP for decision. D13: says two are on R1000 bail each.	
76	99-08-01	Rust: CAS 5/8/99	Deceased: Templeton Njumba	Case further postponed to 24-26/04/2001 D12 (& 13): 12 October 2000 hearing in regional court. In addition to Suspect K "two suspects still outstanding identity unknown.	Suspect K also suspect in case 13 and 20.
81	00-05-25	Phokeng CR 250.05.2000	Sindile Ncedani	Still investigated - suspects unknown.	

Appendix D: Other incidents of violence and intimidation and other criminal cases

No.	Date	Case Number	Victims/Offence	Details of incident and progress with case	Links to other cases
(43)	96-07-31	Mogwase 308/7/96r	Possibly theft of official video camera and pistol	Register of police action regarding case 43 describes incident as involving stabbing to death of de Beer	This case appears to be related to killing of De Beer (case 43). Effectively part of

				and "official video camera and pistol taken. Case numbers given as 307/7/96 and 308/7/96.	same case rather than linked to it. Assumed that suspects are the same as for killing.
11	97-05-14	Not clear that case was opened.	Msizeni "Teenage" Mxhamli and Cosmos Qakathayo – kidnapping and assault GBH	Both are abducted and tortured by WMPU at Union Section. Allegedly by several hundred WMPU members who used wire and nails around wrists, ankles and head in Kangaroo court situation. Both are forced to pay R8000 each for their release. Management loans the money as a salary advance. Allegedly taken to the torture point by Mr Wepenaar (hostel manager). NUM report also suggests involvement of Mr Swart (Senior Personnel Officer), Mr Visser (Security officer), Mr Farmer (Manpower manager).	Mxhamli killed in case 21.
12	97-06-01	Not clear that case was opened	Nicholas Zonela Elliot Gandela - intimidation.	Zonela and Gandela are mentioned by name at a meeting of Mouth Piece Workers held at Nkanene. They are targeted to be killed. Zonela moves out of Jabula hostel for his safety.	Victim "Zonela" appears to be same as deceased in case 33 (98-08-05) 14 months later.
13	97-06-01	Not clear that case was	Zwelakhe Zono (NUM	Mentioned by name at MPWU meeting	Suspect K also suspect in 20 and

		opened?	committee member) - intimidation	held at Jabula hostel sports ground. He is targeted to be killed by Suspect K. Moves out of his house in Boitekong township in June after hearing that Suspect K was inquiring about his residential address.	76.
17	97-06-22		Clifford Metsing Eric Rixi	Both are targeted for killing at MPWU meeting at Nkanene It is stated that they will be killed before close of business on 23 June.	Eric Rixi killed the next day in incident 18 (97-06-23). Victim in 34 and 36 appears to be related to deceased. Two incidents involving Frances occurred 14 months after two incidents involving Rick.
19	97-07-06	Not clear that case was opened?	Amos Krone - abduction, extortion, assault.	Amos Krone abducted and forced to attend WMPU meeting in Smasha Block. Forced to make a false statement that NUM workers had disrupted a MPW meeting and that NUM members had killed Rixi (see 18). Also forced to pay R500 to MPWU. One "suspect" is identified.	Forced to make statement that Eric Rixi (case 18) killed by NUM.
20	97-07-07	Not clear that case was	Xhego Rudwesa (NUM	Threats against Xhego Rudwesa's life	Suspect K also identified as

