

# VIGILANTISM: A THEORETICAL PERSPECTIVE AS APPLIED TO PEOPLE’S COURTS IN POST-1994 SOUTH AFRICA

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## *Abstract*

*The article investigated vigilantism as phenomenon in South Africa. A metatheoretical framework was developed through which the constructed contextual and specific criteria were tested against one case study on people’s courts. The probability of the occurrence of vigilantism is more likely if the following context criteria are present Society experiences a state in disequilibrium, the state is dysfunctional, power vacuums exist and high levels of violence occur. People’s courts have been a continuous phenomenon in post-1994 South Africa. People’s courts qualify as vigilante groups and the context in which they occur is in line with the identified context criteria. This research has shown that vigilantism is a reality in post-1994 South Africa and a real threat to the authority of the state and requires the state’s attention and immediate action.*

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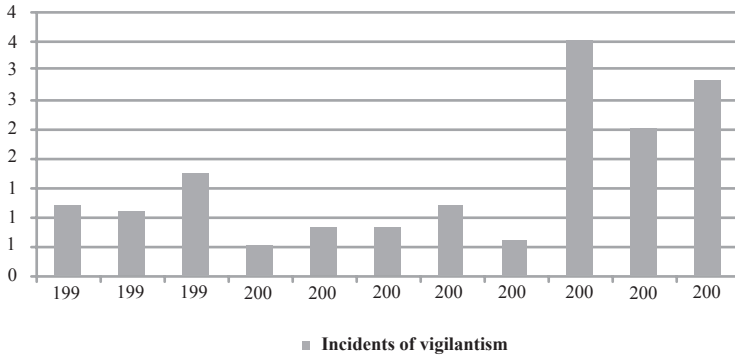
## 1. INTRODUCTION

“Several hundred people have died at the hands of self-appointed crime fighters and many others have been injured. Vigilante organisations and groups continue their criminal actions while the official crime-fighting agencies appear helpless” (Sekhonyane 2003:12). Incidents of vigilantism have become a regular scene in many townships and informal settlements in South Africa. Statistics of the Independent Complaints Directorate indicated that 71 people were killed in vigilante attacks during 2005 – double the number of incidents in 2001. Four hospitals in Gauteng and Pretoria indicated that, during 2006, there was a marked increase in the number of suspected vigilante trauma cases that they had treated (Maughan *et al.* 2006:1). Acts of vigilantism have become a regular occurrence in the post-1994 South Africa as illustrated in the following diagram, and will be studied here as a case study under the umbrella term “people’s courts”.

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## INCIDENTS OF VIGILANTISM BY PEOPLE'S COURTS AS RECORDED IN MEDIA REPORTS: 1997-2007



(Swanepoel 2008: 243)

Examples of more recent incidents of acts of vigilantism by South African communities are when members of a community of the Mpumalanga village, Lefiswane, beat a suspected rapist to death in March 2009 (Moselakgomo 2009:7). In April 2009 it was reported that the Iwandle informal settlement near the Strand experienced an increase in activities of people's courts taking the law into their own hands (De Vries 2009:4). Angry residents of Zithobeni in Bronkhorstspuit, Gauteng, stoned an alleged rapist and murderer in May 2009 and in November 2009 Pietermaritzburg townships experienced a surge of vigilante attacks by community members in an attempt to safeguard their neighbourhood (Waka-Zamisa 2009:3).

Important contextual features of people's courts in South Africa are that they exist only in townships and even more so in informal settlements that are characterised by poor infrastructure and high levels of poverty and unemployment. High crime rates are prevalent in these areas and, according to Sekhonyane (2003:12), in these communities "no crime is small". These features, according to Nina (2000:23), turn a "good" community into a "bad" one due to their willingness to take the law into their own hands.

People's courts are no new phenomenon in the South African dispensation and regular incidents of vigilantism took place in townships through people's courts in the early 1980s and 1990s (Minnaar 2001:6). One would have expected that this phenomenon would have disappeared after the first democratic elections had taken place in South Africa in April 1994. However, the reality is that not a year has passed, since that election, without incidents of vigilantism through some form of people's courts.

People's courts as a case study for vigilantism in post-1994 South Africa will be utilised in this article to demonstrate a theoretical framework developed to explain the occurrence of the phenomenon. The theoretical framework comprises specific and context criteria that were identified through the study of sources referring specifically to the phenomenon and sources that do not specifically refer to the phenomenon but which provide insight into features on political decay of which vigilantism is also one. People's courts will however first be conceptualised so as to provide a clear understanding of what is meant with the concept.

