VOLUME SIX

Truth and Reconciliation Commission of South Africa Report

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The codicil to the report of the Truth and Reconciliation Commission was presented by the Commissioners to State President Thabo Mbeki on 21st March 2003.

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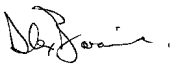

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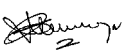

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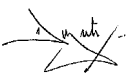

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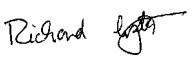

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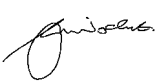

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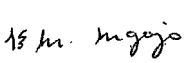

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First published March 2003

ISBN 0702158763

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The photographs that appear in these volumes were taken during the life of the Commission and represent the work of Benny Gool and others. City Press and Trace Image also supplied photographs. Cartoons by Zapiro.

Donors: Ford Foundation and Foundation for Human Rights

Printed by Formeset

Distributed for
the Truth and Reconciliation Commission by
Juta & Co Ltd, Kenwyn, Cape Town

The proceeds of the sale of this report will go
to the President's Fund

Volume **SIX**

Chairperson's Foreword

FOREWORD BY ARCHBISHOP DESMOND TUTU

This Report is the culmination of a remarkable effort by extraordinary people, and I want to begin by paying a warm tribute to the Commission's staff, committee members and commissioners. At this time in particular, we give thanks for those staff who, under the direction of Commissioners Hlengiwe Mkhize, Denzil Potgieter and Yasmin Sooka, have given such meticulous attention to bringing the project to finality, to the extent of providing us with summaries of the cases of some twenty thousand people declared to have suffered gross human rights violations in the period between 1960 and our first democratic election. We owe a very great debt of gratitude to Sue de Villiers who, with her editorial colleagues, working under considerable pressure, did wonders to produce this codicil on time. Thank you, thank you. It has been an incredible privilege for those of us who served the Commission to preside over the process of healing a traumatized and wounded people.

We are also deeply grateful to the thousands of South Africans who came to the Commission to tell us their stories. They have won our country the admiration of the world: wherever one goes, South Africa's peaceful transition to democracy, culminating in the Truth and Reconciliation process, is spoken of almost in reverent tones, as a phenomenon that is unique in the annals of history, one to be commended as a new way of living for humankind. Other countries have had truth commissions, and many more are following our example, but ours is regarded as the most ambitious, a kind of benchmark against which the rest are measured.

We hope that the completion of the Commission's Report brings a measure of closure to the process. I regret that at the time of writing we owe so much by way of reparations to those who have been declared victims. The healing of those who came to us does hinge on their receiving more substantial reparations and I would be very deeply distressed if our country were to let down those who had the magnanimity and generosity of spirit to reveal their pain in public. I appeal to the Government that we meet this solemn obligation and responsibility, and I should like to express appreciation that the Minister of Finance has made it clear that he still regards reparations as unfinished business.

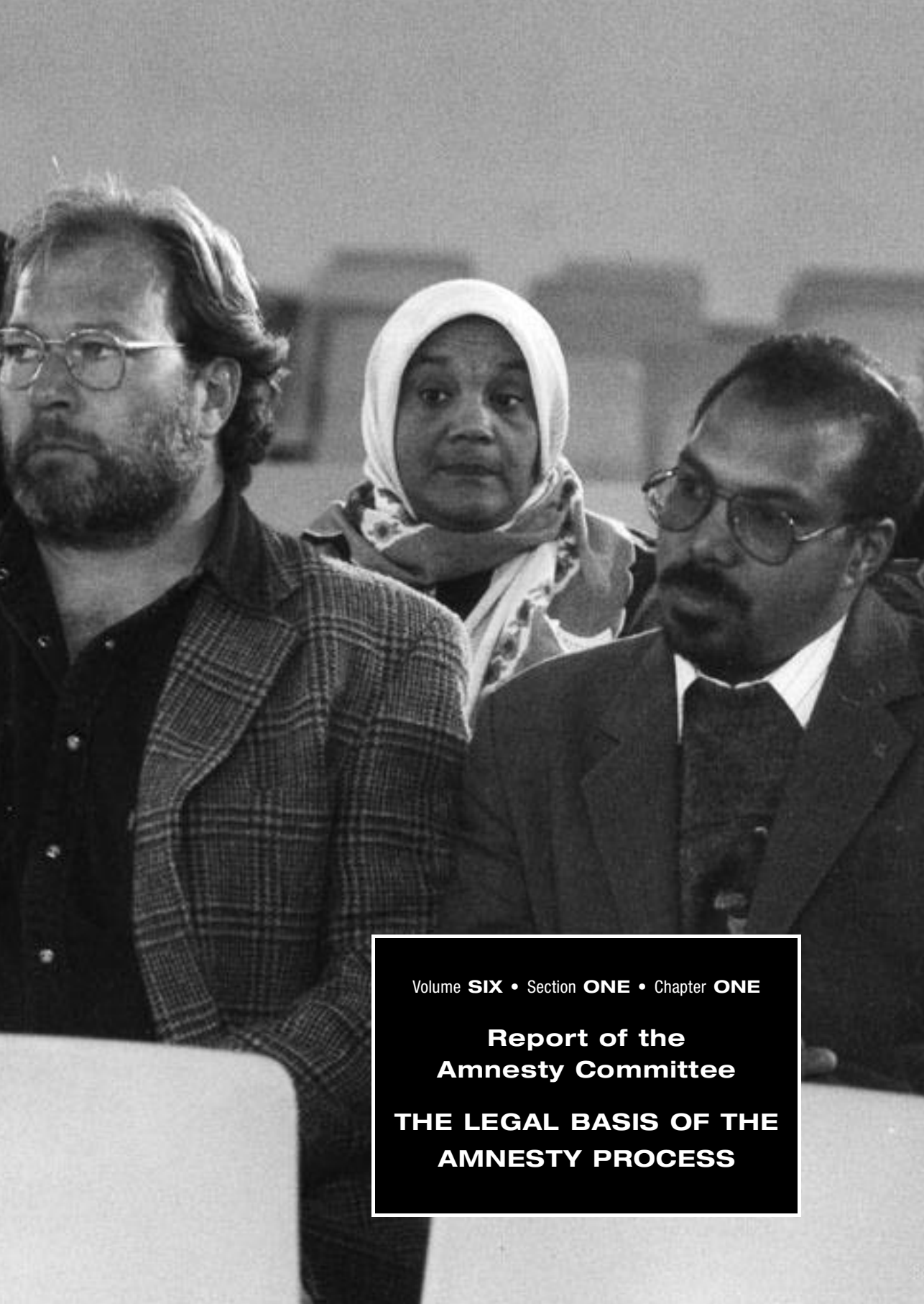
Those who brought to birth the TRC process also ought to be commended for their wisdom, which has recently been demonstrated no more clearly than by the trial of Dr Wouter Basson. Without making any judgment on the correctness of the judge's decision, the case has shown clearly how inadequate the criminal justice system can be in exposing the full truth of, and establishing clear accountability for what happened in our country. More seriously, we have seen how unsuccessful prosecutions lead to bitterness and frustration in the community. Amnesty applicants often confessed to more gruesome crimes than were the subject of the Basson trial, yet their assumption of responsibility, and the sense that at least people were getting some measure of truth from the process, resulted in much less anger. For the sake of our stability, it is fortunate that the kind of details exposed by the Commission did not come out in a series of criminal trials, which – because of the difficulty of proving cases beyond reasonable doubt in the absence of witnesses other than co-conspirators – most likely would have ended in acquittals.

In terms of the settlement reached between the Commission and Chief Buthelezi and the Inkatha Freedom Party, I draw your attention to appendices 1 and 2 to Section 4, Chapter 4 of this volume, being their responses to the findings made against them in the Final Report handed to President Mandela on 29 October 1996.

It is something of a pity that, by and large, the white community failed to take advantage of the Truth and Reconciliation process. They were badly let down by their leadership. Many of them carry a burden of a guilt which would have been assuaged had they actively embraced the opportunities offered by the Commission; those who do not consciously acknowledge any sense of guilt are in a sense worse off than those who do. Apart from the hurt that it causes to those who suffered, the denial by so many white South Africans even that they benefited from apartheid is a crippling, self-inflicted blow to their capacity to enjoy and appropriate the fruits of change. But mercifully there have been glorious exceptions. All of us South Africans must know that reconciliation is a long haul and depends not on a commission for its achievement but on all of us making our contribution. It is a national project after all is said and done.

We have been privileged to help to heal a wounded people, though we ourselves have been, in Henri Nouwen's profound and felicitous phrase, 'wounded healers'. When we look around us at some of the conflict areas of the world, it becomes increasingly clear that there is not much of a future for them without forgiveness, without reconciliation. God has blessed us richly so that we might be a blessing to others. Quite improbably, we as South Africans have become a beacon of hope to others locked in deadly conflict that peace, that a just resolution, is possible. If it could happen in South Africa, then it can certainly happen anywhere else. Such is the exquisite divine sense of humour.

(..p1)



Volume **SIX** • Section **ONE** • Chapter **ONE**

Report of the Amnesty Committee

THE LEGAL BASIS OF THE AMNESTY PROCESS

Report of the Amnesty Committee

INTRODUCTION

1. In October 1998, the Amnesty Committee (the Committee) submitted an interim report to the Truth and Reconciliation Commission (the Commission). This formed part of the Final Report handed to President Mandela on 29 October 1998. The Final Report contains a broad overview of the functioning and activities of the Committee. In addition, Chapters Four ('The Mandate') and Five ('Concepts and Principles') of Volume One of the Final Report contribute towards a fuller understanding of the amnesty process. Chapter Four describes how the Commission was established and outlines the scope of its mandate, including that relating to the granting of amnesty. It also discusses how the Commission interpreted its mandate and how it went about identifying criteria derived from just war theory and other international human rights principles. The mandate and criteria guided the Commission in determining what constituted gross human rights violations and who or what entities could be held accountable for them, as envisaged in its founding Act, the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act).

2. In Chapter Five of Volume One of its Final Report, the Commission discusses questions of amnesty, truth and justice, the relationship between these three complex concepts and their role in and contribution to furthering the Commission's over-arching objective of promoting reconciliation and a sense of national unity.

3. Although the activities of the Commission were suspended on 29 October 1998, the Amnesty Committee was authorised to continue until it had completed its outstanding work. This it did at the end of May 2001. Moreover, when the lifespan of the Committee was extended in October 1998, certain outstanding duties of both the Human Rights Violations Committee (HRVC) and the Reparation and Rehabilitation Committee (RRC) were statutorily placed under the auspices of the Committee in accordance with an appropriate amendment of the Act. At this stage, two Commissioners, representing the HRVC and RRC respectively, joined the extended Committee to attend to these duties.

4. The purpose of the present section is to account for the activities of the Amnesty Committee from October 1998 until its dissolution on 31 May 2001.[1]

5. It is apposite at the outset of this section to repeat an observation made in the report of the Committee in October 1998, namely that, in the view of the Committee, the terms of its statutory mandate and the judicial nature of its activities preclude it from commenting upon or analysing its decisions or its approach to specific cases in this Report. In the Committee's view, this would amount to an actionable gross irregularity.

6. In compliance with the judicial nature of its mandate, the Committee has given fully reasoned decisions in all hearable amnesty applications as well as motivated decisions in all substantive chamber matters. These decisions constitute the sole repository of the Committee's views on all the substantive issues that were relevant to its activities in relation to the matter of amnesty in general and to the specific amnesty applications it considered. The decisions have been reproduced in full and, due to space constraints, accompany this report in electronic form (compact disc). The decisions are fully indexed to enhance their accessibility to interested parties. All decisions in hearable matters have, moreover, been made available on the website of the Department of Justice and Constitutional Development (http://www.doj.gov.za/trc/index.html) in order to promote public access.[2]

7. Finally, we would like to dedicate these chapters on the work of the Amnesty Committee to those members who passed away during the lifespan of the Committee – in recognition of their contribution, dedication and commitment to a process that is, to date, unrivalled not only in South Africa but in the entire world. They are:
   a The Honourable Mr Justice Hassen Mall: Chairperson;
   b Advocate Robin Brink: Evidence Leader, and
   c Mr Dugard Macaqueza: Investigator and Evidence Analyst.

8. The amnesty section of the Report is also dedicated to all Committee members and staff, without whose commitment, dedication and contribution it would have been impossible to give effect to the provisions of the Act. Dealing with the atrocities of the past on a daily basis over a period of almost five and a half years was never easy. Equally difficult were the many days spent on the road, visiting venues all over the country and listening to and adjudicating upon reprehensible acts of severe gross human rights violations.

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1 In terms of Proclamation R31 dated 23 May 2001.

2 See Section Five, Chapter Seven, 'Recommendations' in this volume for further action contemplated in respect of the Commission's archives.

The Legal Basis of the Amnesty Process

INTRODUCTION

1. The legal basis for the amnesty process of the Truth and Reconciliation Commission (the Commission) is to be found in the legal instruments that emerged from the political negotiations that were initiated in 1990. The original provisions were recorded in the postscript (or what also became known as the 'postamble') to the Constitution of the Republic of South Africa Act No. 200 of 1993 (the Interim Constitution) in the following terms:

NATIONAL UNITY AND RECONCILIATION:

> *This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans irrespective of colour, race, class, belief or sex.*
>
> *The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.*
>
> *The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which gen - erated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for under - standing but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.*
>
> *In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.*

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

2. These provisions were preserved in Schedule 6, section 22 of the Constitution of the Republic of South Africa Act No. 108 of 1996 (the Constitution), which provided that:

> *Notwithstanding the other provisions of the new Constitution and despite the repeal of the previous Constitution, all the provisions relating to amnesty contained in the previous Constitution under the heading 'National Unity and Reconciliation' are deemed to be part of the new Constitution for the pur - poses of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995), as amended, including for the purposes of its validity.*

THE COMMISSION'S FOUNDING ACT

3. These constitutional provisions formed the basis for the enactment of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act). Chapter Four of the Act outlined the mechanisms and procedures of the amnesty process. These provided for the establishment of an Amnesty Committee (the Committee) as one of the components of the Commission and empowered it to consider and decide on applications for amnesty. The Act provided that the Committee could grant amnesty where it was satisfied that the application complied with the formal requirements of the Act; that the incident in question constituted an act associated with a political objective as envisaged in the Act, and that the applicant had made full disclosure of all the relevant facts.[3] These requirements are considered in more detail below.

4. The Act also spelt out the fact that the granting of amnesty meant that the applicant was released from all criminal and civil liability arising from the incident, an indemnification that also extended to all institutions or persons who incurred vicarious liability for the incident.[4] Successful applicants serving prison sentences in respect of an incident were, therefore, entitled to immediate release and the expunging of any relevant criminal record.[5]

3 Section 20(1)(a-c).
4 Section 20(7)(a).
5 Section 20(8) & (10).

POWERS, DUTIES AND FUNCTIONS OF THE COMMITTEE[6]

5. The Committee was a statutory body established in terms of the Act, from which it derived all its powers, functions and responsibilities. It was, in effect, a body with only administrative powers. Due to the adjudicative nature of its functions, the Committee's procedures soon started to resemble a judicial process. This stood in complete contrast to the non-adversarial hearings of the other two Committees of the Commission.

Applications for amnesty

6. Section 18 of the Act provided that any natural person could apply for amnesty on the prescribed form. Institutions and organisations could not apply. Application could be made in respect of any act or omission that amounted to a delict[7] or offence, provided that it had to have been associated with a political objective and committed in the prescribed period (see further below).

7. The Committee was required to give priority to the applications of persons in custody. Regulations prescribing measures in respect of these applications were promulgated on 17 May 1996, after consultation with the Ministers of Justice and Correctional Services. These regulations provided mechanisms for informing prisoners of the procedures in respect of amnesty and how to complete the application form properly. They also provided for the recording of applications, the supplying of additional information and the hearing of such applications.

FORMAL REQUIREMENTS

8. Before an application could be considered, it had first to comply with the formal requirements of the Act.[8] That is, the applicant was required to submit a written application on the prescribed amnesty application form. This application had to be made under oath and attested to by a commissioner of oaths.

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6 Sections 16 to 22.

7 A wrongful act for which the injured person has the right to a civil remedy.

8 Section 18(1) requires applications to be submitted 'in the prescribed form'. The term 'prescribe' is defined in the Act as 'prescribe by regulation made under section 40' of the Act. The latter section empowers the President to promulgate regulations in respect of any matter referred to in the Act. In this context, the Committee took steps to have a prescribed amnesty application form produced in all official languages, to be promulgated for use by prospective amnesty applicants.

9. If the Committee received an incomplete application, the form would be returned to the applicant with directions to complete it properly. Many applications were not submitted on the prescribed form. In such instances, the matter was registered and a proper form was sent to the applicant for completion. A large number of forms were returned because they were unsigned and/or had not been attested to by a commissioner of oaths. In many instances, application forms had been completed without legal assistance or had been completed by third parties on behalf of illiterate applicants. In such cases, it was often necessary for the Committee to condone an applicant's failure to comply strictly with the formalities. It was sometimes possible to communicate with the applicants in question and place them in a position to cure the formal defects in the application. Where it was not possible to do this before the hearing, condonation[9] for minor defects in the application[10] was granted at the hearing itself. The Committee adopted the approach of allowing the applicant to present the merits of the application to the hearings panel. In all such instances, some of which were argued comprehensively, the granting of condonation did not result in prejudice to any other party. The hearing into the killings at Boipatong on the East Rand in 1992, for example, involved a substantial condonation application.

10. A further formal requirement was that the application had to be submitted to the Committee before the closing date for applications, as required by the Act.[11] The interpretation adopted by the Committee in this respect was that it had no statutory power to condone a failure to comply with this requirement. Thus the Committee did not consider applications submitted after the closing date. Although some late applicants petitioned the High Court for orders compelling the Committee to hear such matters, none was successful.

11. Some applicants attempted to amend their applications after the expiry of the deadline. Proposed amendments that attempted to introduce new incidents after the closing date for amnesty applications were normally refused. However, amendments that elaborated on incidents already expressly dealt with or alluded to in the original application were allowed. These included instances where applicants raised the possibility in the application of having been involved in further incidents, details of which they had been unable to recollect at the time of submitting the original application but which had subsequently come to mind.

9 A legal term meaning to pardon or overlook.

10 Such as a failure to date or attest a duly completed and signed application form.

11 Section 19(1) provided that the closing date was 14 December 1996. This was later extended to 30 September 1997 to cater for an extension of the cut-off date for amnesty from 5 December 1993 to 10 May 1994.

ACTS ASSOCIATED WITH A POLITICAL OBJECTIVE

12. The Act required that the incident forming the subject matter of the amnesty application had to have been associated with a political objective.[12] The latter term was defined in some detail in the Act and included the following components:

The actions of the applicant must have amounted to an offence or a delict

13. The Committee was required to assess the applicant's actions in order to ascertain whether she or he had complied with all the elements of the particular offence or delict. Where there had been a criminal prosecution and conviction based on the incident, this requirement was normally straightforward. Where, however, an applicant denied guilt for an incident, this requirement was not met and the application had to fail.

14. This highlights a significant limitation in the amnesty process. The patent injustice of this situation became clear where it applied to groups of co-applicants, some of whom denied guilt for incidents associated with political objectives for which all members of the group had been convicted and sentenced. Those who admitted guilt qualified for and were granted amnesty, and were released from custody. However, those who were innocent and also had, on the face of it, been wrongly convicted, were unable to benefit from the amnesty process. They were condemned to remain in custody pending the uncertain prospects of cumbersome and often prolonged administrative procedures that might lead to their eventual release (via, for example, a presidential pardon). The Committee had no powers to intervene in this kind of procedure. It did, however, wherever this kind of situation arose (as in the Boipatong case), include in its decision a recommendation that the cases of such 'innocent' applicants be referred to the President for his consideration.

15. The offence or delict requirement was also not met where the applicant successfully raised a defence that excluded legal liability, such as self-defence. In such instances, the fact that the application might comply with all the other requirements of the Act did not qualify the applicant for amnesty.

12 Section 20(1)(b).

The incident must have occurred within the prescribed time period

16. The time period set by the Act was between 1 March 1960 (the month in which the Sharpeville massacre took place) and 5 December 1993 (the date the final agreement was reached in the political negotiations). This last date was subsequently extended to 10 May 1994 to coincide with the date of the inauguration of the first democratically elected President of the country.[13]

The applicant should fall within one of a number of prescribed categories

17. These categories essentially encompassed supporters, members or employees of the contending parties involved in the past political conflict in the country. It was a pertinent requirement that the incident in question should have related specifically to the South African political conflict. [14]

The incident in question should comply with stipulated criteria in order to constitute an act associated with a political objective[15]

18. One of the underlying purposes in this regard was to ensure that only conduct associated with the past political conflict in the country would qualify for amnesty. Common crimes were excluded.

19. In this respect, the Act relied heavily on the principles of extradition law and the concomitant definition of a political offence within the international context. A specific and significant influence was the approach followed when preparing for the United Nations-supervised democratic elections in Namibia in 1989. The wording of the Act leaned very heavily on what had become known as the 'Norgaard Principles': an approach formulated under the guidance of Professor CA Norgaard, the former President of the European Commission on Human Rights, and applied to guide the process of identifying Namibian political prisoners for release.

20. The Norgaard Principles were gleaned from a survey of the approaches followed by various state courts in dealing with what is known as the 'political offence exception' in extradition proceedings. In terms of the 'exception', a state that

13 The date was initially set in the Interim Constitution to serve as a deterrent to those who wished to continue to use violence to disrupt the elections. However, it was later extended because many of those who had been involved in continued violence later agreed to participate in the democratic process.

14 This was one of the grounds relied upon by the Supreme Court of Appeal in dismissing the application in the matter of Stopforth and Veenendaal. For further details, see Chapter Four, 'Legal Challenges', in this section.

15 Section 20(3).

has been requested to extradite an individual may refuse to do so where the crime for which the extradition is sought is political. It was thus necessary for states to formulate an approach to the question of whether a particular crime amounted to a political offence. The background principles, therefore, recorded the common features of the various states' approaches to the issue.

21. The criteria stipulated in the Act contained important guidelines for assessing whether an applicant's conduct would qualify as being politically motivated within the broad context of political offences referred to above. In this regard, the Committee was enjoined to consider a number of factors: the motive of the perpetrator; the context in which the incident occurred (for example whether it occurred in the course of a political uprising); the nature and gravity of the incident; the object or objective of the conduct and, in particular, whether it was directed against political enemies or innocent parties; the existence of any orders or approval of the conduct by a political organisation, and finally, the issue of proportionality. Moreover, the Act specifically provided that, where the perpetrator had acted for personal gain (except in the case of informers) or out of personal malice, ill-will or spite towards the victim, the conduct in question would not qualify as an act associated with a political objective.

22. The approach adopted by the Committee in applying the stipulated criteria was to avoid a piecemeal and mechanical application of the individual criteria. It chose, rather, to adopt a more holistic approach and to assess the totality of the particular facts and circumstances in the light of the criteria as a whole. Where, for example, an applicant had acted on the direct orders of a superior and the conduct in question seemed reasonable, the Committee would see this as going a long way towards satisfying the requirements of the Act. An applicant who had injured or killed an innocent bystander would be subjected to a more critical assessment than if his or her victim had been a clear political enemy. The reality is that each application presented its own peculiar circumstances, making it inappropriate to adopt hard and fast rules. Each case had to be approached with an open mind and decided on its own merits. In this way, the Committee used the criteria as a guide to help it decide whether a particular incident qualified as an act associated with a political objective.

23. The Committee was, moreover, specifically enjoined to take into account the criteria applied in terms of the repealed indemnity legislation that had preceded the Act. These criteria largely overlapped with those stipulated in the Act.[16]

16 See Volume One, Chapter Four, pp. 51–2.

FULL DISCLOSURE

24. The amnesty process had a critical role to play in helping establish the fullest possible picture of the past political conflict in the country. To this end, amnesty applicants were legally required to give a full and truthful account of the incidents in respect of which they were seeking amnesty.[17] They were accordingly required to make full disclosure of all of the facts relevant to the incident in question.

25. It follows that, where an applicant's version was untruthful on a material aspect, the application was refused. It is important to stress, however, that the obligation to make full disclosure related only to relevant facts. This required that the Committee develop an interpretation of the phrase 'relevant facts'. The Committee concluded that the obligation in question related solely to the particular incident forming the subject matter of the application and did not extend to any incidents not raised in the amnesty application. The facts to be disclosed were, therefore, only those relevant to the incident in question. The interpretation adopted by the Committee required that applicants give a full and truthful account of their own role, as well as that of any other person, in the planning and execution of the actions in question. Furthermore, applicants had to give full details of any other relevant conduct or steps taken subsequent to the commission of the particular acts: for example, concealing or destroying evidence of the offence.

26. The interpretation adopted by the Committee has been criticised because it is perceived as having inhibited the potential of the amnesty process to contribute to the overall objective of the truth and reconciliation process, namely of establishing as complete a picture as possible of the political conflicts of the past. It has been argued that it was not conducive to the overall objective of the process to allow amnesty applicants to be selective about the information on past political conflicts they were prepared to share with the South African public. According to this argument, applicants were placed in a position where they were able to hold back information about incidents that were unlikely to be uncovered in the future, an attitude that frustrated the very intention of the overall process.

27. The Committee took note of these arguments, but remains satisfied that it gave a proper interpretation of its obligation as required by the law. The perceived

17 Section 20(1)(c).

limitations were inherent in the provisions of the Act itself and were accordingly beyond the Committee's control. It should also be pointed out that the Act gave the Commission certain general powers of investigation and subpoena, which allowed it to look further into any matters left unresolved by the amnesty process. The Committee accepts, however, that the criticism relating to possible shortcomings in the process as enacted is serious and substantial.

PROCESSING APPLICATIONS FOR AMNESTY

28. The Committee relied heavily on information furnished by its own investigators and obtained from the South African Police Services, the Department of Correctional Services, the National Prosecuting Authority and the courts of law. Generally only minimal investigation was necessary in respect of those applications completed with the assistance of a legal representative. Upon completion of such an investigation, the Committee would do one of several things:

Acts not associated with a political objective

29. The Committee would inform the applicant that, based on the particulars before it, his or her application did not relate to an act associated with a political objective and, in the applicant's absence and without holding a hearing, refuse the application for amnesty.

Where no gross violation of human rights had been committed

30. If it was satisfied that the formal requirements had been met, the Committee would inform the applicant that there was no need for a hearing as the act to which the application related did not constitute a gross violation of human rights. In such cases, it would grant the applicant amnesty without holding a hearing.

Notification of public hearing

31. Where the application related to a gross violation of human rights as defined in the Act, a public hearing had to be held. The Committee would notify the applicant, any victim and implicated person and any other person having an interest in the application of the date, time and place where such an application would be heard. These persons had to be informed of their right to be present and to testify at the hearing. The Committee could hear applications individually or jointly.

32. In anticipation of the fact that many of these acts, omissions or offences were the subject of court proceedings, the Act provided that:

    a where the act or omission was the subject of a civil claim, the court might, upon the request of the applicant and after proper notice to other interested parties, suspend proceedings pending the outcome of the application for amnesty, and

    b in those instances where the applicant was charged with an offence to which the application related, or was standing trial on a charge of having committed such an offence, the Committee could request the appropriate authority to postpone the proceedings, pending the outcome of the application for amnesty.

33. In order to protect the identity of the applicants and the information contained in applications, the Act provided that all the applications, the documentation in connection with them, any further information obtained by the Committee before and during an investigation, as well as the deliberations conducted in order to come to a decision or to conduct a hearing, should be treated as confidential. This confidentiality lapsed only when the Commission decided to release such information or when the hearing into the application commenced.

THE ROLE OF PRECEDENT

34. The Act provided expressly for the establishment of subcommittees or hearings panels to deal with amnesty applications. This provision enabled the Committee to arrange for various hearings panels to hear different matters simultaneously and so expedite the finalisation of its work. The composition of these panels was not fixed, which resulted in different permutations of Committee members constituting hearings panels on different occasions. This situation created the potential for inconsistencies of approach between the different hearings panels. There were those who saw this is as a risk and believed that it could be eliminated or limited only by introducing a system of precedent, as is followed in the courts, where, in defined circumstances, prior decisions on issues of law become binding in subsequent similar cases.

35. It is important to point out that the Amnesty Committee was an administrative tribunal, and that no formal system of precedent applied to its activities. Apart from certain broad determinations made by the Committee itself (for example the interpretation of what constituted ‘relevant facts’ for the purpose of full disclosure),

it would, in the Committee's view, have been inappropriate to attempt to establish a system of precedent.

36. In order to facilitate its proceedings, the Committee accepted the submissions made by the leadership of some of the structures involved in the past political conflict as duly established for the purposes of subsequent hearings. For example, according to the submissions of the Azanian People's Liberation Army (APLA) leadership, APLA operatives executed robberies in terms of a particular directive and policy decision on the part of the organisation in furtherance of its political struggle. Subsequent APLA amnesty applicants were able to rely on this fact without having to re-establish it. A similar situation applied to the submissions of the African National Congress (ANC) in respect of its role in establishing self-defence units (SDUs) in response to violent conflicts in certain townships during the early 1990s.

37. Apart from such instances, it would have been quite impractical to attempt to establish a system of precedent. The myriad different permutations of facts and circumstances that applied to the various applications resulted in no two being identical or sufficiently comparable to justify applying the principle of precedent. Each case had to be decided in the light of its own peculiar facts and circumstances. Each hearings panel was ultimately responsible for making an independent decision on the particular facts of the case to be decided, even though it was possible to engage in collegial discussions and consultations to elicit the views or draw on the experiences of other members of the Committee in particularly complex matters.

38. Although no formal system of precedent was followed, the Committee approached its work on the basis that every amnesty applicant enjoyed the constitutionally entrenched right to fair administrative action, equality and an even-handed approach. The Committee is ultimately satisfied that the absence of a formal system of precedent did not detract from the quality of decision-making, nor did it result in any patent injustice to any participant in the amnesty process.

GRANTING OF AMNESTY AND THE EFFECT THEREOF (SECTION 20)

39. Amnesty was granted where the Committee was satisfied that the application complied with the requirements of the Act: that is, the act, omission or offence to which the application related was an act associated with a political objective and committed in the course of the conflicts of the past, and the applicant had made a full disclosure of all the relevant facts (as defined above).

40. Where amnesty was granted, the Committee informed the applicant and the victim of the decision and also, by proclamation in the Government Gazette, published the full details of the person concerned as well as the specific act, offence or omission in respect of which amnesty was granted.

41. The granting of amnesty completely extinguished any criminal or civil liability arising from the act in question. Any pending legal proceedings against the applicant were likewise terminated. Where applicants were serving a sentence consequent upon a conviction for the act in question, they were entitled to immediate release from custody. The granting of amnesty also had the effect of expunging any criminal record relating to the offence in respect of which amnesty had been granted. It did not, however, affect the operation of any civil judgment given against the successful applicant based upon the act for which amnesty had been granted.

REFUSAL OF AMNESTY AND THE EFFECT THEREOF (SECTION 21)

42. When the Committee refused an application for amnesty, it notified the applicant and victims concerned of its decision and the reasons for its refusal. If criminal or civil proceedings had been suspended pending the outcome of the amnesty application, the court concerned was notified of this.

43. Where amnesty was refused, the law would take its course against the applicant. Any legal proceeding that might have been suspended pending finalisation of the amnesty application was free to continue. The applicant would, however, be protected against the disclosure or use of the record of the amnesty application in any subsequent criminal proceedings. The prosecution would, moreover, be precluded from relying on the facts disclosed in the amnesty application, or facts that had been discovered as a result of information disclosed in the amnesty application. The Act specifically provides that any

evidence obtained during the amnesty process, as well as any evidence derived from such evidence, may not be used against the person concerned in any criminal proceedings.

REFERRALS TO THE REPARATION AND REHABILITATION COMMITTEE (SECTION 22)

44. In line with the objectives of the Commission relating to reparation and rehabilitation, the Act provided that, where amnesty was granted and the Committee was of the opinion that a person was a victim of the incident in question, the matter should be referred to the Reparation and Rehabilitation Committee (RRC) for consideration. Where amnesty was refused and the Committee was of the opinion that the act constituted a gross violation of human rights and a person was a victim in the matter, it was also referred to the RRC.

45. In these instances, the hearings panel was obliged to endeavour to identify any possible victims. This was not, however, always possible, often due to a lack of sufficient information. In such an event, the hearings panels were compelled to make generic victim findings without identifying specific individuals. This was a particular drawback in the process, given the importance of catering for the needs of victims, particularly where the granting of amnesty obliterated the prospects of civil or criminal proceedings. There was some comfort in the fact that the reparation and rehabilitation process had the potential of dealing with these weaknesses.

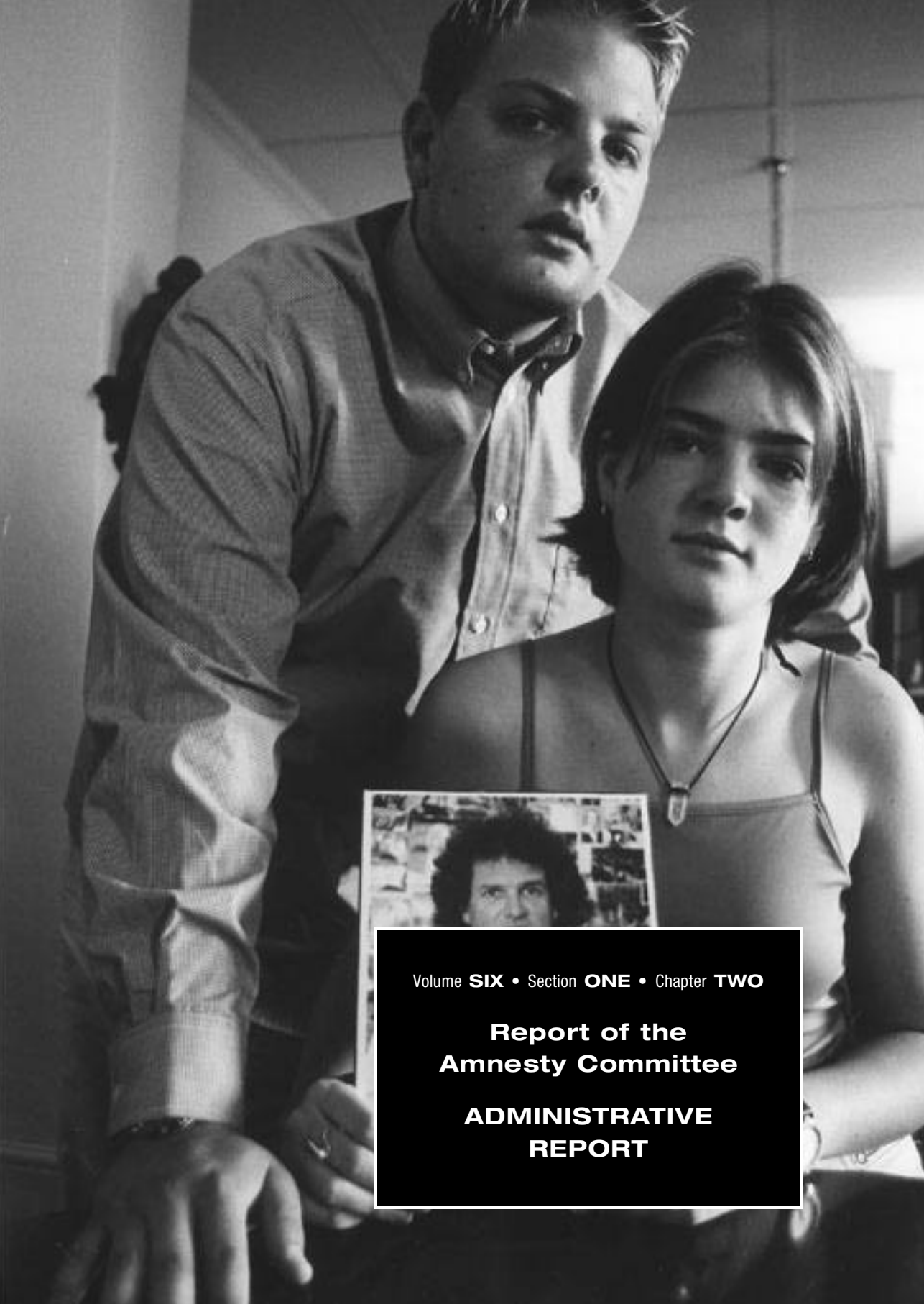
REMEDIES

46. Any party aggrieved by a decision of the Committee had the right to approach the High Court for a review of the decision. The process of review of administrative decisions is regulated by the Constitution,[18] which grants everyone the right to administrative action that is lawful, reasonable and procedurally fair.[19] This constitutional provision has superseded the common-law rules relating to review, the latter having been subsumed under the Constitution.

18 Pharmaceutical Manufacturers' Association of SA and Another : In re Ex Parte President of the Republic of South Africa & Others 2000(2) SA 674 (CC) at para 33.

19 Section 33 of the Constitution, 1996.

47. A court reviewing a decision of the Committee does not consider whether the decision is correct, but rather whether it is *justifiable*. Thus the review court does not retry the matter, but simply concerns itself with the question of whether the decision the Committee has made is justifiable in the sense that there is a rational connection between the facts of the particular application and the decision arrived at by the Committee. The review court does not substitute its own views on the merits of the application for those of the Committee in matters where the rational connection referred to above has been established. The review court does, however, consider the merits of the application in order to decide whether the rational connection has actually been established (see also Chapter Four, 'Legal Challenges'). (...p17)



Volume **SIX** • Section **ONE** • Chapter **TWO**

Report of the Amnesty Committee

ADMINISTRATIVE REPORT

Administrative Report

INTRODUCTION

1. The objective of this chapter is to give as clear a picture as possible of the administrative procedures, mechanisms and functions of the Amnesty Committee (the Committee). The functions of the executive secretary as administrative head of the Committee were integrated with those of the chief executive officer (CEO) of the Truth and Reconciliation Commission (the Commission) during 1997 and performed by the same person, but this section deals mainly with the affairs of the Committee. A separate report is presented on the duties of the CEO.