		opened?	committee member)	are made by Suspect K at various MPWU meetings.	making threats in 13 and suspect in killing (76).
23	97-07-15	Not clear that case was opened?	Tetelele Lugomo (spelling?)	His home in Nkanene invaded by MPWU members. He was not home but they questioned his girlfriend as to his whereabouts and his bed was stabbed.	Killed on 97-08-06 (case 44) i.e. three weeks later.
24	97-07-15	?	William Kgaswane L Mashwane	Kgaswane is attacked by group of MPWU but manages to lock himself in the office. He is threatened with death. (Later) Mashwane is chased by the same group but saved by Mine Casspir.	Incidents apparently form part of 25 (clash).
41	97-07-19	Rust CR 654/07/97 (d6: 08/97)	Possession of unlicensed firearm	Complainant (JH Steyn) brought charges against 10 individuals, including Suspect J, for possession of unlicensed firearm. Case later withdrawn before ballistic tests. D7 (p. 3): the case was before court on 6 February 1998 and was withdrawn against all ten accused i.e. prior to receiving ballistic results. Docket to be disposed as withdrawn. Only Suspect J to be charged on Northam CAS 56/06/97 due to involvement of his firearm.	D7 says three firearms were seized: (p.9) Results firearm 1: Refers to firearm licensed to Suspect J with serial number 503430 which was connected to Northam 56/06/97 (i.e. case 18). Says under "results firearm 2: this firearm is not connected to murder at Bleskop Hostel Tlhabane CR 67/07/97. Firearm 3 is licensed to owner and not connected to any crime.

42	1997-07-25	Tlhabane CR	N. Magqabi - injured	Shots fired and hand grenade thrown at four WMPU members at Nkanene informal settlement. No arrests made.	
27	97-08-19 / (D1: 07-19)	Rust CAS/CR? 791/08/97	M T Njumba - attempted murder	Shot through the right leg at 17h20 at Jabula. Firearm confiscated and sent to ballistics. Suspect arrested but "Case withdrawn" . Contradictions in documentation: - DI refers to two attempted murder cases involving T Njumba one on 97-07-19 (case 21) and one on 98-01-10 (case 23). In relation to the latter it says that CR number is 791/08/97. However this is a number for a case opened in August '97.	Njumba killed in case 76. D5 & D7 & D13: suspect X1's firearm linked to Northam 56/07/97 [if this is 56/06/97 it is case 18]. D13 says firearm linked to 56/06/97.
50	98-02-22	Boitekong CR 101/02/98	Richard Mzodweleni Mkosana Solomzi Somasethi (or Somaseth)	Malicious damage to property case though facts in documentation are not at all clear. 2 victims Solomzi Somasetsi and Richard Mzodweleni Mkosana both of NUM but crime not clear. 7 suspects (same as 7 of 8 suspects in 46)	Mkhosana killed in 65. Somasethi killed in 32 was a vital witness in murder case Boitekong CR 110/02/98 (which is case 65). Suspect B suspect in 46, 32, and 65 - Suspects O, I, H, and M in 46 and 65. - Suspect A in 65 and 70.

					- Suspect N linked to 65 and 70. Some documents don't include Suspect N as suspect.
36	98-08-- -	Boitekong CR 128/08/98	Frances Tekana Rixi	Laid charges of intimidation against WMPU	France Rixi killed in 34. Possibly related to Eric Rixi – targeted, victim 17, 18.
91	99-07/8 ---		WMPU office	From CRC stakeholder meeting (19/07/00): Another incident took place in Northam. Alleged that WMPU office furniture was taken by persons associated with BMEAWU in July or August 1999, resulting in MPWU having to look for another office as persons from BMEAWU took occupation of that office next to the police station and still occupy it today. The conflict started at the top level and is now filtering down to the members.	
90	99-10-?	Mogwase CR 87/10/99 (Desmond); CR88/10/99 (J. Ndungane); CR 89/10/99 (Snaphu).	Robbery CR 87/10/99(Desmond), CR88/10/99(J. Ndungane), CR 89/10/99 (Snaphu)	From CRC stakeholder meeting (19/07/00): In 1999, certain MPWU members were on their way to Northam –they were ambushed- their car, cellphones, cash and chequebooks were all taken. The case was	Victims include person who is suspect in key murder cases in Appendix C and other believed WMPU "ringleaders".

				<p>reported at Mogwase to investigating officer Duncan. The following three case numbers have been opened: CR 87/11/11(Desmond), CR88/10/99(J. Ndungane), CR 89/10/99 (Snaphu) – These cases have still not been heard although there are rumours that the goods have been recovered. Alleged BMEAWU behind group who ambushed the WMPU members.</p>	
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Notes:

¹ See Centre for the Study of Violence and Reconciliation titled "Patterns of Victimisation in the Amplats Conflict: an analysis of deaths".