## 2. CONCEPTUALISATION OF PEOPLE'S COURTS

According to the Oxford Dictionary of Law (Martin & Law 2006:136), a court is described as "(a) body established by law for the administration of justice by \*judges or \*magistrates". A judge is described as "(a) state official with power to adjudicate on disputes and other matters brought before the courts for decision" (Martin & Law 2006:295). A court is therefore a legal structure that has the authority of the state to decide over matters brought before it. The state must then prove beyond reasonable doubt that a person is guilty and the accused has the right to legal representation and is also given the opportunity to defend him-/herself during the proceedings.

Issues that contribute to popular disenchantment with courts of state are the low arrest and prosecution rate. According to a report from the South African Law Commission, in only 27 out of 100 murder cases someone is arrested and only 22 of these files eventually go to court; in only 13 out of 100 incidents of armed robbery someone gets arrested and only ten of these files go to court; and only in 57 out of 100 rape cases someone gets arrested and only 44 of these files go to court. Only six out of 100 violent crimes that do go to court end with a guilty sentence. The report also indicated that criminals in South Africa are under the impression that they will not be punished for their crimes and this is due to the SAPS not being able to successfully investigate the majority of cases classified as violent crimes to the point that it goes to court and with a high probability of a guilty sentence (Steenkamp 2007:5). The Deputy Minister of Justice, Johnny de Lange, said in Parliament on 5 August 2008 that one million crime scenes are not even visited by the SAPS due to a shortage of capable people that can collect evidence. There is a massive shortage in detectives with too little resources to investigate crime. De Lange acknowledges that the criminal justice system is dysfunctional (Steenkamp 2008:1-2).

What is then the difference between a court of the state and a people's court?

- A court of the state provides formal justice while justice of a people's court, according to Knox and Monaghan (2002:11), is informal as it acts outside

the boundaries of the formal criminal justice system. People's courts involve themselves in acts of vigilantism which is defined in this research as the illegal and violent acts or threats of such acts directed at individuals threatening the community order, by self-appointed law enforcement groups consisting of private citizens in reaction to the absence or ineffectiveness of formal systems and aims to reclaim order, protected by a conspiracy of silence.

- People's courts "do not distinguish between civil and criminal matters but deal with problems" (Schärf 2001:46) while the courts of the state do distinguish between the two.
- People's courts are more accessible to people living in that community, while access to the courts of the state is impeded both by physical and resource-related constraints as well as the people's lack of understanding of the complex legal system. Victims, witnesses and the public in general often do not understand why an accused person can be granted bail for an offence that is regarded as serious (Sekhonyane & Louw 2002:20, 22). The use of customary law in people's courts consists of rules and customs of the particular community. African people still identify with their customary law, rather than with other laws that baffle the learned and ordinary people alike (Peters 1999:9).
- People's courts provide immediate judgement as well as punishment, while a state court can take months, even years, before a verdict is given. In a people's court the accused is not given the opportunity to defend himself and the people's court does not have to prove anything as it accepts the complainant's word as enough proof.

From these differences between a court of state and people's courts one can derive the following characteristics of people's courts: They consist of private citizens of a community, they deal with all community problems, civil and criminal, they are accessible to the community, they act as judge, jury and executioner against an alleged wrongdoer, they act outside the law and they resort to violent methods.

A people's court can be described as a *community-based informal structure that takes over the judicial function of the state within that community by acting outside the law as judge, jury and executioner with the aim of providing order in the community through meeting out violent punishment to alleged wrongdoers.*

### **3. THEORETICAL FRAMEWORK**

A theoretical framework for the phenomenon has been identified through the research of contextual conceptual frameworks on political decay of which vigilantism is a feature and specific conceptual frameworks that specifically analyse

the phenomenon. The sources referred to in respect of the following are mentioned in the footnote:<sup>2</sup>

A common denominator that has been identified in all the **specific and contextual** conceptual frameworks supports is that vigilantism is a feature of political decay. Political decay is described by Duvenhage (2003:44) as negative political change and is associated with an inability of the state to provide law and order, stability, security and good governance to all its citizens.

The reason for this deduction is that its occurrence is always explained on the basis of a lack of law and order, a weak government, an inability of the state to provide security and social needs, social organisations (vigilantes) having their own rules, low bureaucratic abilities and the state failing to perform all its functions.