2. For the sake of completeness, this section should be read with the CEO's report and with the earlier Management Report of the Committee, which formed part of the Commission's Final Report that was handed to the President in October 1998.[20]

3. This chapter offers an overview of the amnesty process from the perspectives of the executive secretary and later the CEO. The provisions of the Act will be reflected upon insofar as they related to the administration and management of, especially, the amnesty process. Reference is also made to the development of the administration and amnesty process since 1996. The contents are based on a variety of documents, including the minutes of the meetings of the Committee since its establishment, internal memoranda, the minutes of meetings of the various components of the Commission and management, as well as inputs from the departments and sections concerned.

ESTABLISHING THE COMMITTEE

4. Section 16 of the Act provided for the establishment of the Committee as one of the three statutory Committees of the Commission. Its mandate was to grant amnesty to those persons who successfully applied for amnesty in respect of acts, omissions and offences that had been associated with political objectives and committed in the course of the conflicts of the past. One of the basic premises was that national unity and reconciliation would become possible only if the truth about past human rights violations became known (see Chapter One of this volume).

20 Volume One, Chapter Ten.

HOW THE AMNESTY COMMITTEE WAS CONSTITUTED

The Committee: An overview

5. In terms of section 17 of the Act, the Committee initially consisted of only five members, two of whom had to be Commissioners. President Nelson Mandela appointed Judge Hassen Mall and Judge Andrew Wilson as chairperson and vice-chairperson respectively and Judge Bernard Ngoepe as the third member. After consultation with the Commission, the President appointed Commissioners Sisi Khampepe and Chris de Jager as members of the Committee.

6. These five members had to attend to the setting up of the Committee and deal with all applications for amnesty received. Due to the large volume of work and in order to expedite the process, the membership of the Committee was subsequently increased to eleven in June 1997 and to nineteen during December 1997. All members were legally qualified, being judges of the High Court, advocates and attorneys. The President dissolved the Committee with effect from 31 May 2001 in terms of Proclamation R31 dated 23 May 2001.

7. Despite the increase in numbers, the Committee never experienced the benefit of its full complement of nineteen members for any significant period of time. This was due to the resignation of some members to take up other positions, and poor health on the part of others. Moreover, the limited lifespan of the Committee made it impractical to fill these vacancies. The Committee also suffered the loss of its chairperson, Judge Hassen Mall, who passed away on 18 August 1999. He was replaced as chairperson by Judge Andrew Wilson, and Acting Judge Denzil Potgieter was appointed vice-chairperson.

8. The following persons served with distinction on the Committee:

Judge H Mall	15/12/1995–18/08/1999
Judge A Wilson	15/12/1995–31/05/2001
Judge B Ngoepe	15/12/1995–01/07/1998
Ms S Khampepe	15/12/1995–31/03/2001
Advocate C de Jager SC	15/12/1995–31/05/2001
Advocate D Potgieter SC	01/07/1997–31/05/2001
Advocate N Sandi	01/07/1997–31/05/2001
Mr W Malan	01/11/1997–31/05/2001
Advocate J Motata	01/11/1997–31/01/2001
Advocate L Gcabashe	01/12/1997–30/08/1999

Judge S Miller	05/02/1998–28/02/2001
Judge R Pillay	05/02/1998–31/05/2001
Judge S Ngcobo	05/02/1998–01/01/1999
Advocate F Bosman	05/02/1998–31/05/2001
Advocate S Sigodi	05/02/1998–31/05/2001
Mr JB Sibanyoni	05/02/1998–31/03/2001
Dr WM Tsotsi	05/02/1998–30/10/1999
Mr J Moloi	05/02/1998–01/07/1998
Mr I Lax	05/02/1998–31/05/2001

The Amnesty Department

9. The Act made no provision for an administrative component for the Committee. It was left to the Committee to secure the services of professional and administrative personnel to assist it in executing its mandate. Resources were initially shared with other components of the Commission. This hampered the Committee in setting up the independent administrative, investigative and corroborative mechanisms it needed.

10. In April 1996, a month before its first public hearing, the Committee had a staff complement of two professional and three administrative officials. A year later, in April 1997, the Committee had only six professional and seven administrative officials to administer, peruse and prepare more than 7000 amnesty applications for decisions by the Committee. Due to tremendous time constraints, there was inadequate opportunity for staff training and development. It was left to the members of the Committee to take care of some of the administrative duties.

11. In an attempt to address these administrative difficulties, Advocate Martin Coetzee, a senior official from the Department of Justice, was seconded to the Commission on a temporary basis in August 1997 to act as the executive secretary of the Committee, with instructions to reassess the entire amnesty process. (Advocate Coetzee was later appointed as executive secretary of the Committee, and became chief executive officer of the Commission in May 1999.)

12. Under Advocate Coetzee, operational processes were co-ordinated and placed under stricter management control. Mechanisms were put in place to deal properly with amnesty applications. The reassessment resulted in an increase in the number of both staff and Committee members. Within a period of six months,

the number of staff members making up the Amnesty Department increased from the original thirteen to ninety-four, in the following categories:

- leaders of evidence;
- evidence analysts;
- information analysts;
- administrative staff members;
- logistics officers;
- investigators;
- witness protectors;
- secretarial staff; and
- an amnesty victim co-ordinator.

Leaders of evidence

13. Leaders of evidence were advocates and attorneys with practical experience. They were responsible for the final preparation of applications that needed to go for public hearing. Supervised by a chief leader of evidence, leaders of evidence conducted and led evidence at hearings. The chief leader of evidence and the executive secretary were responsible for scheduling hearable applications.

Evidence analysts

14. Evidence analysts were legally qualified people without practical experience. Later on in the process, persons without legal training but with sound analytical or investigative skills were also appointed as evidence analysts. Evidence analysts were responsible for the initial perusal and preparation of amnesty applications. They saw to it that the necessary investigations were conducted and gathered all relevant information and documentation.

Information analysts

15. Information analysts were people experienced in analysing data and capturing information on a computer database. They were responsible for the electronic capturing of the contents of applications and other related information.

Administrative staff members

16. Administrative staff members were responsible for the processing, filing and safekeeping of amnesty applications. Some were also responsible for dealing with incoming correspondence relating to applications.

Logistics officers

17. Logistics officers were responsible for all logistical arrangements in connection with public hearings.

Investigators

18. Investigators were responsible for investigating applications and obtaining the evidence and documentation required by the Committee and evidence analysts. The Committee was fortunate in obtaining the services of experienced members of the South African Police Services (SAPS) and Correctional Services and a number of international investigators. Investigators were based in Cape Town and at the Commission's regional offices in Johannesburg, Durban and Port Elizabeth.

Witness protectors

19. Witness protectors were experienced members of the security forces responsible for the protection of (predominantly) applicants, implicated persons and victims.

Secretarial staff

20. Secretarial staff consisted of senior and junior secretaries who rendered secretarial services and, in certain instances, served as personal assistants to members of the Committee and senior staff members.

Amnesty victim co-ordinator

21. The amnesty victim co-ordinator was responsible for attending to the victim referral process of the Committee.

22. The functions and responsibilities of the Committee and the various sections of the amnesty department were clearly demarcated. Regular workshops emphasised training and motivation. Proper guidelines were developed for dealing with applications from the moment they were received and registered until they were finally disposed of. (These will be dealt with in more detail later in this chapter.)

23. All these measures proved effective in placing the amnesty process on a sound footing. The position improved even further when the activities of the Commission were suspended on 29 October 1998, and staff members from other parts of the Commission were reallocated to the Committee.

THE AMNESTY PROCESS

24. The purpose of this section is to give an account of how amnesty applications were processed before they were ready for decision by the Committee. The process was far from flawless. Indeed, as has already been pointed out, a complete reassessment and the implementation of new and improved systems became necessary during 1997.

25. It should be emphasised from the outset that the amnesty process was unique. There were no historical or legal precedents on which to draw. The Act was silent on procedures, and the Committee had to find its own way. The end product was the culmination of various ideas and proposals and the result of mechanisms that developed as the process evolved.

26. The Commission came into operation on 15 December 1995 and the first application for amnesty was submitted on 1 January 1996. The Committee, which was based in Cape Town, met for the first time in February 1996. It became operational during April 1996 and held its first hearing on 20 May 1996. By the end of April 1996, a total of 197 applications had been received. At this time, five Committee members and four staff members were dealing with the applications. By 30 September 1997, in excess of 7000 applications had been received and were being dealt with by a maximum of nineteen Committee members and ninety-four staff members.

Receipt and processing of application forms

27. A standard application form for amnesty was developed and distributed for completion by prospective applicants. The form was translated into all eleven official languages of South Africa and was made available at all the offices of the Commission, offices of the Department of Justice and prisons. Upon completion, these forms were handed in at either the head office of the Commission or at one of its three regional offices for forwarding to the head office.

28. Applicants were required to provide the following information and particulars:
    a personal details;
    b political or other affiliation, or employment by the state;
    c particulars regarding the act, omission or offence for which amnesty was sought;

d particulars regarding victims;
e particulars regarding the political objective that was being pursued in committing the act, the omission or offence for which amnesty was sought;
f whether any benefits had accrued as a result of the act, omission or offence;
g particulars as to whether the act was committed in execution of an order or with implied or express authority; and
h particulars regarding prosecutions and civil proceedings.

29. On receipt, each application was registered and allocated a unique registration number. The Committee decided that all applications for amnesty had to be registered, whether or not they were submitted on the prescribed form.[21] The rationale behind this decision was to avoid penalising any person who had shown a clear intention to apply for amnesty. The correct application form was then sent to the person concerned with a request that she or he complete it and return it to the Committee. It was also made very clear that, unless an application was properly completed and submitted in terms of the Act, the Committee could not consider it. Some of the applications received and registered as amnesty applications were later found to be applications for reparation or statements on human rights violations, and had to be deregistered and referred to the appropriate section of the Commission.

Capturing information

30. All applications received were electronically registered on the Commission's database. In addition, all information initially contained in the application was electronically captured. As the process progressed, all relevant information pertaining to a specific application, including information on hearings, victims and decisions, was added. This process proved invaluable for the purposes of research and cross-referencing. The resultant database will form an integral part of the history concerning the past political conflict.

Safekeeping and administration of application forms

31. Once registered, copies were made of all applications, and the originals were placed in fireproof strongrooms for safekeeping and in order to secure their confidentiality. The copies were used as working documents when applications were being prepared for consideration.

21 Indeed, many 'applications' were made simply by writing a letter to the Committee or by furnishing the information on other application forms used by the Commission.

32. The administrative component of the Committee was the nucleus that managed the movement of the applications, and thus played a central role in the amnesty process. A staff component of eight officials, under the direct supervision of the executive secretary, was responsible for the safekeeping and administration of the application forms. All information, correspondence and documents relating to applications were channelled to this section, which was responsible for filing and subsequent distribution to the staff responsible for preparing the applications. Audits were conducted on a regular basis to ensure that all applications were accounted for.

33. An application was finalised only once the Committee took a decision on it. It was then put on file and prepared for archiving.

Workshops

34. The Committee held several workshops during its existence, with the aim of streamlining the process and ensuring the proper execution of its mandate. The first workshop for evidence leaders and investigative personnel was held in October 1996. This was followed by workshops in September and November 1997, April 1998 and March 1999. Workshops were also held for administrative and logistical staff. Regular meetings to discuss and evaluate the amnesty process were held with all the sections in the Department.

35. These workshops proved an invaluable way of training staff and making them part of the process. Participation by Committee members went a long way towards communicating their expertise to staff and proved invaluable in setting up channels of communication. During these workshops, everyone had the opportunity to air their views and work together to identify problem areas and seek solutions.

Developing guidelines

36. With the benefit of hindsight, it is clear that what was expected of the Committee in terms of sheer workload was totally unrealistic. Certainly it could not reasonably have been foreseen that more than 7000 amnesty applications, relating to more than 14 000 different incidents, would be submitted. Nor could anyone have predicted how much work would be involved in perusing and investigating these applications. For example, was it really reasonable to expect that a single application dealing with incidents involving hundreds of victims and implicated persons – that had, moreover, engaged a court for well over three years – could be dealt with in a matter of days?

37. As has already been mentioned, the Committee began its work with no formal guidelines or prescriptions on how it should prepare applications. Over time, however, it evolved guidelines for its work: some through a process of logical reasoning, others through trial and error.

38. For the purposes of this chapter, the process will be discussed in stages, bearing in mind that none of these processes existed in isolation. At times, indeed, they were intertwined, and at others, their sequence was inverted.

First stage

39. The initial perusal of the applications was done by the administrative staff, who checked the forms to ascertain whether they were properly completed, signed and attested to. If not, they were returned to the applicants to be rectified. Those forms that complied with the formal requirements were checked to establish whether they had been submitted before the deadline of 30 September 1997. Applications submitted after this date could not be considered by the Committee and were returned to the applicant with an appropriate note.

Second stage

40. At the second stage, the evidence analysts perused the applications in order to establish which of the following was the case:
    a The act in respect of which amnesty was sought was not committed within the prescribed period. If so, the Committee could not consider the application and the applicant would be informed accordingly.
    b It appeared, *prima facie*,[22] that the application did not relate to an act associated with a political objective, or that the act was committed for personal gain or because of malice, ill will or spite towards the victim. In such cases the application was submitted to the Committee for consideration in chambers.[23] If the Committee was satisfied that the application did not meet the requirements of the Act, amnesty was refused and the applicant was informed accordingly. In certain cases, it might not be possible for the Committee to make a decision without further investigation. Such an investigation would be co-ordinated by an evidence analyst.
    c It appeared, *prima facie*, that the application related to an act associated with a political objective, but that such an act did not constitute a gross violation of human rights. In such cases, the application was submitted to the Committee in chambers. The granting of amnesty could then be considered in the applicant's absence unless further investigation was required.

22 On the face of it or at first glance.

23 These applications were referred to as 'chamber' matters because they were not dealt with by the Committee at a public hearing (see 'Chamber Matters' in Chapter Three of this section).

d It appeared, *prima facie*, that the application related to an act that was associated with a political objective and that constituted a gross violation of human rights. The Committee would then direct that the application be scheduled for a public hearing, subject to further investigation.

41. It must be emphasised that, in making each of the above decisions, the Committee was the sole judge and was also intimately involved in the process of categorising the applications. A panel of at least three Committee members, of whom one had to be a judge, made the final decision to grant or refuse amnesty in each case.

Third stage

42. The third stage entailed completing the required investigation before proceeding to finalise the application. This was one of the most difficult and time-consuming stages. Firstly, the level and intensity of the investigation depended on the circumstances surrounding each specific application. Moreover, some applications related to more than one incident, each requiring its own investigation. Depending on the facts that needed to be investigated, investigations varied from the mere confirmation of one fact to an in-depth investigation that might last several months.

43. Investigations required by the Committee could include:
    a obtaining further and/or additional information from an applicant;
    b corroboration that an incident had occurred;
    c obtaining prison records from the Department of Correctional Services;
    d obtaining relevant court records (indictments and judgments) from the Department of Justice, reports from the then attorneys-general, and/or police dockets from the SAPS;
    e obtaining confirmation from a political party or liberation movement about whether an applicant was a member or supporter; and
    f obtaining statements about the incident in question from victims, implicated persons and/or witnesses.

44. Over and above the information obtained in the course of its investigation, the Committee also used information gathered by the Commission's research department and the Human Rights Violations Committee (HRVC).

45. The investigations and corroboration were done on behalf of the Committee by a group of dedicated investigators. At its peak, the Committee enjoyed the services of thirty-two investigators. The investigative component consisted of contracted

officials, officials seconded from the departments of Correctional Services and Defence, officials from the SAPS and a number of international investigators seconded to the Commission by their respective governments. Investigations were done in all parts of the country and even overseas. Investigators travelled literally hundreds of thousands of kilometres over all nine provinces. In some cases, isolated areas could be reached only on horseback or on foot.

Fourth stage

46. Upon completion of the required investigations and after final perusal by the evidence analyst, an application was ready for submission to the Committee and would be dealt with either in chambers or at a public hearing.

47. In the early stages of the Committee's life, applications considered at public hearings were dealt with on an individual basis. Later it emerged that duplication could be avoided and staff expertise used more efficiently if applications were clustered into political groupings and geographical regions. This allowed the Committee to hear more than one applicant in the same region or with respect to the same incident. This not only assisted the Committee in evaluating the evidence of various applicants, but also assisted the Commission in obtaining the fullest possible picture in respect of the incident(s) concerned. The groupings into which the applications were divided included:
    a Members or supporters of the African National Congress (ANC) and aligned organisations;
    b Members or supporters of the Pan Africanist Congress (PAC) and aligned organisations;
    c Members or supporters of the Inkatha Freedom Party (IFP) and aligned organisations;
    d Members of the former security forces; and
    e Members or supporters of the white right-wing organisations.

48. In an effort to assist the Committee, applications were initially submitted to the chief leader of evidence for quality control before submission to the Committee. Incomplete applications were referred back to the analyst with further instructions. If the application did not involve a gross human rights violation, or where it appeared, prima facie, that the application was not likely to be successful, the application was referred to the Committee to be dealt with in chambers. If the application involved a gross human rights violation and it appeared, *prima facie*, that amnesty was likely to be granted, the application was handed to an evidence leader to prepare for a public hearing. When the chief leader of evidence resigned during 1998, the quality control function was taken over by members of the Committee.

Fifth stage

49. The leader of evidence was responsible for putting before the Committee all the relevant evidence it might require in order to come to a decision as to whether or not amnesty should be granted. The leader of evidence was also responsible for ensuring that all the necessary investigations were done and that all relevant documentation was available before a hearing was scheduled.

50. The scheduling of an application was a complex issue. Various factors that could influence – and indeed determine – the scheduling needed to be taken into account. These included:
    a the place where the incident (the focus or subject matter of the hearing) took place, so that the local public could attend;
    b the location of the applicant at the time of the scheduled hearing (if the applicant was in prison, the necessary arrangements had to be made so that s/he could attend);
    c the location and availability of victims, so that they could attend the hearing;
    d whether other similar applications should or could be heard simultaneously;
    e the availability of the necessary logistical services, namely a suitable and secure venue, translating facilities, recording facilities, accommodation, transport and witness protection services; and
    f the availability of legal representatives of the applicants, victims and/or implicated persons. Some hearings involved no fewer than nineteen legal representatives.

51. There were times when four panels of the Committee sat simultaneously at four different locations, making the scheduling of applications for public hearings a challenging task. Once a hearing was finally scheduled, the chairperson of the Committee assigned a panel consisting of a judge and at least two other members to preside over the hearing. The leader of evidence was then responsible for the following:
    a Issuing the necessary notices in terms of section 19(4) of the Act, and informing the applicant, victims and implicated parties of the date and venue at least fourteen days before the hearing.
    b Requesting and confirming all logistical requirements and arrangements. As far as was practical and reasonable, the Committee was responsible for providing transport and accommodation for victims.
    c Preparing the hearing documentation. This bundle contained all the applications and relevant documentation and could vary from fifty to 500 pages. Copies of these bundles were made available to all the members of the panel of the Committee, applicants, victims and implicated persons.

d Arranging for the services of a legal representative for those applicants and victims who were not legally represented.

e Arranging and conducting a pre-hearing conference with all the legal representatives involved. The purpose of this conference was, amongst other things, to identify and limit the issues, determine matters that were common cause and exchange any documents to be used at the hearing.

52. Once a hearing had been scheduled, it was the task of the Committee's logistics officers to take care of all the logistical arrangements. The success of a hearing depended to a very large extent on proper logistical arrangements. The logistics officer was normally the first official with whom the applicants, victims, implicated persons, legal representatives and media made contact. Thus apart from performing their logistical responsibilities, logistics officers had to double as public relations officers. Hearings could last anything from three days to eight weeks, and the logistical arrangements normally had to include:

a Securing an appropriate and secure venue for the hearing. In determining a venue, one of the factors that needed to be taken into account was its accessibility to the various parties and the public. In line with the Committee's decision to allow the community concerned to be part of the hearing, a venue was secured, as far possible, in the area where the incident in question had occurred.

b Taking care of the required security arrangements.

c Taking care of travel, accommodation and catering arrangements for members of the Committee, staff and victims.

d Arranging for interpreting services. Honouring the decision of the Commission that everyone should be allowed to give evidence before the Commission in his/her mother tongue, the Committee made use of interpreters contracted by the Commission. At certain hearings, interpretation into no fewer than six languages was required.

e Arranging for technical assistance for recording the proceedings and operating the simultaneous interpretation system. Bearing in mind that anything between two and four hearings per week took place simultaneously, proper planning was essential to ensure that these services were always available.

f Arranging for telephone, faxing and photocopying facilities.

g Securing the services of 'briefers' – qualified mental health workers who were responsible for attending to the emotional well-being of victims for the duration of the hearing. Briefers played an invaluable role in assisting grief-stricken victims and relatives. At times, the demand for these services was so high that logistics officers and evidence leaders had to double as briefers.

h Ensuring that all recordings were submitted to the transcribers for transcribing.
i Submitting a reconciliation of all expenses for audit by the finance department at the completion of the hearing.

53. At its inception, the Committee decided that, as an adjudicative body, it would not issue media statements or give interviews about its work or decisions. It also decided that the Commission's media department and the Committee's executive secretary would deal with all communications with the media. The Committee initially had reservations about media coverage of its hearings, especially television coverage. It felt that this might deter people from applying for amnesty or from giving evidence. Concern was also expressed that legal representatives might be tempted to exploit to their advantage the public exposure that television coverage affords.

54. Notwithstanding these concerns, the Committee agreed, albeit reluctantly, that full media coverage would be allowed during hearings, provided that the Committee had the discretion to disallow or halt coverage when it was in the interests of justice to do so.

55. It emerged, however, that the media were to play a very constructive and important role in covering amnesty hearings, and an excellent working relationship developed between the media and the Committee. The role of the media in communicating the essence of the amnesty process and involving the public in the proceedings cannot be underestimated; and it must be said that the process was considerably enriched by this contribution.

Sixth stage: Hearings

56. The hearings of amnesty applications were the only publicly visible part of the amnesty process. Not only did they physically take place in public, but the hearings were also extensively covered by the print and electronic media.

57. The Act provided that the Committee should determine the procedural rules regulating public hearings of amnesty applications. This was done over a period of time, taking into account the practicalities of the process. In general the guidelines were as follows:
a Any person giving evidence was required to do so under oath or affirmation.
b The first to testify were the applicants, followed by any witnesses they wished to call.

c The next to give evidence were the victim(s) or the relatives of the victim(s) and any witnesses they wished to call. Victims who were unable to contribute towards the merits were allowed to make a statement rather than testify if they so preferred. These statements normally dealt with contextual or back ground factors and subjective views and experiences, often critical to issues of reconciliation and closure for victims.

d If applicable, the Committee could then call witnesses, either of its own volition or, if it was seen to be in the interest of justice, at the request of any person who had a material interest in the proceedings. The Committee could also allow any implicated person an opportunity to rebut any allegations against him/her.

e The Committee had the discretion to allow cross-examination of any person giving evidence before it by any interested person or her/his legal representative. The Committee could limit the scope and extent of cross-examination.

f At the conclusion of the evidence, the applicant or his/her legal representative was entitled to address the Committee. This would be followed by an address by the other interested parties or their legal representatives. The Committee could, within reasonable limits, restrict the scope and duration of the addresses, which were required to be succinct and to the point.

g A person giving oral evidence was entitled to do so in any of the official languages.

h Any person who wished to make use of any document during the hearing had to ensure that sufficient copies were furnished to the Committee and to all other known interested parties in good time. This rule was more strictly applied where the person was legally represented.

i Evidence was limited to issues that were material to a proper consideration of the application.

58. The Committee could, in its sole discretion, vary any of these procedures, which did not in any way detract from the general competence of the Committee or its inherent powers.

59. The decision to allow cross-examination of any applicant or witness could be influenced by the following factors:

a whether or not the cross-examiner was opposing the application;

b whether or not the concerns of implicated persons could be adequately met by an affidavit in which they stated their version;

c whether or not the purpose of the cross-examination was to show that the applicant was not entitled to amnesty;

d whether or not the cross-examination was directed at specific requirements prescribed by the Act in order to qualify for amnesty; and
e whether or not the interests of justice demanded that cross-examination be allowed and to what extent it should be allowed.

60. The decision not to promulgate formal rules of procedure allowed the Committee to adopt a flexible approach that was more appropriate to the unique nature of the amnesty process. The guidelines adopted by the Committee enabled it to use its sole discretion in determining the order of proceedings and to rule on any relevant point of law or matter during the course of a hearing. It was thus able to allow:
    a affidavits to be submitted to the panel from persons not present at or avail able to attend the hearing;
    b documents to be submitted as evidence during the course of the proceedings;
    c hearsay evidence to be heard and its evidentiary value determined; and
    d cross-examination, having due regard to time constraints, fairness, relevance and the purpose of such cross-examination.

61. Moreover, persons (or legal representatives acting on their behalf) who challenged or contested the allegations contained in affidavits submitted to the Committee could do so by filing written representations or by submitting an affidavit within a reasonable period of time after the hearing.

62. The Committee could, on application by a party, take cognisance of evidence given at judicial proceedings, provided that the party sufficiently specified the relevant portion of the evidence concerned, and allow persons implicated by evidence given during the course of the hearing to make representations within a reasonable period of time after the hearing.

Seventh stage

63. The final stage in dealing with an application was the delivery of a decision by the Committee and the consequent notification of all parties concerned.

64. In certain instances, the Committee gave *ex tempore* (immediate) decisions at the conclusion of a hearing. In the majority of the cases, however, the Committee only decided the matter at a later stage.
65. The reason for this is that many of the hearings stretched over a period of days and the evidence ran to thousands of transcribed pages. Thus, both the Committee and the legal representatives needed time to go through the evidence.

In certain instances, legal representatives required a reasonable period to submit written heads of argument and Committee members needed time to discuss the evidence and prepare a decision.

66. As soon as a decision was reached, it was handed to the executive secretary, who promptly notified the applicant and all other interested parties of the outcome and provided them with a copy of the decision as well as a copy of the proclamation that would be published in the Government Gazette. Known victims and implicated persons were notified through their legal representatives. Where applicable, notifications were also sent to the Department of Correctional Services, the head of the prison concerned, the National Prosecuting Authority and the registrar of the court concerned. The Commission was similarly notified.

CHALLENGES FACED BY THE COMMITTEE

67. The Committee was faced with various challenges, not all of a substantial nature. Only those factors that made it difficult for the Committee to do its work will be reflected upon here.

Reviews

68. No provision was made in the Act for an appeal against any decision of the Committee. Once the Committee had made its decision and informed the applicant, the Committee was *functus officio* (its function fulfilled) and could not review its decision or change it. The only remedy available to those who were dissatisfied with the decision (whether applicant, victim or interested party) was to approach the High Court to review the decision.

69. At the time of compiling this report, eight review applications had been filed against the decisions of the Committee. In two instances, the applications succeeded and the matters were referred back to the Committee for reconsideration. In three instances, the applications were dismissed. The remaining three instances were still pending at the time of publication. (These reviews are dealt with in more detail in Chapter Four, 'Legal Challenges'.)

Operational challenges

70. Operational challenges had the most profound impact on the ability of the Committee to finish a huge workload within the shortest period possible. Some of the most significant are mentioned below:

Staff

71. All members of staff were employed in a temporary capacity and on a contractual basis. Due to the lack of employment security and uncertainty about exactly when the process would end, staff members were understandably constantly on the lookout for permanent employment elsewhere. Apart from a basic salary, staff members were offered no incentives, such as service bonuses, causing the Committee to lose experienced staff on a regular basis. It became increasingly difficult to fill vacancies, as it was almost impossible to find experienced and skilled people willing to enter into contracts for limited periods without being able to offer them substantial incentives.

Budgetary constraints

72. The Committee did not have its own budget and had to compete with the rest of the Commission for available funds. More funds would certainly have gone a long way towards making it possible to employ more staff and so reduce some of the pressure on the Committee.

Preparation of applications

73. The preparation of an application entailed substantially more than simply reading it and submitting it to the Committee for finalisation. The information contained in applications was, as a rule, very scant and had to be supplemented in one way or another. The vast majority of applicants did not have the luxury of a legal representative to assist them in completing the application form, and those who had lawyers usually divulged as little as possible. This necessitated a continuous exchange of correspondence between the Committee and applicants to elicit the necessary information.

74. Approximately 65 per cent of the applications were submitted by people who were in custody and had limited means of obtaining information. In most of these instances, court and police records had to be obtained. Delays were frequently experienced in obtaining records from the responsible institutions and, in many instances, the investigators had to go personally to collect them.

75. Corresponding with applicants in custody was often very difficult, since they were often transferred from one prison to another without the Committee being informed. This resulted in correspondence being despatched to the wrong address and reaching them only after a delay.

76. Some of the incidents mentioned by applicants had never previously been investigated by the police or dealt with at a trial. Consequently, the Committee had to investigate these incidents long after the event had taken place.

77. Establishing the identity and location of implicated persons, and especially of victims, was a very difficult and time-consuming task. The print and electronic media had to be used. The cost of placing even a single newspaper advertisement per missing person could add up to a considerable amount of money.

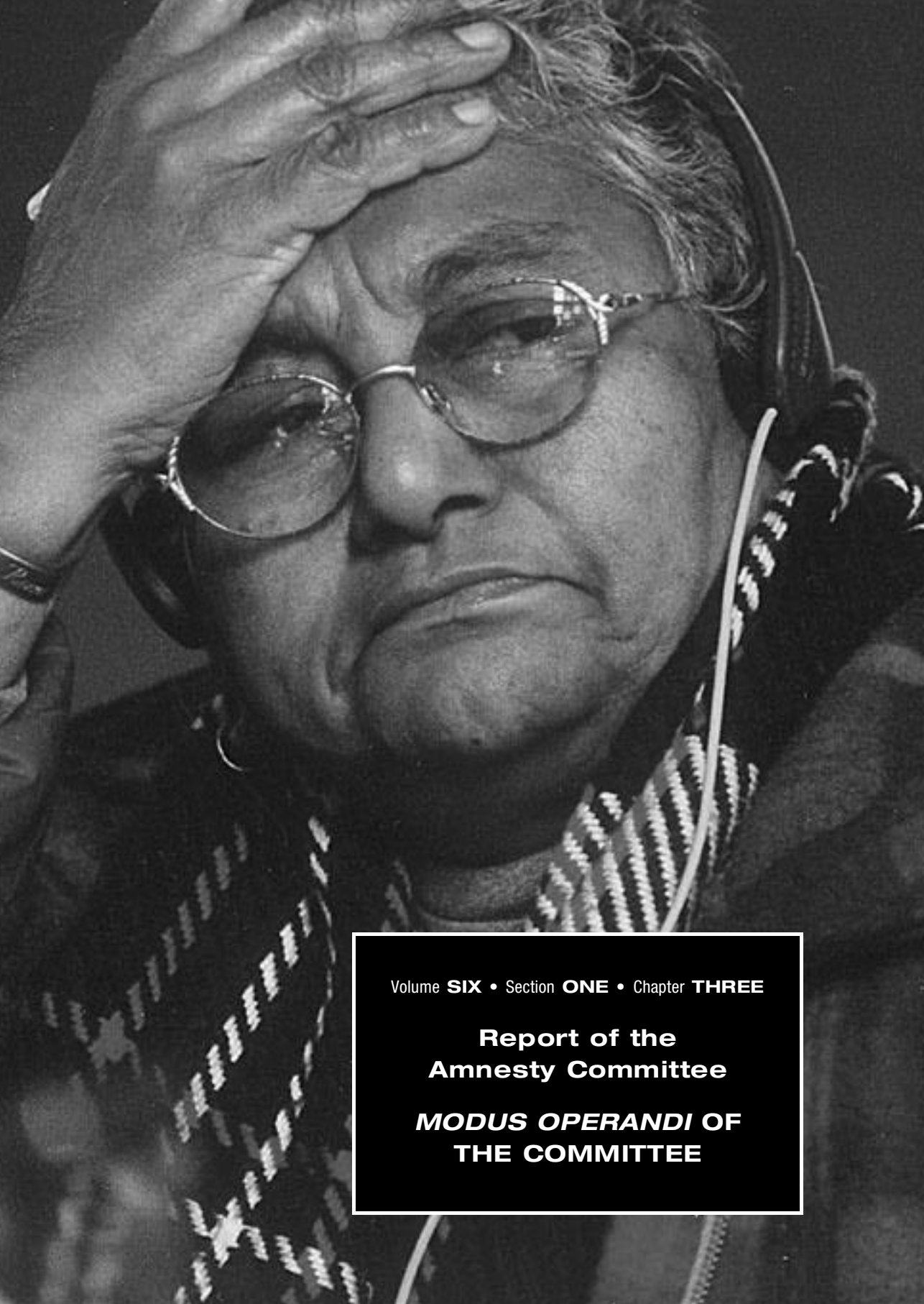
78. Investigative work took investigators all over the country, in many cases to remote and inaccessible areas. Investigators often had to contend with uncooperative victims and implicated persons, but all information furnished by applicants had to be verified.

79. The co-operation of political parties with the amnesty process was at times disappointing. Getting them simply to confirm an applicant's membership or provide information about an incident or policy could take anything between two and six months. In the meantime, the Committee was left to contend with irate and frustrated applicants.

Hearings

80. The task of scheduling – and adhering to a planned schedule – was complicated by a number of factors, including the difficulty of finding a suitable venue. Not all institutions were willing to make accommodation available for a hearing, especially for periods of up to two weeks or longer. Factors that had to be taken into account in the choice of a venue included financial constraints, security, and the accessibility of the venue to applicants, victims and the general public. Another difficulty was finding a date that suited the various legal representatives representing the applicants, the implicated persons and victims. In addition, lawyers tended to treat hearings as criminal trials, with the result that the cross-examination of applicants sometimes continued for days.

81. These are but some of the challenges the Committee faced. Due to dedication and effort on the part of everyone involved, none of these challenges proved insurmountable. Notwithstanding these less than optimum circumstances, the Committee was able to complete its mandate successfully by 31 May 2001. (...p36)



Volume **SIX** • Section **ONE** • Chapter **THREE**

Report of the Amnesty Committee

MODUS OPERANDI OF THE COMMITTEE

Modus Operandi of the Committee

■ CHAMBER MATTERS

1. Section 19(3) of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) gave the Amnesty Committee (the Committee) the discretion to deal with certain applications in the absence of the applicant and without holding a public hearing – after having investigated the application and having made such enquiries as the Committee considered necessary. These matters were generally referred to as 'chamber matters' and concerned incidents that did not constitute gross violations of human rights as defined in the Act (see further Chapter One).[24]

2. Subsection 19(3)(a) of the Act empowered the Committee to refuse an application in chambers when it was satisfied that the application did not relate to an act associated with a political objective. In appropriate circumstances, the Committee was authorised to give the applicant the opportunity to make a further submission before the matter was finalised. This happened quite frequently where the available information created some doubt as to whether the requirement of a political objective had been satisfied, for example where it was not clear whether the applicant had acted within the scope of a particular order or mandate.

3. In terms of subsection 19(3)(b) of the Act, amnesty could be granted in chambers only if the requirements for amnesty (as set out in section 20(1) of the Act) had been complied with; if there was no need for a hearing, and if the act, omission or offence to which the application related did not constitute a gross violation of human rights.

4. The largest percentage of applications the Committee dealt with were chamber matters. Out of a total of 7115 applications, 5489 were dealt with in chambers.

24 Section 1(ix) defined gross violations of human rights as killings, abductions, torture and severe ill-treatment, including any attempt, conspiracy, incitement,instigation, command or procurement to commit any of these acts.

DIFFICULTIES ENCOUNTERED WHEN DEALING WITH CHAMBER MATTERS

5. One of the difficulties the Committee experienced when dealing with chamber matters arose from the lapse of time between the commission of the act or offence and the consideration of the application for amnesty. Where this spanned a period of years, it was often difficult to trace victims or possible witnesses in order to obtain their comments on an applicant's version. In many such cases, it was difficult if not impossible to obtain police or court records. Even where court records were traced, applicants often averred that they had lied to the trial court to escape punishment. It was also not uncommon to learn from applicants that they had concealed the political motivation for their deeds in their court evidence, as this would, at the time, have been regarded as an aggravating circumstance. This left the Committee with the dilemma of having to decide whether an applicant had disclosed the truth in the amnesty application or whether this new version was also just an expedient stratagem. Obviously, these difficulties also arose in 'hearable' matters.

6. Another difficulty arose from the fact that, in the time gap between the submission of an application by a serving prisoner and its consideration by the Committee, an applicant might have been released from prison without leaving any forwarding address or contact details. In these instances, the Committee took the view that applicants had a duty to keep the Committee informed of their whereabouts. Nevertheless, the Committee took all possible steps to trace applicants. If several attempts and a final ultimatum failed to elicit a response, such matters were dealt with on the basis of unsupplemented information.

7. The use of pseudonyms, and references to co-perpetrators by pseudonyms or *noms de guerre*, hampered the proper linking of files relating to the same incident and consequently made it extremely difficult to corroborate the versions of the various applicants by cross-referencing. This was a particular problem when dealing with applications by members of the liberation movements. The resultant delays made the process of dealing with chamber matters more time-consuming than had originally been anticipated.

8. Other delays resulted from slow responses to enquiries directed to political organisations, government institutions and private individuals. This was not always due to reluctance or unwillingness to assist the Committee on the part

of those concerned, but more often reflected a lack of the necessary capacity to deal with these enquiries expeditiously.

9. The Committee was mindful of the particular difficulties experienced by government departments. In many instances, old files had been destroyed in the normal course of events or as part of a deliberate policy to conceal information.[25] Some considerable changes in staff after the democratic elections in 1994 caused additional difficulties in accessing archival material. In the case of private individuals, communication by mail presented its own problems, particularly in areas that were not easily accessible, such as outlying rural areas and informal settlements.

PROCEDURE FOLLOWED BY THE COMMITTEE IN DEALING WITH CHAMBER MATTERS

10. The procedure followed when dealing with chamber matters was adapted from time to time to take account of the availability of Committee members. This resulted in differing views on the interpretation of the Act. Initially, when the Committee consisted of only five members, all were required to consider the application and only one member was mandated to sign the decision on behalf of the full Committee. After the enlargement of the Committee, two signatures were at first considered sufficient. The Committee, however, eventually settled on a three-member panel (one of whom had to be a judge) to decide chamber matters.