² See Centre for Study of Violence and Reconciliation report on issues of environmental safety in the mine hostels.

³ See Centre for the Study of Violence and Reconciliation "A Report on informal justice in the conflict at the Amplats Rustenburg mines".

⁴ From the first of October 2000 the abbreviated name for Anglo American Platinum Corporation changed from Amplats to Anglo Platinum. However the company will be referred to as Amplats in this report as this is the name by which the company was known during most of the period which is focused on in this report.

⁵ Document 16, page 5.

⁶ It should be noted that different documents give slightly contradictory accounts as to who the senior leaderships of WMPU was at its inception. Thus D6 (dated February 1998) states that at its initial meetings the new Union was introduced as follows: Kaizer Mpiyakhe – National President; Thandinkose Madidizela – Vice President; Maginisa Telford Nyati – Deputy National President; Danson Marogo – General Secretary; Ntomuzodwa Sobetshe – Deputy Secretary; Mqoduswas Mdabaso – Senior Roving Official; Tembelakhe Madiba Madyos – Senior Roving official. Document 16 (dated November 1997) agrees with Document 3 in relation to Mpiyakhe and Nyathi but says that the General Secretary was Piet Joubert. It refers to WMPU having 14 Executive members. Others who are listed by name are: Mathew Joubert – Chairperson, Peter McLeod - Head of the Disciplinary

Tribunal and legal advisor – Caesar Bungane.

⁷ Document 15, page 13.

⁸ Insurance scheme behind mine wars, *Mail and Guardian*, July 18 1997.

⁹ It should also be noted that various sources have suggested that sections of Amplats security, or persons employed in the Amplats administrative offices, or even members of Amplats management at a more senior level, in some ways colluded with WMPU, particularly during the earlier phases of the violence. In point iv) above it is suggested the seemingly unjustified willingness on the part of Amplats management to give in to the demands of the 5 Madoda in the early stages prior to the eruption of violence, suggests that the emergence of 5 Madoda was seen as an opportunity to undermine the NUM. Similarly some of those who have commented have raised questions about the seeming alacrity with which Amplats security assisted with raising the "ransom money" when Mxamli and Qakathayo were abducted and tortured. While the general version of events which is put forward in this report is agreed upon by virtually all of the sources which were consulted (both persons interviewed and documents) it needs to be clearly stated that the allegations about collusion by other sections of Amplats, need to be recognised as suspicions held by some people, but as suspicions which, while they cannot be disproved, are not supported by this report. Similarly others have also suggested that the violence was in some ways "political", with some suggesting that it was possibly linked to right wing elements in the North West province. Another strand to this argument has been to suggest that in some ways the conflict was a UDM-ANC conflict, with WMPU supposedly aligned to the UDM and NUM historically aligned to the ANC. However while there has been a history of right wing militancy in the area in the recent past and there were attempts to draw government and political parties into the issue during the 1996-1997 period, the information available at the time of the writing of this report did not support the idea of the violence having been "political" in nature, and this version of events was not supported by any of those interviewed.

¹⁰ D16.

¹¹ In one of the stakeholder meetings, a couple of incidents were also referred to in the July – October period of 1999 where BMEAWU members were allegedly involved in occupying WMPU offices and a robbery carried out against senior WMPU members.

¹² See also the report by the Centre for the Study of Violence and Reconciliation, "A report on informal justice in the conflict at the Amplats Rustenburg mines".

¹³ While we are dealing with an exceptionally small number of cases here and it is not appropriate to make statistical comparisons, we may note that, according to Schönteich, the national figure for murder cases resulting in a conviction as a proportion of cases prosecuted was 64% in 1998.

¹⁴ Note the names of most of the suspects are not disclosed in the report, as this would appear to jeopardise the confidentiality of police information.

¹⁵ As will be seen the latter case is not recorded in the list of cases in [Appendix C](#) as there is no reference to it in any of the documentation relating to the murders. The reference to this case in the telephone conversation with Inspector Minnaar is the first and only time this case has been referred to during the course of the research into the violence at Amplats.