From these sources the following contextual and conceptual criteria for the occurrence of vigilantism were identified:

**Specific criteria** – when an organisation complies with the criteria it can be classified as a vigilante group/organisation. The criteria are that vigilantism is more than a sporadic act, as it involves premeditation, planning and organisation; it is conducted by private citizens acting on a voluntary or contract basis; the activity is undertaken without the state's authority or support; force is either applied or threatened; it is a reaction to crime and social defiance, in other words a reaction to the real or perceived transgression of institutionalised norms; personal and collective security, in other words vigilantism, aims at offering people the assurance that established order will prevail; and the presence of a conspiracy of silence.

**Contextual criteria** – when present the occurrence of vigilantism is very likely. These criteria are present firstly when a society experiences negative change/disequilibrium and there are low levels of need satisfaction. According to Duvenhage (2003:44) a state of disequilibrium is associated with the inability of the

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2 **Specific conceptual frameworks:**

- Strange's work *The retreat of the state... of 1996*;
- Black's paradigm *The behaviour of law of 1976*; and
- De la Roche's contribution of 1996 to that of Black's paradigm;
- Abrahams' work *Vigilant citizens Vigilantism and the state of 1998*;
- Johnston's paper of 1996 *What is vigilantism?*; and
- Minnaar's works, *The new vigilantism in post-April 1994 South Africa Crime prevention or an expression of lawlessness? (2001)* and *The new' vigilantism in post-April 1994 South Africa Searching for explanations (2002)*.

**Contextual conceptual frameworks:**

- Huntington's theory *Political development and political decay of 1965* and his subsequent and extended *Political order in changing societies of 1968*;
- Duvenhage's perspective on *Political decay as a pattern of political change a theoretical-exploratory perspective of 2003*;
- Migdal's theories *Strong states weak states of 1987* and *Strong societies and weak states of 1988*;
- Geldenhuys's *State collapse of 1999*; and
- Zartman's theory *Collapsed states of 1995*.

state to provide order, stability, security and good governance from which the need for people's courts may grow to establish order again. The second criterion is a dysfunctional state and refers to a state with low levels of institutionalisation or low bureaucratic abilities and high levels of corruption. Due to these two criteria where the state is unable to perform its basic functions, power vacuums occur which is the third criterion. The result is an enormous security industry, but as Schönteich (1999:24) puts it: "Vigilantism is often the poor man's version of private security." The last criterion is the presence of high levels of violence which includes high levels of violent crime. High levels of violence in a society in transformation refer to high levels of political violence, communal violence as well as high levels of crime, especially of violent crime, with low levels of prosecution. As crime is given as the main reason for the occurrence of vigilantism, continuous high levels of crime will result in the recurring presence of vigilante groups.

#### **4. APPLICATION OF CONTEXT CRITERIA TO PEOPLE'S COURTS**

Vigilante groups are active in townships, but more so in informal settlements where poverty, unemployment and crime rates are very high. Because the majority of the incidents take place in informal settlements and to a lesser degree in the more formal townships, the focus of the context criteria will be applied to these areas in South Africa.

The context criteria that will be individually analysed against the case study are a society in disequilibrium, a dysfunctional state, the existence of power vacuums and a high level of violence. The aim will be to determine whether the context from 1994 until the present in townships and informal settlements in which people's courts are formed and operated was and still is conducive to the occurrence of vigilantism. The focus will therefore be on townships and informal settlements during the period 1994 to 2008.

##### **4.1 A society in disequilibrium**

Apartheid policies left the majority of South Africans living in a highly unequal society. Zegeye & Maxted (2003:1) write that a situation of "plenty amidst poverty" existed. They further report that the first fully representative household income survey done in 1993 found that 19 million people, just under half of the population at that time, were living in poverty. The first democratic elections held in April 1994 created very high expectations in many people who hoped that the inequality would diminish and that all would benefit. However, a survey indicated that, of the approximately 717 000 live births in 1999, 75% were born into low-income households and 45% of the population, about 18 million, lived on less than \$2 a day as measured by the World Bank (Zegeye & Maxted 2003:10). Patterns of

political instability therefore existed and, according to Huntington (1991:69), high expectations and great inequalities “create stress and strains in the social fabric”, stimulating political mobilisation and demands for political participation. Davies (1971:372) explains that continuous low levels of need satisfaction will result in conflict. The continuous high levels of poverty after the first democratic elections in South Africa resulted in people losing faith and viewing the state as not in transformation – positive change – but rather in disequilibrium – negative change.