11. Committee members dealt with chamber matters as and when they were available in between hearings and the writing of decisions. At times, this resulted in the involvement of more than just the three Committee members required to sign the final decision. A Committee member would, for example, be assigned to deal with a particular matter in chambers and might, in the process, direct an administrative official to obtain further particulars (such as a police docket or court record) to clarify the application. Once the additional information became available, the same file might be referred to another Committee member who happened to be available at the time, and not necessarily back to the member who had originally dealt with the file. This member would, if satisfied, take a decision and have a draft decision prepared. If s/he did not consider the application to be a straightforward one, s/he might decide to consult with other Committee members before drafting the decision. Once the decision was drafted and the three members concurred, it would be signed and the interested parties would be informed of the outcome of the application.

25 See particularly Volume One, Chapter Eight, 'The Destruction of Records'.

12. Some chamber matters proved to be of such complexity that they required the attention of more than the requisite three Committee members, and even of the full Committee. However, after appropriate consultations among members, the matter would still be finally decided by a three-member panel.

13. In less complicated cases, where an application was refused, no summary of the facts was given but only the ground/s for the refusal. Where amnesty was granted in less complicated cases, a brief summary of the facts was provided, followed by the Committee's decision.

SPECIAL CASES

14. Some cases that were originally earmarked to be dealt with in chambers were eventually referred to a hearing after further consideration and investigation. These special cases fell into three categories. The first concerned a collection of applications involving witchcraft and the burning of people as a result of this phenomenon. These were particularly prevalent in, but not limited to, the Northern Province. The second category concerned a cluster of cases involving the activities of self-defence units (SDUs) in the townships, some of which did not, strictly speaking, require a hearing, but were ultimately heard to ensure that the Committee obtained a complete account of SDU activities. The last category concerned the activities of Azanian People's Liberation Army (APLA) operatives, particularly robberies and related violent acts committed, it was argued, to raise funds for the organisation.

15. At first glance, all of these incidents appeared to be common crimes. The SDU applications, moreover, contained scant information, which aggravated the difficulty of determining the events that had taken place. As the context of these incidents was clarified, however, it became evident that these matters could only be properly decided at public hearings where all the relevant circumstances could be fully canvassed. The Committee accordingly opted for this approach.

Witchcraft

16. Applications relating to offences involving witchcraft were considered to fall into a unique category of human rights violations and were given special attention by the Committee. The question as to whether amnesty could be granted where a victim or victims had been attacked or killed as a result of a belief in witchcraft elicited much debate, and members of the Committee were initially divided on the issue. One view was that such a belief was not sufficient grounds for

granting amnesty and that applications of this nature ought to be refused. Others argued that the concept 'conflicts of the past', as envisaged in the Act, also encompassed the very real conflict between traditional values – essentially supporting the *status quo* – and the emerging democratic values supporting transformation.

17. So contentious was the issue initially that it was referred to a full meeting of the Committee. At this meeting, a subcommittee was mandated to investigate the matter and make recommendations. It was ultimately decided that all witchcraft cases should be dealt with in one cluster and referred to a public hearing.

18. The bulk of the witchcraft cases were heard in two hearing sessions at Thohoyandou in the Northern Province. Professor NV Ralushai, an expert witness and chairperson of the 1995 Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province, testified at the principal hearing. His evidence, as well as the Interim Report of his Commission – which was made available to the hearings panel – were invaluable in helping the Committee make informed decisions on all witchcraft-related applications.

19. Largely as a consequence of these contributions, the Committee concluded that a belief in witchcraft was still widely prevalent in certain rural areas of South Africa. Moreover, it became clear to the Committee that the issue of witchcraft had – at certain times in some rural areas – been a central factor in some of the recent political conflicts between supporters of the liberation movements and the forces seeking to entrench the *status quo*. The former were of the opinion that traditional practices and beliefs related to witchcraft had been exploited by the latter to advance their positions.

20. The Committee accepted the following finding of the Ralushai Commission of Inquiry:
Apartheid politics turned traditional leaders into politicians representing a system which was not popular with many people, because they were seen as upholders of that system. For this reason, traditional leaders became the target of the now politicised youth.[26]

21. It further accepted the view of the Commission of Inquiry that:
[i]n some cases the youth intimidated traditional leaders in such a way that the latter had little or no option but to sniff out so-called witches.[27]

26 Interim Report of the Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province, p. 49.

27 Interim Report of the Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province, p. 144.

22. It was also clear from the evidence heard by the Committee that, in Venda particularly, the liberation forces used cases of witchcraft and ritual killings to politicise communities. This strategy was facilitated by the fact that local communities were dissatisfied with the manner in which the apartheid authorities had handled such cases. For example, the failure of the authorities to act against people who were believed to be witches resulted in a belief that the government was the protector of witches. In Venda, where traditional leaders with relatively poor education were politically empowered and were associated with some of the most heinous abuses, the situation was ripe for political conflict.

23. In some cases, where comrades and other pro-liberation movement activists were perceived as having died as a result of witchcraft, community organisations took steps to eliminate those they believed to have been responsible for these deaths.

24. This exposition represents only some aspects of the hearings on these complex witchcraft-related applications. Although the facts and merits of the various applications were diverse, the incidents occurred largely against the background outlined above, which also informed the decisions of the Committee. Within this framework, each application was decided individually and according to its own merits. The specific circumstances of each case are fully recorded in the amnesty decisions accompanying this report.

25. The Committee shares the widespread concern expressed by civil society about the continued prevalence of practices and violent incidents related to a belief in witchcraft in certain areas. It is the Committee's view that this issue warrants further attention by the appropriate government authorities.[28]

Self-defence units and township violence

26. The Final Report of the Truth and Reconciliation Commission (the Commission) discussed the phenomenon of SDUs and the various acts of violence their members committed in many parts of the country[29]. It will not, therefore, be elaborated on here.

27. Applications by former members of SDUs presented the Committee with formidable problems. Most SDU applications were hurriedly completed and submitted just before the closing date for amnesty applications.[30] These forms contained only basic information with few, if any, details about the incident(s)

28 See Section 4, Chapter 6, 'Findings and Recommendations' in this volume.

29 See Volume Two, pp. 35,36,675ff, 684; Volume Three, pp. 214–15,298–303,515,692.

30 Applicants had been assisted by a community worker who had been closely involved in monitoring community conflicts.

for which amnesty was being sought. Most were identical and simply contained general reference to unspecified SDU activities.

28. These SDU applications caused a number of specific difficulties.

29. First, and not unnaturally, SDU members stated in their applications that they had acted in self-defence. On a strict legal interpretation, such conduct is not unlawful and does not, therefore, amount to an offence. As one of the statutory requirements for amnesty is that the applicant's conduct must constitute an offence associated with a political objective, SDU applicants did not qualify for amnesty (see also Chapter One of this volume).

30. Second, given the form of the violence in the townships and the nature of the operations undertaken by SDUs during the early 1990s, applicants frequently could not identify any specific victim(s) of their actions. Incidents tended to involve violent conflicts between crowds of African National Congress (ANC) and Inkatha Freedom Party (IFP) supporters. Many applicants were unable to say whether or not any person(s) had been injured or killed as a result of their actions in the course of these clashes. They were often not even able to say whether any injuries or deaths had resulted during specified clashes.

31. Third, some applicants (usually convicted prisoners) denied having participated in or even having been associated with the commission of the offence(s) for which they had been convicted and for which they were seeking amnesty. Again, in terms of the Act, they could not be said to have committed an offence with a political objective as required by the Act. Generally the Committee took the view that it was not a court of appeal and that applicants who had been refused amnesty had to seek redress from the courts. The Committee did, however, endeavour to draw the attention of the appropriate government authority to the anomaly of releasing via the amnesty process those guilty of offences, sometimes of a heinous nature, while retaining in prison those innocent of these offences. This is obviously a matter requiring further focussed attention by the appropriate authorities.

32. Fourth, in some SDU cases the Committee found that the applicant(s) concerned had acted against targets without knowing whether or not they were members or supporters of an opposing political organisation or party. Rather, they acted against communities that were perceived to be supporting a rival organisation. This created a potential complication in that the Act required the applicant to have acted against a political opponent.

33. Fifth, the Committee also heard that some SDU applicants had acted during specific incidents without an order from (a) leader(s) of the political organisation or party they represented or of which they claimed to have been a member or supporter at the time of the commission of the offence(s). Again, this complicated even clearly politically motivated action.

34. Sixth, those ANC-aligned SDU members who had committed acts of robbery ostensibly with the aim of buying arms for their activities could not conceivably be said to have acted in accordance with the general policy of the ANC, which disavowed robbery as part of its policy.

35. Finally, due to the lack of legal representation and advice available to them at the time of the completion of the amnesty application forms, many SDU applicants failed to provide the necessary particularity concerning their actions. These applications were, therefore, at risk of being refused for their failure to comply with the requirements of the Act.

36. After intense discussions prior to the finalisation of SDU applications, the Committee decided to deal with them at public hearings where the context of the conflict and the activities of the SDUs could be fully ventilated.

37. The hearings helped clarify the political background and context within which these offences occurred through the evidence of witnesses who were part of the leadership of the organisations involved in the conflict. The Committee also benefited from the reports and testimony of representatives of non-governmental organisations who had been involved in monitoring the political violence and trends in the areas where these activities occurred. In evaluating the merits of the applications, the Committee also considered the submissions of the ANC, and subjected applicants to pertinent and probing questions about the ANC's tactics and policies.

38. However, although these submissions were generally helpful, they did not always enable the Committee to reach an informed decision on every individual case. It was clear, for example, that it had not always been possible for SDU members to receive a specific order before launching an attack or operation. The areas in question were, moreover, gripped by large-scale, ongoing and indiscriminate violence where the maintenance of law and order had all but collapsed. Testimonies at the hearings depicted a grim picture of day-to-day survival as communities came under attack by clandestine forces, often operating

with the tacit approval and even support of the security forces. The East Rand in the early 1990s offered a clear example of this, with young people testifying about their involvement in violent operations in defence of their communities.

39. It was often difficult to draw a distinction between legitimate SDU operations and criminal actions. Local criminal elements exploited the violence and civil strife for their own ends. Some SDUs became a virtual law unto themselves, even acting against fellow SDU members, as was the case in Katlehong in 1992. Other SDU elements launched operations against the express orders of their political leadership.

40. Investigating the involvement of the security forces in the township violence of the early 1990s proved difficult. Lack of investigative capacity on the part of the Committee was one factor; time constraints were another. But the biggest obstacle was the attitude of the security forces themselves. Security force members were reluctant to appear before the Committee to refute allegations about their role in the violence. In many cases, they responded by submitting affidavits or instructing legal representatives to cross-examine those who had implicated them. Rarely did they attend the hearings to present their own version. The result was that, at the end of these hearings, there was little to contradict the strong impression that certain members of the security forces had been involved in acts of violence against communities which had simply sought to defend themselves.

41. It must also be mentioned that, in some of the SDU cases, there was no objective evidence to corroborate the testimonies of the applicants – either because the victims were unknown to the applicant or because they had left the area in which the attack occurred. This did not deter the Committee from making victim findings (in terms of section 22 of the Act) in the hope that the victims, once they reappeared, would be able to access the reparations process. There were also cases where victims took a conscious decision not to attend the hearings and testify for fear of reprisals by other members of an applicant's political organisation or party.

APLA operations

42. Applications from persons claiming to have been members or supporters of APLA – the armed wing of the Pan Africanist Congress (PAC) – presented the Committee with problems peculiar to this particular category of applicants.

43. These problems resulted from certain policies of the organisation, acknowledged by their leaders, which sometimes made it difficult to distinguish between acts associated with a political objective committed by bona fide APLA members and purely criminal acts committed for personal gain, often coupled with severe assault and murder.

44. The first such policy was that expressed in the APLA slogan 'one settler, one bullet'. Given the fact that APLA and the PAC regarded all white people as settlers, this slogan actually translated into 'one white person, one bullet'. Thus individuals became legitimate targets simply because of the colour of their skin, as in the case of the white American exchange student, Ms Amy Biehl[31], the patrons of the Heidelberg Tavern[32], the King William's Town Golf Club, and the Crazy Beat discotheque in Newcastle. These were, of course, analogous to incidents that involved members or supporters of the white right-wing organisation, the Afrikaner Weerstandsbeweging (AWB)[33], where black people were seen as supporters of the ANC and/or communists simply because they were black, and became targets as a result.

45. The second problematic policy position related to the 'repossession' of property. Particular difficulties arose in respect of 'repossessed' goods that, unlike firearms, could not be used directly in the furtherance of the liberation struggle. Many amnesty applications by APLA operatives involved the robbery or theft of a variety of goods and valuables, including cash and vehicles. They often alleged that some of the proceeds of these operations were used as subsistence for the operatives: that is, the proceeds provided their means of survival so that they could continue with their political work. Where goods other than cash were 'repossessed', it was claimed that these were sold to raise funds for the liberation struggle. APLA commanders who testified at hearings were at pains to point out that they viewed these acts of theft and robbery as the legitimate repossession of goods to which the African people of South Africa were rightfully entitled, in line with APLA policy.

46. In dealing with the APLA applications, the first issue the Committee had to resolve was whether these were bona fide operations associated with the liberation struggle. The Committee adopted the approach that amnesty would be refused if the applicants were unable to satisfy the Committee that the property involved had either been handed over to APLA or used in accordance with APLA policy in furtherance of the liberation struggle.

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31 Volume One, p. 11; Volume Three, p. 510.

32 Volume Three, p. 508.

33 Volume One, p. 120; Volume Two, pp. 643,645–8, 665; Volume Five, pp. 209,237.

47. Given the open-ended nature of this 'repossession' policy, it was not surprising that a large number of prison inmates attempted to obtain amnesty ostensibly under the flag of the PAC or APLA. The Committee initially inclined to the view that all these doubtful matters could be dealt with in chambers. However, it later adopted a more cautious approach, with the result that many alleged APLA cases were later revisited and referred to a public hearing.

48. A further difficulty that bedevilled the Committee in assessing the APLA applications was the somewhat loose structure of the APLA units that operated inside the country and, in particular, the 'task force' or 'township trainees' recruited by trained APLA commanders to assist in operations. According to the general submission of the PAC to the Commission, as well as the evidence of APLA commanders at hearings, these task force members were often recruited from the ranks of known criminals both in and outside prison. This was done, it was suggested in evidence, specifically because people with criminal records were best suited to the task of 'repossession' by means of theft and robbery.

49. The use of code names, the unavailability of APLA records and the impossibility at times of ascertaining the true identity of individual amnesty applicants further compounded the problems experienced by the Committee. According to the testimony of APLA commanders, the records of the organisation had been confiscated by the police and never returned. A further difficulty arose from the fact that the PAC and APLA maintained independent organisational structures. This duality is illustrated by the fact that, in the early 1990s, the PAC leadership – which represented the political wing of the organisation – suspended the armed struggle, while APLA, the military wing, continued with the armed struggle in apparent conflict with the PAC position. The resultant confusion presented a further difficulty for the Committee when it came to apply the amnesty-qualifying criteria of the Act – such as the provision that the act under consideration had to be 'associated with a political objective'.

50. The Committee sought the assistance of the PAC and APLA leadership in an attempt to ascertain the truth or relevant information to shed more light on particular aspects of various applications. Unfortunately this assistance was very seldom forthcoming. In those cases where assistance was given, it took an inordinately long time before a query was responded to.

51. Bold allegations of APLA membership or APLA involvement, uncorroborated by any objective proof, were obviously insufficient to comply with the requirements

of the Act. Unfortunately, in many instances, APLA commanders failed to attend hearings or to come to the assistance of applicants. This left the Committee in the position of having to test alleged APLA membership or involvement in incidents as best as it could, for example by evaluating an applicant's knowledge of the history, policies and structures of the organisation.

HEARABLES

52. In line with the provisions of the Act, the Committee was obliged to deal with any application concerning a gross violation of human rights at a public hearing.[34] This part of the Committee's mandate encompassed its most visible activities and was its public face. Although the Act provided for hearings to be held behind closed doors under exceptional circumstances, all the hearings conducted by the Committee were accessible to members of the public as well as to all sectors of the media, including television. The media covered most of the hearings and gave particularly extensive coverage to the cases considered to be high-profile amnesty applications, although this coverage and interest waned towards the end of the process.

Constitution of panels

53. The Act empowered the chairperson of the Committee to constitute subcommittees or hearings panels, which had to be presided over by a High Court judge. Normally a hearings panel would consist of three members who constituted a quorum, though at times, and in more complex matters, panels of up to five members were established.[35] An effort was always made to ensure that panels were representative of the racial and gender composition of the Committee itself, taking into account the exigencies of the particular case. Other relevant factors such as language were also taken into account. In applications involving official languages other than English, an effort was made to ensure that at least some members of the panel were proficient in the language in question, although a simultaneous interpretation service was provided at every hearing. This approach significantly facilitated the work and deliberations of the hearings panel outside of the formal hearing itself.

34 Subsections 19(3)(b)(iii) & (4).

35 There is no statutory quorum requirement set out in the Act. The quorum stipulation was established by decision of the Committee. The Act initially provided for a single committee of five members to consider applications. This soon proved impractical in view of the tremendous workload of the Committee. The Act was consequently amended to expand the membership of the Committee and to provide for multiple hearings panels in order to expedite finalisation of the work of the Committee within the general time constraints that applied to the Commission's process as a whole. It was, therefore, only on rare occasions that panels of more than three members were constituted later on in the process.

54. There is no doubt that the general representivity of the hearings panels greatly benefited the hearings process and helped the panels to deal with and appreciate the nuances of particular cases, enhancing the ultimate quality of decision-making within the Committee.

Hearings procedure

55. Although the Act gave the Committee the latitude to prescribe a formal set of rules to govern hearings, the Committee decided, after some consideration, that it would be in the best interests of the unique process created by the Act not to opt for a set of rules in advance.[36] It settled instead on the more flexible approach of determining the hearings procedure as the amnesty process unfolded, taking into account the practical demands of the process itself. This enabled the Committee to ensure procedural fairness in all cases, even where this required deviations from the procedures followed in the majority of cases. In the end, the procedure followed in most cases did not differ substantially from that which applies in a court of law.

56. It must be noted that there were those who criticised what they described as the 'judicialisation' of the amnesty process, arguing that the Committee was under no statutory obligation to adopt the process it followed: one which, even in the setting and formalities of hearings, very closely resembled the court approach.

57. A further and related criticism concerned the membership of the hearings panels. Although the Act required only that the Committee and the hearings panels be chaired by judges, the membership of the Committee consisted exclusively of lawyers. Critics argued that the exclusion of persons skilled in other disciplines – for example the social sciences – from Committee membership, impoverished the process. It was their view that multi-disciplinary panels would have diluted the legalistic process adopted by the Committee and introduced, instead, a rich variety of perspectives.

58. This criticism is reproduced here without analysis or comment, save to offer the Committee's view that, in a process requiring adjudication, lawyers will inevitably play a significant if not leading role and that the process will tend, therefore, to be judicial in nature. While it must be accepted that any system designed by humans will always leave room for improvement, it is the Committee's view that the adopted process did not result in prejudice to any party.

36 There was a view within the Committee that procedures should have been agreed upon and publicised at the outset.

59. In general, the Act provided for a process with clear inquisitorial elements. The Committee was expressly required to conduct investigations in respect of amnesty applications[37] and to ensure that the fullest possible picture emerged of the particular incident forming the subject matter of the application. This process had, moreover, to be undertaken within the context of the new constitutional system, which requires that administrative bodies such as the Committee should engage in fair administrative action.[38]

60. Within the broad parameters set by the legislation, the Committee endeavoured to steer a middle course between a purely inquisitorial and an adversarial procedure[39] in its hearings. The guiding principle followed was to allow every interested party the fullest possible opportunity to participate in the proceedings and to present a case to the panel. Every party that participated in the hearings had the right to legal representation, and even those who were indigent were always afforded some form of legal representation.[40] This enabled the hearings panels to adopt a less inquisitorial approach during the course of the hearings, which eventually became predominantly adversarial in nature. In some exceptional cases, and where it was demanded by the interests of justice, hearings panels acted proactively by postponing hearings (even when they had already been partly heard) to allow a party the opportunity to investigate or deal with material issues that arose in the course of the hearing. This meant that parties were allowed the fullest possible opportunity either to present or oppose an amnesty application. While endeavouring to make the process as fair as possible, the Committee was cognisant of and guarded against the possible abuse of the flexibility of the adopted procedure to the detriment of one of the parties or the process as a whole.

61. Throughout the process, the Committee was faced with the challenge of having to balance the need to allow applications to be fully canvassed with the need to conclude the process within the shortest possible time and with ever-dwindling resources. To this end, the Committee was authorised by the provisions of the Act to place reasonable limitations on cross-examination and the presentation

37 Section 19(2) provides that the 'Committee shall investigate the application and make such enquiries as it may deem necessary …'.

38 Section 33 of the Constitution (Act 108 of 1996) provides that 'everyone has the right to administrative action that is lawful, reasonable and procedurally fair'.

39 An inquisitorial procedure is one in which the court or committee takes the leading role in questioning witnesses and examining evidence. In an adversarial procedure the court or committee plays a neutral role and allows the parties to present their cases and question each other. South African courts are traditionally adversarial, and commissions of inquiry traditionally inquisitorial.

40 Section 34 of the Act entrenches the right to legal representation while at the same time providing for a legal assistance scheme for indigent parties to amnesty proceedings. In practice this scheme was chiefly applied to assist victims, since the government introduced a state-sponsored scheme to assist applicants who were former or present state employees or members or supporters of liberation movements. The perceptions of the victims with regard to the quality of legal representation provided for in the respective schemes are dealt with elsewhere in this report.

of argument at hearings.[41] Hearings panels were, therefore, in a position to direct cross-examination and argument towards only those elements of a case that were relevant to assessing the factors to be considered in deciding the amnesty application. In many instances, the incidents in question had already been fully canvassed at court hearings – particularly in criminal trials – which had already established the objective facts surrounding an incident (such as the date, time, place and nature of the incident, the identity of the victims and the like).

62. There was, however, a significant limitation to the degree of assistance that could be obtained from the records of many criminal trials in cases where an amnesty applicant had appeared as the accused. The striking difference between an amnesty application and a criminal trial lies in the fact that, in a criminal trial, the accused invariably try to exonerate themselves, while at an amnesty hearing they incriminate themselves. This latter factor is, of course, one of the legal requirements for qualifying for amnesty. The Committee was often struck by the extent to which both defence and prosecution had perverted the normal course of justice in earlier criminal trials. Not only did amnesty applicants who had earlier been accused admit to having presented perjured evidence to the trial court, but similar admissions were often made by amnesty applicants who had appeared as prosecution witnesses at criminal trials or who had investigated cases as members of the former South African Police. A similar situation pertained to official commissions of inquiry, such as the Commission of Inquiry into Certain Alleged Murders convened in 1990 and chaired by Mr Justice LTC Harms.

63. With a few notable exceptions, the Committee generally received the co-operation of legal representatives in confining cross-examination or argument to strictly relevant issues. As the amnesty process progressed, oral argument at the conclusion of hearings became the norm. It was only in particularly complex cases, or where extensive evidence and other material were presented to the hearings panel, that the parties were called to give written argument. In some exceptional cases, hearings panels had to reconvene to receive oral submissions on the written argument that was presented to the panel.

Decision-making

64. Only in the most exceptional cases did the Committee deliver its decision immediately on conclusion of the proceedings. These few *ex tempore* (immediate)

41 Section 34(2) deals with this issue as follows: '(2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of cross-examination of witnesses or any address to the Commission.'

decisions were handed down in clear-cut cases where all parties agreed that amnesty ought to be granted and that any further delay would occasion irreparable prejudice to the applicant, who was in many cases serving a prison sentence for the offence for which amnesty was being sought.

65. However, in the normal course of events, the Committee would reserve its decision at the end of the hearing to allow members of the panel to consider the case. In the majority of cases, panels reached consensus. There were, however, instances where dissenting decisions were handed down. For the most part, the dissenting opinion related to the overall outcome of the application. In some cases, however, it applied only to a particular issue, or to only one of a number of incidents forming the subject matter of the application, or to some of the applicants only.

66. In all cases, the hearings panel handed down reasoned, written decisions.[42] The decision was then made available to all parties that had participated in the application, and was simultaneously made public.

67. Insofar as the specific process of decision-making was concerned, it was the responsibility of the presiding judge to allocate the writing of the particular decision to a member of the hearings panel. In most cases, the panel was able to come to a decision soon after the finalisation of the hearing. In more complex cases, or where there was no immediate consensus, the panel took time to consider the entire case and review the transcript and any preliminary views expressed by members of the panel. Sometimes, one or more meetings had to be convened to canvass the matter.

68. In order to decide a case, the panel had to make a decision based on the relevant facts. These findings were then tested against the requirements laid down in the Act in order to determine whether the particular applicant qualified for amnesty. One of the difficulties that confronted the Committee was that hearings panels were sometimes presented with only a single version, namely that of the amnesty applicant. This was the case where the applicant was the only witness to the incident in question, or where other potential witnesses were untraceable or deceased. Needless to say, this was not a particularly satisfactory way of determining applications, especially those concerning grave incidents. The reality was, however, that panels had to make a decision on each and every application and were left with the task of assessing the single version as best they could,

42 A full text electronic version of all decisions handed down in hearable matters accompanies this report in the form of a compact disc.

taking into consideration the established objective facts as well as the probabilities. Unfortunately, there was always the possibility of suspicion or doubt around cases of this nature. There was, however, no foolproof method of eliminating the possibility of abuse of the process in cases of this nature.

69. Usually, however, hearings panels were faced with the task of deciding cases in the face of conflicting versions of fact. These could and did take a variety of forms and related to both peripheral and material issues. There was often a conflict between the version of the applicant and the version of those opposing the application. Frequently this conflict did not relate directly to the merits of the incident in question but to other relevant issues, such as the political motivation for the incident, or the alleged political activities of a deceased victim. In other instances, the factual dispute related to conflicting versions amongst multiple applicants.

70. Equally frequently, there was a conflict between versions tendered at the amnesty application and those that had been given at earlier criminal trials, inquests, commissions of inquiry and the like. In many instances, there was a conflict between the written application for amnesty and the testimony of the applicant at the amnesty hearing.

71. In situations where amnesty applicants and other parties who appeared at amnesty hearings readily admitted to having given false testimony in earlier judicial proceedings, the Committee could obtain very little assistance from the decisions of those tribunals. The same caveat applied with respect to the potential value of prior police investigations. The shocking injustices that had been perpetrated as a result of police investigations in some of the incidents that came before the Committee often meant that the results of these investigations had to be treated with caution when deciding amnesty applications. One of the more prominent examples of this was the so-called 'Eikenhof incident', where the wrong people were convicted and sentenced on the strength of false confessions obtained in the course of the police investigation.[43]

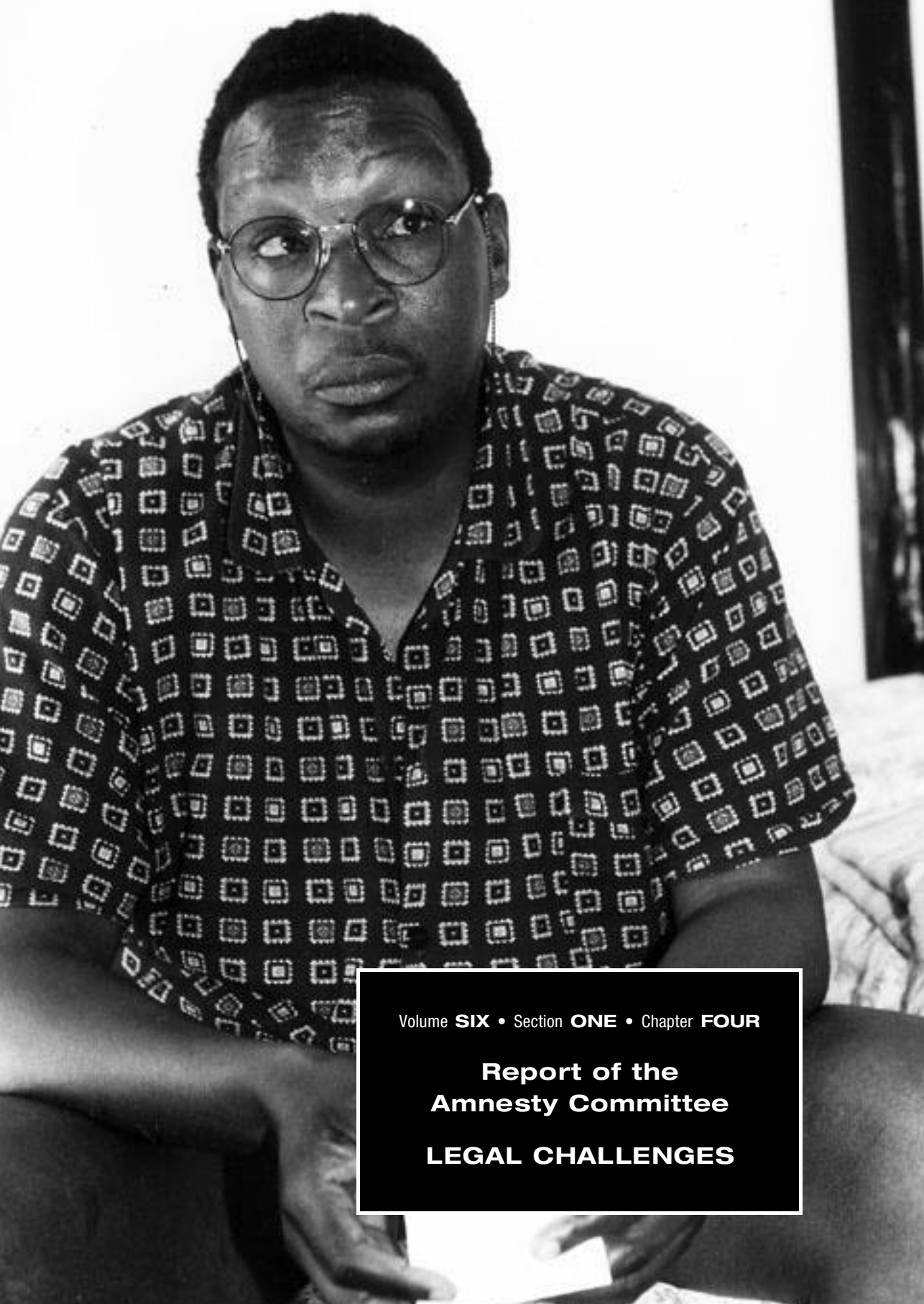
72. In these rather challenging circumstances, the Committee tried as best it could, by means of its own investigative capacity and a very careful weighing of all the relevant facts and circumstances, to reach just and fair conclusions. Aggrieved parties had the option of taking decisions of the Committee on review to the High Court. To date, eight of the Committee's decisions have been challenged

43 Phila Dola [AM3485/96].

and taken on review. Though the Committee was required by the High Court to review one of its decisions, that process resulted in the Committee reaffirming its original refusal of amnesty. The most prominent of these cases was that involving the assassins of the senior ANC/South African Communist Party official, Mr Chris Hani – namely Messrs Clive Derby-Lewis and Janusz Walus – where the Committee's rejection of their amnesty applications was upheld.[44]

73. Finally, it is also pertinent to note that the Act did not expressly introduce an onus of proof on applicants. It simply required that the Committee should be satisfied that the applicant had met the requirements for the granting of amnesty. This requirement is less onerous on applicants and introduced greater flexibility when deciding amnesty applications. (...p54)

44 See this section, Chapter Four, 'Legal Challenges'.



Volume **SIX** • Section **ONE** • Chapter **FOUR**

Report of the Amnesty Committee

LEGAL CHALLENGES

Legal Challenges

■ INTRODUCTION

1. On 29 October 1998, the Truth and Reconciliation Commission (the Commission) submitted its Final Report to President Mandela. It is a matter of public record that this historic occasion almost failed to take place due to the threat of two legal challenges which, had they succeeded, would have prevented the Commission's Report from being published at this time. Those who instigated these two court actions were the African National Congress (ANC) and former State President Frederick Willem de Klerk.

2. After submitting its Report to the President, the Commission and its Commissioners were placed in suspension pending the completion of the work of the Amnesty Committee (the Committee), which was eventually dissolved on 31 May 2001. This chapter supplements Chapter Seven of Volume One of the Final Report ('Legal Challenges'), and covers the period from October 1998 until dissolution of the Commission.

3. Subsequent to November 1998, the Commission was subjected to further legal challenges, mainly against the decisions of the Committee in respect of various amnesty applications. In addition, several matters that had been initiated before October 1998 were finalised during this period. These included complaints to the Public Protector by the Inkatha Freedom Party (IFP) and by certain generals of the former South African Defence Force (SADF).[45]

4. The IFP also launched an application in the High Court with the aim of compelling the Commission to provide all the information and evidence it possessed relating to the findings made against the IFP in the Commission's Final Report. This matter is dealt with below.

45 Reported on in Volume One, pp. 196–7.

LEGAL CHALLENGES TO THE PUBLICATION OF THE COMMISSION'S REPORT

African National Congress[46]

5. During the early hours of the morning of 29 October 1998 – the date of the scheduled handover of the Commission's Report to the President in Pretoria – the ANC launched an urgent application to the High Court for an interdict restraining the Commission from publishing any portion of its Final Report that implicated the ANC in gross violations of human rights before the Commission had considered certain written submissions it had received from the ANC on 19 October 1998. The ANC's submissions were made in response to the contemplated findings annexed to the Commission's notice in terms of section 30(2) of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act).[47]

6. The ANC's submissions were largely critical of the Commission's competence, integrity and bona fides in respect of the findings on the ANC. The ANC was especially concerned in view of the fact that the struggle for liberation against the unjust system of apartheid was in itself morally and legally justifiable in terms of international law.

7. It is necessary to understand that the Commission's mandate to investigate and report on the commission of gross violations of human rights required it to cut across political lines and that the Commission was, furthermore, required to conduct its investigations in an objective and transparent manner. Thus, in addition to investigating the former government and its various structures, the Commission also analysed the role of the liberation movements during the mandate period.

8. The Commission also made a distinction between human rights violations committed: firstly, by the armed combatants of the liberation movements in the course of the armed struggle; secondly, against their own members outside South Africa and, thirdly, by their supporters during the 1980s and after the unbanning of the organisations concerned on 2 February 1990.

46 The African National Congress v The Truth and Reconciliation Commission: Case No. 1480/98 (Cape of Good Hope Provincial Division).

47 Those findings appear in Volume Two, Chapter Four, pp. 325–66.

9. The Commission based its conclusions and findings on the ANC on a wide range of information and evidence it obtained from:
   a statements made by those who alleged they had been the victims of gross violations of human rights at the hands of the ANC;
   b amnesty applications by ANC members and supporters in respect of acts they had committed, which could have resulted in the perpetration of gross violations of human rights; and
   c the ANC itself in its detailed submissions to the Commission and from its own Commissions of Inquiry into human rights violations, namely the Stewart Report and the Motsuenyane and Skweyiya Commission Reports.

10. The Commission's findings that led to the ANC being held morally and politically responsible for the commission of gross violations of human rights pertained largely to the deaths and physical injuries sustained by unarmed civilians. These, the ANC had itself admitted, could be attributed to two main causes: either poor reconnaissance, faulty intelligence, faulty equipment, infiltration by the security forces, misinterpretation of policy by their cadres and anger on the part of individual members of MK, or the 'blurring of lines' between civilian and military targets during the 1980s.

11. As a result of the information placed before it, the Commission found the ANC to be responsible for a range of gross human rights violations arising out of unplanned operations; the bombing of public buildings, restaurants, hotels and bars; the landmine campaign in the northern and north-eastern parts of South Africa; the killing of individual enemies, defectors and spies; operations of uncertain status; the conflict with the IFP; violations committed by supporters in the context of a 'people's war' fostered by the ANC, and the severe ill-treatment, torture and killing of ANC members outside of South Africa.

Events leading up to the ANC's legal challenge

12. On 24 August 1998, the Commission served notice on the ANC (in terms of section 30(2) of the Act) that it intended to make certain findings against the ANC that would be to the latter's detriment. The notice invited the ANC to respond either by leading evidence before the Commission at a hearing or furnishing submissions within fifteen days of the date of the notice. This meant that the ANC was obliged (in terms of the provisions of the Act) to respond to the notice by no later than 8 September 1998 if it elected to make further submissions or bring further evidence.

13. The ANC failed to respond within the time limit stipulated. Instead, it entered into a series of correspondences with the Commission, seeking an extension of the deadline and requesting an audience with the Commission to discuss the findings the Commission intended to make against it.

14. In this context, it needs to be clearly understood that the Commission was required to set certain absolute deadlines for the receipt of information in order to finalise the editing, printing and publishing of the Final Report by the already determined handover date of 29 October 1998. Yet, despite various extensions acceded to by the Commission, no written submissions were forthcoming from the ANC. The Commission also explained in detail to the ANC why it could not grant the requested audience and, on 2 October 1998, informed the General Secretary that 5 October 1998 would be the last date on which the Commission would be able to consider any submissions.

15. On 19 October 1998, the ANC made its submission to the Commission. On 26 October 1998, the Commission informed the ANC that the submission had arrived too late to be considered but that, nevertheless, some but not all the Commissioners had been given access to the submission and that much of the factual content referred to in the objections had been rectified during the editing process. The ANC was also assured that its position as a liberation movement had been contextualised in the chapter on 'The Mandate' and that the findings of the Commission were based on a careful analysis of the evidence placed before it.

16. The ANC expressed its dissatisfaction with the Commission's response and demanded an assurance from all the Commissioners that they had properly considered all the issues and matters raised in the written submissions of 19 October 1998. The Commission responded on the same day, reiterating its earlier position and indicating that there was nothing more that could be done. The ANC responded with its legal challenge.

The court finding

17. In a judgment by Mr Justice J Hlope, the court dismissed the ANC's application with costs. In summary, the court found that the onus was on the ANC to establish the existence of a clear right (or a right clearly established in its favour) for the granting of an interdict to prevent the publication of the Commission's findings against the ANC. The court found that the Commission was entitled (in terms of section 30(1) of the Act) to adopt a procedure for the purposes of implementing

the provisions of section 30(2) (the notice provisions). The procedure was to invite submissions in writing before it made findings to a person's detriment or to receive evidence at a hearing of the Commission, as the case might be.