¹⁶ It appears that Kaizer Mpiyakhe had also, at an earlier date, been convicted on a number of intimidation charges. According to one of the groups of interviewees, Mpiyakhe was charged on six counts of intimidation and convicted on 3 counts and was fined R10 000 for these offences. Prior to being convicted for murder he was apparently also arrested, granted bail, and then skipped bail on these charges but was rearrested and eventually convicted. According to the interviewee Mpiyakhe had also been fired from his job on the mine on the basis of his involvement in intimidation.

¹⁷ Murders which have occurred on the Lonrho mines east of Rustenburg, and which fall into the area of jurisdiction of the Bethanie Police station, have been investigated by the Garankuwa Murder and Robbery Unit. While many of the Mfelandawonye related cases have occurred in this area, the area has not really been affected by the WMPU related violence.

¹⁸ This does not only apply to SAPS documents but also to documents put together by other role-players such as Amplats Security. The document provided by Amplats Security for instance has no record of 68, 65 or 49.

¹⁹ According to one investigator, at one point a list was also put together of attempted murder cases linked to the violence. The intention was to review these cases but they "didn't get anything out of these cases".

²⁰ In terms of measures announcement by the SAPS in January 2001 these units are due to be shut down. Their place is to be taken by two types of specialised units in the form of "Organised Crime Units" and "Serious and Violent Crime Units" while many of their members are to be transferred to the Criminal Investigation Sections at Police Stations.

²¹ It was also suggested that this problem was further aggravated in that there continued to be hostility and mutual distrust between those that perceive themselves as part of the old Boputhatatswana and those part of the old South African systems.

²² According to one of the interviewees there is a specific team dealing with WMPU related cases in the Eastern Cape. However it is not clear whether this unit deals with "less serious" cases as well.

²³ At the time when interviews were conducted (August 2000) it was meeting once a week.

²⁴ In the prosecution of Kaizer Mpiyakhe three separate incidents of murder were consolidated on one charge sheet. However this still does not reflect a major change of investigative approach.

²⁵ The one exception to this observation appears to have followed the incident at Sefekile

on 31 July 1996 in which Cornelius de Beer was murdered. The register of police actions in document 5 says that following this incident Kaizer Mpiyakhe was arrested. The document says that he appeared before the magistrate's court on 1997-01-29. He was apparently found guilty and fined R10 000. The charges are recorded as having been two counts of intimidation.

²⁶ Apparently one of the other problems that has faced the investigation has been that of unreliable witnesses, people who have come forward but were not actually witnesses to the events apparently because they see the witness protection programme as a potential source of income.

²⁷ Among 28 other possible measures to prevent and deal with witness intimidation which have been suggested include, for instance, "requiring officers to ask witnesses if they have been intimidated, screens, mirrors, or videos for identification parades, protective custody, screens, CCTV and voice distorters, press reporting restrictions, not identifying the witness in court, friend in court schemes, increasing police patrols in witness's area. (Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System", p. 129).

²⁸ According to one interviewee there is one case of a docket that allegedly disappeared at the Tlhabane magistrate's office. The relevant office of the Director of Public Prosecutions was apparently investigating the case of the missing docket.

²⁹ See under the selection of victims in [Section 4](#) above.

³⁰ Some of the issues raised are generally applicable to policing in South Africa and not just to the Rustenburg area or North West province. Thus there would be many involved in policing issues in South Africa who would agree with the observation made at one stakeholder meeting that:

"SAPS members should be made aware that their work is different from the rest of the community. Combating crime is a full time responsibility and does not reduce at a given time of the week/month. It happens anytime. SAPS members should therefore be given off more frequently during the week and they should strive to having as many of their members on duty during weekends and public holidays as the tendency in South Africa is that more crimes are committed over these periods and we know that less officers are on duty during these times as they themselves are busy enjoying the weekends and public holidays. The few that are on duty cannot cope with the amount of complaints and it is inevitable that perpetrators are going to get away with their crimes more easily than during the week when SAPS have a much larger contingent of staff on duty".

³¹ See Centre for Study of Violence and Reconciliation report on issues of environmental safety in the mine hostels.