In an analysis conducted in an informal settlement in the Vaal Triangle it was found that the unemployment rate was 94% among respondents and 80% among their partners and two thirds of care-givers had an income of below R500-00 per month (Oldewage-Theron *et al.* 2005:13). This indicates that the unemployment rate in informal settlements is extremely high and as a result the poverty rate as well. A study done in 2006 in three informal settlements in the Cape Metropolitan area found that unemployment levels were 39,5%, while 14,3% of households in these settlements often went hungry and a further 39,4% of households occasionally went hungry. About 36% of people in the Cape Metropolitan area lived in poverty in 2005, which is up from 25% in 1996 (Anon. d 2006:1).

The need satisfaction in South Africa’s poor townships and informal settlements is extremely low, since 27,1% of South Africans are ultrapoor, meaning 27,1% of people in the country often go hungry (Pauw 2005:1). This is directly linked to the high unemployment rate, especially among Africans who mainly reside in townships and informal settlements. This situation was also a continued reality in these residential areas from before the first democratic elections in April 1994 and is still a reality. Duvenhage (2003:67) writes that low per capita income and the gap between rich and poor are factors contributing to political decay. South Africa was and still is experiencing features of political decay as more than 25% of its population is ultrapoor and 50% of the population is classified as poor. To more than half of the population, a state in disequilibrium is a reality due to the continuous low level of need satisfaction.

## 4.2 Dysfunctional state

A growing number of people are living in informal housing, such as shacks in informal settlements in South Africa. The number grew from 1,05 million in 1996 to 1,38 million in 2001. According to Oldewage-Theron *et al.* (2005:13), 13,5% of all South African households live in informal settlements. Informal settlements refer to areas where people do not have any legal tenure to the land they occupy; the settlements are outside the formal planning process and the dwellings are informal as they are built by the people themselves from basic materials. These households lack or have very low levels of basic services such as water and sanitation. This was also highlighted through service delivery protest action of which by September

2009 63 major incidents had taken place across South Africa which was double the number when the previous high was experienced in 2005 (Tromp 2009:8).

Citizens involved in vigilante activities of people's courts have no confidence in the police's ability due to their capacity and competency problems. The community of Ezibeleni who had experienced vigilante attacks on alleged criminals complained that they were tired of local police who could not assist them as they were "hamstrung by insufficient resources" (Kabeli 2006:3). South Africans are, according to Makgamele (1999:5), frustrated either by insufficient police services or a justice system that metes out lenient sentences. The Independent Complaints Directorate (ICD) also indicated in a report that there was an increase of 18% of reports received from the public indicating serious criminal offences allegedly committed by the police (Benton 2005:1). This is one of Zartman's (1995:10) ultimate danger signs for a state in collapse as the state loses control over its own state agents such as the police who are consistently breaking the law themselves. According to Faull (2007:9), South Africa has high and rising levels of corruption, and is not implementing anticorruption strategies effectively, also in the security sector. He further wrote that although the Code of Conduct applies to all SAPS members it is easily ignored at station level due to a lack of management. There is also a culture of silence within the police, which hampers the execution of police anticorruption measures. This indicates that, although the government has good policies, the lack of implementation thereof indicates low bureaucratic abilities together with high levels of corruption which are characteristics of a weak state (according to Geldenhuys 1999:43).

The dysfunctionality of the state with regard to service delivery as well as high levels of corruption in the SAPS caused and are still causing power vacuums as people, especially in poor communities, resort to vigilantism through people's courts to find a sense of control within their communities. This situation turns "good communities" into "bad communities", placing the state in an environment of political survival.

### **4.3 Power vacuums**

Most of the cases reported to the ICD related to charges of neglect of duty by police, while 6,4% related to the failure or refusal to perform duties (Benton 2005:1-2). Another problem is that 25% of police officers are illiterate, resulting in 75% of serious crime cases not even reaching the courts due to an inability to take down statements from victims (Mabasa 2004:2). The lack of willingness as well as of capacity within the police result in power vacuums as people lose trust in the system and in some communities do not even bother to report crimes, but prefer dealing with it through local people's courts. Shaw and Camerer (1997:16) write that crime prevention is a local issue as it is shaped by local conditions and circumstances.



Poor people in townships and informal settlements cannot afford to pay for security offered by security companies. They also are not able to install security measures; therefore, if the state cannot protect them, they will resort to vigilantism. Abrahams's (1998:24, 170) approach is that vigilantism typically emerges in poor communities, especially as law enforcement is inadequate in these areas and the state's authority is spread unevenly. One notices therefore the rise of Migdal's (1987:402) strongmen who take over the role of the state, where it is lacking in these communities, and provide their own security in the form of vigilantism. The state is therefore undermining its own sovereignty due to its inability to perform all its basic functions to most of its citizens most of the time.