18. The court found that there had been no objection by the ANC to the fifteen-day notice period. This was substantially in accordance with the ruling in the case of Niewoudt v Truth and Reconciliation Commission 1997 (2) SA 70 SECLD at 75 H-I. The ANC had not argued that this time period was unreasonably short, nor had it elected to testify at a further hearing of the Commission.

19. The ANC was, as a result, lawfully obliged to respond to the section 30(2) notice by no later than 8 September 1998 and, in the circumstances, had no right to insist on a further extension of time. Any extension of time granted by the Commission would be the result of largesse rather than legal obligation.

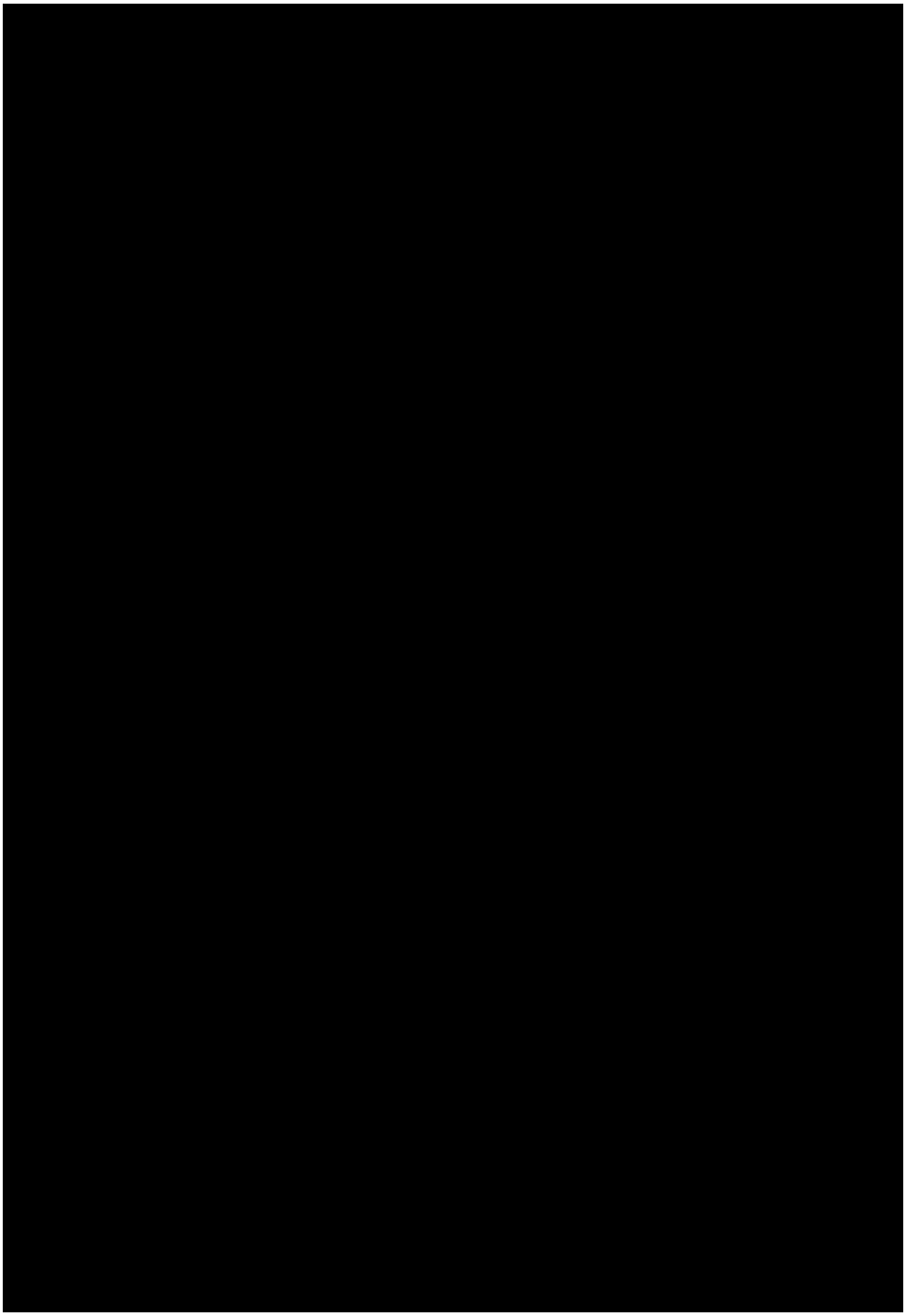
20. The Commission had clearly impressed on the ANC that it should make its submissions by 5 October 1998, given the Commission's responsibility to finalise the report for handover to the President. Because the ANC submission tendered on 19 October 1998 was extensive and contained serious allegations regarding the Commission's competence, integrity and bona fides, it was unreasonable to have expected it to convene as a body between 19 and 29 October 1998 to discuss and deliberate on submissions delivered so late in the day.

21. The court found that the ANC had failed to prove that the Commission had either condoned the late filing of the submission (in terms of section 30(2) of the Act) or that the ANC had a legitimate expectation of having the submission considered by the Commission, given the fact that the Commission had set 5 October 1998 as a final date for submission in extension of the original date of 8 September 1998, when the submission had been lawfully due.

Former State President de Klerk's challenge[48]

22. On 1 September 1998, the Commission gave notice to former State President FW de Klerk of its intention to make findings against him to his detriment (in terms of the provisions of section 30(2) of the Act). The findings it contemplated making were set out in an annexure to the notice. Mr de Klerk was notified of his rights under the section 30(2) provisions and was required to respond to them. The Annexure read as follows:

48 FW de Klerk and Another v The Chairperson of the Truth and Reconciliation Commission and the President of the Republic of South Africa: Case No. 14930/98 (Cape of Good Hope Provincial Division).



23. Despite objections by Mr de Klerk, the Commission resolved to publish its findings. As a result, on 26 October 1998, Mr de Klerk filed an urgent application

with the Cape High Court for an order directing, *inter alia*, that the Commission be interdicted from:

a making any of the intended findings set out in the annexure to the notice dated 1 September 1998 issued in terms of section 30(2) of the Act;
b including any of the intended findings in the report to be submitted to the President on 29 October 1998; and
c submitting the report to the President, should it contain any of the intended findings.

24. The Commission's findings against Mr de Klerk were challenged on various grounds, including allegations of bias against him by members of the Commission.

25. Given the timing of this legal challenge (26 October 1998) and the fact that the Commission was due to hand over its Report on 29 October 1998, the Commission was advised by its legal team not to risk an interdict, which would have had the effect of preventing the Report from being handed over to President Mandela. The Commission acted on this advice and agreed not to publish the finding and to deal with the matter after publication and the handover.

26. The Commission 'blacked out' the findings.

27. The matter was to be set down for hearing in the Cape High Court. In the intervening period, the President's Office tried to facilitate a settlement between the Commission and Mr De Klerk. As the full Commission was in suspension and the Amnesty Committee was the only body in existence at the time, it entered into discussions with Mr De Klerk in an effort to resolve the matter.

28. As a result of these discussions, the Amnesty Committee accepted the following finding, which Mr De Klerk conceded to.

29. ***Proposed finding relating to Mr FW de Klerk's knowledge of the Khotso House bombing:***

Mr FW de Klerk was a member of the State Security Council throughout the 1980s and State President and head of the former government during the period 1989 to 1994.
On 31 August 1988, Khotso House, which was located in the central business district of Johannesburg, a densely populated urban area, was bombed by members of the SAP. The bomb had immense explosive force, rendered Khotso

House unusable and damaged neighbouring properties and vehicles. There was a high risk to passers-by who could have been killed or injured; there were blocks of flats in the immediate vicinity which were inhabited; there was a flow of pedestrian traffic in the area which was very high till the early hours of the morning. The effect of the explosion was unpredictable. Colonel Eugene de Kock, who led the SAP bombing team, foresaw the possibility of loss of life as did Mr Vlok, who considered it a miracle that no one was killed. The group of policemen who carried out the task did so armed with automatic assault rifles with orders to shoot – if necessary – even at fellow policemen. As a result of the blast, a number of persons were injured (though not seriously). The inherent risk in unleashing a devastating explosion in a high-density area in the circumstances described above, involved the risk that persons might be killed. This risk was inevitably foreseeable and was in fact foreseen; the bombing was nevertheless ordered and proceeded with by the perpetrators with reckless disregard of the consequences.

During his presidency, Mr de Klerk was told by General JV van der Merwe, his former Commissioner of Police, that he had been ordered as head of the Security Branch of the SAP to bomb Khotso House. Mr de Klerk did not report the matter to the prosecuting authorities or the Goldstone Commission because he knew that General van der Merwe would be applying for amnesty in respect of the relevant bombing.

On 21 August 1996 and 14 May 1997, Mr de Klerk testified before the Commission in his capacity as head of the former government and leader of the National Party. His testimony was accompanied or preceded by written submissions. In his written and oral submissions to the Commission on 21 August 1996, Mr de Klerk stated that neither he nor his colleagues in cabinet, the State Security Council or cabinet committees had authorised assassination, murder, torture, rape, assault or other gross violations of human rights.

In a written question directed to Mr de Klerk on 12 December 1996, he was asked whether he maintained this assertion in the light of the allegation made by General van der Merwe against Mr Vlok. The allegation was to the effect that Mr PW Botha had instructed Mr Vlok to bomb Khotso House, and that Mr Vlok, in turn, had instructed General van der Merwe to do so. In his written reply on 23 March 1997, which reflected his views at the time of the preparation of his submission as well as the views of as many of his Cabinet colleagues as were conveyed to him at the time, he stated that Mr Vlok and any other members of former

Cabinets should be allowed to speak for themselves. In his oral submissions to the Commission on 14 May 1997, Mr de Klerk stated that the bombing of Khotso House was not a gross violation of human rights as there was serious damage to property, but nobody was killed, or seriously injured.

The Commission finds that the bombing of Khotso House constituted a gross violation of human rights and that at all material times, Mr de Klerk must have had knowledge it did despite the fact that no lives were lost.

The Commission finds that when Mr de Klerk testified before the Commission on 21 August 1996, he knew that General van der Merwe had been authorised to bomb Khotso House, and, accordingly, his statement that none of his colleagues in Cabinet, the State Security Council or Cabinet Committees had authorised assassination, murder or other gross violations of human rights was indefensible.

The Commission finds that when Mr de Klerk testified to the Commission on 21 August 1996 and responded in writing to the Commission's questions on 23 March 1997, he failed to make a full disclosure of the involvement of senior members of the government and the SAP in the bombing of Khotso House.

30. However, this finding was never made an order of court as it was never put to the Commission and was thus never discussed, accepted or rejected.

COMPLAINTS TO THE PUBLIC PROTECTOR BY THE IFP AND FORMER SADF GENERALS

31. Both the IFP and a group of former SADF generals made formal complaints to the Office of the Public Protector concerning what they claimed to be disparate treatment of themselves by the Commission. The Commission responded fully to the allegations and the Public Protector neither took nor recommended any action against the Commission.

32. The Commission considers both these matters to be finalised.

LEGAL CHALLENGE: IFP REQUEST FOR INFORMATION[49]

33. As a result of its investigations and hearings in terms of section 29 of the Act, the Commission served notice on the IFP and its leader, Chief Mangosuthu Buthelezi, and other members of the IFP, of the contemplated findings it intended to make against them, which were to their detriment. They were invited to respond in writing. On 24 August 1998, the Commission received a comprehensive submission from legal representatives for the IFP, Chief Buthelezi and the other implicated persons. The findings appear in full in Volume Three of the Final Report.[50]

34. In summary, during the period 1982–94, the IFP – known as Inkatha prior to July 1990 – was responsible for gross violations of human rights committed in the former Transvaal, Natal and KwaZulu against persons perceived to be leaders, members or supporters of the United Democratic Front (UDF), the ANC, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). Other targets were persons who were identified as posing a threat to the organisation, and Inkatha/IFP members or supporters whose loyalty was questionable.

35. The violations of human rights referred to formed part of a systematic pattern of abuse that entailed deliberate planning on the part of the organisation and its members.

36. The organisation was responsible for the following conduct:
    a speeches by the IFP President and senior party officials, inciting supporters to commit acts of violence;
    b mass attacks by members and supporters on persons regarded as their political enemies;
    c the killing of leaders of political organisations and their supporters who were opposed to Inkatha/IFP policies;
    d colluding with the South African government's security forces to commit the violations referred to;
    e colluding with the SADF to create a paramilitary force to carry out such violations;

49 Inkatha Freedom Party and Mangosuthu Gatsha Buthelezi v Truth and Reconciliation Commission, The President of the Republic of South Africa and the Minister of Arts, Culture, Science and Technology: Case No. 6879/99 (Cape of Good Hope Provincial Division).

50 Chapter Three, pp. 155–328.

f creating self-protection units made up of the organisation's supporters with the specific objective of violently preventing the holding of elections in KwaZulu-Natal in April 1994; and
g conspiring with right-wing organisations to commit acts that resulted in injury or loss of life.

37. By virtue of his position as leader of Inkatha and/or the IFP, and Chief Minister in the KwaZulu government, Chief Buthelezi was held accountable by the Commission for the commission of gross violations of human rights by any of the agencies referred to.

38. In court papers served on the Commission in December 1998, the IFP and Chief Buthelezi declared that they regarded the findings of the Commission to have been defamatory of the organisation and himself, unwarranted and unjustified, and not supported by the information and evidence collected or received by the Commission. In the court application, the IFP and Chief Buthelezi sought an order compelling the Commission to provide all the information collected and received upon which it had made its findings. This claim was based on the provisions of section 32(1) of the 1996 Constitution, which reads:

Everyone has the right to access to – (a) any information held by the state; (b) any information that is held by another person and that is required for the exercise or protection of any rights.

39. When this matter was argued before Mr Justice Davis in the Cape High Court, the Commission contended, first, that it was not an 'organ of State' nor 'in any sphere of Government' and, second, that the information sought had not been proved to have been required for the exercise and protection of any of the applicants' rights.

40. On 15 December 1999, Mr Justice Davis dismissed the application with costs. The court upheld the second of the Commission's objections, namely that the applicants had not established that the information was required for the exercise and protection of any of their rights. It further held that the applicants should either have sued the Commission for defamation based on bad faith (*male fide*) if so proven, or brought review proceedings in terms of rule 53(3) of the Uniform Rules of the High Court to set the Commission's finding aside.

Settlement

41. The applicants subsequently applied for leave to appeal to the Constitutional Court against the judgment of Mr Justice Davis. This was granted, and the matter was set down for hearing on 9 November 2000. Before the appeal to the Constitutional Court was heard, the parties settled the matter on the basis that each party would withdraw their respective appeals and pay their own legal costs. The Commission agreed to provide access to the record of information and evidence to the applicants by 1 March 2001, on condition that appropriate measures were employed to safeguard the confidentiality of persons who had made statements to the Commission.

42. The decision to settle the matter was based on the consideration that the Promotion of Access to Information Act No. 2 of 2000 was due to be gazetted on 15 September 2000 and that this legislation would have entitled the applicants to obtain the information they were seeking. To proceed with an appeal on a point of law about to be settled by the promulgation of an Act would have been futile and a waste of resources. This decision was taken after consultation with the Commission's senior counsel and in terms of a resolution of the Amnesty Committee acting in terms of section 43 of Act No. 34 of 1995.

43. Despite the above settlement arrangements, the IFP and Chief Buthelezi instituted review proceedings against the findings of the Commission on 20 October 2000.

44. Just the before the Commission was due to publish its Codicil, the IFP interdicted it from publication on the grounds that the terms of the settlement had not been met.

45. Discussion culminated in a settlement which was finalised at a hearing on 29 January 2003. The requirements agreed in the settlement appear as an Appendix to Chapter 3 of Section Four of this Volume.

CHALLENGES TO AMNESTY DECISIONS

Clive Derby-Lewis and Janusz Walus: The killing of Chris Hani[51]

46. The facts, issues and legal arguments in this matter are reflected in the court's decision in the above case, handed down on 15 December 2000. A summary of the main points and aspects of the review proceedings follows. It needs to be stressed that the source of this summary is the court record and judgment, and should in no way be interpreted as a comment by the Commission or the Committee on its own amnesty decision.

47. On 10 April 1993, Mr Janusz Walus shot and killed Mr Martin Thembisile Hani (aka Chris Hani) in the driveway of the latter's residence in Dawn Park, Boksburg. Mr Walus was arrested on the same day, as were Mr Clive Derby-Lewis and his wife, Mrs Gabrielle (Gaye) Derby-Lewis. They were all charged in the Witwatersrand Local Division of the High Court with, amongst other things, the murder of Mr Hani. All three accused pleaded not guilty, but both Mr Derby-Lewis and Mr Walus were convicted of the murder of Mr Hani and the unlawful possession of the murder weapon (a Z88 pistol). Mr Derby-Lewis was also convicted of the unlawful possession of five rounds of ammunition. Mrs Derby-Lewis was acquitted of all charges against her.

48. On the 15 October 1993, both applicants were sentenced to death on the murder count. Both Derby-Lewis and Walus appealed to the Supreme Court of Appeal against their convictions and sentences; but their appeals were turned down in November 1995. The death penalty was, however, declared unconstitutional by the Constitutional Court on 6 June 1995.[52] As a result, the applicants escaped the gallows and had to be re-sentenced by the trial court. On 14 November 2000, the court imposed sentences of life imprisonment on both Derby-Lewis and Walus.

49. In April 1996, the applicants applied for amnesty for the murder convictions and the unlawful possession of the murder weapon and, in the case of Derby-Lewis, the illegal possession of ammunition. The SACP and the family of Chris Hani strenuously opposed the applications for amnesty.

51 Clive John Derby-Lewis and Janusz Jakub Walus v The Chairman of the Committee on Amnesty of the Truth and Reconciliation Commission, his Lordship Mr Justice H Mall N.O., The Honourable Chairman of the Truth and Reconciliation Commission, the Right Reverend Archbishop Desmond Tutu, Ms Limpho Hani and The South African Communist Party: Case No. 12447/99 (Cape of Good Hope Provincial Division).

52 See S v Makwanyane and Another 1995 (3) SA 391 (CC).

50. The applications for amnesty were considered by the Amnesty Committee, comprising Mr Justice Mall (as chair) and Judges Wilson, Ngoepe, Potgieter and Khampepe.

51. On 7 April 1999, the Committee refused the amnesty applications of both applicants. Subsequently, an application for a review of the Committee's refusal was brought before a full bench of the High Court, Cape of Good Hope Provincial Division. The applications for a review were opposed by the chairperson of the Committee as well as the Hani family and the SACP.

The facts

52. Mr Clive Derby-Lewis was a founder member of the Conservative Party (CP) in February 1982. In 1987, he became the party's spokesperson on economic affairs and represented the CP in Parliament between May 1987 and September 1989. He was an elected member of the CP's General Council (the highest body of the party).

53. The CP regarded the unbanning of the ANC and SACP by former President FW de Klerk in February 1990 as a betrayal of the country. In May 1990, at a mass meeting of the CP at the Voortrekker Monument, Dr Andries Treurnicht, the leader of the CP, announced that the 'third freedom struggle' had begun. Derby-Lewis regarded this speech as a 'call to arms for Afrikaners' implying that, although diplomatic channels remained open to the CP, its followers should prepare for war and arm themselves accordingly. There was increasing fear within the CP of a National Party (NP) handover to an ANC/SACP government without a mandate from white voters. Various calls to arms led to the implementation of the CP mobilisation plan on 26 March 1993. This was seen as the only way of saving South Africa from plunging into misery and chaos should the ANC/SACP alliance take over the government of South Africa. As the leader of the SACP, Mr Chris Hani was regarded by the CP as the real threat to the future of South Africa. His leadership role and his past position as Chief of Staff of Umkhonto we Sizwe (MK) made him a prime military and political target. The CP regarded him as 'enemy number one' of the Afrikaner nation and the likely successor as President to Mr Nelson Mandela.

54. Against this background, Derby-Lewis and Walus started to plan the assassination of Hani in about February 1993. Their objective was to create a situation in which the radicals who supported Hani would cause widespread chaos and mayhem in the wake of his death. Because the NP would not be

able to take effective control, this situation would unite right-wing leaders. They would then be able to combine with the security forces and, by 'stepping in', trigger a 'counter-revolution' and take over the government of the country.

55. Despite the above, the evidence reflected that the CP did not espouse a policy of violence nor the killing of political opponents. It was also common cause that neither Derby-Lewis nor Walus had received any direct or indirect order from anyone in the top structure of the CP to assassinate Hani. Equally plain was the fact that the plan to assassinate Hani was not shared with anyone else. Nevertheless, Derby-Lewis contended that, by virtue of his senior position in the CP, he had the necessary authority in the prevailing circumstances to take the decision to assassinate Hani on behalf of the CP.

56. Derby-Lewis handed Walus a list of names and addresses he had obtained from his wife, a journalist. Walus numbered these names on the list. This was done at a time when Derby-Lewis and Walus had 'started talking about the identification of targets'. Derby-Lewis insisted that they discussed only one target, namely Hani, who had been number three on the list.

57. It was agreed that Walus would carry out the shooting after a certain amount of surveillance had been carried out. During March 1993, Derby-Lewis claimed that he had obtained a Z88 pistol and silencer. This was ostensibly for self-defence purposes, while the silencer was primarily to allow him to practice at home without disturbing the neighbours. It was intended to provide some element of surprise if he were to be attacked at his home by either MK or the Azanian People's Liberation Army (APLA).

58. Walus had requested an 'untraceable weapon with a silencer' for the purpose of the assassination.

59. On 6 April 1993, Derby-Lewis handed Walus the pistol and a few rounds of subsonic (silencer) ammunition. On 7 and 10 April, Walus requested further sub-sonic ammunition. On the morning of 10 April, Derby-Lewis informed Walus that he had made arrangements for further ammunition. No discussion about killing Hani took place on that particular day. The shooting of Hani came as a shock to Derby-Lewis because he had wanted to postpone the assassination plan for a variety of reasons.

60. Although Walus' evidence largely coincided with that of Derby-Lewis, Walus indicated that Derby-Lewis had mentioned to him that before the Easter weekend would be a bad time to assassinate Hani.

61. On 10 April 1993 (the day before Easter), Walus decided to reconnoitre the Hani residence. After contacting Derby-Lewis about more subsonic ammunition and being told that it was not yet available, he loaded the unlicensed Z88 pistol with his own ammunition.

62. On arriving at the Hani residence, Walus noticed Hani driving off in his vehicle without his usual bodyguards. He decided that this was the 'best occasion' to execute the assassination and waited for him to return. When Hani got out of his vehicle in the driveway to his house, Walus approached him and fired two shots at him. After he had fallen, Walus shot him twice at close range behind the ear. He left the scene in his vehicle and was arrested a short while later.

63. Walus insisted that he had killed Hani on the instruction of Derby-Lewis and the CP. He had never expressly asked Derby-Lewis whether the CP had authorised the assassination, as it was 'obvious' to him that it had. However, Walus conceded that, had it come to his attention prior to April 1993 that the CP had not changed its policy from non-violence to violence, he would not have proceeded with the murder.

The decision of the Amnesty Committee

64. The basis of the Committee's refusal of amnesty was that it found that both Derby-Lewis and Walus had failed to satisfy two of the three jurisdictional preconditions for the granting of amnesty as set out in section 20(1) of the Act: that is, they had failed to comply with the requirements of section 20(1)(b) read together with section 20(2), and they had not made a full disclosure of all relevant facts as required by section 20(1)(c).

65. With reference to section 20(2)(a), the Committee was not satisfied that, in assassinating Hani, the applicants had acted on behalf of or in support of the CP, the publicly-known political organisation of which both applicants were members at the time of the assassination. The Committee expressed itself as follows:

It is common cause that the applicants were not acting on the express authority or orders of the CP, which party they purported to represent in assassinating Mr

Hani. The CP has never adopted or espoused or propagated a policy of violence or the assassination of political opponents.

The CP was never aware of the planning of the assassination and only became aware thereof after the event. It never approved, ratified or condoned the assassination.

66. The Committee did not find it necessary to decide whether the phrase 'on behalf of' (in section 20(2)(a) of the Act) should be interpreted narrowly. This would have had the effect of confining the application of this phrase to cases where a person acted as a representative or agent of the relevant political organisation or liberation movement. The Committee held the view that, in any event, section 20(2)(a) 'does not cover perpetrators who act contrary to the stated policies of the organisation which they purport to represent'. As the assassination of political opponents was contrary to the stated policies of the CP, the applicants had failed to comply with the requirements of section 20(2)(a) of the Act.

67. With reference to section 20(2)(d) of the Act, the Committee found that, in assassinating Hani, the applicants were not acting within the course and scope of their duties or on the express authority of the CP. This was confirmed by the evidence tendered by the leader of the CP, Mr Ferdi Hartzenberg, and by the applicants themselves.

68. In respect of section 20(2)(f), the Committee rejected the argument that the applicants had any 'reasonable grounds' for believing that, by assassinating Hani, they were acting in the course and scope of their duties, or within the scope of their express or implied authority.

69. Finally, the Committee found that both Derby-Lewis and Walus had failed to make full disclosure (as required by section 20(1)(c)) in respect of a number of 'relevant and material issues', identified by the Committee as follows:
    a the purpose of the list of names and addresses found in Walus' apartment after his arrest and on which Hani's name and address appeared;
    b the purpose for which the names on the list were 'prioritised';
    c the purpose for which the Z88 pistol (the murder weapon) was obtained and fitted with a silencer; and
    d whether or not Walus, in assassinating Hani, was acting on the orders or instructions of Derby-Lewis.

The applicants' challenge

70. The applicants challenged all the above grounds provided by the Committee in refusing amnesty, and argued that its decision should be reviewed and set aside on the grounds that they had complied with all the legal requirements for amnesty. They argued that the Committee had misinterpreted section 20(2)(a); that the Committee had failed to follow the correct interpretation of section 20(2)(a) as established by other (differently constituted) amnesty committees in previous decisions where amnesty had been granted (such as the murder of Ms Amy Biehl and the St James' Church attack); that the Committee had misdirected itself both in fact and in law in its interpretation of section 20(2)(f), and that its findings in respect of these subsections were not justifiable in relation to the reasons given for them. The case of Mr Koos Botha, a CP member of Parliament who planted a bomb at a school, was cited. Mr Botha had been granted amnesty for purely political objectives because he 'had interpreted the public utterances of the CP leaders as a call to violence'.

71. With regard to the question as to whether or not Walus had acted on the orders of Derby-Lewis, they claimed that the Committee had erred in law by setting a higher standard than the Act required, because it had elevated the criterion or consideration set out in section 20(3)(e) of the Act to the status of a substantive requirement for amnesty in the context of section 20(1).

72. With the exception of the purpose for obtaining the pistol and silencer, the other issues identified as relevant facts for purposes of section 20(1)(c) were not relevant facts required to be disclosed fully by the applicants in order to qualify for amnesty.

73. Even if the issues referred to above, or only some of them, were relevant facts for the purposes of section 20(1)(c), the decision of the Committee in respect of each of these issues was not justifiable (objectively rational) in relation to the reasons given for them.

The decision of the court

74. The full bench of the High Court decided that the questions to be decided were whether there was any merit in the applicants' main points of argument. The court considered all the evidence that had been presented before the Committee, as well as the arguments by all the parties, and analysed the various provisions of section 20 of the Act in considerable detail. The court's main findings were as follows:

75. The court held that the established principles of interpretation should be applied in interpreting the provisions of section 20. Legislative purpose, as opposed to legislative intent, was only one of the principles to be applied. The court should not adopt a purely benevolent or a purely restrictive interpretation.

76. The fact that other amnesty committees had interpreted or applied section 20 in an incorrect way could not create a legitimate expectation that such an error, either of law or of fact, would be perpetuated by the court.

77. In respect of Section 20(2)(a), the court held that the applicants did not act on behalf of the CP, but that they had embarked on a terrorist foray of their own. Although the applicants said that they held the *subjective* belief that their conduct would advance the cause of their party, the court held that it should assess *objectively* whether it was reasonable for them to hold such a belief. The court concluded that the Committee had correctly rejected the applicants' contention that they fell within the ambit of this section.

78. In respect of section 20(2)(d), the Committee had correctly held that the applicants had not acted in the course and scope of their duties as members of the CP as required by this section of the Act, as assassination had never been one of Derby-Lewis' duties as a senior member of the CP. It followed that Derby-Lewis could not have shared a nonexistent duty with Walus; nor could he have delegated part of it to Walus. It also followed that assassination never formed part of Walus' duties.

79. In respect of section 20(2)(f), Derby-Lewis did not act, and could not have had any reasonable grounds for believing that he was acting, in the course and scope of his duties and within the scope of his authority in assassinating Hani. He was a senior ranking member of the CP, a parliamentarian and a serving member of the President's Council.

80. Walus was, however, in a different position, as he was a rank-and-file member who was entitled to assume that Derby-Lewis had authority to speak on behalf of the party. Walus could have made a case for such a proposition and this could have led to a closer evaluation of his (Walus') beliefs and the reasonableness of them. This was not, however, the case that he had made. Walus had stated in his original application that 'he had acted alone in the planning and commission of the deed'. Under cross-examination, he said that this was not true. He later amended his amnesty application to incorporate Derby-Lewis as his accomplice, insisting that this was the truth. Walus' version was that he believed that he had been assigned the assassination plan as an order from Derby-Lewis, given as a

result of his senior position within the CP or as part of his duties as a member of the party. The court found that this claim lacked objective credibility, and therefore Walus also did not meet the requirements of this section.

81. With regard to relevance and full disclosure, the evidence of the applicants in respect of the main issues (namely the purpose of obtaining the pistol and silencer, the purpose of the list of names and the prioritising of the names on the list) was generally improbable, contradictory and lacked candour. The Committee was correct in rejecting the applicants' evidence in these respects as being false and was, therefore, entitled to find that the applicants had failed to make full disclosure of all relevant facts as required by section 20(1)(c) of the Act.

82. In the result, the full bench dismissed the application with costs. Both Derby-Lewis and Walus subsequently brought an application before the same court for leave to appeal to the Supreme Court of Appeal. The court refused leave to appeal on the grounds that the applicants had failed to show that there were any reasonable prospects of success on appeal or that another court could come to a different conclusion on the same facts.

83. On 31 May 2001, the applicants filed a petition to the Chief Justice seeking leave to appeal. The petition was refused. The applicants have now exhausted all their available remedies in law.

APPEAL BY MEMBERS OF THE NASIONAL SOSIALISTE PARTISANE[53]

84. Mr CJ van Wyk and Mr Pierre du Plessis applied for amnesty for a wide range of criminal offences, including the theft of a motor vehicle, three counts of murder, attempted robbery with aggravating circumstances, contravention of the Firearms and Ammunition Act, housebreaking with the intent to steal, theft, two counts of robbery and contraventions of the Explosives Act.

85. Mr van Wyk had been convicted and sentenced to life imprisonment, and Mr du Plessis had been sentenced to an effective twelve years' imprisonment. The applicants belonged to an organisation or movement called the Nasional Sosialiste Partisane (NSP). At the time of the acts for which amnesty was sought, this organisation had only four members, inclusive of the two applicants. The other two members died during a shootout with the police when the applicants were arrested.

53 CJ van Wyk and P du Plessis v Komitee oor Amnestie: Saak Nr. 16602/99 (Transvaal Provinsiale Afdeling).

The facts

86. On 13 October 1991, the applicants and two others (deceased) travelled in a stolen vehicle to Louis Trichardt, where they planned to rob a household belonging to a Ms Roux. They believed that only a servant, a Ms Dubane, would be present. However, things did not go according to plan, and one of the others in their group shot and killed Ms Dubane and cut her throat. When Ms Dubane's husband appeared, he too was shot and killed and had his throat cut. Ms Roux tried to escape the attack by hiding in a cupboard, but she too was shot and killed and had her throat cut by one of the other members of the group (later deceased). Nothing was taken from the house, despite the fact that the group had been informed that there would be an R4 rifle and ammunition at the premises.

87. From Louis Trichardt the group proceeded to Oudtshoorn, where they planned to steal weapons from an army base. Here they obtained a quantity of arms, ammunition and explosives. They also broke into an army base in Potchefstroom, where they stole two R4 rifles. They fired shots at the soldiers in an attempt to kill them.

Amnesty decision

88. The Committee refused to grant amnesty to the two men for the following reasons:

89. First, the NSP was not a publicly known bona fide political organisation or liberation movement acting in furtherance of a political struggle waged against the state or any former state; nor was it a publicly known political organisation or liberation movement as required by the provisions of section 20(2)(a) of the Act.

90. Second, when they committed the acts for which amnesty was sought, the applicants had done so specifically in their capacity as members of the NSP. The fact that their objectives may have been similar to or the same as those of other recognised political organisations or liberation movements was irrelevant.

Court's findings on review

91. The High Court found nothing untoward in the reasoning of the Committee and dismissed the application for review with costs. The presiding judge, Mr Justice van der Walt, indicated that, although it was a tragic situation and one would possibly want to grant amnesty to persons of the calibre of the applicants, one could not do so because they had placed themselves beyond the pale of the provisions of section 20(2) of the Act, and that was solely their own doing.

THE DUFFS ROAD ATTACK: APPEAL BY MEMBERS OF THE ORDE BOEREVOLK[54]

92. Mr David Petrus Botha and two other persons, Messrs Smuts and Marais, were convicted in the Supreme Court, Durban, on seven counts of murder, twenty-seven counts of attempted murder and one count of unlawful possession of firearms and ammunition. They were members of a right-wing group called the Orde Boerevolk. All three were sentenced to death on 13 September 1991. This sentence was subsequently commuted to 30 years' imprisonment.

93. On 9 October 1990, the applicants and their colleagues attacked a bus full of black commuters on Duffs Road, Durban, by shooting at them with automatic weapons. The reason they gave for the attack was retaliation for an incident that had occurred earlier that day, when a group of approximately thirty supporters of the Pan Africanist Congress (PAC) or APLA, wearing PAC T-shirts, had randomly attacked white people on Durban's beachfront with knives, killing an elderly person and injuring several others.

94. All three applied for amnesty and appeared before the Committee on 5 September 1997.

95. The Committee accepted that Orde Boerevolk was a recognised political organisation involved in a political struggle with the then government and other political organisations, and that their acts were associated with a political objective. In applying the additional criteria set out in section 20(3) of the Act, the Committee distinguished between the roles played by Mr Botha on the one hand and by Messrs Smuts and Marais on the other. The basis for the distinction was that Smuts and Marais were subordinates of Botha and were under orders to carry out the attack as members of the Orde Boerevolk. Botha, on the other hand, had received no order or instructions to carry out the attack; nor had his actions been approved by any one of his superiors or by the organisation.

96. For this reason, Smuts and Marais were granted amnesty. Botha was refused amnesty in respect of the charges of murder and attempted murder, but was granted amnesty in respect of the charges of unlawful possession of firearms and ammunition.

54 David Petrus Botha v Die Voorsitter SubKomitee oor Amnestie van die Kommissie vir Waarheid en Versoening, Saak Nr. 17395/99 (Transvaal Provinsiale Afdeling).

97. Botha appealed to the Transvaal Provincial Division[55] against the Committee's refusal to grant him amnesty.

Review proceedings

98. The presiding judge, Mr Justice J Smit, held that the Committee had failed to consider properly whether the applicant's conduct in respect of the attack on the bus had complied with the requirements of section 20(3)(e) of the Act as to whether the 'act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter'.

99. The court also found that the Committee had misdirected itself in losing sight of the fact that the provisions of section 20(3)(e) were merely criteria to be applied to determine whether an act was committed with a political objective, and not requirements necessary for the granting or refusal of amnesty.

100. As a result of this, the court determined that it could interfere in the Committee's finding and made an order setting aside the refusal of amnesty and referring the matter back to the Committee to hear further evidence on this point.

Second amnesty hearing

101. On the 13 December 2000, Botha again appeared before the Committee and led evidence by the leader of the Orde Boerevolk, Mr Pieter Rudolph. This evidence did not take the matter any further as Mr Rudolph indicated that he would not have authorised the attack had he been asked to do so by the applicant and that, in any event, he had had no way of communicating with his supporters at the time as he had been in detention.

102. The Committee subsequently refused amnesty to the applicant on the same basis as before, namely that Botha had had no authority from his political organisation to launch such an attack on innocent and unarmed civilians.

55 The name of this court still refers to the pre-1994 provincial arrangement in South Africa, as the complex process of restructuring the court system is still underway.

THE NAMIBIAN EXTRADITION CASE: APPEALS OF DARRYLE STOPFORTH AND LEONARD VEENENDAL[56]

103. Because similar questions of law were raised in both these appeals, the Supreme Court of Appeal deemed it convenient to deal with them at one and the same time.

104. The court was constituted of five judges, namely Justices Mahomed, Olivier, Melunsky, Farlam and Madlanga. The only question raised in these appeals that affected the work of the Commission concerned the jurisdiction of the Committee to grant amnesty for offences committed by South African citizens outside the Republic. This matter was reported in Volume One[57] of the Commission's Final Report, where the facts are comprehensively set out.

Background to the appeal

105. In November 1996, the appellants launched motion proceedings in the Transvaal Provincial Division of the Supreme Court of South Africa. The proceedings were, amongst other things, for an order suspending the Minister of Justice's decision of 10 October 1996 ordering their extradition to Namibia, pending the adjudication by the Committee of their applications for amnesty – primarily for the killing of two persons during an attack on the United Nations Transitional Action Group (UNTAG) offices in Outjo on 10 August 1989.

106. The application was heard by Justice Daniels who came to the conclusion that the Commission (acting through the Committee) could not grant amnesty for deeds committed in Namibia, because it had no jurisdiction over crimes that had been committed in what was then South West Africa. The court also held that section 20 of the Act was not applicable, as Namibia could not be classified as a 'former state' of South Africa. He accordingly dismissed the application with costs.

107. On appeal, the court investigated the competency of the Committee to grant amnesty to an applicant for gross violations of human rights committed outside the country. The court relied on the provisions of section 20(2) of the Act, namely that the act in question must have been advised, planned, directed, commanded,

56 Darryle Garth Stopforth v The Minister of Justice, The Truth and Reconciliation Commission (Amnesty Committee), The Government of Namibia, The Minister of Safety and Security: Case No. 317/97 (Supreme Court of Appeal of South Africa) and

Leonard Michael Veenendal v The Minister of Justice, The Truth and Reconciliation Commission (Amnesty Committee), The Government of Namiba, The Minister of Safety and Security: Case No. 316/97 (Supreme Court of Appeal of South Africa).