Power vacuums, specifically with regard to the provision of personal security, have existed since 1994 and still exist – the continuous vigilante activities of people's courts are proof of this. High levels of violence would also then be present, as will be discussed under the next context criteria.

#### **4.4 High levels of violence**

A survey done of city victims in Pretoria found that people living in townships and informal settlements were far more worried about safety at night than those in the suburbs. 70% of residents in informal settlements and 63,5% in townships felt very unsafe at night. In Durban 48% of people living in townships and 57% in informal settlements felt unsafe at night (Anon. a 1998:4). A statistics release in Parliament in September 2009 indicated that townships experienced the brunt of burglaries and robberies during 2008: more than 10 000 homes in 12 major townships were either robbed or burgled and 1 146 murders occurred (Chuenyane 2009:8). The residents of the KwaMashu Township live in fear with 300 murders in 2007 and 236 in 2009 (Olifant 2009:8).

According to Knox and Monaghan (2002:65), the poor, especially Africans, tend to be the victims of violent crime. The poor experience a disadvantage with regard to protection from the state. Knox and Monaghan (2002:65) further write that for people living in townships and informal settlements, fear of crime and victimisation is a daily reality; therefore the communities view victims of vigilante attacks as deserving the treatment they receive.

The percentage of violent crime in South Africa is high and it is the nature and extent of violence that sets this country apart from others. Although the state boasted about crime rates dropping, it must be kept in mind that crime rates were exceptionally high and that a drop in the crime rate is not experienced as such by the public. For example, the figure for murder in 2004/2005 was 18 798 which represented a ratio of 40,3 per 100 000 of the population that far exceeds the international norm of 5,5 per 100 000 (Burger 2006:110). Violence is therefore a continuous reality within communities of especially the poor. Geldenhuys

(1999:42-43) and Zartman (1995:207) argue that high levels of violence create a context conducive to the existence of political decay. The high levels of violent crimes that continue to be an issue in South Africa even in 2008 also indicate low levels of institutionalisation within the criminal justice system, failing people in poor communities. Duvenhage (2003:54, 66) contends that the inability of the state to provide security and stability to its citizens, causes institutions outside the government to take over these tasks. People's courts are therefore an indication that the state is in political decay and the vigilante activities of these people's courts causes a further increase in violence as their methods are of a violent nature.

High levels of violence, especially violent crime, have been present within poor communities in South Africa since 1994, making the context conducive to the occurrence of vigilantism and indicating a state in political decay.

## **5. APPLICATION OF SPECIFIC CRITERIA TO PEOPLE'S COURTS**

The specific criteria for vigilantism will be applied to people's courts in order to determine whether they can indeed be classified as vigilante organisations. The period from which examples will be taken to support or refute whether or not people's courts do fit a specific criterion will be April 1994 to early 2008.

### **5.1 A reaction to crime and/or social deviance with the aim to provide order**

Minnaar (2003:3) writes that communities that experience lawlessness and minimal police presence see community vigilantism as a legitimate effort to maintain a form of law and order. It would appear that, over the years, vigilante activity has become more prevalent in the informal squatter settlements where very little official control is exercised or basic services are delivered by the authorities. The informal settlements that have received a huge amount of media attention, due to the vigilante activities taking place there, are Khayelitsha, Gugulethu, Boipatong, Nyanga, KwaMaye, and Ivory Park. In combating vigilantism, the police have consistently called for communities not to take the law into their own hands but rather to hand suspects over to them with any evidence which could contribute towards proper prosecution of the suspects. However, vigilantism responds, according to Abrahams (1998:170), to a range of persistent imperfections and unless those imperfections are rectified, people's behaviour with regard to the utilisation of people's courts will not change.

According to Ger (1999:8), the function of people's courts is to determine what wrongful act has been done to threaten peaceful co-existence in the community and then to do what is necessary to restore order. If their role in deterring criminal behaviour within a community is removed, they may suffer a corresponding loss of respect. With a loss of respect the people's courts lose legitimacy and without

legitimacy they will be ineffective and no different from the formal courts whose ineffectiveness is the reason for the existence of people's courts.

John Mdayi, a "judge" in the A-team people's court, said that people have lost faith in the justice system. In a democracy, people are free to do what they want. Their aim is to restore law and order in their community (Pokwana 1999:1). Clearly people feel that the state does not have the ability to provide security to them, resulting in, as argued by Duvenhage (2003:56), many role-players competing to perform this function. In other words, as Du Toit (1995:407) explains in his analysis of Migdal's theory: "Bypassing the rule of law has become a form of survival" for people in townships and informal settlements.

People's courts therefore comply with this specific criterion as they are formed in reaction to crime and aim to provide order within their communities.

## **5.2 Conducted by private citizens on a voluntary or contract basis**

An example of private citizens becoming involved in vigilante activities on a voluntary basis is that of the Gugulethu community in the Western Cape that has been plagued by crime for years. Cases reported to the Gugulethu police were not attended to and the community felt that the police were collaborating with the gangsters. The relationship between the community and the police soured with time and the community started reporting crimes to the community police forum. The community of Gugulethu reached the end of their tether in June 1998 when a journalist was assaulted by SAPS members when he reported a vehicle accident at the Gugulethu police station. The community held a sit in at the police station in protest against the situation and demanded better service to the community. Government representatives promised that steps would be taken to deliver a better service to the community. Nothing came of it and the community then started reporting their criminal-related cases to taxi drivers at the Gugulethu taxi rank, who became known as the law-enforcing zone committee, i.e. a people's court. The Gugulethu taxi rank became an informal charge office where residents queued to lay charges and seek help in recovering stolen property (Ntabazailila 1998:13).

The A-team of Ezakheni is on the other hand unemployed people who are voluntarily providing the service of running a people's court for the community (Govender 1997:21).

The Peninsula Anti-Crime Agency (PEACA) in Khayelitsha runs a charge office from a metal shack and provides security services to its community such as protecting old women when collecting their old age pension, but on the other hand also beating confessions out of crime suspects (Hootnick 2003:55). PEACA is a clear example of a people's court run by private citizens that provides services to the community of which not all is vigilantism by nature, but that they do cross the legal line is, however, clear. PEACA also distinguishes itself by taking a 10% cut from money collected

from a respondent to pay for food and their phone (Tshehla 2003:4). This provides an exception as a vigilante group can also act on a contract basis.

These examples of people's courts operating in post-1994 South Africa support Zartman's (1995:1) argument that when a state collapses, order and power are up for grabs by local groups. A collapsed state or, as Geldenhuys (1999:43) terms it, a weak state, lacks internal cohesion and has low bureaucratic abilities. South Africa lacks internal cohesion as some communities provide their own security separate from the state due to the state's low bureaucratic abilities in especially the criminal justice system. The specific criteria of vigilante acts being conducted by private citizens on a voluntary basis are therefore also relevant to people's courts.

### **5.3 Premeditation, planning and organisation**

People's courts, guilty of vigilantism, do indeed comply with the characteristic of premeditation, planning and organisation. Examples indicating this are situations where a criminal's bail in the state court is being paid by the community for the alleged criminal to be judged and punished by the people's court. In July 1999, residents of the Winnie Mandela squatter settlement east of Johannesburg joined forces to raise the R4 000 bail money for accused murderer Johannes Manamela. As soon as he stepped out of jail, he was taken to a people's court, quickly judged and killed by the mob (Dempster 2002:2). This action taken by members of the Winnie Mandela squatter settlement was well-planned and well-organised. The people's court in Ezakheni, known as the A-team, is also well-organised and acts with premeditation as it tracks down suspected thieves, rapists and murderers before making a public spectacle of them as they have to march down the street with the goods that they have stolen. They even occasionally travel as far as Gauteng and Durban to hunt down criminals (Govender 1997:21).

People's courts therefore act like Migdal's (1987:402) strongmen. They, and not the state, make the rules within their communities, diluting the state's power and indicating a state in political decay.

### **5.4 They act outside the law and it always involves violence**

The people's court, ran by the Eyona taxi association, took over policing in Gugulethu. The courts handle more than 15 cases a day and are heavily biased in favour of the complainant. Suspected criminals are frequently sjambokked in the "court", sometimes until they lose consciousness. Some even die as a result of their injuries (Pokwana 1999:1). In July 1999 eight men from this people's court in Gugulethu were arrested by the police and charged with kidnapping, attempted murder and murder (Mokwena 1999:3) – all acts of extreme violence.

The so-called Cleaners punish those who commit serious crimes such as murder and rape by shooting them dead and the accused of other crimes are sjambokked. The community also mandated this people's court to patrol the streets at night. Strangers who are found in the streets are simply sjambokked (Kempen 1999:8).

The taxi operators of Langa in the Western Cape, having taken over the SAPS's functions, also beat up suspects before handing them over to the police and even as recently as early 2004 a suspected criminal was stoned to death along with his brother who tried to intervene (Anon. c 2004:8).