57 p. 192.

ordered or committed within or outside the Republic against the state, or any former state or another publicly known political organisation (section 20(2)(a)).

108. According to the preamble to the Act, amnesty is to be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past. These conflicts must have sprung from South Africa's deeply divided society. The envisaged amnesty is intended to reconcile opposing South African people.

109. The court held further that the acts of the appellants committed in 1989 in what was then South West Africa were not part of the conflicts of the past as intended by the Act. Those acts were not directed against South African opponents in the context of South Africa's own past. Thus an internal conflict between groups in South West African society fell outside the jurisdiction of the Committee.

110. The appeals were accordingly dismissed.

THE 'MOTHERWELL FOUR'[58]

111. Messrs Marthinus Dawid Ras, Wybrand Andreas Lodewicus du Toit, Gideon Johannes Nieuwoudt and Nicolaas Jacobus Janse van Rensburg each filed review proceedings against the refusal of the Committee to grant them amnesty arising from the murders of Warrant Officer Mbalala Mgoduka, Sergeant Amos Temba Faku, Sergeant Desmond Daliwonga Mpipa and Mr Xolile Shepard Sakati, aka Charles Jack, committed at Motherwell, Port Elizabeth, on the 14 December 1989. This matter became known as the 'Motherwell Four' amnesty application.

112. The applicants in the review proceedings were part of a group of nine amnesty applicants, including Messrs Eugene Alexander de Kock, Daniel Lionel Snyman, Gerhardus Lotz, Jacobus Kok, and Nicolas Johannes Vermeulen. All were former members of the security forces.

113. The four deceased were killed when the motor vehicle in which they were travelling was blown up by an explosive device that had been attached to it. They were all members of the Port Elizabeth Security Branch, except for Charles Jack, who was an askari (a turned ANC/MK member) and also on the Security Branch payroll.

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58 Marthinus Dawid Ras v The Chairman of the Amnesty Committee of the Truth and Reconciliation Commission: Case No. 7285/00 (Cape of Good Hope Provincial Division); Wybrand Andreas Lodewicus du Toit v Die Voorsitter Subkomitee oor Amnestie van die Kommissie vir Waaarheid en Versoening: Saak Nr. 9188/00 (Cape of Good Hope Provincial Division); Gideon Johannes Nieuwoudt v Die Voorsitter Subkomitee oor Amnestie van die Kommissie vir Waaarheid en Versoening: Saak Nr. 366/01: (Cape of Good Hope Provincial Division); Nicolaas Jacobus Janse van Rensburg v Die Voorsitter Subkomitee oor Amnestie van die Kommissie vir Waaarheid en Versoening: Saak Nr. 4925/01 (Cape of Good Hope Provincial Division).

114. At the criminal trial, Nieuwoudt, Du Toit and Ras were convicted of murder, perjury and defeating the ends of justice, and sentenced to twenty, fifteen and ten years' imprisonment respectively. Lotz and Kok were acquitted, whilst De Kock, Snyman and Vermeulen gave evidence on behalf of the State and were, except for Vermeulen, granted indemnity against prosecution.

115. The motive for the killings was that the deceased were believed to have been involved in a breach of security. Nieuwoudt, who had been in charge of the group, had received an order from one of his superiors – one Gilbert – that the deceased should be killed to prevent them from disclosing information about the affairs of the Security Branch, as they had threatened to do.

116. Nieuwoudt sought the assistance of Van Rensburg, who approached De Kock at Vlakplaas to help with the assassination of the deceased. Du Toit and Kok from the Technical Division of the Security Branch, Pretoria, were to manufacture the explosive device. Snyman, Vermeulen and Ras were instructed by De Kock to assist as back-up should the planned explosion fail to kill the deceased, in which event they were to shoot them with (untraceable) Eastern Bloc weapons. An explosive device was fitted to a motor vehicle in which the victims would be driving when it exploded.

117. The Amnesty Committee refused amnesty to the other eight applicants on the following grounds:
    a Except for De Kock, the applicants were not found to be credible as witnesses. Their evidence was vague and somewhat contradictory regarding the motive behind the killing.
    b The motive for killing the deceased was to prevent them from carrying out their threat of exposing the illegal activities of the security police. The deceased had made the threat because they were facing charges of fraud after having been involved in intercepting cheques and funds mailed to various trade unions and left-wing organisations. They were not killed for any political objective associated with the conflicts of the past, nor was the killing directed against any member or supporter of the ANC or any other publicly known political organisation as was required by the Act.
    c With the exception of De Kock, the applicants had failed to make a proper and full disclosure of all relevant facts relating to their own participation in the assassination of the deceased.
    d The killing of the deceased was wholly disproportionate to any objective that the applicants might have pursued. There was no reliable evidence to link the

deceased with the ANC or any other political grouping. There was, in fact, evidence from the applicants themselves that there was no good reason to doubt the loyalty of the deceased to the Security Branch.

118. As a result, the applications for amnesty were refused.

119. Each of the applicants contested the findings of the Amnesty Committee and were successful in their application in the High Court for the review of the Amnesty Committee's decision to refuse them amnesty. The High Court ordered that the Committee's decision be set aside and that the Minister of Justice reconvene an Amnesty Committee to hear the applications.

THE KILLING OF RUTH FIRST, JEANETTE CURTIS SCHOON AND KATRYN SCHOON[59]

120. On 30 May 2000, the Amnesty Committee granted amnesty to Messrs Craig Michael Williamson and Roger Howard Leslie Raven for the killing of Ms Ruth First in Maputo on 17 August 1982 and of Ms Jeannette Schoon and her daughter Katryn Schoon in Angola on 28 June 1984.

121. It was common cause that Ruth First and Jeanette and Katryn Schoon were killed by bombs concealed in parcels that were addressed to them. Both Williamson and Raven were members of the Security Branch. The assassinations of the deceased were ordered, advised, planned and/or directed within the Republic of South Africa, while the explosion and resulting deaths occurred outside the borders of the Republic.

122. The Committee was mindful of the Stopforth and Veenendal judgment referred to above. It held that it had the necessary jurisdiction to hear these amnesty applications, despite the fact that the killings occurred outside the Republic.

123. After a protracted hearing, the Committee was satisfied that the following applied:
    a The killings of Ruth First and Jeannette and Katryn Schoon were offences committed in the course of the conflicts of the past.

59 Claire Sherry McLean N.O.; Shaun Slovo, Gillian Slovo; Robyn Jean Slovo v Amnesty Committee of the Truth and Reconciliation Commission, Judge Andrew Wilson N.O. (Chairperson) Craig Michael Williamson and Roger Howard Leslie Raven: Case No. 8272/00 (Cape of Good Hope Provincial Division).

b The applicants were members of the Security Police and, as such, were employees of the state. They had acted within the course and scope of their duties and within the scope of their express or implied authority.
c The offences were directed against publicly-known political organisations or liberation movements, namely the ANC and SACP and/or members or supporters of those organisations, and were committed bona fide to the objective of countering or resisting the struggle.
d Katryn Schoon, aged six years, was tragically killed in the crossfire. Williamson testified that he had not expected the Schoon children to be with their parents in a military zone, but to have been in London at the time.
e The evidence indicated that, although the Schoons and Ruth First were lecturing at their respective universities, they had not totally withdrawn from politics and were still involved in the liberation struggle waged by the ANC/SACP.
f There was no evidence to support the allegation that Williamson acted out of malice towards the deceased. The Committee held that there was evidence that Williamson had received orders from his superiors to proceed with the letter bombs.
g The killings of Jeannette and Katryn Schoon and Ruth First achieved their objective to shock, destabilise and demoralise the ANC/SACP. The acts were accordingly not disproportionate to their objectives.
h The applicants had made a full disclosure of all relevant facts.

Review application

124. Following the granting of amnesty to both applicants, the Schoon and Slovo families launched review proceedings against the granting of amnesty. The Committee did not oppose the application and chose to abide by the judgment of the High Court. The various grounds for review may be summarised as follows:

125. First, the Committee had failed properly to consider the evidence relating to the applicants' knowledge of the Schoons' domestic arrangements abroad.

126. Second, the Committee had failed properly to consider the requirements of proportionality (as required by section 20(3)(f)) in the killing of a six-year-old child. Further, the Committee should have refused amnesty on the grounds that the statement that 'it had served the Schoons right that their daughter had been killed because they had used her as their bomb disposal expert' indicated personal malice or spite as contemplated in section 20(3)(ii).

127. Third, the Amnesty Committee had misdirected itself in finding that the Schoons were still engaged in political work, thereby justifying its conclusion that the bomb was sent bona fide with the object of countering or resisting the struggle within the meaning of section 20(2) of the Act.

128. Fourth, the sending of a letter bomb to kill the Schoons had not been act associated with a political objective, as the Security Police had already succeeded in driving the Schoons out of South Africa.

129. Fifth, there had been failure to make full disclosure in respect of a wide range of evidence given by Williamson and Raven. This related to the identification of the targets to whom the bombs were sent, the manner in which the bombs were packaged, the construction of the device itself, the involvement of General Petrus Johannes Coetzee and the precise role played by each of the applicants.

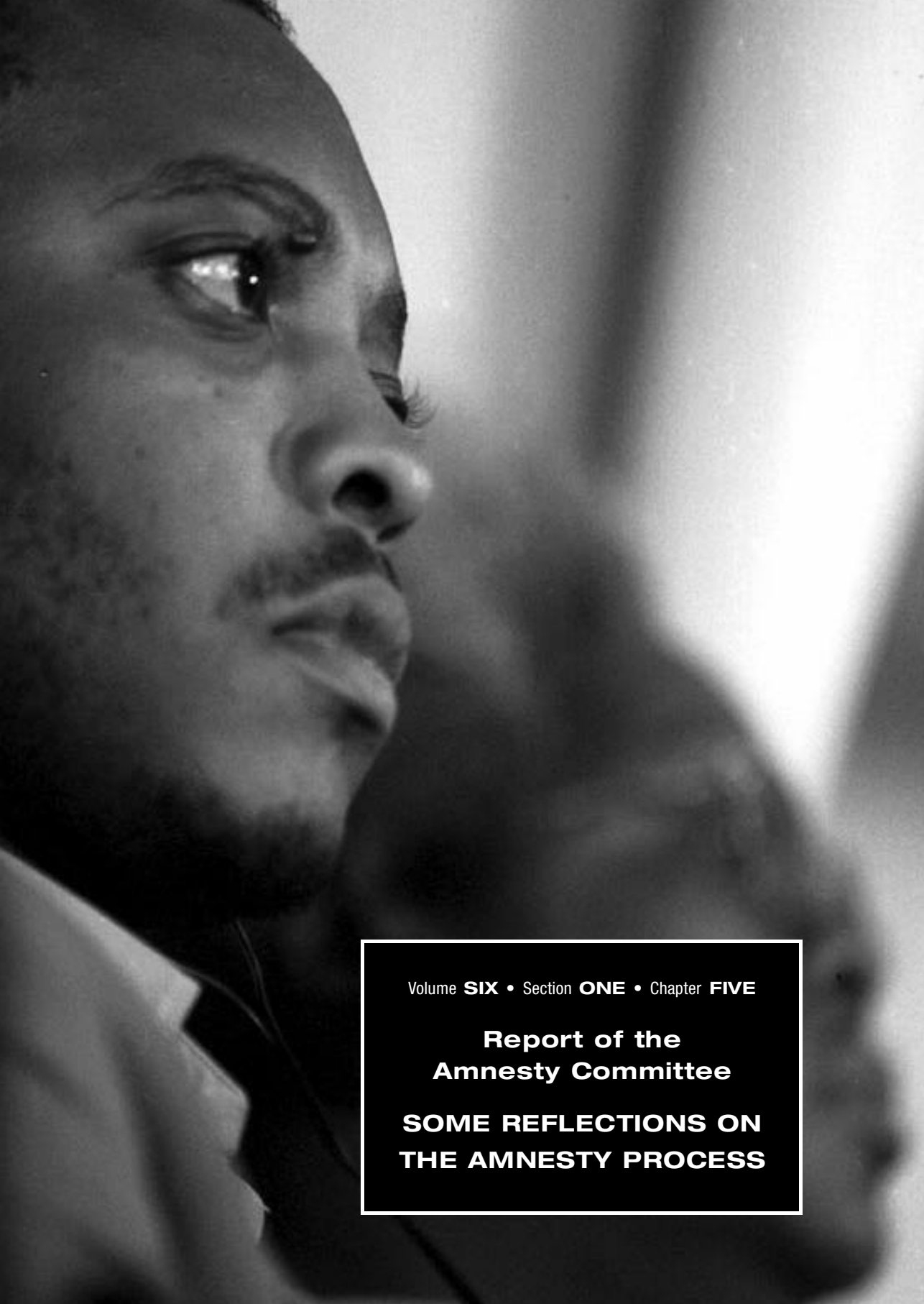
130. Similar objections were raised by the applicants in respect of the killing of Ms First.

131. The respondents (Williamson and Raven) had not, at the time of publication, responded to the allegations set out in the founding papers. As the Committee decided not to oppose the application, the interest of the Commission in this matter is limited. Both Williamson and Raven filed an exception to the review application on the basis that a review against the granting of amnesty in terms of section 20 was not permissible in law.

132. This matter had not yet been resolved and was still pending at the time of publication of this Codicil.

THE CASE OF BHEKUMNDENI QEDUSIZI PENUEL SIMELANE

133. Mr Simelane brought an application to the Cape High Court to review the Amnesty Committee's decision to refuse him amnesty. At the time of publication, this application was still pending and is currently being handled by the Ministry of Justice. (...p83)



Volume **SIX** • Section **ONE** • Chapter **FIVE**

Report of the Amnesty Committee

SOME REFLECTIONS ON THE AMNESTY PROCESS

Some Reflections on the Amnesty Process

1. As was noted in Chapter Two of this volume, the South African amnesty process was unique in that it provided not for blanket amnesty but for a conditional amnesty, requiring that offences and delicts related to gross human rights violations be publicly disclosed before amnesty could be granted. This meant that the Amnesty Committee (the Committee) set sail in uncharted waters, with no international or local precedents to guide it.

2. Nobody foresaw the immensity of the work ahead. The legislature originally envisaged that the entire task could be completed within a mere eighteen months. Both the Truth and Reconciliation Commission (the Commission) and the Committee were astonished at the sheer volume of amnesty applications.

3. While the Committee is aware that the process as it developed was by no means perfect, it believes nonetheless that the experience was in many respects a positive one for South Africa. While recognising that the realisation of national unity and reconciliation is a long-term project involving a range of role players, the Committee is of the view that the amnesty process has contributed in no small way to the promotion of these objectives.

4. The Committee is also aware that its work has been closely watched and widely admired by the international community. While mindful of the fact that the work of truth commissions must be tailored to the individual cultural, political and other needs of the societies within which they operate, and that the South African model cannot be randomly superimposed on other societies, the Committee believes, nonetheless, that there are lessons to be learnt from the South African experience. It is in this light that the following comments are made.

Perceptions about the Committee

5. Even before the Committee was established, the controversial idea of amnesty and the way it should be dealt with became the topic of lengthy debates and deliberations (see Chapter Four of Volume One). Shortly after the Amnesty Committee was established, the very constitutionality of the amnesty provisions

was challenged in the Constitutional Court in the case of Azanian People's Organisation (AZAPO) & Others v The President of the Republic of South Africa & Others (Constitutional Court Case No. CCT17/96). The Constitutional Court unanimously upheld the constitutionality of the amnesty provisions.

6. There were negative perceptions about that part of the Committee's work that related to indemnifying offenders. These perceptions were prevalent not only amongst the general public, but were also evident amongst some officials of the prosecuting authority and the police, especially during the early stages of the Committee's existence. There was some resistance from some of the officials who were requested to assist the Committee with investigations into amnesty applications. This resistance could possibly be ascribed to an understandable view that the Committee was undermining their work in fighting crime by indemnifying criminals. Various meetings, at which the role and objectives of the Committee were explained, helped ease the situation and improve the working relationship with members of these bodies.

7. Thus the amnesty process was often the subject of scrutiny and criticism. Although the Committee was a creature of statute, some critics saw its work as being at odds with that of the Commission's other Committees. While the Human Rights Violations Committee (HRVC) was perceived to be devoting its time and energy to acknowledging the painful experiences of victims of gross violations of human rights, the Amnesty Committee, it was argued, was indemnifying many of the perpetrators of such violations against prosecution and the legal consequences of their actions. These perceptions were, of course, the result of the statutory scheme created by the provisions of the Act. Moreover, while the Amnesty Committee had the powers to implement its decisions, the Reparation and Rehabilitation Committee (RRC), for example, could only make recommendations for reparations for victims. Thus, while perpetrators were granted immediate indemnification if their amnesty applications succeeded, victims were required to wait until Parliament took a final decision on implementing reparations.

8. The resultant view that the Committee was 'perpetrator friendly' was thus to an extent understandable and even unavoidable. Any accusation that the Committee was insensitive towards victims is, however, totally unfounded. The Committee's records bear ample testimony to the resources made available to assist victims. Substantial budgetary provision was made for locating victims, arranging for their legal representation and providing subsistence, transport and accommodation to enable them to attend and participate fully in amnesty hearings.

9. The statutory provisions that ensured the Committee's independence as an adjudicative body unfortunately resulted in the development of some distance and differences of opinion between the Committee and the rest of the Commission. It was, however, considered necessary to maintain such an 'arm's length' relationship in order to allay fears that the Commission might influence the decisions of the Committee. This was vividly exemplified by the fact that the Commission, on one occasion, brought a court application to set aside the Committee's decision in respect of the collective amnesty application of thirty-seven prominent leaders of the African National Congress (ANC).

10. It was against this background that the Committee was required to perform its statutory functions. The Committee never allowed any of these circumstances to deter it from its statutory mandate to adjudicate objectively, impartially and even-handedly on all applications for amnesty.

Composition of the Amnesty Committee

11. Appointments to the Committee were made exclusively from the ranks of the legal profession: that is, its members were judges, advocates and attorneys. There were those who questioned this. It was their view that the process would have been enriched had social scientists and other non-lawyers – for instance historians or anthropologists – been appointed to the Committee. The argument was that the specialised knowledge of such persons could have benefited the deliberations of the Committee.

12. In the view of the Committee, this argument entailed the danger of assuming findings of fact prior to evidence having been heard. It also felt that the presence of non-lawyers could have increased the fears of those persons who were concerned that they might not receive a fair and impartial hearing.

13. Committee members were all aware of the fact that they had entered the process with different perspectives. They were equally aware of their statutory duty to act impartially and decide applications objectively. Given the fact that its role was largely adjudicative, the Committee remained convinced that the legal training of its members rendered them better equipped to perform this adjudicative function. Hence, in the Committee's view, its impartiality was generally accepted by all those who participated in the amnesty process.

14. The question does, however, raise the need for expert evidence concerning the background and context of incidents in respect of which amnesty was applied for. Only on rare occasions did the Committee avail itself of the opportunity to receive such inputs. This was helpful in matters concerning witchcraft, the self-defence units (SDUs), the policies of the Azanian People's Liberation Army (APLA)[60] and the activities of so-called right-wing groupings. Given the positive inputs of these non-legal experts, it might well have assisted the process had the Committee been empowered to use the services of experts qualified in a particular field of enquiry as assessors at hearings on an *ad hoc* basis.

Unfolding of the Process

15. What was true for the Commission as a whole was also true for the Committee: no preparatory work had been done before the Committee was established. The original Committee of five members had to start from scratch, designing application forms and determining its own operational procedures. It had to appoint staff with no clear idea either of the scope of its tasks nor of the volume of work that lay ahead. As it turned out, the number of staff members appointed was inadequate to cope with the workload.

16. In spite of this obvious lack of preparedness, the Commission exerted pressure on the Committee to commence with hearings. Despite a concerted effort to summarise applications and capture the information on a database, the first hearings were held before the closing date for the filing of applications for amnesty, and before all applicants who had applied for amnesty for the same incidents had been linked. As a result, not all the evidence that related to a specific incident had been placed before the Committee or could form part of the record of the hearing. This necessitated different panels hearing different applicants on the same incident, resulting in duplication and extra costs. Moreover, the Commission's Investigation Unit was at that time taken up with investigations on behalf of other arms of the Commission. As a result, the Committee had done no proactive investigations by the time the initial hearings began.

17. There was, however, one very positive result that arose from these early hearings. The fact that the amnesty process was being publicly observed seems to have reduced public scepticism, and consequently the volume of applications increased.

18. The lack of a dedicated or adequate investigative capacity for the Committee created numerous problems, which are discussed briefly below.

60 See this section, Chapter Four.

19. First, although hearings were scheduled in the expectation that the relevant applications would have been properly investigated prior to the hearing, on more than one occasion this turned out not to be the case. In some cases, not all victims had been informed of the hearing, and some had not even been traced. The result was that hearings had to be postponed, prolonging the overall process.

20. Occasionally, however, hearings had to proceed at a stage when more extensive investigations could possibly still have been done, or even where the event for which an applicant had applied for amnesty had not been fully corroborated by the Committee. The Committee had to weigh the interests of all parties in deciding at what particular stage to set a matter down for a hearing. The prejudice caused by delays, especially to applicants in custody, was of particular relevance in this regard.

21. Second, in those instances where the Committee realised that further applicants still had to be heard in respect of the same incident, a decision was held over, pending the hearing of all applications relating to that incident. This was done in order to avoid potential prejudice to interested parties. Decisions on specific incidents were thus also postponed. By so doing, the Committee simply created more work for itself, since the hearings panel had to revisit the record of the proceedings and their notes in order to refresh their memories before finalising the delayed decision.

22. Third, the delay in finalising decisions on incidents that concerned clusters of applicants deprived lawyers for those applicants of guidelines on the requirements for amnesty contained in decisions of the Committee. This resulted in the presentation of extensive evidence on minutiae and non-material matters, and sometimes unnecessary cross-examination, out of excessive caution on the part of legal representatives. This added a lot of unnecessary time to the process.

23. There are a number of observations to be made in respect of the above.

24. First, the prescribed application form could have been simplified by providing for a narrative summary of both the incident and the role of the applicant. In far too many applications, correspondence with applicants was required simply to obtain information the application form should have elicited in the first place.

25. Second, legal assistance should have been made available to applicants who required help with the completion and submission of their applications. This would have substantially reduced the number of defective applications, particularly those that failed to disclose a political objective or an offence or delict. People in prison were particularly vulnerable in this respect. The saving of time and

effort in processing better quality applications, taken together with the enhanced prospects of justice being done in respect of indigent applicants, would have more than compensated for the extra costs of providing additional legal assistance. This situation contrasted sharply with the situation of amnesty applicants who qualified for legal assistance from the state. These applicants were entitled to legal representation from the stage of preparing their applications.

26. Third, and in the same vein, legal assistance should have been provided to all applicants on a basis of parity from the outset. The Legal Aid Board provided legal assistance to applicants at much lower rates than that provided to former or present employees of state departments. Victims or their families also received the lower rates and, by implication, less experienced legal assistance. The Committee assumed the responsibility for providing legal assistance towards the middle of 1999, after which its legal department negotiated better fee structures with legal representatives. This made for a more equitable arrangement. Although the Committee is of the opinion that no real prejudice resulted from this situation in view of the more inquisitorial approach it adopted in these earlier hearings, victims understandably felt aggrieved by that semblance of inequality. This should not detract from the very positive aspects of the process, particularly the fact that legal assistance was afforded to all interested parties.

27. Fourth, the absence of useful precedents inhibited the Committee's ability to conceptualise, plan and manage the process in an integrated fashion from the outset. It would, for example, have served the process much better had the Committee immediately dedicated its full capacity to capturing all applications on the database with the least possible delay. All linked applications should have been prioritised for analysis and subjected to focused and managed investigations. This should have entailed the tracing of victims or their next-of-kin and other interested parties with a view to obtaining their versions of events and, where applicable, to obtaining research material relevant to the applications in question.

28. Fifth, pre-hearing conferences involving legal representatives could have been better utilised to limit the scope of hearings by minuting common cause facts and thus focusing the hearing solely on matters actually in dispute.

29. Sixth, the more regular use of *ex tempore* decisions in the many instances where applications were clear-cut would have contributed towards effecting savings and speeding up the overall process.

A Few Reflections on the Provisions of the Act

30. In some instances, applicants applied for amnesty in respect of offences for which, they maintained, they had been wrongly convicted. Since the Act required that the conduct for which amnesty was sought should have constituted an offence or delict, the Committee could not consider such applications favourably. In some cases, co-applicants confirmed the innocence of such an applicant. The Committee referred those cases to the Department of Justice in the hope that they could be dealt with in terms of the Presidential prerogative. The Committee merely wishes to record that such cases could have been dealt with had the legislation either conferred additional powers on the Committee or provided for a concurrent process to deal with those cases.

31. In a few cases, the Committee found that gross human rights violations that did not fall within the ambit of the Act had occurred during and as a result of the conflicts of the past. These related mainly to intra-organisational conflicts. In such conflicts, the acts in question were not directed at a political opponent as required by the Act. Although these cases might have been deserving, they could not qualify for amnesty. This difficulty could have been addressed by extending the ambit of 'an act associated with a political objective' so as to encompass matters of this nature.

32. In many instances, where applications were unopposed and the facts common cause among all interested parties, the Committee was still compelled to hold public hearings merely by virtue of the fact that these matters concerned gross human rights violations. These included, for example, matters related to conspiracies to commit a gross violation of human rights where plans were later aborted, and abductions of persons for a very limited period of a few hours without any physical harm being done to the victim. A wider discretion to grant amnesty in matters where the application was unopposed and the facts common cause, without having had to hold a public hearing, would have contributed to a more expeditious process and cost savings.

33. Applications for amnesty were received from persons in leadership positions in various political groupings, who accepted collective responsibility for (gross) human rights violations committed within the ambit of their policies or resulting from a misguided but bona fide belief that these violations were perpetrated in the implementation of such policies. Often these applications were made pursuant to calls by the Commission on persons in leadership to apply for amnesty. The application of the provisions of the Act to such matters was fully dealt with in the High Court review of the collective amnesty application by ANC leaders.

The latter applications were eventually disposed of on the basis that no act or omission had been disclosed which constituted an offence or delict. The findings of the Committee in these applications were not, therefore, to the effect that an offence or delict had been committed for which amnesty was refused. On the contrary, the findings on the applications *per se* were that none of the applicants had committed any offence or delict.

34. The Committee considers it to be in the interests of justice to clarify the mistaken public impression that these applicants (most of whom occupy key public positions) are liable for prosecution in the light of their unsuccessful amnesty applications. It is arguable whether statutory provision for such applications was necessary or would have benefited the Commission process.

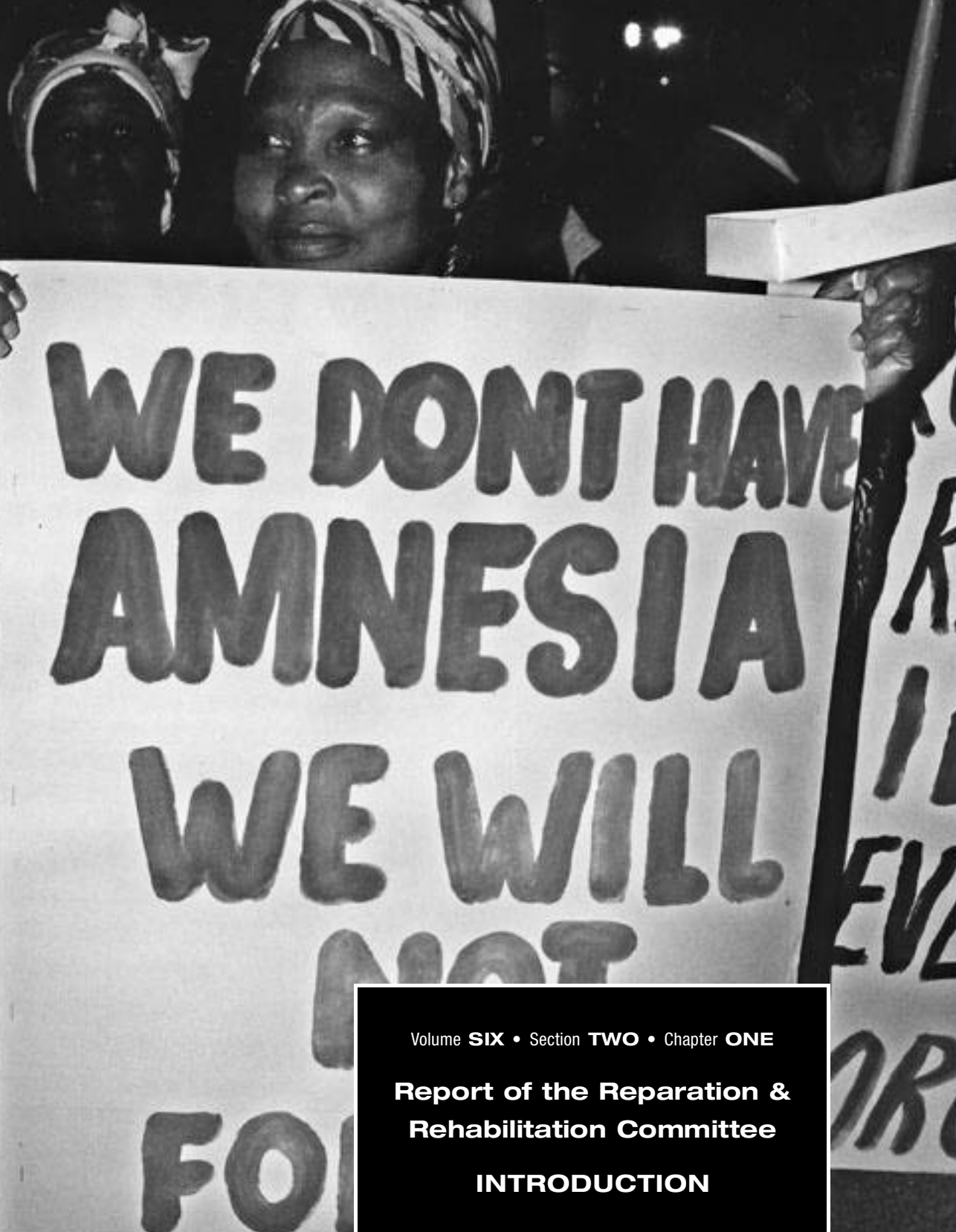
Reconciliation and National Unity

35. The various participants experienced the Amnesty Committee process differently. Victims who attended hearings had to contend, generally speaking, with the reopening of old wounds. Their responses varied from strongly opposing to supporting applications for amnesty; from opposing the principles underlying the amnesty process to embracing them; from frustration with perceived non-disclosure by perpetrators to satisfaction at having learnt the facts; from animosity towards applicants to embracing them in forgiveness and reconciliation. Often they merely stated that they had learnt the truth and now at least they understood how and why particular incidents had happened.

36. Perpetrators' attitudes ranged from taking pride in their past actions, to disavowing any further support for their earlier attitudes, to expressions of deep remorse. Often they had to experience the humiliation of public exposure of their shameful pasts. Others said that they would probably repeat what they had done in similar circumstances.

37. The Committee believes that, in all its many facets, the amnesty process made a meaningful contribution to a better understanding of the causes, nature and extent of the conflicts and divisions of the past. It did so by uncovering many aspects of our past that been hidden from view, and by giving us a unique insight into the perspectives and motives of those who committed gross violations of human rights and the context in which these events took place.

38. By sharing these insights, the Committee hopes that its efforts have made a real contribution to the challenge of ensuring that our country and future generations will continue to build on the process towards unity and reconciliation in which the Commission has played so integral a part. (... p92)



Volume **SIX** • Section **TWO** • Chapter **ONE**

Report of the Reparation & Rehabilitation Committee

INTRODUCTION

Report of the Reparation and Rehabilitation Committee

INTRODUCTION

1. In 1998, the Reparation and Rehabilitation Committee (RRC) reported on its work and presented its policy recommendations to the President.[1] This formed part of the Final Report of the Truth and Reconciliation Commission (the Commission), which was handed to the President of South Africa on 28 October 1998. In that chapter, the RRC discussed the need for reparation and the moral and legal obligation to meet the needs of victims of gross human rights violations. The RRC also outlined the nature and progress of the urgent interim reparation (UIR) programme and submitted a comprehensive set of proposals for final reparations. The present chapter needs to be read in conjunction with that earlier chapter.

MANDATE OF THE REPARATION AND REHABILITATION COMMITTEE

2. The RRC received its mandate from the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act)[2], which made provision for reparations for those who had suffered human rights violations.

3. As stated in the Final Report of the Commission, the Preamble to the Act stipulates that one of the objectives of the Commission was to provide for:

   the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; …

4. As an integral part of the Commission, the RRC was required to draw up a set of recommendations to the President with regard to:

   (i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;

1 See Volume Five, Chapter Five.

2 Sections 25 and 26 of the Act.

(ii) measures which should be taken to grant urgent interim reparation to victims; …[3]

5. Furthermore, section 25(b)(i) of the Act stipulates that the RRC may:

make recommendations which may include urgent interim measures as contemplated in section 4(f)(ii), as to appropriate measures of reparation to victims; …

6. The Act also provides for referral to the RRC by the other Committees of the Commission. Thus:

When the Committee [on Human Rights Violations] finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.[4]

7. Similarly:

(1) Where amnesty is granted to any person in respect of any act, omission or offence and the [Amnesty] Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.[5]

(2) Where amnesty is refused by the Committee and if it is of the opinion that –

(a) the act, omission or offence concerned constitutes a gross violation of human rights; and

(b) a person is a victim in the matter, it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 26.

THE COMMISSION'S REPARATION AND REHABILITATION POLICY

8. The policy recommendations submitted to the President by the Commission consisted of five basic components. Following internationally accepted approaches to reparation and rehabilitation, the RRC stressed the following principles:
   a Redress: the right to fair and adequate compensation;
   b Restitution: the right to the restoration, where possible, of the situation existing prior to the violation;

3 Section 4(f) of the Act.
4 Section 15(1).
5 Section 22.

c Rehabilitation: the right to medical and psychological care, as well as such other services and/or interventions at both individual and community level that would facilitate full rehabilitation;

d Restoration of dignity: the right of the individual/community to an acknowledgment of the violation committed and the right to a sense of worth, and

e Reassurance of non-repetition: the right to a guarantee, by means of appropriate legislative and/or institutional intervention and reform, that the violation will not be repeated.

9. These principles provided a basic framework from which to elaborate the specific proposals outlined below:[6]

Urgent interim reparation

10. UIR is defined as assistance for people in urgent need, with a view to providing them with access to appropriate services and facilities. In this regard, the Commission recommended that limited financial resources be made available to facilitate such access where necessary.

Individual reparation grants

11. This is an individual financial grant scheme. The Commission recommended that each victim of a gross human rights violation receive a financial grant, based on various criteria, to be paid over a period of six years.

12. It was proposed that individual reparation grants be paid to victims (if alive) or relatives/dependants (where victims were deceased). The amount to be paid should be calculated according to three criteria: an amount that acknowledges the suffering caused by the violation; an amount that enables access to requisite services and facilities, and an amount that subsidises daily living costs according to socio-economic circumstances. As the cost of living is higher in rural than in urban areas, it was recommended that victims living in the rural areas should receive a slightly higher grant. The amount also varied according to the number of dependants (up to a maximum of R23 023 per annum). It was recommended that the annual amount be paid twice a year for a period of six years and be administered by the President's Fund, which is located within the Department of Justice and Constitutional Development.

6 See Volume Five, Chapter Five.

Symbolic reparation and legal and administrative measures

13. Symbolic reparation encompasses measures that facilitate the communal process of remembering and commemorating the pain and victories of the past. Such measures aim to restore the dignity of victims and survivors.

14. Commemorative aspects include exhumations, tombstones, memorials or monuments, and the renaming of streets or public facilities.

15. Legal and administrative measures include matters such as the issuing of death certificates or declarations of death in the case of people who have disappeared, expunging criminal records where people were sentenced for politically related offences, and expediting outstanding legal matters.

Community rehabilitation programmes

16. The establishment of government-led community-based services and activities is aimed at promoting the healing and recovery of individuals and communities affected by human rights violations. As many victims were based in communities that were subjected to systemic abuse, the RRC identified possible rehabilitation programmes and recommended a series of interventions at both community and national level. These included programmes to demilitarise youth who had been involved in or witnessed political violence over decades; programmes to resettle the many thousands displaced by political violence; mental health and trauma counselling, as well as programmes to rehabilitate and reintegrate perpetrators of gross violations of human rights into normal community life.

Institutional reform

17. Institutional reform included legal, administrative and institutional measures designed to prevent the recurrence of abuses of human rights. The Commission drew up a fairly substantial set of recommendations aimed at the creation and maintenance of a stable society – a society that would never again allow the kind of violations experienced during the Commission's mandate period. These included recommendations relating to the judiciary, security forces and correctional services as well as other sectors in society such as education, business and media.

18. The RRC, focusing on the need to implement these recommendations, proposed that a structure or body be set up in the office of the State President or Deputy President and headed by a national director of Reparation and Rehabilitation.

Further, the RRC recommended that reparation desks be established at provincial and municipal levels to ensure effective delivery and monitoring.

DELAYS IN THE IMPLEMENTATION OF REPARATION THUS FAR

19. Since the submission of the Final Report of the Commission with its proposals for reparation, there has been a considerable delay on the part of government in setting forth its vision for the Reparation and Rehabilitation programme. Indeed, government's only response thus far has been to challenge the individual reparation grant component of the Commission's recommendations.

20. This delay has led to ongoing public debate and widespread criticism. Much of this criticism has been directed at the Commission, as public perception, frequently fuelled by the media, has continued to see reparation as the responsibility of the Commission rather than of the government.

21. The fact that this delay has taken place against the background of the amnesty process is also unfortunate. The fact that victims continue to wait for reparations while perpetrators receive amnesty has fuelled the debate about justice for victims[7] within the Commission process.

22. It needs to be strongly emphasised that giving victim evidence before the Commission was not simply a question of reporting on the past. It was intended to change peoples' views and experiences of their own pain and suffering. It was intended, moreover, to play an important role in reconciling the nation. This exposure and exploration of past experiences – this reconciliation – needed to be accompanied by reparation and rehabilitation-related services and the meeting of financial and other needs. Without this important component, the work of the Commission remains essentially unbalanced.