Other areas in the Western Cape that have regular incidents of vigilantism under organised people's courts are Khayelitsha and Alexandra. These courts were responsible for the necklacing of some suspected criminals.

People's courts also comply with this specific criterion and fall within Huntington's (1965:416) praetorian societal circumstances which are "a society which lacks law, authority, cohesion, and discipline and consensus, where private interests dominate public ones". People's courts act like minimilitaries within their communities.

## 5.5 A conspiracy of silence

People rarely report or come forward as witnesses when suspects are killed or badly beaten after having been judged by a people's court, even if thousands witnessed the crime (Minnaar 2003:2). The reason for the silence is either fear or consent or both.

Residents reacted with anger to the arrest of members of the Gugulethu people's court in 1999, because the men were providing an invaluable service in combating crime in their community (Mabaso & Gophe 1999:2). On 30 July 2003 an angry group of pro-vigilantism protesters from the Lindelani informal settlement near KwaMashu marched to the Durban North police station protesting against the arrest of a man accused of being involved in the killing of three suspected criminals in the area. The suspects were hacked and stoned to death. The people demanded the man's release (Anon. b 2003:1). The fact that people support vigilante action in certain areas and react in anger when people are arrested when involved in such activities is a clear indication that communities will not testify against such people or even report such crimes to the SAPS but rather comply with a conspiracy of silence.

Makgalemele (1999:5) writes that members of the community that do indeed inform the SAPS about those involved in vigilante activities are harassed and intimidated by the rest of the community as happened at Orange Farm in Gauteng.

One of Zartman's (1995:10) characteristics for a state in collapse is when power moves to the periphery and falls into the hands of power-grabbers or future warlords. People's courts intimidate and terrorise people within their communities, much like warlords, enforcing their silence when it is not voluntary. People's courts are therefore an indication that the state is weak and has lost some of its power.

## 6. CONCLUSION

Many people's courts across the entire South Africa are crossing the line by taking the law into their own hands and are taking on the characteristics of a vigilante group, resulting in them not only breaking the law and undermining stability themselves, but, in a sense, becoming the law in their respective communities. Such non-state groups, according to Van Creveld (1991:225) are not recognising the state's monopoly over violence and are therefore undermining the sovereignty of the state. Although Van Creveld does not refer to vigilantes as one of these non-state groups, vigilante groups can also be classified as a non-state group that undermines the sovereignty of the state. But as with the previous two case studies, people's courts are only temporarily in the phase of vigilantism, although for longer periods as they receive much less attention from the state than prominent vigilante groups such as People Against Gangsterism and Drugs (PAGAD) and *Mapogo-a-Mathamaga*. People's courts' level of vigilante activity also depends on the level of dissatisfaction and frustration within the community, meaning that a people's court can be very active in one month while inactive in the next as criminals may have fled the area or the state may have acted in an acceptable manner.

The level of organisation and planning that is evident in the examples given indicates that vigilantism in post-1994 South Africa is not sporadic and isolated cases of mob violence. This indicates that South Africa is a state in political decay.

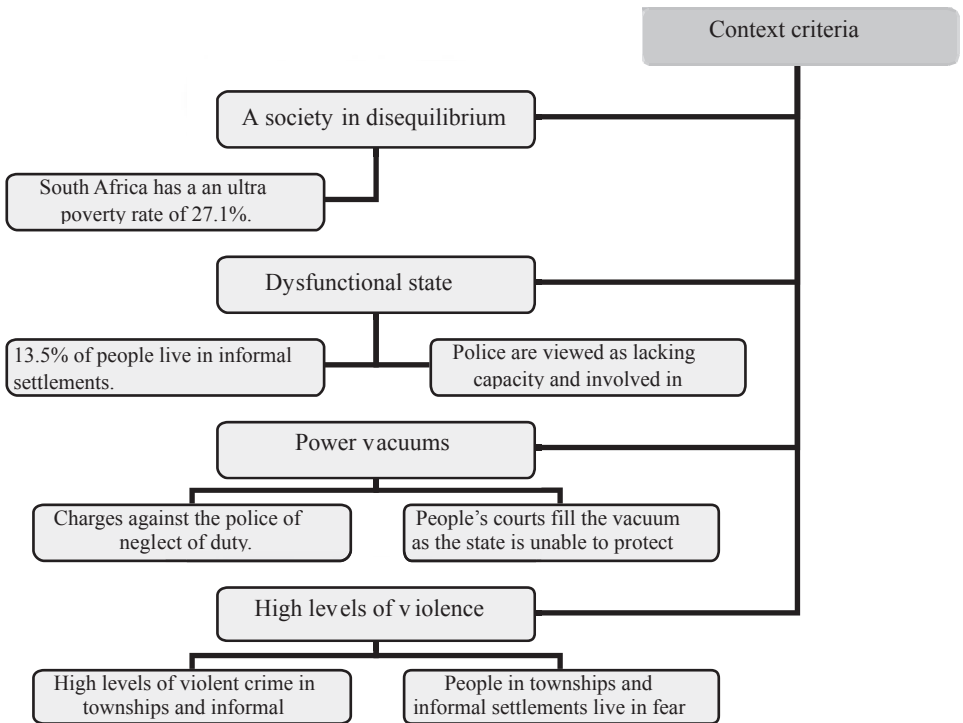
It can be concluded that the context theory is applicable to people's courts as a case study of vigilantism in post-1994 South Africa. The analysis indicates that South Africa as a society was and still is in a state of disequilibrium, specifically in townships and informal settlements. Townships and informal settlements also experience the state as dysfunctional, specifically with regard to its criminal justice system which is in a crisis, mainly due to the process of change and the continuous high crime rate. This situation is especially relevant in areas where urbanisation took place at a high rate such as around the larger cities – Cape Town, Johannesburg, Pretoria, Durban, Port Elizabeth and East London. Low levels of service delivery, specifically with regard to housing, added to this criterion being present. Power vacuums occurred because of this situation, which was taken up by people's courts. People's courts remained popular as they were active since 1994 up till early 2008 as an alternative structure in providing security, while the state's structure was not trusted or lacked capacity. Lastly South Africa also experiences high levels of violence. The fact that violent crimes in townships and informal settlements were and still are very high is important, adding to the fact that these communities are living in fear, especially at night, as the state is unable to protect them.

People's courts also comply with the specific criteria for vigilantism. They are established in reaction to the high crime rate in the communities in townships and

informal settlements. Their aim is to restore law and order. They are well-organised and act with premeditation. A conspiracy of silence is also present and people are intimidated not to divulge information concerning the people’s courts’ illegal activities. People’s courts are conducted by private citizens on a voluntary basis, but also in some instances on a contract basis. They flourish under the high crime rate in South Africa, which ensures their continued existence and support from the communities.

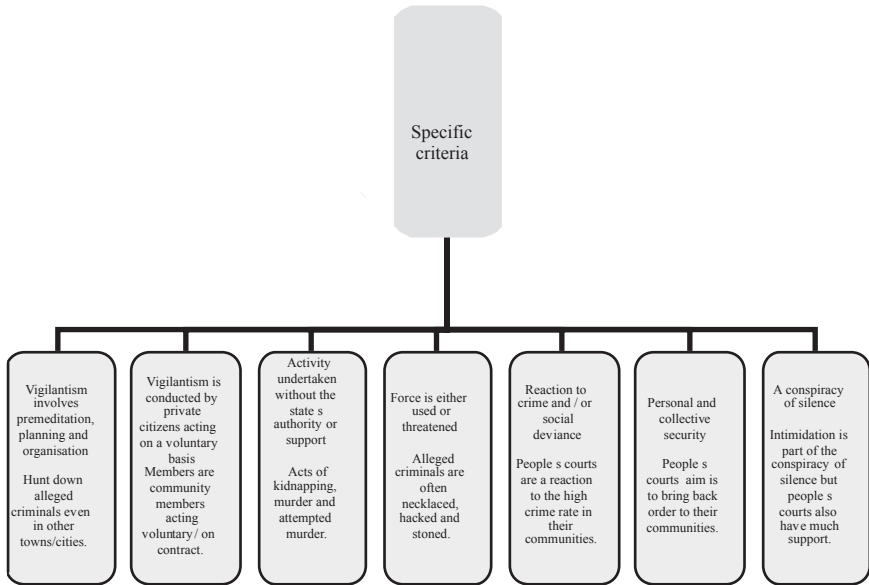
People’s courts as a case study support the context criteria and also apply to the specific criteria for vigilantism for the period April 1994 to March 2008 as full-fledged vigilante organisations. This application can be illustrated in the following diagram:

**Context and specific criteria applicable to people’s courts as vigilante organisations**



The fact that people’s courts have continued to feature continuously up to the present day indicates that the state is indeed experiencing features of a weak state

and is unable to provide all its citizens with adequate personal security most of the time, which would dissolve the need for people's courts.



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