23. It should be noted further that, while the public debate has tended to focus on individual financial grants, the reparation policy proposed by the RRC was much broader in intent. In other words, it did not focus simply on financial compensation.

7 The Commission's use of the term 'victim' was explained in its Final Report on the grounds of the original wording of the Act. The RRC acknowledges the connotations associated with the term as a multiplicity of experiences, or engendering notions of the 'victim' having being vanquished or conquered in some way. The alternative, 'survivor', is open to a more fluid interpretation, but still fails to represent the variations of that survival. In the context of the Commission, it is a definition based on the specific violation experienced by the individual – that is, killing,abduction, torture or severe ill-treatment. It is not a term based on the individual's current state or understanding of himself or herself. This 'violation-based' definition is unsatisfactory to the Commission in that it promotes a homogeneous grouping of those who approached the Commission and has the potential to stifle creative approaches to the issue of reparative interventions.

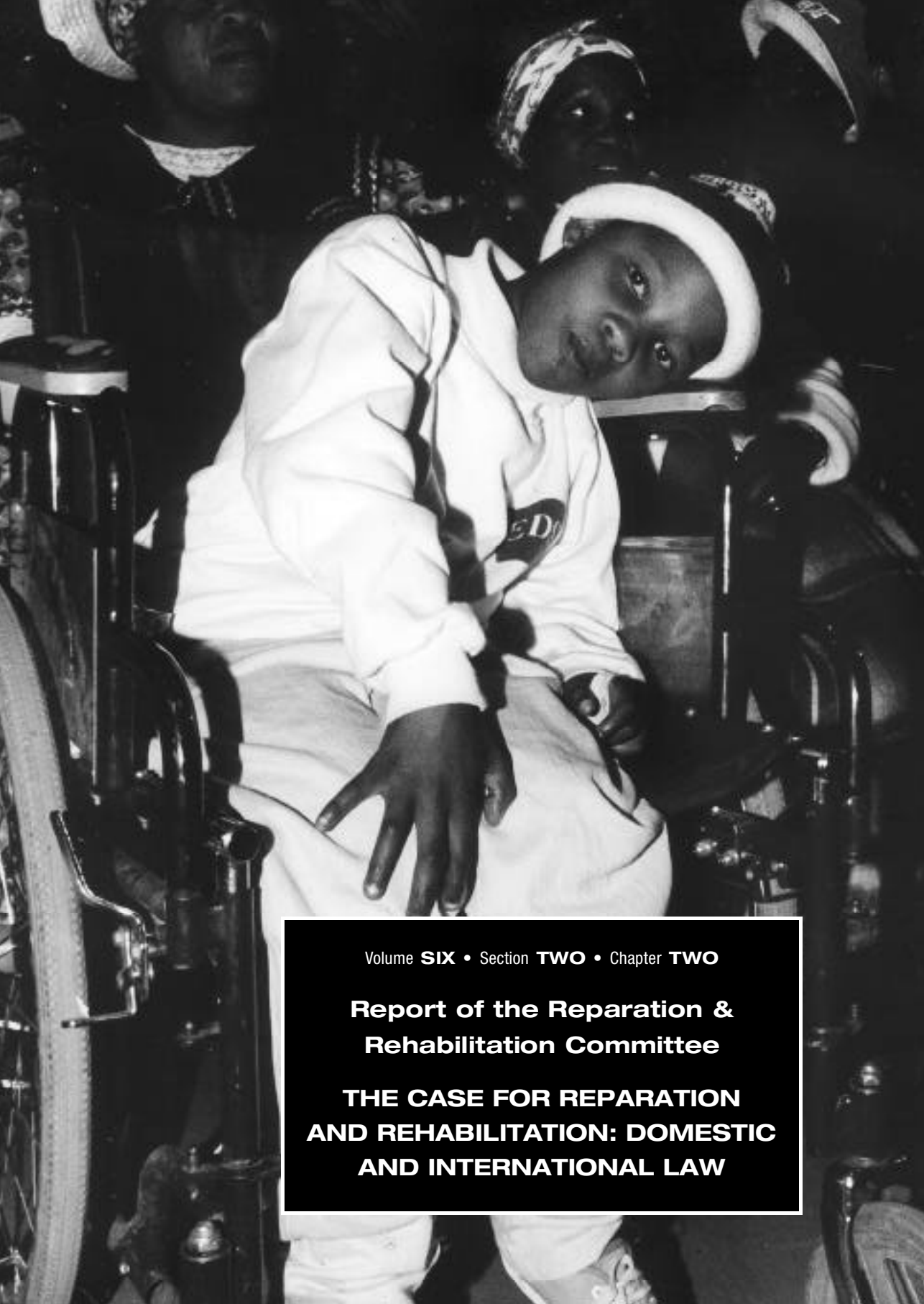
It catered not only for the individual needs of those who suffered from past abuses, but had implications for communities that had been targeted for abuse as well as those requiring fundamental institutional transformation.

THE FOCUS OF THIS REPORT

24. The purpose of these chapters is to re-emphasise the urgency and importance of the recommendations for reparation and rehabilitation. This section also focuses on the work undertaken by the RRC since 29 October 1998. At that time, the RRC had processed seventy applications and sent them to the President's Fund. As of 30 November 2001, when the RRC closed down, a total of 17 016 forms for UIR grants had been submitted to the President's Fund, of which some 16 855 payments had been made, totalling R50 million. The processing of forms and data in respect of UIR has formed the bulk of the RRC's work since October 1998.

25. In addition to the above, the RRC has been responsible for considering victims referred to it by the Amnesty Committee for purposes of reparations.[8] Further, the Committee on Human Rights Violations has continuously referred new victims to the RRC as it completed its findings and dealt with appeals against earlier negative findings. As a result of these two processes, victim referrals were still being made to the RRC up to the time of finalising this report. (...p98)

8 In terms of section 22 of the Act.



Volume **SIX** • Section **TWO** • Chapter **TWO**

Report of the Reparation & Rehabilitation Committee

THE CASE FOR REPARATION AND REHABILITATION: DOMESTIC AND INTERNATIONAL LAW

The Case for Reparation and Rehabilitation: Domestic and International Law

1. In its broadest sense, the mandate of the Reparation and Rehabilitation Committee (RRC) was to affirm, acknowledge and consider the impact and consequences of gross violations of human rights[9] on victims, and to make recommendations accordingly. In doing so, the RRC had access to a rich source of information about reparations, drawn from domestic and international law and opinion.

DOMESTIC LAW AND DEMOCRATIC ACCOUNTABILITY

Domestic Law

2. The obligation to institute reparations is enshrined in South African law itself.

3. The Constitution of the Republic of South Africa Act No. 200 of 1993[10] (the Interim Constitution) recognised the principle that the conflicts of the past had caused immeasurable injury and suffering to the people of South Africa and that, because of the country's legacy of hatred, fear, guilt and revenge: 'there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation'.[11] This view was given concrete expression in the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act), which mandated the Commission to develop measures for the provision of reparation to those found to have been victims of gross violations of human rights.

4. Through the Act and in unambiguous language, the legislature made clear its intention that 'reparations' of some kind or form should be awarded to victims.

9 Killings, torture, severe ill-treatment and abduction. A number of violations were reported to the Commission which did not fall into these categories. These were described as 'associated violations'.

10 Constitution of the Republic of South Africa Act No. 200 of 1993, 'National Unity and Reconciliation', Chapter Fifteen.

11 Constitution of the Republic of South Africa Act No. 200 of 1993.

This reaffirms the belief that the Act created rights in favour of victims. For example:

[T]he Commission shall – …
(f) make recommendations to the President with regard to –

(i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims [section 4];

Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form … [section 26(1)].

The recommendations referred to in section 4(f)(i) shall be considered by the President with a view to making recommendations to Parliament and making regulations [section 27(1)].

5. Entitlement to reparation therefore arises from the provisions of the Act itself. The only qualification is that the recipient must be a victim of a gross violation of human rights as defined in section 1 of the Act,[12] and as further elaborated in subsequent promulgated regulations.

Legitimate expectation

6. The general statutory obligations imposed upon the Truth and Reconciliation Commission (the Commission) created a legitimate expectation on the part of victims of gross violations of human rights that the Commission would fulfil this part of its mandate. This legitimate expectation gave rise to legally enforceable rights in terms of section 26 of the Act. According to this section, persons are entitled to apply for reparations by virtue of having been referred as a victim to the RRC either by the Amnesty Committee[13] (the Committee) or the Human Rights Violations Committee[14] (HRVC).

12 Section 1(xix) of the Act defines 'victims' as – (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights – (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted; (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and (c) such relatives or dependants of victims as may be prescribed.

13 Section 22 of the Act.

14 Section 15(1).

7. The principle of legitimate expectation has been accepted in our law[15] and has since been enshrined in the South African Constitution. Victims, therefore, have a legitimate expectation that they are entitled to reparations once the RRC has considered their applications for reparation and referred them to the President's Fund and/or relevant government department in the proper manner.

Amnesty and reparations: Achieving a balance

8. The argument that the case for reparations is well founded in the Constitution and in the Act is also supported and underpinned by a majority judgment of the Constitutional Court.[16] The judgment emphasises the obligation on the state to meet the 'need for reparations' as enshrined in the Constitution.

9. The Act requires that, once a perpetrator has been granted amnesty, the right of the victims and/or their families to institute criminal and/or civil proceedings is extinguished.[17] In 1996, the Azanian People's Organisation (AZAPO) and several relatives[18] of persons killed by the security forces challenged the constitutionality of the amnesty provisions.[19] The Constitutional Court dismissed the application in a majority judgment. Affirming the constitutionality of the provisions, the Court[20] noted that the notion of amnesty was a cornerstone of the negotiated settlement and was enshrined in the 'postamble' to the Interim Constitution[21]. However, the judgment noted that the 'postamble' made provision not only for amnesty, but also for a reparations process:

The election made by the makers of the Constitution was to permit Parliament to favour 'the reconstruction of society' involving in the process a wider concept of 'reparation' which would allow the state to take into account the competing claims on its resources, but at the same time, to have regard to the 'untold sufferings' of individuals and families whose fundamental human rights had been invaded during the conflict of the past.[22]

15 Administrator of the Transvaal and Others v Traub and Others 1989 (4) SA 731 (A) at 761 D.

16 Constitutional Court Case No. CCT 19/96.

17 See section 20(7) of Act No. 34 of 1995.

18 Ms NM Biko, wife of Mr Steven Bantu Biko who died in detention in October 1977; Mr CH Mxenge, brother of Mr Griffiths Mxenge who was killed in November 1981 by a Security Branch hit squad; and Mr C Ribeiro, son of Dr Fabian and Ms Florence Ribeiro who were killed in a joint Security Branch and SADF Special Forces operation in December 1986.

19 See Volume One, Chapter Seven,pp. 175–8.

20 Constitutional Court Case No. CCT 19/96.

21 The Interim Constitution provided the framework for the transition to a democratic order.

22 See AZAPO judgment per Judge Mahomed at p. 40 para 45.

10. The Court offered some examples of such reparations, including: bursaries and scholarships for the youth; occupational training and rehabilitation; surgical intervention and medical assistance; housing subsidies, and tombstones and memorials.[23]

11. Thus it may be seen that the Act as passed by Parliament includes provisions for both amnesty and reparations, and embodies and endorses the spirit of the Interim Constitution.

12. Mr Justice Didcott, a Constitutional Court judge, issued a separate judgment in which he considered various constitutional matters and questions of law. In this judgment, which in no way disagrees with the majority view, Judge Didcott expressed the following opinion on the phrase 'need for reparation', which appears in the postscript of the Interim Constitution:

    Reparations are usually payable by states, and there is no reason to doubt that the postscript envisages our own state shouldering the national responsibility for those. It therefore does not contemplate that the state will go scot-free. On the contrary, I believe, an actual commitment on the point is implicit in its terms, a commitment in principle to the assumption by the state of the burden.
    What remains to be examined is the extent to which the statute gives effect to the acknowledgment of that responsibility. The question arises because it was said in argument to have done so insufficiently.

    The long title of the statute declares one of the objects that it promotes to be: '… the taking of measures aimed at the granting of reparation to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights'.

    Section 1 defines 'reparation' in terms that include – '… any form of compensation, ex gratia *payment, restoration, rehabilitation or recognition'*.[24]

13. Judge Didcott discussed the effects of granting amnesty and the award of reparations as follows:

    The statute does not, it is true, grant any legally enforceable rights in lieu of those lost by claimants whom the amnesties hit. It nevertheless offers some quid pro quo *for the loss and established the machinery for determining such alternate redress.*[25]

23 See AZAPO judgment per Judge Mahomed at p. 40 para 45.
24 See AZAPO judgment per Didcott J paras 62–4.
25 See AZAPO judgment per Didcott J at pp. 55–6, para 65.

14. Whilst the granting of reparations to victims whose rights to criminal prosecution and civil claims have been destroyed by the granting of amnesty to perpetrators may conceivably be described as a *quid pro quo*, it must be noted that the proportion of victims emerging from the amnesty process is relatively small compared to the total number of persons declared to be victims by the Commission. It must be stressed, however, that any reparation policy that attempted to make a distinction between these two categories of victims would be divisive and counter-productive.

THE INTERNATIONAL ARGUMENTS

15. In its Final Report,[26] the Commission made it clear that its position with regard to reparations was consistent with well-established international principles. The following section re-states and elaborates this position.

The right to reparation

16. The protection of human rights is widely recognised as a fundamental aim of modern international law, which holds states liable for human rights violations and the abuses they or their agents commit. For some considerable time now, the minds of the international legal community have been preoccupied with the issue of compensation for injuries arising from human rights violations and the formulation of effective reparation policies. Although no consistent reparations policy has evolved in international human rights law, there is nevertheless reasonable consensus about the obligations of states to make reparations for violations of human rights.

17. A survey of international law institutions, bodies and tribunals at both global and regional level, taken together with the many treaties, declarations, conventions and protocols in respect of the protection of civil liberties and human rights, provides overwhelming proof of the moral and legal support the Commission's reparations policy finds in international law. Indeed, as will be shown, the reparation policy proposed by the RRC is in many respects framed by the policy positions of the international human rights community.

18. The Universal Declaration of Human Rights of 1948, the founding document on international human rights, states that: 'Everyone has the right to an effective

26 Volume Five, Chapter Five.

remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or laws'. The declaration further states that any person unlawfully arrested, detained or convicted has an enforceable right to compensation.[27]

19. Further examples of support for reparation can be found in the International Covenant on Civil and Political Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the Convention on the Prevention and Punishment of Genocide (1948); the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the United Nations (UN) Security Council Resolution on the Establishment of the UN Compensation Commission (1991), and the study by the United Nations High Commission on Human Rights (UNHCHR) concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (1993).

20. In the Commission's Final Report, reference was made to the last-mentioned study, in which the UNHCHR argued that, where a state or any of its agents is responsible for killings, torture, abductions or disappearances, it has a legal obligation to compensate victims or their families.

21. Subsequent to the publication of the Commission's Final Report, the UN authorised a further study on the subject of reparations. On 18 January 2000, a UNHCHR working group, headed by international human rights scholar M Cherif Bassiouni, drew up a report that incorporated the UN 'Draft Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law' (the Draft Principles). The report confirms that, in order to comply with their international human rights and humanitarian law obligations, states must adopt *inter alia*:
    a appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice; and
    b measures to make available adequate effective and prompt reparation.

22. In terms of these Draft Principles, the expression 'access to justice' is not limited to access to ordinary courts of law, but also includes equal and effective access to justice in the form of adequate reparations. In order to give effect to

27 Articles 9(5) and 14(6) United Nations Declaration of Human Rights.

these principles, states must provide victims with appropriate mechanisms for accessing and receiving reparations.

Nature of remedy or reparation offered

23. As the right to a remedy for victims of human rights abuse has increasingly been accepted in international human rights and humanitarian law, reasonable consensus has begun to emerge as to what such reparation should entail. Significantly, in almost every instance, the remedy envisaged goes far beyond individual monetary compensation.

24. The UNHCHR, established to ensure state compliance with the International Covenant on Civil and Political Rights, has recommended that a state that is in violation of the Covenant should:
    a pay financial compensation to the victim;
    b provide appropriate care where necessary;
    c investigate the matter; and
    d take appropriate action, including bringing the perpetrator to justice.

25. Article 14 of the Convention against Torture states that:

    Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as the result of an act of torture, his dependants shall be entitled to compensation.

26. In 1998, the Working Group on Involuntary or Enforced Disappearances issued a similar declaration. However, it extended the right of redress to the family of the victims and stipulated that, in the case of enforced disappearances, it was the primary duty of the state to establish the fate and whereabouts of the disappeared. In considering what could be regarded as adequate reparation, the Working Group stated that it should be 'proportionate to the gravity of the human rights violations (that is the period of disappearance, the conditions of detentions and so on) and to the suffering of the victim and the family'. In determining compensation, the Working Group noted that consideration should be given to the following:
    a physical and mental harm;
    b lost opportunities;
    c material damages and loss of earnings;

d harm to reputation; and

e legal costs incurred as a result of the violation.

27. In the event of the death of a victim, additional compensation should be awarded.

28. Additional measures to ensure rehabilitation (such as physical and mental services) and restitution (restoration of personal liberty, family life, citizenship, employment or property, return to the place of residence) should be provided. Finally the victim and her/his family should be guaranteed the non-repetition of the violation.

29. The Draft Principles (as drafted by Professor M Cherif Bassiouni) give fairly detailed guidance on the possible forms of reparation. These are worth setting out in full, as the recommendations made by the Commission exemplify these principles in many respects, demonstrating the extent to which the recommendations the Commission proposes are in line with those proposed internationally.

Article 22: Restitution should, wherever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty; legal rights; social status; family life or citizenship; return to one's place of residence; restoration of employment and return of property.

Article 23: Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as: physical or mental harm, including pain, suffering and emotional distress; lost opportunities, including education; material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; costs required for legal or expert assistance, medicines and medical services, and psychological and social services.

Article 24: Rehabilitation should include medical and psychological care as well as legal and social services.

Article 25: Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following: cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses or others; the search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities; an official declaration or

a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of the persons closely connected with the victim; apology, including public acknowledgment of the facts and acceptance of responsibility; judicial or administrative sanctions against persons responsible for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the violations that occurred of international human rights and humanitarian law in training and in educational material at all levels.

Preventing the recurrence of violations by such means as (1) Ensuring effective civilian control of military and security forces; (2) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces; (3) Strengthening the independence of the judiciary; (4) Protecting persons in the legal, media and other related professions and human rights' defenders; (5) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials; (6) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises; (7) Creating mechanisms for monitoring conflict resolution and preventive intervention.

Decisions of international human rights bodies supporting the right to reparation

30. The creation of numerous bodies and procedures within the UN system has created a powerful mechanism for (amongst other things) the investigation of reported violations of human rights, the holding of public hearings, and recommendations on international policy. Yet none of the UN's permanent treaty or internal bodies is legally empowered to give concrete effect to reparations or the bringing of perpetrators to book.

31. Despite this, several regional bodies established to promote and protect human rights do have such competence. European and Inter-American bodies in particular have developed a rich jurisprudence around international human rights and humanitarian law generally, as well as on specific issues such as reparation.

32. The Inter-American Commission on Human Rights (IACHR) is, for example, empowered to investigate complaints and to effect the amicable settlement of disputes. In two well-publicised cases, the IACHR brokered a settlement where

damages were claimed from Ecuador for the disappearance of two young men. Ecuador admitted liability and agreed to implement the following reparations:

a payment of a lump sum US$ 2 000 000 settlement without prejudice to civil remedies against the perpetrators;
b an undertaking to conduct a definitive and complete search of the area where the boys allegedly disappeared and to provide all necessary and reasonable logistical support to carry out the search, including training men to recover the bodies;
c an undertaking not to interfere with any ceremonies commemorating the deaths of the youths;
d an undertaking to rehabilitate the reputation of the family by publicly affirming that the young men were not guilty of crimes under Ecuadorian law or morality;
e an undertaking properly to investigate, prosecute and punish the perpetrators of the violation of the human rights of the deceased and their families.

33. This case study is a good example of how a package of recommendations (such as the RRC has proposed in South Africa) can be holistically combined rather than quantifying the violations committed against the victims or their families to a sum of money alone.

34. The IACHR has made important contributions to the growing body of jurisprudence with respect to formulating reparation policy as an alternative to monetary compensation. It has, in a number of cases, recommended the reform of the military court system, methods of investigation (Columbia), prosecution and the punishment of violators (Tarcisso Meduna Charry v Colombia), the adoption or modification of offending legislation, and guarantees for the safety of witnesses. Similarly, the South African Commission has made many recommendations in respect of institutional reform.[28]

35. The IACHR has been particularly concerned with an important area of international jurisprudence relating to the issue of impunity: not only as it concerns past violations, but also to the prospect of violations that may take place in the future. This has a direct bearing on the kinds of reparation needed to remedy the situation. In its report on the *Ley de Caducidad* in Uruguay, the IACHR concluded that the impunity granted to officials who had violated human rights during the

28 See Volume Five, Chapter Five, 'Recommendations'.

period of military rule was in breach of the American Convention on Human Rights. A similar finding was made in respect of Argentina's *Ley de Puncto Final* (the 'full-stop law') and Presidential Pardon No. 1002. In this respect, the South African Commission's recommendations in relation to prosecution[29] need to be seen as being an important part of reparation policy in that they address the issue of the non-repetition of violations by seeking to put an end to a culture of impunity.

36. Where settlement is not possible, the IACHR refers disputes to the Inter-American Court on Human Rights. In Valesquez Rodriguez v Honduras 1988 and Godinez Cruz v Honduras 1989, the Inter-American Court of Human Rights found the government of Honduras responsible for the disappearances of two young men at the hands of the military. Despite the argument by Honduras that the Court was limited to awarding the most favourable benefit under Honduran law for accidental death, the Court decided that international law required restitution of the *status quo ante* (before the violation occurred) where possible. Another case where full compensation was required was in the Barrios Altos case.[30] In Loayza Tamayo v Peru, the Court agreed that reparations could be granted, based on identifiable damage suffered as a result of a violation that included lost opportunities (*proyecto de vide* or 'enjoyment of life'). It should be noted that compensation proposed by the RRC does not include the notion of 'lost opportunities' addressed in this and other international human rights instruments and law. In this respect, the individual compensation proposed by the RRC is a far more modest amount.

37. The former European Court of Human Rights gave a more restrictive interpretation to Article 50 of the European Convention for Human Rights and Fundamental Freedoms, which provided, *inter alia*, for adequate compensation for human rights violations. This hampered the evolution of remedies in the European system. However, since the creation of the new European Court of Human Rights on 1 November 1998, the Court has expressed its opinion[31] that, in terms of the Convention, the state should do more than financially compensate the victim. Rather it should effect restitution so that the victim is restored to the position s/he held before the violation.

38. More recently, the Organisation of African Unity (OAU) established a system designed to ensure adherence to human rights. In 1986, the OAU issued an African Charter on Human and People's Rights. This Charter established an

29 See recommendation on 'Accountability', Volume Five, Chapter Eight, p. 309.

30 Judgment March 14 2001 Inter-American Court on Human Rights Sec. C No 75 2001.

31 In cases like Papamichalopoulos and Others v Greece.

independent African Commission on Human and People's Rights, which was entrusted with, *inter alia*, the promotion and protection of human rights in African states as well as interpretation of the Charter.

39. In June 1998, the OAU went on to adopt a draft protocol for the establishment of an African Court on Human Rights. Article 26(1) provides that, if the Court should find that a violation of a human or people's rights has been committed, it should make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

Amnesty and reparation in international law

40. The aim of restorative justice internationally is to restore the balance in favour of the victim to whom wrong has been done. The intention is to provide compensation for loss, to make victims whole and to sanction perpetrators and ensure that they are deterred from engaging in future misconduct.[32] The Final Report offers a definition of restorative justice as a process that satisfies the following criteria:[33]
    a It seeks to redefine crime: it shifts the primary focus of crime from the breaking of laws or offences against a faceless state to a perception of crime as violations against human beings, as injury or wrong done to another person.
    b It is based on reparation: it aims for the healing and the restoration of all concerned – of victims in the first place, but also of offenders, their families and the larger community.
    c It encourages victims, offenders and the community to be directly involved in resolving conflict, with the state and legal professionals acting as facilitators.
    d It supports a criminal justice system that aims at offender accountability, full participation of both the victims and offenders, and making good or putting right what is wrong.

41. International law has been hostile to blanket amnesties and to amnesty provisions that deprive victims of their civil law rights. The granting of amnesty undermines victims' rights to justice through the courts by removing their rights to pursue civil claims against perpetrators, who thereby escape liability. In a 1998 ruling,

32 See, for example, York,K, and Bauman, J, Remedies: Cases and Materials, 1979.

33 Volume One, Chapter Five, p. 126, para 82, from South African Law Commission, 'Sentencing Restorative Justice' Issue Paper 7, p. 6.

the IAHRC condemned the 1993 El Salvadorean amnesty law because it 'expressly eliminat[ed] all civil liability (article 4) ... Prevent[ing] the surviving victims and those with legal claims ... from access to effective judicial recourse'.

42. This implies that amnesty in respect of civil liability for human rights violations can be reconciled with international law only where the state has simultaneously furnished some mechanism of investigation and some form of reparation for victims. Thus the 'Draft Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity' prepared for the UNHCHR's Sub-Commission on Prevention of Discrimination and Protection of Minorities in October 1997 stipulates that:

Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds. They shall be without effect with respect to the victims' right to reparation ...

43. Repeated references in international human rights instruments and treaties, echoed by state practice and expert opinion, to the obligation of states to respect and ensure respect for rights, right of access to justice and the right to remedy, provide strong evidence of a customary obligation. Such obligation implies that victim reparations are a minimum requirement where ordinary access to the courts is limited.

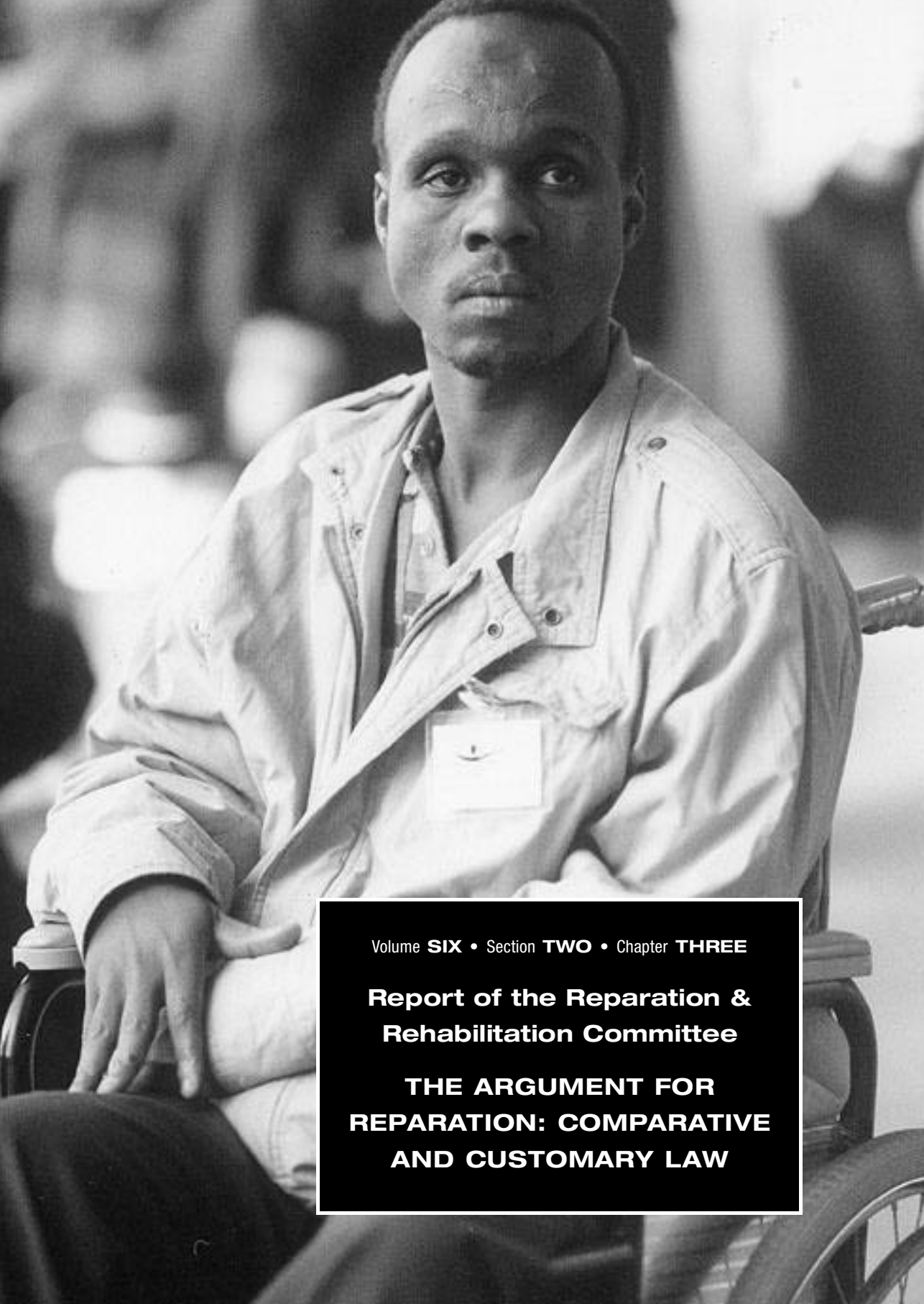
44. Therefore, because the South African amnesty process deprives victims of access to the courts, its international legitimacy depends on the provision of adequate reparations to the victims of gross violations of human rights. Making good the injuries to victims of gross violations of human rights where their ability to seek reparation has been taken away from them is thus an inescapable moral obligation on the part of the post-apartheid democratic state.

45. In short, amnesty coupled with an adequate and effective provision for reparation and rehabilitation meets government's obligation to ensure justice to the victims of the past. Stated differently, amnesty without an effective reparations and rehabilitation programme would be a gross injustice and betrayal of the spirit of the Act, the Constitution and the country.

46. It can be seen from the above discussion that the reparation policy proposed by the RRC is well within the bounds determined by international human rights law.

Indeed, as suggested above, the policy proposed by the RRC is, in many respects, an attempt to take seriously international consensus on developing a defensible and sound reparations programme.

47. Finally, it must be noted that the former government was not a party to any of the major international human rights treaties during the Commission's mandate period – that is, the period during which violations of human rights were perpetrated on a large scale. This does not, however, render the current South African government immune from the obligation to make reparation for gross violations committed during the mandate period. As indicated above, South Africa is bound by customary international law for violations committed during the apartheid era. (...p112)



Volume **SIX** • Section **TWO** • Chapter **THREE**

Report of the Reparation & Rehabilitation Committee

THE ARGUMENT FOR REPARATION: COMPARATIVE AND CUSTOMARY LAW

The Argument for Reparation: Comparative and Customary Law

1. Most of the many advances made over recent decades with respect to reparation policy have taken place at the level of global bodies and individual case law. More recently, however, the issue of reparations has become a matter of national significance in countries that have experienced transitions to democracy after years of repression.[34] For example, first in Argentina and then elsewhere in South America, a series of truth commissions were established by transitional governments with the aim of investigating human rights violations and abuses committed by predecessor regimes. The issue of reparations emerged strongly from the work of such commissions.

2. It needs to be noted that some South American governments have accepted and implemented recommendations for reparation in countries that, in many respects, face similar economic constraints to those of South Africa. Their commitment to reparation is thus of particular significance.

Argentina

3. In May 1987, the Law of Due Obedience (Law No. 23521) created a presumption that low- and middle-ranking officers as well as most officers of higher rank acted under superior orders and duress and could not, therefore, be prosecuted for human rights abuses.[35] This was widely viewed as compromising the initiatives of the Argentine National Commission on the Disappeared.[36] In October 1989 the new President, Carlos Menem, decreed a general pardon[37] of military personnel and civilians convicted of military or politically-motivated crimes, and senior officers facing charges for abductions. Initially the pardon excluded certain named leaders, but it was extended in December 1989 to cover all those convicted.

34 See also this volume, Section One, Chapter Two.

35 Kritz, NJ (ed), *Transitional Justice,* Vol II: Country Studies. Washington,DC: United States Institute of Peace, 1995, p. 363.

36 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001,pp. 233,258.

37 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001, p. 161.

4. However, such amnesties did not preclude the possibility of victims and families of victims instituting civil claims. In addition, a number of laws were passed providing for reparations to compensate victims of human rights violations.[38]

   a Law No. 24 411 (Argentina, 7 December 1994) provided for monetary reparations for families of the disappeared and killed. Victims had to have been listed in the report of the National Commission on the Disappeared or have been subsequently reported to the government's Human Rights Office (which requires verification through mention in the media, a human rights report or court documents). The amount of the award was a one-time payment to the family of $220 000 paid in state bonds. The amount was determined with reference to the civil service pay scheme and equivalent to 100 months at the salary level of the highest-paid civil servant.
   b Law No. 23 466 (Argentina, 1987) granted a pension of $140 per month to children of the disappeared (until they reached the age of 21 years). The estimated cost to the state of these reparations is between $2 and $3 billion.
   c Law No. 24 043 (Argentina, 11 May 1994) provided monetary reparations for those imprisoned for political reasons or forced into exile. The law applied to political prisoners held without trial; those who had been 'temporarily disappeared', and whose case was reported to the media, to the truth commission or to a human rights organisation at the time, and to those arrested and sent into exile by the authorities. The award amounted to the equivalent of the daily salary rate of the highest-paid civil servant for each day the victim spent in prison or in forced exile. The award was made in a one-time payment of state bonds and could not exceed $220 000. If the victim had died while in prison, his or her family was entitled to the same daily rate up until the date of death plus the equivalent of five years at the same rate up to a total of $220 000. If the victim had been seriously wounded while in prison, his or her family was entitled to the daily rate plus the equivalent of 3.5 years at the same rate, up to a total of $220 000. The estimated cost of these reparations to the state was approximately $500 million.

38 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001,pp. 316–17.

d Non-monetary reparations consist of:
   i. the creation of new legal category of 'forcibly disappeared', which holds the legal equivalent of death for purposes of the law (allowing the processing of wills and closing of estates) while preserving the possibility of a person's reappearance (Law No. 24 321, Argentina, 11 May 1994);
   ii. a waiver of military service for children of the disappeared, and
   iii. housing credits for children of the disappeared.

5. While the law sought to compensate for the injuries suffered by unlawfully detained persons, a number of constraints prevented many individuals from benefiting in practice. For example, victims were required to corroborate a period of detention by producing an arrest order and an order of liberty (issued by the executive). However, the military government refused to acknowledge the abductions and the new government failed to obtain disclosure of many of the necessary facts required to corroborate such cases.

CHILE

6. A National Commission on Truth and Reconciliation (the Chilean Commission) was set up in 1990 to account for the dead and disappeared in Chile during the period 11 September 1973 to 11 March 1990. This corresponds to the period during which the Pinochet regime ruled Chile.[39]

7. The Chilean Commission envisaged three aspects to reparation, namely:
   a disclosure of the truth and the 'end of secrecy';
   b recognition of the dignity of victims and the pain suffered by their relatives, and
   c measures to improve the quality of the lives of victims.

8. While the Chilean Commission largely fulfilled the first objective of reparations – namely that of 'ending secrecy' and establishing the fate of victims – the third objective remained unfulfilled and the Chilean government accepted the Chilean Commission's recommendation that specific measures be taken to compensate victims and their families. As a consequence, a National Corporation for Reparation and Reconciliation (the Chilean Corporation) was established in 1992 to see to the unfinished business of the Chilean Commission and to implement recommendations, including reparations.[40]

39 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001,pp. 293 & 35.
40 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001, p. 293.

9. The Law Creating the National Corporation for Reparation and Reconciliation (Law No. 19, 123, Chile, 31 January 1992) established the following benefits:[41] monthly pensions for the relatives of those killed or disappeared; fixed-sum payments for prison time and lost income of dependants of those who died or disappeared, health and educational benefits.[42]
    a Monetary reparations included a monthly pension paid by cheque to family members of those killed or disappeared (as determined by the Chilean Commission or Corporation). If only one family member survived, the pension amounted to $345 per month. If more than one family member survived, the pension amounted to $481 per month, to be distributed amongst immediate family members. Family members were entitled to the pension for their lifetimes, except for children, whose pensions ended at the age 25 years. In addition to the monthly pension, family members were entitled to a one-time start-up payment of the total annual sum. The total cost to the state was $13 million per year.
    b Medical benefits to the families of the disappeared and killed included a monthly medical allowance (calculated at 7 % of the pension mentioned above) as well as free access to special state counselling and medical programmes. The total cost to the state was $950 000 per year.
    c Educational benefits to the children of the disappeared and killed included full coverage of tuition and expenses for university training up to the age of 35 years. The total cost to the state was $1.2 million per year.
    d Children of victims were exempted from mandatory military service.
    e Those who had lost a state job for political reasons could reinstate their retirement pensions with lost years credited with the assistance of a special state office.
    f Those who returned from exile abroad were eligible for a waiver of re-entry tax for vehicles.

10. The total cost of the reparations programme in the years when the greatest numbers of survivors were still alive was approximately $16 million per year.

11. With respect to symbolic reparations, former Chilean President, Patricio Aylwin, issued a formal apology to the victims and their families on behalf of the state and requested the army to acknowledge its role in the violence.

41 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001, p. 317, and Kritz, NJ (ed), *Transitional Justice,* Vol III: Country Studies, Washington,DC: United States Institute of Peace, 1995,pp. 683–95.

42 Hayner, PB, *Unspeakable Truths*. New York: Routledge, 2001,pp. 314–15.

12. Despite what are generous measures by comparison with the recommendations of the South African Commission, critics of the Chilean initiative pointed out that compensation would have been greater under Chilean civil law had this course not been precluded by the 1978 amnesty decree. In terms of the decree, the former military regime headed by General Augusto Pinochet promulgated an amnesty that had the effect of awarding itself a self-imposed and unconditional immunity for criminal offences committed between 1973 and 1978. This amnesty granted to itself by the former regime – and not repealed by its successor civilian government – survived for over 20 years.[43]

13. Moreover, as the Chilean Commission/Corporation's mandate was confined to investigating cases of deaths and disappearances, reparations – aside from a little-known medical assistance programme – did not include survivors of imprisonment and torture.

HAITI, EL SALVADOR AND GUATEMALA

14. Truth commissions in Haiti, El Salvador and Guatemala all drew up proposals for reparation.

15. In its final report, delivered in February 1996, the National Truth and Justice Commission in Haiti recommended the creation of a reparations commission to determine the 'legal, moral, and material obligations' due to victims, and suggested that funds come from the state, from national and international private donations and from voluntary contributions by the United Nations member states.[44]

16. The Commission on the Truth in El Salvador, established in 1992, recommended:
    a the creation of a special fund to award 'appropriate material compensation to the victims' to be funded by the state and substantial contributions from the international community (the El Salvadorian Commission suggested that not less than 1 % of all international assistance reaching El Salvador be set aside for reparations);
    b the creation of a national holiday in memory of the victims;
    c the construction of a monument bearing the names of all the victims of the conflict, and
    d recognition of the 'good name of the victims' and the 'serious crimes of which they were victims'.[45]

43 See further this volume, Section One, Chapter Two.

44 Hayner, PB, *Unspeakable Truths*. New York: Routledge, 2001, p. 179.

45 Hayner, PB, *Unspeakable Truths*. New York: Routledge, 2001,pp. 179–80,311–12.

17. The Commission for Historical Clarification in Guatemala recommended:
    a a declaration by Congress affirming the dignity and honour of the victims;
    b the establishment of a day of commemoration of the victims;
    c the construction of monuments and parks in memory of the victims, and
    d the creation of a National Reparations Programme, to be overseen by a broadly representative board, to provide moral and material reparations, psycho-social rehabilitation and other benefits.[46]

18. However, these recommendations were not taken seriously by the respective governments, nor have foreign agencies pursued recommendations that they contribute towards such reparation programmes.

BRAZIL AND MALAWI

19. While neither Brazil nor Malawi instituted truth commissions following the transition from dictatorship to democracy, both countries have subsequently recognised the need to provide some form of compensation to victims of human rights abuse.

20. In Brazil, a reparations commission was established in 1995 to provide between US$100 000 and US$150 000 to the families of 135 disappeared individuals. The vast majority of the families decided to accept the money. No other benefits (pensions, health services and so on) were offered. About US$18 million was spent by the Brazilian Commission.

21. Malawi's National Compensation Tribunal was established in 1996 after the 1994 multi-party elections that followed the 30-year despotic regime of Kamuzu Banda. Although the Tribunal has received over 15 500 claims, only 4566 victims had been fully compensated as of July 2001.[47]

OTHER REPARATION PROGRAMMES

22. Payment of reparations as a consequence of war has long been a customary and/or legal obligation, generally extracted by the winning party. While historically such reparations or compensation tended to be based on collective claims, the twentieth century brought an increasing recognition of the rights of individual

46 Hayner, PB, *Unspeakable Truths*. New York:Routledge, 2001,pp. 312–13.
47 Africa News, 31 August,1999; *Agence Francæ Presse,* 25 July, 2001.

victims to compensation. In 1977, one of the additional protocols added to the 1949 Geneva Convention recognised the obligation of belligerent parties to pay reparations for acts committed by members of their armed forces.[48]

23. This obligation should be borne in mind when considering the countries in Southern Africa, whose citizens suffered extensive violations of their human rights as a consequence of the South African conflict and whose economies were devastated by South Africa's destabilisation policy during the 1980s.

Reparations arising from World War II

24. Possibly the most extensive and costly reparations programme ever was borne by the Federal Republic of Germany (West Germany) following World War II. Reparations were paid both to victims of state violence (German citizens who suffered human rights abuse at the hands of the Nazi state) and to nationals of occupied territories, the latter assuming the form of both collective and individual compensation. A Reparations Conference in Paris at the end of 1945 agreed on the principle of compensation to victims of Nazi atrocities. Since then, literally billions of Deutsche Mark (DM) have been paid.

25. Inside Germany, for example, a Federal Law on Reparation awarded damages to victims of Nazi persecution according to a range of categories. These categories included dependants of those who died as a result of political persecution, those who suffered lasting physical or mental impairment, those imprisoned or held in concentration camps and those for whom persecution resulted in loss of earning power.

26. A 1952 treaty concluded with Israel acknowledged, 'that Israel had assumed the burden of resettling many Jewish refugees'[49] and thus awarded Israel an amount of DM 3 000 million. Agreements with Western European nations between 1959 and 1964 provided for compensation, 'for the injury to life, health and liberty of their nationals'[50]. Lesser amounts were paid to Eastern European countries, including compensation for victims of pseudo-medical experiments conducted by the Nazis. Given the extensive displacement of persons as a consequence of the war, West Germany also made a contribution to the United Nations High Commission for Refugees.

48 Geneva Convention, Article 91 of Additional Protocol 1 of 1977.

49 Shelton, D, *Remedies in International Human Rights Law*. Oxford University Press, 2001, p. 335.

50 Shelton, D, *Remedies in International Human Rights Law*, p. 335.

27. By 1988, the total sum paid by West Germany in reparations was DM 80.57 billion. Nor is this process complete, as is evidenced by the recent demand and agreement to pay compensation to victims of Nazi forced labour camps.

28. The former German Democratic Republic (GDR) has also paid reparations. While it is not known to what extent East German victims were compensated, in 1990 the GDR offered compensation to the World Jewish Congress. Japan also agreed to pay reparations, in terms of the 1951 Peace Treaty with the Allied Powers, including reparations to former prisoners of war.

29. More recently, however, reparations have been offered or demanded not just from those countries that emerged defeated, but also for those victims who suffered at the hands of the Allied Forces or even other parties. In 1988, the United States (US) agreed to compensate its own citizens and permanent residents of Japanese descent whose rights had been violated by being interned during the war. Symbolic reparations were also offered by way of an apology from the US President and Congress. Swiss banks have agreed to pay compensation to people of Jewish descent whose assets were unjustly misappropriated.

Other examples of reparation

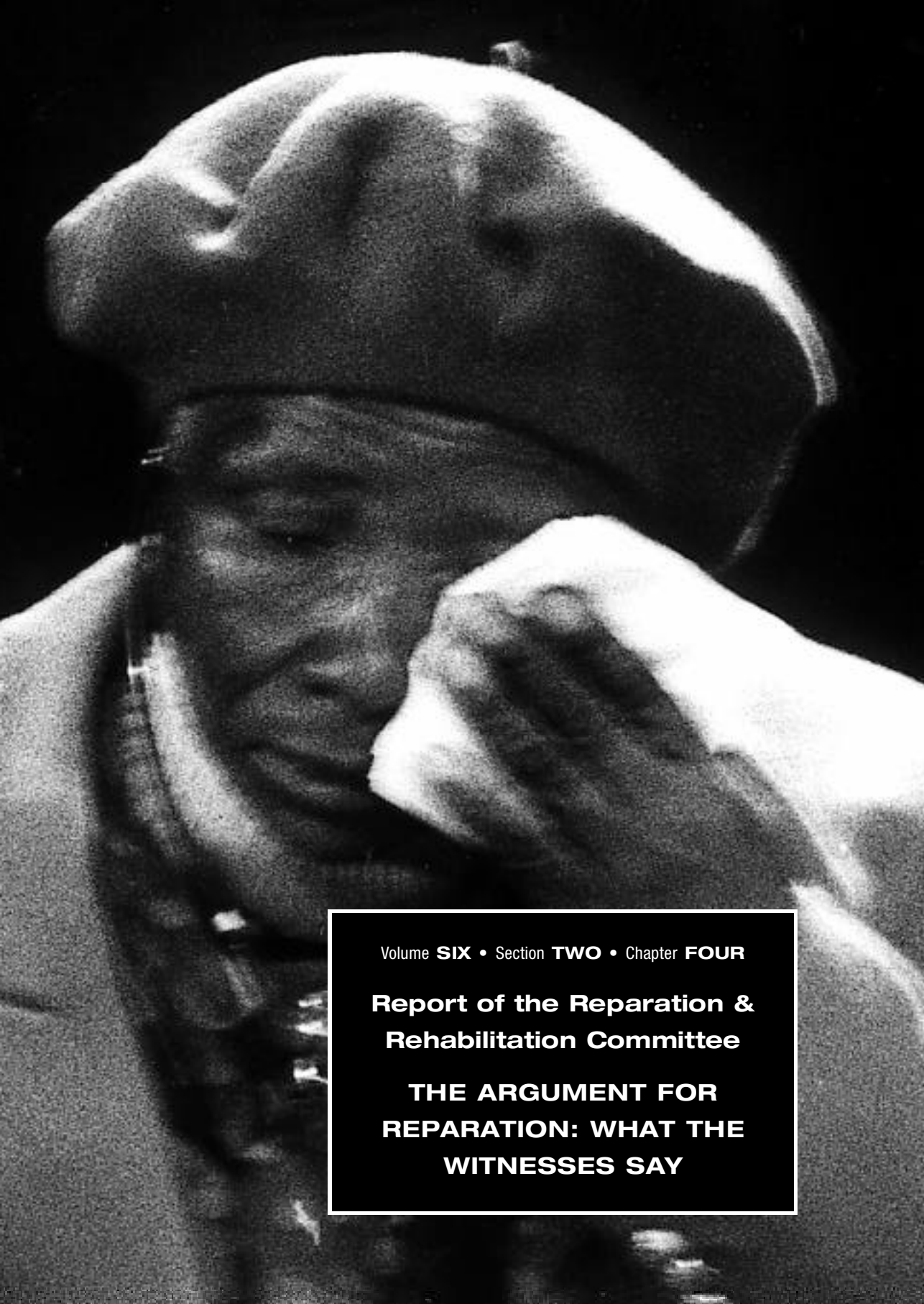
30. The following are other recent examples of reparation or calls for reparation:

31. As a result of the Gulf War in 1990, the United Nations Compensation Commission has already paid out billions of dollars in reparation to victims, including corporations and foreign governments. The revenue was obtained from levies on Israeli oil production.

32. In the Philippines, the victims of human rights abuses brought a class action suit against the estate of former President Ferdinand Marcos.[51] The US Federal Courts awarded compensation amounting to millions of dollars to victims of disappearances, torture and unlawful detention, for which the former President was held personally liable.

33. There was a call for reparations for the African slave trade and the consequences of European colonialism at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at Durban in September 2001.(...p120)

51 Hilao v Marcos, 103 F.3d p. 767 (9 April 1996).



Volume **SIX** • Section **TWO** • Chapter **FOUR**

Report of the Reparation & Rehabilitation Committee

THE ARGUMENT FOR REPARATION: WHAT THE WITNESSES SAY

The Argument for Reparation: What the Witnesses say

1. Any broad process such as that undertaken by the Truth and Reconciliation Commission (the Commission) must necessarily summarise and generalise vast amounts of information to allow for presentation in a useful and accessible format. Yet, as we are all so acutely aware, behind each statistic lies a unique human story. It is the essence of this experience that the following section seeks to capture.

2. The stories below have not been chosen because they represent specific categories of the consequences of human rights violations and the issues they raise for reparation and rehabilitation. They are not and cannot be representative. They simply try to offer a context, a way to bring us back to what sometimes risks being obscured in the process of amassing and interpreting so vast a body of material. In so doing, they provide an opportunity to remember why we began this long and difficult journey into our past … a chance to hear once again the voices of some of those who spoke to us along the way.

THE STORY OF THE MZELEMU FAMILY

3. On 2 April 1994, members of the Inkatha Freedom Party (IFP) attacked the Mzelemu family home at Port Shepstone. On that day, Ndukuzempi William Mzelemu lost almost his entire family: his 84-year-old mother, Cekise, his first wife Doris and seven of his daughters, Gugu, Hlengiwe, Joyce, Khululekile, Lindiwe, Phelelisile and Phindile, aged between five months and 18 years. His second wife, Ntombifuthi Mildred Mzelemu, survived but was injured, shot and stabbed. The reason for the attack was simply his son's alleged involvement with the African National Congress (ANC).

4. On that fateful day, Mr Mzelemu heard a terrible knocking at his front door. He refused to open up but his attackers persisted, threatening to shoot if he refused to open up. Jumping out of the window, he ran to get help, with his attackers in hot pursuit.

5. Mr Mzelemu managed to evade the men and eventually got help from the chief's son. Together they went to the police station and arranged for members

of the security forces to accompany them to his homestead. On the way, Mr Mzelemu saw his second wife, Ntombifuthi, crawling towards the main road, carrying their five-month-old baby girl on her back. When he saw that his wife had been stabbed and was covered with blood, he asked the soldiers to stop and help him take her to hospital. At the hospital, he was shocked to discover that the baby had also been stabbed. She was certified dead on arrival.

6. When Mr Mzelemu returned home, he found that eight members of his family had been hacked to death.

7. Mr Mzelemu was employed at the time of the attack. The area in which he lived was tense due to violent political conflict and people were afraid to help him arrange for the funeral of his family members. As a result, he had to make the burial arrangements himself and had little time to mourn or grieve.

8. After the funerals, Mr Mzelemu's life became unbearable. He received constant threats from the people who had killed his family and was forced to resign from his job because of repeated anonymous telephone calls at work.

9. He finally fled the area to escape those who threatened to hunt him down. As a result, he was separated from the remaining members of his family, whom he was forced to leave behind in Port Shepstone. Then his daughter Elizabeth disappeared during violence in the area and he lost contact with her as well. Although he reported her disappearance to the police, to this day he has not heard from them. He has no idea where she is or whether she is still alive. This is a source of great concern to him.

10. Although he reported the killings to the police station, he was later told that the docket had gone missing. The police also tried to persuade him not to proceed with the case, telling him that he would get nothing out of pursuing the matter but his own death. He was told that people holding high positions in the 'previous system' were involved.

11. Mr Mzelemu settled in KwaMashu where he now lives with his married son. Both he and his wife are unemployed. In an interview with the Commission[52], Mr Mzelemu said that he always carries a picture of his children in his mind and that he does not know how he survived the ordeal. He raised a number of concerns,

52 Interview conducted with deponent by the Commission, 2000.

including the fact that he cannot forget the brutal killing of his family members or his missing daughter and that his wife is finding it difficult to adjust to township life, which she finds very violent. He made the following requests:

a He would appreciate it if the Commission could help him to find a place of his own.
b He would like assistance in finding his daughter Elizabeth, who is still missing.
c The family is facing a terrible financial situation.
d His children's educational needs need to be addressed.
e The experiences have been very traumatic for the entire family and they would appreciate some form of counselling.

THE DEATH OF GEORGE AND LINDY PHAHLE AND JOSEPH MALAZA

12. This is the story Hilda Phahle told the Commission about the South African Defence Force (SADF) raid on Gaborone in 1985:[53]

*I will start from '**is hulle dood, morsdood?**'[54] These are the words of the SADF members after killing our children on lot 15717 in Gaborone, Botswana, on that fateful night of June 13/14 1985.*

It all began on 10 December 1976, when police from John Vorster Square raided and ransacked our home. They did not have the decency to tell us what they were looking for. Their language was spiced with the violence of words. Yes, this was the beginning of the rest of our beloved son George's life, which ended when he, his wife Lindy née Malaza and her cousin Joseph Malaza were brutally massacred in their home by the SADF in Botswana in Gaborone on the 14th of June 1985.

*Our children fled this oppression of this country. They went into exile, fighting for their rights, for the land of their birth, the land of their forefathers. They were tortured beyond reason and fled. The enemy followed them and brutally massacred them, '**morsdood**', (stone-dead) – yes, '**morsdood**'.*

It is now time and it is their right to rest in peace on the soil where they were born, the soil they died for. It is time they were brought home to be buried where we can visit them at our convenience.

The victims, George Phahle, our son, who tried to make ends meet by running a transport business on a hired permit in Botswana; Lindi, BA Social Sciences, his wife, employed as a social worker by the Botswana government; Joseph Malaza,

53 Evidence of H Phahle to the HRV hearing in Alexandra, 30 October 1996.
54 'Are they dead, stone-dead?'

Lindi's cousin who was just visiting there for the night. Survivor: Levi, our younger son who lived to tell the story and was adversely affected.

He tells the gruesome story of how the SADF arrived swearing and behaving like people well-drugged and drunk, ordering George to open the door. The door was blown open. Instead of opening, George and Lindi ran into his bedroom, locked the door, and pushed his portable piano against it. Lindi threw herself face down in a corner. George fell over her as a sign of protection. There was nothing impossible with these murderers. They blew the door open, pushed it and the piano fell against Levi's bed under which he was hiding. God spared him to tell the story.

THE STORY OF MRS ELSIE LIZIWE GISHI

13. On 26 December 1976, Mrs Gishi was shot in Nyanga, Cape Town, during a conflict involving riot police, hostel-dwellers and township residents. On the same day, her children went out to look for her husband, who they feared had been attacked by the hostel-dwellers. Mrs Gishi explained:[55]

    When my children got to the house, they found their father full of blood, the house on fire, and he was dead. The hostel-dwellers had killed him, and threw him outside. They had cut his ears. And then my children called people. God gave them strength. This time my son who was 16 years old was put inside a van with his dead father, to save him. The men decided that at least the son should survive so that the father has someone remaining to take his place. This is how they explained to me when I came back from hospital. The vans were transporting people; children were dead; houses burning, and I was taken to Tygerberg Hospital.

14. Mrs Gishi's husband died in hospital and she describes herself as 'never physically well' since the shooting. It proved impossible to remove some of the bullets in her body due to the risk of damaging vital organs. Mrs Gishi complained of paralysis on the one side of her body and said she was unable to undertake various everyday tasks like buttoning her clothes due to brain damage. She has to take sleeping pills and said she would end up in 'Pinelands' (Valkenberg Hospital, a psychiatric hospital) were she not to do so. She described what happened when she tried to manage without the pills:

    Once I did not take the sleeping pills. I was tired of taking pills; my body is always sore because of all this medication. Just when I was beginning to fall

55 Interview conducted with deponent by the Commission, 2000.

asleep, I experienced a sharp pain, I woke up; the pain moved to the head, I felt like my head was on fire. I screamed and then collapsed. My children came and found me unconscious. The first time was '77, my children could not see any fire and they called the neighbours, who also came and said they couldn't see anything. So since '77 I have been taking these pills.

15. Mrs Gishi's physical incapacity, emotional difficulties and ongoing financial struggles form the backdrop of everyday life for the family. 'I lost my health, my life, my husband and my furniture, and I was a worker', she said.

16. Mrs Gishi has five children. Her only son was stabbed at a party some time ago and he lost the use of one of his hands. Her youngest daughter has experienced emotional difficulties and abuses alcohol as a result. Although it could be argued that these problems with her son and youngest daughter cannot be directly linked to the events of 1976, there is little doubt that the circumstances in which she was shot and partially disabled, and the manner in which she was traumatically widowed and had her home burnt down, impacted on her children's experiences while growing up.

17. Mrs Gishi's son, Bonisile, who accompanied his dying father to hospital, must have been affected by this event and his mother's shooting that same day. The daughters in the family must also have been affected by these tragic events. Any family undergoing these experiences and the ongoing difficulties they cause needs both practical and emotional resources to help them deal with these issues over time. Mrs Gishi's ability to provide or seek out these resources was traumatically interrupted many years ago and her own mental and physical condition has become a burden for herself and her family over the years.

18. Mrs Gishi reported that she spent the R2000 given to her after she testified before the Commission mainly on furniture. She asked, however: 'Where is my husband's share? What is R2000?' She has, however, had some acknowledgment of what happened to her and her family, as is the case with most of those who received a financial grant of interim reparation.

19. Mrs Gishi's case raises the recurring question as to whether interim reparation is sufficient.

THE STORY OF MRS LEONILLA TENZA

20. Early in Mrs Tenza's interview[56] she said, 'Hmm! I have been really traumatised in life.' Born in 1932, she described being bitten by police dogs while 'we were toyi-toying for our freedom'. She said that she fell while running away from police dogs and consequently lost a child. At the time, Chief Mangosuthu Buthelezi was still a member of the ANC. Subsequently, when the ANC was banned, 'we all joined IFP-Inkatha'. Her brother divorced his first wife when their infant son, Eugene Xolisani Tenza, was seven months old, and Mrs Tenza took the child in and raised him. When her nephew grew up, there were few employment opportunities and she recommended that he join the KwaZulu Police (KZP).

21. On 13 June 1989, during a period of great tension between the ANC and IFP in KwaZulu/Natal, Xolisani was murdered. This incident formed the basis of Mrs Tenza's testimony to the Commission.

22. According to Mrs Tenza, she was made to witness her already injured nephew being axed to death. For some time she was also in danger and had to remain on the run until a community member finally arranged a meeting at which ANC 'comrades' were persuaded not to kill her and to allow her to return home.

23. Among other difficulties, Mrs Tenza now had sole responsibility for her slain nephew's two-year-old child. She claimed that her own children were not killed because, 'they were ANC members to avoid being killed'. Her business as an indigenous healer or inyanga was severely affected, as clients were afraid to consult her because of her alleged political leanings. She has subsequently lost a daughter to AIDS, and this daughter left four children 'of whom I do not know their fathers'. One of these grandchildren is apparently mentally handicapped, and is in Grade I at the age of fourteen. One of her sons also died of a stroke 'while they were *toyi-toying*'. Another child was laid off from work for reasons she did not specify.

24. Currently, Mrs Tenza is struggling to support her various dependants. She feels emotionally unable to continue her *inyanga* practice and is helping the health authority with health education issues, specifically in relation to HIV/AIDS. She says that she has a heart condition and must take medication for this. Her participation in the local health forum has been compromised by her health:

56 Interview conducted with deponent by the Commission, 2000.

They called me recently for a Forum since I have not been able to attend them because I was sick for a long time last year. I underwent an operation because my intestines were burst due to my low blood flow. The organisers of these Forums were surprised of my behaviour because we were working well. They were the ones who referred me to the hospital. My behaviour was so odd: I used to have outbursts and did not wait for my turn to talk, and confabulated when asked questions. I did not know what was happening in my head and these people came to my house to beg me to come back to the Forum. I then got better because I used to cry every day before.

25. At the outset of the interview, Mrs Tenza seemed robust and full of humour. As she began to relate her story, she became tearful and deeply upset. Although she claimed to be 'better' than in the previous year (1999), her distress was very apparent.

26. As we have seen with other cases, the particular event Mrs Tenza reported to the Commission was little more than a punctuation mark in a life of ongoing difficulties. Both she and her family made political decisions at times influenced at least as much by attempts to survive violence and poverty as by ideological persuasions. The tone throughout is of a long struggle to eke out a meagre existence in a violent world. Mrs Tenza's life story paints a vivid picture of the convoluted political history of KwaZulu/Natal and the human consequences. The awful experience of seeing her nephew murdered in front of her is just one example of a broader tragedy.

27. It is very difficult to separate out the complex mixture of physical and emotional complaints and distress suffered by Mrs Tenza. The distinction between mind and body that remains intrinsic to much of western biomedicine does not make any sense to her. She does not experience physical and emotional sensations separately.

28. Mrs Tenza's experience points to important issues to be considered when planning services. One of the most significant is that commonly held distinctions between the physical and the emotional may not apply to all those who need assistance. Other distinctions – for example, between financial, educational, and emotional needs – may also prove problematic. Emotional issues can play a decisive role in the extent to which a person is able to learn or earn a living; conversely, success or failure in learning impacts not only on economic well being, but also on emotions.

'THIS IS MY FATHER AND LOOK WHAT THEY HAVE DONE TO HIM': THE STORY OF SERGEANT RICHARD MOTHASI

29. Richard Mothasi was a police sergeant based at the Hammanskraal Police College. An assault by a white fellow officer left him with a burst eardrum. After he had laid a charge of assault, several unsuccessful efforts were made to pressure him into withdrawing charges. On 30 November 1987, operatives of the Northern Transvaal Security Branch shot Sergeant Mothasi dead, allegedly at the request of the then Divisional Commissioner of Police in the Northern Transvaal. His wife, Mrs Busisiwe Irene Mothasi, was also killed in the incident.

30. Some of those responsible for the killing applied for amnesty and testified that they had been told that Sergeant Mothasi was suspected of having made contact with the ANC.

31. Mrs Mothasi's mother, Mrs Gloria Hlabangane, told the Amnesty Committee (the Committee) of the circumstances surrounding the deaths of her daughter and son-in-law:[57]

I received a telephone call in the morning as I was just preparing myself to go to town, and they said I should go to Hammanskraal … And I started to panic because at the time I knew that something had happened … I sat down and I begged [to be told] what had happened so that I may be able to gather enough courage to face the truth. Then [I heard] that my son-in-law had died as well as Irene had died.

We went to Irene's home … I got out of the car … When I got out of the car there was a hearse, and when I went into the kitchen, I came across somebody pushing a stretcher and I had a look. I saw that it was my daughter, Irene, and I discovered that my daughter had died and she had one wound on the forehead. And I left her because I realised that she had died. I went into the dining room … When I got there I discovered that Mothasi was laying in a pool of blood. And he had also been shot. And the spent cartridges were on the floor, his brains were also splattered, as well as certain pieces of the skull were on the floor, scattered all over the place and I looked at his ear, something whitish was coming out of his ears – I don't know whether it was his brains – and he was also dead.

And from there I ran. I went into the bedroom. That is their son's bedroom, or their child's bedroom. I looked for the child, but I couldn't find the child. I

57 Evidence by G Hlabangane at a hearing before the Committee, Pretoria, 5 March 1997.

looked in all the other rooms without any success, and I started getting very confused at this stage because I didn't know where the child was. And when I went outside, I heard – I could feel somebody grabbing me and it was the child. I took the child … He was five years old. I took the child. I lifted [him] to my chest and the parents were taken in the hearse…

32. Asked where the child had been during the murders, Mrs Hlabangane testified:

When I asked my neighbours, they told me that the child was inside the house at that time, but nobody knows as to how he survived, because he escaped unscathed, but they heard the child screaming throughout the night asking for help, saying 'help me, help me'. He realised that something was happening, probably he hid somewhere, but people were woken up by the screams of the child inside the house. And my next-door neighbour came into the house in the morning to fetch the child and they stayed with the child … He stayed with the corpses of his parents and he was running from pillar to post trying to wake his parents up, but there was no help coming at that particular moment.

33. While still at the house, three policemen arrived. Mrs Hlabangane thought that they had come to express sympathy about a fellow colleague's death. Instead they demanded Sergeant Mothasi's uniform. After removing the insignia, they threw the uniform back at her, telling her to give it to her 'old man'. One of them, a white police officer, then brandished a gun:

Do I know what a gun is used for … do you see what the gun has done to Mothasi and his wife. He said 'if you talk too much, this is what you get' and at the time he was pointing the gun at my forehead.

34. Since the death of Richard and Busisiwe Mothasi, Mrs Hlabangane and her husband, a pensioner, have cared for their grandson. They receive R500 for child maintenance from Richard Mothasi's pension, so they are able to pay for transport, groceries and schooling. However, her grandson requires ongoing psychological support:

My grandson didn't care throughout, he didn't show any signs of being disturbed. But when he grew up, there were certain signs, even when he gets a newspaper where there is something about a person who has died, he always came with the newspaper clipping and showed it to me. At some stage he got a ***Tribute*** *magazine that had his father's photo and he showed it to me and he said: 'This is my father and look what they have done to him'. And since then he has been very disturbed,*

I had to seek medical attention for him ... I ... take him to the clinic, but now I am facing a difficulty because where he is attending they want medical aid and I don't have a medical aid and that is the problem that I am facing at this juncture.

35. While Mrs Hlabangane and her husband struggle to care for their grandson, three[58] of the perpetrators responsible for the killing received amnesty.

UNFINISHED BUSINESS: THE 'NIETVERDIEND TEN' AND SIYABULELA TWABU

36. Whilst the Commission process did unearth a significant amount of new information with regard to the causes, nature and extent of gross human rights violations, its processes inevitably also produced important information that could not be brought to an absolute conclusion or closure.

37. Perhaps the most painful scenario that arose from the limitations of the process was that the families of deceased victims learnt of the fate of their loved one(s), but did not learn of the whereabouts of their remains. One such example of this is the 'Nietverdiend Ten', the case of ten youths killed in a joint SADF and Security Police operation. The youths, aged between 14 and 19 years, had been 'recruited' by Security Branch agent, Joe Mamasela, purporting to be an Umkhonto we Sizwe (MK) operative.

38. The youths left their Mamelodi homes on 26 June 1986, accompanied by Constable Mamasela, believing they were being taken to Botswana for military training. Instead, Mamasela drove them to a spot close to the Botswana border where a team of SADF Special Forces operatives surrounded them and injected them with a chemical substance, rendering them unconscious. A Special Forces operative then drove the vehicle towards an embankment, leapt out and left the vehicle to careen into a tree where it burst into flames, killing all of them.

39. The families of these youths spent ten years in ignorance of their children's fate. Many waited eagerly for their homecoming in the early 1990s when most exiles were returning to the country. Only in 1996, following investigations by a special unit set up by the Attorney-General, did the families learn that their children were dead. The circumstances surrounding their death remained sketchy, however, and it was another three years before they were to witness the amnesty hearings of the perpetrators of these killings.

58 A fourth person involved in the incident, Constable Joe Mamasela, did not apply for amnesty.

40. The families appealed for the remains of their children. Mrs Martha Makolane, the mother of 17-year-old Abraham, testified:[59]

I don't have the [reconciliation] as they have taken them from my place to the place where they have killed them. I want them to go and fetch them where they've left them to bring them home so that we will be able to bury them peacefully. Yes, we want those bodies as they have taken them from Mamelodi. They have got to go back and fetch them from that place and bring them back to Mamelodi so that we will be able to bury them.

41. Mrs Phiri, the mother of 21-year-old Thomas, testified[60]:

Let them tell us the full story so that we can – we are deeply hurt. If they tell the story, we will be okay. We want to know where these children were buried because we were never told the truth of where they were buried.

I want to enquire from the killers: yes, they told us that they killed them, they told us that they injected them with drugs and they are buried, but I want them to know that their graves are open and even in heaven they will not get forgiveness at all because they killed minor children. Had these children killed people before, we would have understood that, yes, it was their turn to be killed. But I want to tell them today that they will never get forgiveness from God at all. Their graves are waiting for them, waiting open.

42. Further investigations revealed that the youths had been buried in pauper's graves in Winterveld cemetery. After three visits to the cemetery, the families made contact with two workers who remembered burying the remains. They were, however, unable to locate the exact sites.

43. The most recent attempt to exhume the remains was carried out on 3 March 2001. However, the areas indicated by the cemetery staff did not produce anything. Fourteen years after the youths disappeared, the search has now been reduced to an area the size of half a football field – seemingly so near, yet so far away from the sort of ceremony that the families need traditionally, culturally and emotionally for closure. All those who applied for amnesty for this incident have had their applications granted.

59 Evidence heard at hearing of the Committee in Johannesburg in the application of J Cronje and others, 21–31 October 1996.

60 Evidence heard at hearing of the Committee in Johannesburg in the application of J Cronje and others, 21–31 October 1996.

THE CASE OF SIYABULELA TWABU

44. While the families of the 'Nietverdiend Ten' and others still search for the remains of their children who died inside South Africa, other families live with the pain of knowing their children are buried in foreign lands. Siyabulela Twabu was 19 years old when he left his Transkei home and went into exile. His mother told the Commission how she learnt of his fate:[61]

Time and time again the police would come. Sometimes I would be at work: I am a teacher. I requested politely that they should not come to my workplace because the people from the village are against the police. They were going to be under the impression that I was liaising with the police. After a while I was called; there was a meeting, a teachers' meeting and I was called outside. Mr Sifuma was outside. I got into the car, he drove a bit, gave me a newspaper. There was an article about Siyabulela's death – apparently he had been shot.

45. Siyabulela was one of six Azanian Peoples' Liberation Army (APLA) members killed in a shoot-out with Transkei and Lesotho security forces at Quacha's Nek on the Transkei–Lesotho border in March 1985. Their bodies were found several days later, decomposing in a forest. Siyabulela was buried in a grave in Lesotho, without his family being present:

We went to the funeral. We got there; he was already buried. Because we were travelling on the gravel road, we were trying to escape from the police. When we got to Maseru, it was too late. The police took us to where he was staying. I came back from the funeral and I continued with my life.

46. Mrs Twabu made the following plea to the Commission:

I request that my child's body be exhumed from Lesotho because he is buried next to a river. The riverbanks are quite big and it is not safe. Could the Commission help me with medical aid, I am mentally ill, I am also – my heart also is ailing. His father died in 1983, then my son in 1985. After that, I – my health started deteriorating.

47. These scenarios illustrate the kind of unfinished business raised at the Commission that will be impossible to follow through without the necessary resources and skills.

61 Evidence by Mrs N Twabu at HRC hearing, Lusikisiki, 26 March 1997.

48. In many cases, the mere fact that information emerged at the Commission did not lead to a quick and easy solution. In too many instances, this resulted in a protracted and painful search that, for many, may never reach conclusion.

THE STORY OF MAGISENG ABRAM MOTHUPHI

49. Mr Magiseng Mothuphi was 21 years old when he, his brother, his sister and seven others stopped at a roadblock between Krugersdorp and Ventersdorp in 1993. This was not a police roadblock but was manned by a group of heavily armed Afrikaner Weerstandsbeweging (AWB) members. The occupants were forced out of the vehicle:

[They] took us out of the car and they said we should raise up our hands. Then they searched us. After they searched us, they showed us where we should stay. We sat down in a line. Whilst we were sitting there in a line, they were asking us questions as to … where do we come from and where do we go, about our work situations, as to whether are we employed or not. At the time when we were questioned, they were hitting us with the gun butts on the head. I was bleeding at the time with my nose. Then I was bending my head …

[After] that then they told us that we were members of the ANC. Simon Nkompone said that we are not members of the ANC and we don't know anything about the ANC. Again they started to hit us [and] told us that we are not telling them the truth. …

[Then] they were conniving amongst themselves. After that they came back and then I heard a gun shot; I didn't know what happened. Then I woke up. I was bleeding and when I looked at myself on the mirror of the car, I was bleeding and injured. Next to me was Simon Nkompone. Then the young [girl] who is my [niece], was crying.[62]

50. Mr Mothuphi's brother and sister and two other passengers were killed in the shooting and his nose was destroyed. For seven years, the young man covered the hole in his face with an 'Elastoplast' bandage. In 1998, Mr Mothuphi was invited to attend the amnesty hearing of the AWB members involved in this incident. At the time of the hearing, Mr Mothuphi had not been declared a victim of a gross violation of human rights by the Commission, as he had not made a statement to the Committee on Human Rights Violations (HRVC).

62 Evidence by M Mothupi heard at hearing of the Committee in the amnesty application of AWB members for the 'Rodora Crossing' incident in Johannesburg, 12 June 1998.

51. The sight of Mr Mothuphi in the television coverage of the hearing sparked the interest of Greg Bass, head of the department of dental technology at Natal Technikon, which specialises in the construction of facial prostheses. Mr Bass contacted the Reparation and Rehabilitation Committee (RRC) to offer assistance. He said that his department had funds for charity work and would be in a position to pay for the treatment. This proactive response from the doctor was unusual, compared with the usual passive witnessing of victim testimony that characterised the attitude of the majority of viewers.

52. A lengthy wait ensued until the Committee had finalised the matter and referred Mr Mothuphi to the RRC as a victim, whereupon he became eligible for reparation. Thereafter, the RRC arranged for the Technikon to make a prosthetic nose for Mr Mothuphi. His transport to Durban was donated by Transnet and he used his interim reparation grant to pay for his stay while he was having treatment.

53. After having the prosthetic nose fitted, Mr Mothuphi was asked if his life had changed:

My life has changed very much. Before this operation I was afraid even to go to the shops because many people looked at me and stared. Since I got this nose, I'm free. I want to go somewhere I can study so that I can get a job but it's hard because I have no money. After the accident [violation], I lost my girlfriend because of my face; but since the treatment I have found a new girlfriend, I'm very, very happy now.[63]

54. Months after the medical procedure, Mr Mothuphi approached the Commission with a request that may be seen as a symbolic and instructive metaphor. He telephoned the Commission to ask for the contact details of the Technikon as he had run out of the special surgical glue needed to attach the prosthetic nose to his face. Although undoubtedly an oversight, such a situation highlights the crucial importance of the sustainability of any reparation intervention and the potential for counter-productive and traumatic side effects from quick fix solutions. This example also demonstrates clearly that one intervention, however significant, is insufficient to address the wide-ranging consequences of a particular violation.

55. At the same time, unique as it is in terms of the usual experiences of victims and the Commission, Mr Mothupi's story is important because it illustrates the potential benefit that interventions from a number of sectors can have. It also shows how the amnesty process identified victims who would not otherwise have entered into the Commission process.

63 From communication with the RRC.

‘LEFTOVERS FROM THE STRUGGLE’: THE STORY OF MR XOLILE DYABOOI

56. In 1987, Mr Xolile Dyabooi was detained by the Bophuthatswana Police. He was tortured in Mmabatho and held in solitary confinement in Brandvlei prison, before being convicted of terrorism and jailed for five years. He was released as part of the indemnity process in December 1990.

57. In Mr Dyabooi’s view, reconciliation can only effectively be achieved when those who have suffered are given an opportunity to participate in rebuilding society. As a person who fought on the side of what became the present government, he told the Commission:[64]

What I am saying is that we contributed a lot to the struggle: our contribution can never be necessarily only paid on money, there are many things. But now after all these things I feel the other people tend to forget our role. There are those who might benefit from our victories. So now feel that we are people who are leftovers from the struggle.

Because we were supposed to be given an opportunity, like of using the skills we got from our times in the struggles, in terms of building reconstruction, I mean in terms of building reconciliation, because I don’t believe reconciliation can only come through Mandela or Thabo Mbeki’s speeches. I believe that people on the ground, who experienced those things, must be able to be given opportunities, like opportunities in terms of work, bursaries and all those things. But I strongly believe that the contribution we can be, like we need to be on the ground, and all that, to do something. But now our skills instead of being used, they are wasted, you see. Because after the whole thing you don’t feel comfortable in this situation, ja.

I am still suffering. I’m still at my home. My life is in ruins. I don’t have hope for tomorrow. Maybe I will survive. I don’t know. I am just a human that goes up and down like a zombie. Although there are some sung heroes who are there. So I believe that we are unsung heroes. We contributed to the struggle, then we were banned until the new order came and even the new order banned us. Don’t talk, maybe someone from above will come and address these things. We waited until now.

64 Interview conducted with deponent by the Commission, 2000.

58. Mr Dyabooi expressed anger at the present government and at the Commission, which he sees as working closely with the government:

Ja, when I went to the TRC I hoped for better life. I thought I would get better life in terms of – in terms of – like I asked for education, I asked for – I mean, how can I say now – I asked for accommodation and whatsoever. Although those people promised that they will consider my request, I waited until now, nothing has happened. I just hoped each and every month and years. I waited and waited but today, now, I won't wait.

In the beginning the government promised to give us reparation, but at the end the government now is trying to play hide and seek. They don't give us a opportunity to express our views. They don't call us into their commissions, to present our ideas or our feelings about the whole thing – they just sum up, and go and take decisions on their own.

So therefore I am saying, there can't be reconciliation without taking those people who were victims into their board.

CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS: DISCUSSION

59. It must be stressed once again here that the stories presented in this section are not representative either in terms of violations or the experiences of victims. Each of these stories has its own individuality and texture, and this must be borne in mind when considering the special needs and circumstances of each victim.

60. What is, of course, representative about these stories is that they are about ordinary men and women whose lives were irrevocably changed by the violations they suffered during the course of political conflict.

61. Some of the arguments politicians have raised in response to calls to implement the recommendations of the Commission's RRC have caused concern. They make the point that the majority of victims were political activists who, in one way or another, made a conscious decision to engage in a political struggle against apartheid. The argument is often expressed thus: 'we were not in the struggle for money'. While the Commission understands the grounds upon which this statement is made, in terms of international human rights law on reparations and rehabilitation even political activists who decided to become involved in the struggle against apartheid should be compensated if they became casualties of the conflict.

62. The Reparation and Rehabilitation policy raises far-reaching and complex questions concerning individuals who have been victims of gross violations of human rights. How can we assess the impact of an abuse of human rights on the life of any one individual? Is it possible to separate that abuse from other aspects of a person's life? Is it possible to make an accurate assessment of the impact without understanding the full context of that person's life? How can we conclude what a person's life would have been like had the violation not occurred?

63. The simplest model (and one that is commonly used) is of a single negative event having a single negative consequence for the person involved. It would be convenient if we could simply draw up a list of negative things that happen to people, assign a weighting to them and from there determine accurately the impact of event X on person Y. This would certainly simplify the issues and administration of reparations and rehabilitation.

64. However, in many cases, people affected by what are defined as gross violations of human rights have been living lives in which other, ongoing stressors have played their part. These stressors include living with poverty, discrimination, lack of access to the resources the country has to offer and the experiences of humiliation and disrespect that many black South Africans have borne for generations. Moreover, oppression, humiliation and racism have serious consequences not only for individuals but for the social fabric as well. Thus, although the Commission is bound by its mandate to consider only certain kinds of violations, it is necessary to describe the context within which these violations took place.

65. This leads to a further question to be considered: how do we understand the consequences of social injustice and human rights violations for individuals, for their families and for communities?

66. Compounding the matter even further is the fact that the effects of trauma appear to be felt by succeeding generations. For example, studies on children and grandchildren of survivors of the Holocaust in Europe in the middle of the twentieth century show clearly that these now-distant events continue to impact on the course of people's lives, their patterns of attachment and the quality of their relationships. Arguments about financial compensation from that now-distant calamity also continue unabated.

67. Thus, it is not only the case that events occur in context, as we have already mentioned, but that the consequences of events impact on the way people

continue with their lives, their relationships, their child-rearing practices and those of their children and grandchildren for decades after the traumatic event.

68. Another complexity in understanding human rights violations lies in the fact that the same people have, in different events, been both victims and perpetrators. One reasonably common consequence of abuse is that abused people have a greater likelihood of becoming perpetrators of abuse. Many people who have perpetrated what are defined as gross violations of human rights have themselves been affected by abuse, poverty and discrimination.

69. Furthermore, the consequences of human rights abuse and political oppression may at times cross the boundaries of public and private life. For example, a person who has been abused and humiliated in the context of a political struggle may be more likely to perpetrate abuse and humiliation in the context of family life. It has also been well established in many contexts that people who have been oppressed may be at risk of emulating their oppressors – and of taking on the oppressor role in the future. Active intervention in this cycle is often necessary in order to break it.

70. White South Africans who were protected by the state bear scars of a different kind. Although there is no question that being a target of discrimination generally has far more serious consequences than being a beneficiary of it, social injustice has consequences for all who live in the society. If the Commission is to fulfil its role of contributing to the rehabilitation not only of individuals but of the nation as a whole, South Africa must look seriously at the social consequences of allowing the beneficiaries of an unjust system to reproduce discrimination at a cost to themselves and future generations. A nation that turns its back on these social realities places itself at serious risk of an ongoing cycle of injustice and violence.

REPARATIONS AS A VEHICLE FOR RECONCILIATION AND HEALING

71. There are examples worldwide of noble agreements aimed at resolving bloody conflicts that have proved unsustainable beyond the lifetimes of the peacemakers. Talks about reconciliation that fails to emphasise justice for victims seem doomed to fail in their promise of national unity and reconciliation. This is why calls for reparation and rehabilitation urge South Africans to dismantle the ‘conspiracy of silence’ that often characterises the ongoing experience of victims and survivors of violations of gross human rights.

72. Dr Yael Danieli, director of the Group Project for Holocaust Survivors and their Children and director of the Centre for Rehabilitation of Torture Victims in New York, suggests that silence is the most common way society responds to the survivors of trauma. Because most people find trauma overwhelming, they choose to avoid dealing with it. Unfortunately such avoidance further isolates the individual or the community, entrenching the feeling of alienation and vulnerability often experienced by those who have been in the hands of torturers and killers. The silence may leave the 'sufferers' with no option but to repress their pain, thereby delaying the desired complex healing process from being initiated.

73. The Commission's Final Report discussed in some detail the enormous importance of reconciliation as 'a goal and a process' of the Commission.[65] It highlighted the different levels at which reconciliation needs to take place in South Africa and the complexity of the links between them.

Many years ago, Albert Luthuli, the first South African recipient of the Nobel Peace Prize, articulated a vision of South Africa as 'a home for all her sons and daughters'. This concept is implicit in the Interim Constitution. Thus, not only must we lay the foundation for a society in which physical needs will be met; we must also create a home for all South Africans. The road to reconciliation, therefore, means both material reconstruction and the restoration of dignity. It involves the redress of gross inequalities and the nurturing of respect for our common humanity. It entails sustainable growth and development in the spirit of ***ubuntu*** *... It implies wide-ranging structural and institutional transformation and the healing of broken human relationships. It demands guarantees that the past will not be repeated. It requires restitution and the restoration of our humanity – as individuals, as communities and as a nation.*[66]

74. The policy proposed by the RRC and described in the Final Report[67] encompasses the spirit of this paragraph. Urgent interim reparation seeks to provide assistance for people in urgent need. Individual reparation grants seek to 'transform abject poverty into modest security'.[68] Symbolic reparation and legal and administrative measures seek to assist communities and individuals in commemorating the pains and victories of the past. Community rehabilitation programmes seek to establish community-based services in order to aid the

65 Volume One, Chapter Five, p. 106.

66 Volume One, Chapter Five, p. 110, para 26.

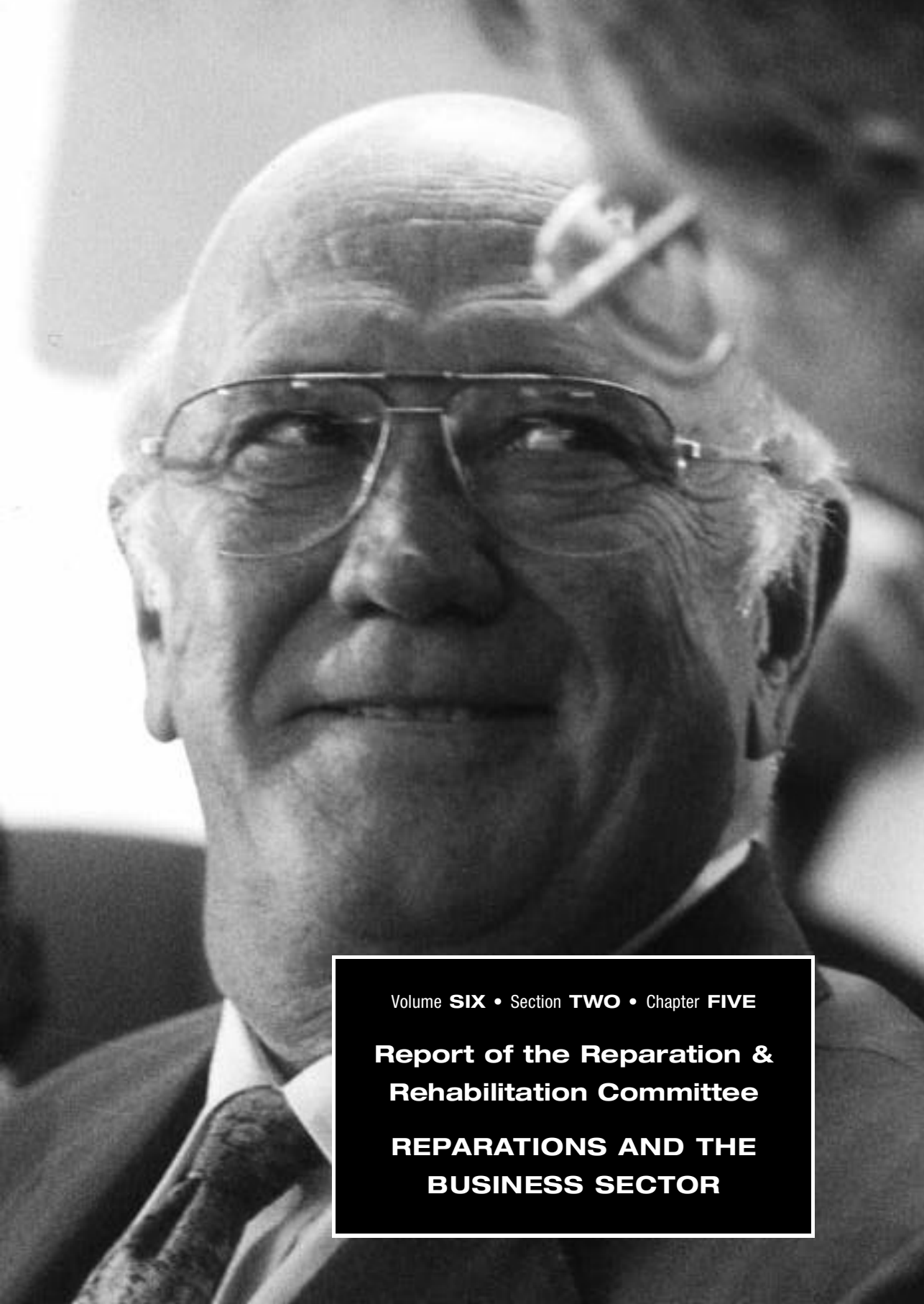
67 Volume Five, Chapter Five.

healing and recovery of individuals and communities. Institutional, legal and administrative reforms are designed to prevent the recurrence of human rights abuses.

75. Speaking at a series of workshops hosted by the Commission in Gauteng, KwaZulu-Natal and the Western Cape, Dr Danieli warned that failure to act will cause South Africans to pay for the legacy of political violence in the future. She proposed that healing and reparation in South Africa should be prioritised as a cornerstone for transformation beyond the life of the Commission, and should take place at individual as well as community (school, church, workplace) and national levels. In the words of Wole Soyinka:

As the world draws closer together – the expression 'global village' did not come into currency for no just cause – it seems only natural to examine the scoresheet of relationships between converging communities. Where there has been inequity, especially of a singularly brutalizing kind, of a kind that robs one side of its most fundamental attribute – its humanity – it seems only appropriate that some form of atonement be made, in order to exorcise that past. Reparations, we repeat, serve as a cogent critique of history and thus a potent restraint on its repetition ... It is not possible to ignore the example of the Jews and the obsessed commitment of survivors of the Holocaust, and their descendants, to recover both their material patrimony, and the humanity of which they were brutally deprived. (...p140)

68 Volume One, Chapter Five, p. 125



Volume **SIX** • Section **TWO** • Chapter **FIVE**

Report of the Reparation & Rehabilitation Committee

REPARATIONS AND THE BUSINESS SECTOR

Reparations and the Business Sector

INTRODUCTION

1. Information received from the business and labour hearings indicated that: 'Business was central to the economy that sustained the South African state during the apartheid years'.[69] The Truth and Reconciliation Commission (the Commission) noted that the degree to which business maintained the status quo varied from direct involvement in shaping government policies or engaging in activities directly associated with repressive functions to simply benefiting from operating in a racially structured society in which wages were low and workers were denied basic democratic rights.[70]

2. While numerous submissions by business to the Commission argued that apartheid harmed business, sometimes resulting in reduced profits and distortions and restrictions on the labour market, the Commission noted further that such business opposition to apartheid as there was came very late in the day and was weak and indecisive.

3. The final position and finding of the Commission was that business generally benefited financially and materially from apartheid policies. Some examples illustrating this finding emanate from points made during submissions:
   a White-owned large-scale agricultural, farming and agri-business enterprises benefited from the colonial-era restrictions on black land ownership that were maintained during apartheid, and the extremely low wages such enterprises were able to pay to the landless.
   b Those enterprises involved in extracting and exploiting the mineral wealth of the country benefited from the provision of a relatively cheap migratory labour force, which was brought into being by land expropriation, forced removals, apartheid pass laws and influx controls.
   c Those businesses with an industrial workforce benefited from the existence of a reserve of unemployed workers resulting from enforced landlessness.

69 Volume Four, Chapter Two, p. 58
70 Volume Four, Chapter Two, p. 18

They also made use of state suppression of trade union activity, which would otherwise have exerted upward pressure on wages.

d Those enterprises involved in manufacturing processes that depend heavily on energy inputs such as electricity benefited from the relatively cheap power that was generated through the exploitation of cheap labour on the coal mines.

e The arms industry benefited substantially from the military requirements of the apartheid regime, which resulted from its internal repression and external destabilisation.

f Those banks and financial institutions that bankrolled the military–industrial complex and the minerals–energy complexes in South Africa benefited vicariously from all the above conditions.

g Those banks and financial institutions that lent directly to the apartheid regime during the 1980s benefited from the relatively high interest rates they were able to charge as a consequence of the difficulty Pretoria encountered in borrowing during the imposition of sanctions internationally.

h White residents generally benefited from the discrepancies in public investment between white towns and black townships and rural areas – in everything from health and education to water and sanitation – and from the existence of cheap domestic labour to be employed in the home.

4. Noting that the 'huge and widening gap between the rich and poor is a disturbing legacy of the past' and given this historic benefit enjoyed by business, the Commission made specific recommendations regarding the responsibility of business in the area of restitution 'to those who have suffered from the effects of apartheid discrimination'.[71]

5. Implicit in this and other recommendations relating to business was the notion of the involvement of business in a wider project of reparation, relating not simply to those identified as victims by the Commission, but to all those South Africans whose normal development was impaired by the system of apartheid. The desirability of such involvement was reinforced by the socio-economic reality of South Africa. Although South Africa is a middle-income economy, about half of South Africa's population lives in poverty. Half of the African population is homeless or lives in informal accommodation, such as shacks. More than half of Africans aged twenty or more have no secondary education, compared to 2 per cent of whites. As many as 42 per cent of Africans are unemployed or have given up

71 Volume Five, Chapter Eight, p. 318.

looking for employment, compared to 5 per cent of whites. The poverty of Africans in relation to whites is also reflected in the huge disparities in services: for example, three quarters of Africans lack running water in their homes, compared to 2 per cent of whites.

6. On the other side of the divide, a small section of the population, mainly from the white community, enjoys a higher standard of living than most residents of high-income developed countries. These sharp divisions in our society are evidenced in the high South African crime rate and other expressions of popular dissatisfaction. These factors militate against national unity and reconciliation and led the Commission to consider reparative measures to the very large majority who remain victims of South Africa's past.

7. It is for this reason that the Reparation and Rehabilitation Committee (the RRC) approached organised business and individual business leaders with the aim of encouraging them to contribute to the President's Fund.

THE REPARATION AND RECONCILIATION COMMITTEE AND THE BUSINESS TRUST

8. At a consultative forum between business and the Commission, business leadership referred to the Business Trust as the vehicle through which business, in agreement with government, would honour its responsibility to the victims of apartheid. Some trustees of the Business Trust expressed great concern that there seemed to be no real relationship between the objectives of the Trust and the recommendations of the Commission. Another trustee seemed concerned that, on the whole, the majority of organised business was not committed, or had not shown serious commitment, to the Trust.

9. The Business Trust, established for the purpose of reparations, has to date received a total of some R800 million from the South African private sector. This is a paltry amount when one considers the massive amount needed to repair the inequities and damage caused to entire communities. A recent fund established in Switzerland to contribute to reconstruction and development in South Africa secured a commitment of less than 0.02 per cent of the profits made by Swiss banks and investors in South Africa each year during the 1980s.[72]

72 See the section on the role of Swiss banks during the apartheid years, later in this chapter.

REITERATION OF PROPOSALS

10. In these disappointing circumstances, it seems essential to restate the proposals made by the Commission for ways in which business could generate funds for this broader project of reparation and restitution. These were:
    a a wealth tax;
    b a once-off levy on corporate or private income;
    c each company listed on the Johannesburg Securities Exchange to make a once-off donation of 1 per cent of its market capitalisation;
    d a retrospective surcharge on corporate profits extending back to a date to be suggested;
    e a surcharge on golden handshakes given to senior public servants since 1990, and
    f the SASRIA (SA Special Risks Association) Fund (contributed to by business and individuals as insurance against material loss arising from political conflict).

11. The Commission further suggested that repayment of the former government's 'odious debt' be reconsidered and that money released from this could potentially be used to fund both reparations and programmes of reconstruction and development.

12. It was also recommended that a 'Business Reconciliation Fund' be established that 'could provide non-repayable grants, loans and/or guarantees to business-related funding for black small entrepreneurs in need of either ... skills or capital for the launching of a business'.[73]

13. Further ways in which funding could be generated could include:
    a a restructuring of the state pension fund to release assets for social development;
    b a restructuring of service charges on parastatals such as the South African Energy Supply Commission (Eskom) to ensure that subsidies for white-owned large-scale businesses are replaced by subsidies for the poorest black consumers;
    c A claim for reparations lodged against the lenders who profited illegitimately from lending to apartheid institutions during the sanctions period.

14. The Commission reiterates its finding that business benefited substantially during the apartheid era either through commission or omission and has, at the

73 Volume Five, Chapter Eight, p. 319.

very least, a moral obligation to assist in the reconstruction and development of post-apartheid South Africa through active reparative measures. While individual businesses may well have contributed to individual projects falling under the general rubric of restitution or reparation, it is the Commission's view that business, possibly through the Business Trust, needs to commit itself to a far more focused programme of reparation.

SWISS BANKS AND OTHER LENDERS

15. As noted above, it is the aim of a recently established reconstruction and development fund established in Switzerland to persuade those who benefited substantially from doing business with Pretoria during the 1980s to contribute to the fund. It is estimated that the amount pledged by Swiss banks and investors currently totals less than 0.02 per cent of profits generated by Swiss banks and investors each year during the 1980s, during which period gross violations of human rights were committed on a wide scale.

16. This section examines the role of Swiss banks in South Africa during the apartheid era and the case for making a significant reparation claim against these banks.

17. The major Swiss banks were important partners of Pretoria during apartheid. Both *Credit Suisse* and the predecessor of UBS opened offices in South Africa within a few years of apartheid being institutionalised in 1948, and played a central role in marketing South African gold. They also invested in apartheid-era infrastructure in South Africa and in the homelands.

18. After the Sharpeville massacre in 1960, the chairman of the largest Swiss bank, UBS, was asked: 'Is apartheid necessary or desirable?' His response was: 'Not really necessary, but definitely desirable.'

19. In 1968, the Swiss banks formed the Zurich Gold Pool and Zurich became the most important gold market in the world. In 1969, the Swiss banks imported over 1000 tons of gold – half the world's annual production. Three quarters of this came from South Africa. The Swiss banks encouraged their customers to buy gold from South Africa and to buy shares in the gold mines.

20. After the 1976 Soweto uprising, the United Nations (UN) condemned apartheid as a crime against humanity and expelled South Africa. This was the time of the gold boom. In 1980, the gold price reached an all-time high of US$850 an ounce, filling Pretoria's coffers. Soon afterwards, the gold price fell dramatically, the economy plunged into crisis and the apartheid government was forced to look for financial help from around the world. In 1984, President PW Botha visited Switzerland. In that year, his government took seven international loans, four of which were arranged by the Swiss banks. After the British, the Swiss banks were the most important lenders to the apartheid government at this time.

21. During the debt crisis of 1985, the Swiss banks played an especially important role. After Chase Manhattan, an American bank, cut back its lending facility, there was crisis in Pretoria. In a sudden loss of confidence, banks refused to lend money to South Africa and the government was unable to pay its debts. With pressure from the masses and internationally, there seemed no way to save apartheid. Swiss banks came to the rescue. Mr Fritz Leutwiler, former President of the Swiss National Bank, negotiated with the world's banks on behalf of South Africa and secured an agreement to give South Africa a two-year break from paying its debts and 15 years to make the repayments. Despite international pressure, he refused to use the deal to force Pretoria to dismantle apartheid. Mr Leutwiler gave the South African regime a breathing space during one of its most violent and repressive periods – the late 1980s. While many countries were imposing sanctions against apartheid gold and the United States (US) had banned the direct import of gold bars, the Swiss banks continued to import over half the gold produced in South Africa.

22. South Africa was discussed repeatedly in the Swiss Parliament. Over 100 calls for sanctions were rejected. Despite this, there was recognition that the policy of the banks was dangerous. One parliamentarian declared: 'Let's be honest. Our businessmen just want to do business in South Africa at any price. And this policy is not a sound policy for our country internationally. One of these days it's going to come back and haunt us.'

THE SWISS BANKS AND OTHER LENDERS: THE CASE FOR REPARATIONS

23. The case for reparations from the banks is based on three arguments:
    a As Pretoria's key partner in the international gold trade, Swiss banks benefited over several decades from the exploitation of the black mineworkers, whose human rights were violated by (amongst other apartheid policies) the pass laws, the migrant labour system and suppression of trade union activity.
    b The banks ignored the call for sanctions against Pretoria initiated by the UN and continued to enrich themselves through the gold trade and lending.
    c The banks played an instrumental role in prolonging apartheid from the time of the debt crisis in 1985 onwards.

24. It can be argued that there are legal grounds for instituting a claim for reparation. The law governing the enforcement of contracts such as bank loans is heavily influenced by public policy considerations. The common thread is that contracts concluded contrary to public policy are unenforceable. In South African contract law, these agreements may fall into one of two possible categories – those that are tainted with criminality or those that are *per se* immoral.

25. Hence a contract that is contrary to the community's sense of justice is not capable of being enforced in a court of law. A significant date in this regard is 18 July 1976, the date on which the UN Apartheid Convention came into effect. Article 1 of the Convention reads:

    1. The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

    2. The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid.

26. According to this, any credit institution or private money-lending corporation that financed the apartheid state ought to be targeted as a profiteer of an immoral and illegal system. It is also possible to argue that banks that gave

financial support to the apartheid state were accomplices to a criminal government that consistently violated international law.

27. Arguments also exist based on the doctrine of 'odious debt'. The principle is that debts incurred for illegitimate purposes by illegitimate parties are unenforceable. Debts incurred in the furtherance of apartheid would fall under the principle. The fact that the General Assembly of the UN did not recognise the apartheid government's delegation as the legitimate representatives of the state of South Africa from 1965 onwards lends even more credibility to the argument. There are several precedents for the doctrine, including a 1923 arbitration case between the Costa Rican government and the Royal Bank of Canada. In this case, the US repudiated a debt incurred by Cuba and owed to Spain in its peace treaty after the US had taken sovereign control of Cuba at the end of the Spanish–American war. Similarly, the Soviet government repudiated the debts incurred by the Tsar in the previous Russian regime. An article in a professional journal written by lawyers at the First National Bank of Chicago in 1982 warns lenders of the potential risks of making loans that infringe the doctrine.

28. Swiss banks are not the only lenders whose support for and enrichment under apartheid may provide grounds for reparations. British, German, French and North American banks are amongst those that financed Pretoria during the 1970s and 1980s. In addition, in 1976 and 1977 the IMF granted South Africa balance of payment loans totalling US$464 million, which helped to cover the increased expenses needed for the South African Defence Force (SADF) and were used to fuel the apartheid machine. More research is required on these matters.

THE CASE OF THE PARASTATALS

29. The parastatal sector sheds further light on the role and responsibility of business in the apartheid era, particularly in view of the way the apartheid government used the parastatals to further its own objectives. Eskom is used here as an example without prejudice. In using this example, we need to acknowledge the many changes Eskom has made in the last decade in relation to the racial identity of its employees and the pioneering role it has played among South African industrial giants in investing in building infrastructure in poor black neighbourhoods. This does not, of course, dilute the critique of its apartheid-era practices and its deep collusion with the political and economic structures of apartheid.

30. Between 1950 and 1980, international financial institutions and foreign private banks granted loans to Eskom amounting to at least US$7.5 billion. British banks contributed 26 per cent, banks in France almost 24 per cent, West Germany about 17 per cent and Switzerland more than 12 per cent. Substantial amounts were also granted by the World Bank, public export credit agencies and parastatal banks. Loans to public sector corporations and business enterprises were the economic lifelines of the apartheid economy. This point is reinforced by correspondence between Swiss banks and the Finance Ministry in Pretoria: foreign banks would grant loans to Eskom only on condition that central government signed a declaration of guarantee or a warrant to the creditor banks.

31. During the sanctions years (1986 to 1989), foreign debt represented between 44 and 56 per cent of Eskom's total net debts. During the 1980s, Eskom's capital investments at current prices amounted to R35 billion. A fairly large part of these investments involved the importation of capital goods and services. The South African Reserve Bank provided long-term forward cover, especially in the US$/Rand market. From April 1981 to the end of January 1998, a total loss of R26.4 billion was recorded on the Forward Exchange Contracts Adjustment Account. Of this amount, R19.1 billion was directly attributable to long-term forward cover granted directly to the erstwhile parastatals, primarily Eskom, in the late 1970s and early 1980s. Such losses had to be paid for by the taxpayer.

32. As a parastatal within the apartheid system, Eskom produced extremely cheap energy, making the exploitation of the rich mineral endowment the foremost 'comparative advantage' in South Africa's relations with global markets.

33. At least until the mid-1980s, the minerals–energy complex produced more value added per worker employed than any other economic sector. It was here that most capital accumulation took place, where most of South Africa's exports and a sizeable part of its gross domestic product were produced. Historically, the production of electrical energy served mainly the needs of the mining industry.

34. Like mine workers, black electricity workers were mainly migrants, housed in the same controlled single-sex compounds and receiving the same low wages (which disregarded the needs of the workers' families back in the labour reserves). For the 58 years between 1911 and 1969 there was no increase in the real wages of black miners and electricity workers.

35. Eskom also had to promote the political objectives of the ruling National Party. Since the Broederbond[74] influenced the selection of Eskom's chief executive officers, there was seldom a conflict of interests. Thus, Eskom:
    a offered preferential employment to poor whites as guard labour;
    b did not recognise independent, non-racial trade unions until 1987;
    c replaced the racial job colour bar with security concerns in the 1980s, requiring black employees to get clearance from the security police;
    d offered long-term supplier contracts to Afrikaner coal mining companies;
    e used Afrikaner financial institutions to issue and market Eskom public bonds in the domestic market, to procure foreign exchange on its behalf and administer its bank accounts;
    f supported the implementation of apartheid's Bantustan policy by offering extra cheap tariffs for industries settling in 'border areas', like Alusaf in Richards Bay;
    g buttressed the state's claim to regional hegemony by controlling the development of electricity generation and distribution in occupied Namibia;
    h propped up the colonial empire of Portugal in Angola and Mozambique by supporting the building of the Cahora Bassa and the Gove and Calueque dams, as well as the hydro-electric power stations at Ruacana in the Cunene river basin and at Cahora Bassa on the Zambezi, and
    i followed the state's guidelines in response to the threat of economic sanctions by establishing a mammoth oversupply capacity of electricity generation.

36. Because of its strategic importance, Eskom, its power stations, substations and control centres were declared national key points in 1980. All senior security officers and senior personnel at key points had to obtain security clearance. Eskom established its own counter-intelligence unit, which worked closely with the security police and military intelligence. Eskom also created its own militia force, procured a substantial number of firearms and established its own armoury.

37. Evidence was presented under oath to the Commission that, during the twilight years of the apartheid system, high-ranking members of Eskom attempted to make available or sell a portion of this armoury to Inkatha. According to the evidence, this was authorised and done with the knowledge of the Commissioner of Police.

74 A secret society composed of Afrikaners holding key jobs in all walks of life.

38. Eskom co-financed the South African Uranium Enrichment Corporation and financially supported research into the development and manufacture of apartheid's nuclear bombs.

39. During its rapid expansion period between 1950 and 1980, Eskom had no particular interest in supplying the households of black people with electrical energy. The Group Areas Act of 1950 separated the administration of black urban areas from that of white cities. This often meant that black areas were without electricity services altogether. White municipal areas normally had industrial as well as residential demand. This could be used to balance the load factor, resulting in lower overall costs for industrial as well as residential users. As black townships were electrified, there were no industrial users to balance the peak load, with the result that consumers in black townships paid a very high demand charge whilst using considerably less electricity. Thus, in effect, electrified black townships subsidised neighbouring white municipal areas.

40. It was estimated in 1992 that about three million black households had no access to electricity – this after a history of electricity generation in South Africa of more than 85 years; equally some 19 000 schools and 4000 clinics serving black communities had not been linked to the national electrical grid.

41. The politics of racial segregation and apartheid suppressed for decades both the human rights and the consumer demands of South Africa's black people. People living in low-income black residential areas, both urban and rural, persistently faced high environmental costs. Energy sources other than electricity (low-quality coal and wood burning in open indoor fires without proper stoves and chimneys, paraffin and candles) have constantly polluted the air and endangered their users. Accidental fires and burns, paraffin poisoning and chronic bronchitis were all too common. On winter evenings, dense smog with high concentrations of sulphur dioxide, carbon dioxide, airborne ash particles and dust was found hanging low over black residential areas, leading to respiratory diseases and even circulatory disorders, and severely reducing the quality of life for young and old.

ESKOM AND OTHER PARASTATALS: THE CASE FOR REPARATIONS

42. In summary, the case for reparations in relation to parastatals such as Eskom is based on the following two factors:

    a The role of foreign lenders in supporting key institutions of apartheid. Debts incurred by Eskom and other parastatals during apartheid should also be considered 'odious' insofar as the new political dispensation is concerned.
    b The failure of the parastatals to invest in infrastructure and services for the majority of the population, despite being financed by public means. Hence there is a case for highly subsidised investments in electricity and other services for the poor black majority today.

THE MINING CORPORATIONS

43. Again, as it is not possible to develop case studies on each private corporation, reference will be made to the Anglo American Corporation, without prejudice.

44. Through punitive taxes in rural reserves and through land dispossession (the Land Act of 1913 and 1936), the black male worker was dislodged from agricultural subsistence farming and forced to work at the underground rock faces. This influx of a large black population instigated early stirrings of *swart gevaar* ('black danger') – and more broadly a fear of the threat posed not only to frontier political control but also to the stability and profitability of diamond and gold mining.

45. Migration control regulations were first drafted by the Chamber of Mines' Native Labour Department in 1895 as a response to perceived state reluctance to organise a stable and constant labour supply. The President of the Chamber of Mines enthused: '… a most excellent law … which should enable us to have complete control over the Kaffirs'. In its submission to a 1944 commission on 'native wages', the Chamber of Mines argued openly for the 'subsidiary means of subsistence' that migration back to homelands guaranteed. This would subsidise the cost of labour and the costs of reproducing that labour. This zeal for population control on the part of the mining houses set a precedent for the pass laws of the apartheid government.

46. The mines' thirst for migratory labour led them to establish recruiting agencies in distant rural areas and neighbouring countries, originally opened to capital by

military conquest. In this way 'native reserves' evolved into labour reserves. Offering financial inducements to the Swazi monarch, the Native Recruiting Commission set up by the Chamber of Mines was able to diminish the severe labour shortage in the post-World War II economic boom, while migrant work assured the King of his subjects' annual repatriation to fulfil tributary labour 'loyalties'. Tribalism on the Rand originated in recruitment strategies and bargain-hunting by the mines. It was perpetuated by a closed compound system of hostels that fostered separate identity and anticipated the conflicts within the hostels and with permanent township residents. Thus the blueprint for 'grand apartheid' was provided by the mines and was not an Afrikaner state innovation. The mines' instigation of tribalism in employment and housing practices is admitted in their submission to the Commission.

47. The single-sex hostels, moreover, eroded family structures. Women who had accompanied their male partners and husbands to the compounds were 'endorsed out' or sent back to the homelands. A corollary to the slave-like conditions of work on the mines, women were left to rear children and cultivate fields ultimately on behalf of the mine owners. When occupational hazards ejected invalid workers, the social security of homesteads helped absolve companies of providing adequate compensation and/or pensions.

48. In mitigation of its housing policy, the Anglo American Corporation contends that it was frustrated in its attempts to develop an 'urban model for black South Africans' by the apartheid regime. The Corporation argued that Sir Harry Oppenheimer appealed to the Verwoerd government in the 1950s to be allowed to house 10 per cent of black workers with their families at the Free State gold mines. These appeals were rejected by the state, but they cannot atone for the cellblock structures and systems the company provided for each of its armies of black miners.

49. Harsh conditions on the mines were enforced by state repression which employers – and Anglo American – did nothing to discourage. Strikes were unheard of during the booming 1960s. When the upsurge of worker resistance began with the wave of strike actions in Durban in 1973, state security forces became almost permanently resident on production sites to maintain and restore order. From the outset, Anglo American did not hesitate to use the services of the apartheid security apparatus to curb working-class militancy during this period. A strike at its Western Deep mine was dealt with by government forces and resulted in the deaths of twelve miners. Worker resistance to the state-led

'total onslaught' campaign led to the detention of five executive members of the National Union of Mineworkers (NUM).

50. The consensus between business and the apartheid government was given institutional expression in an array of joint committees at the interface of private capital and the state. 'Total strategy' was quickly sold to business South Africa at the government-convened Carlton Conference in 1979. Harry Oppenheimer promoted the 'new era' of business and state détente. Joint Management Centres (JMCs) were set up to gather intelligence about trade union activity. Their reports to the State Security Council (SSC) effectively drafted business leaders into the state apparatuses.

51. The renting of Waterloo farm to security force agents by Tongaat Hulett, a sugar-producing company with a majority Anglo American shareholding, represents one example of such collusion. Business, moreover, directly financed the SADF through its participation in the Defence Manpower Liaison Committee structures. These were designed to facilitate the least disruptive conscription of white men to the armed forces by supplementing the income of soldiers during their stints in the army.

52. Outsourcing the function and/or costs of national security to private interests was accomplished by the 1980 National Keypoints Act of the Botha regime. 'Keypoints' of national interest, usually production sites, were identified as possible targets. Protection was supplied by the SADF and paid for by the business concerned.

53. By 1976, the Anglo American group enjoyed a shareholding interest of 20 per cent in Barlow Rand. Through a number of its subsidiaries, Barlow Rand was a major producer of defence electronics, dividends from which were paid to Anglo American. Three members of the Barlow Rand board of executives (including the chairman) were also members of PW Botha's Defence Advisory Board. Anglo American chairman Gavin Relly himself served intermittently on the Armscor board. The sinews of the military–industrial complex were firmly enmeshed with the mine-based economy.

54. The high level of accidents on the mines went far beyond anything that can be excused by the ordinary hazards of working underground. Here again it was the mines themselves that must take responsibility for ignoring the most basic safety standards applied by the International Labour Organisation (ILO). By 1993, the

mortality rate on the gold mines as a result of accidents stood at 113 for every 100 000 miners. This does not take into account the delayed deaths and disability resulting from the occupational hazards of work underground. The migratory labour system allowed employers to repatriate miners suffering from injury, silicosis, pulmonary tuberculosis and other work-related ailments to their distant homes, where they would often die slow and painful deaths, living on meagre pensions and without the necessary medical treatment. Even though a curative treatment for pulmonary tuberculosis was available by the 1950s, mines continued to send sick miners home, with the result that up to 60 per cent would die within two years, and families became infected. By the 1980s, only 10 per cent of these workers – effectively retrenched – received the necessary treatment.

55. Apartheid also affected how workers were recompensed by the state, and can be seen in the inadequacy and racial differentials of lump sums paid out. The structure of the Workmen's Compensation Fund cleared mine owners of liabilities stemming from whatever civil claims could have been brought against them. Thus deference to the state made good business. As late as the early 1990s, permanently disabled black workers were paid only R2000, with a 1:13 compensation ratio between black and white workers.

56. In 1974, 'Harry Oppenheimer made a public call to review South Africa's labour laws' and was 'amongst the first to grant independent black unions access, recruiting and collective bargaining rights'. The Anglo American submission to the Commission attributes this to Oppenheimer philanthropy. Yet his sudden concern about the absence of union organisation amongst black workers cannot have been coincidental: his call was stoked by the fear of disruption of production schedules when industrial relations are not mediated by union representation. Despite the orderly bargaining framework that union recognition brought to industrial relations, apartheid employers did not take this to imply that legally striking workers ought not to be dismissed. Anglo American cut the biggest swathe through workers' ranks when it dismissed 50 000 workers who were on strike for a living wage.

57. Nor did the recognition of black trade unions preclude security cordons around mines and the control of union meetings. An NUM report on repression at Anglo American mines described how meetings had to be approved by mine management. The significance of union recognition was further downplayed by the spread of Anglo American companies throughout the Bantustans. Unions enjoyed legal status only if the labour laws upheld by the homeland puppet states allowed

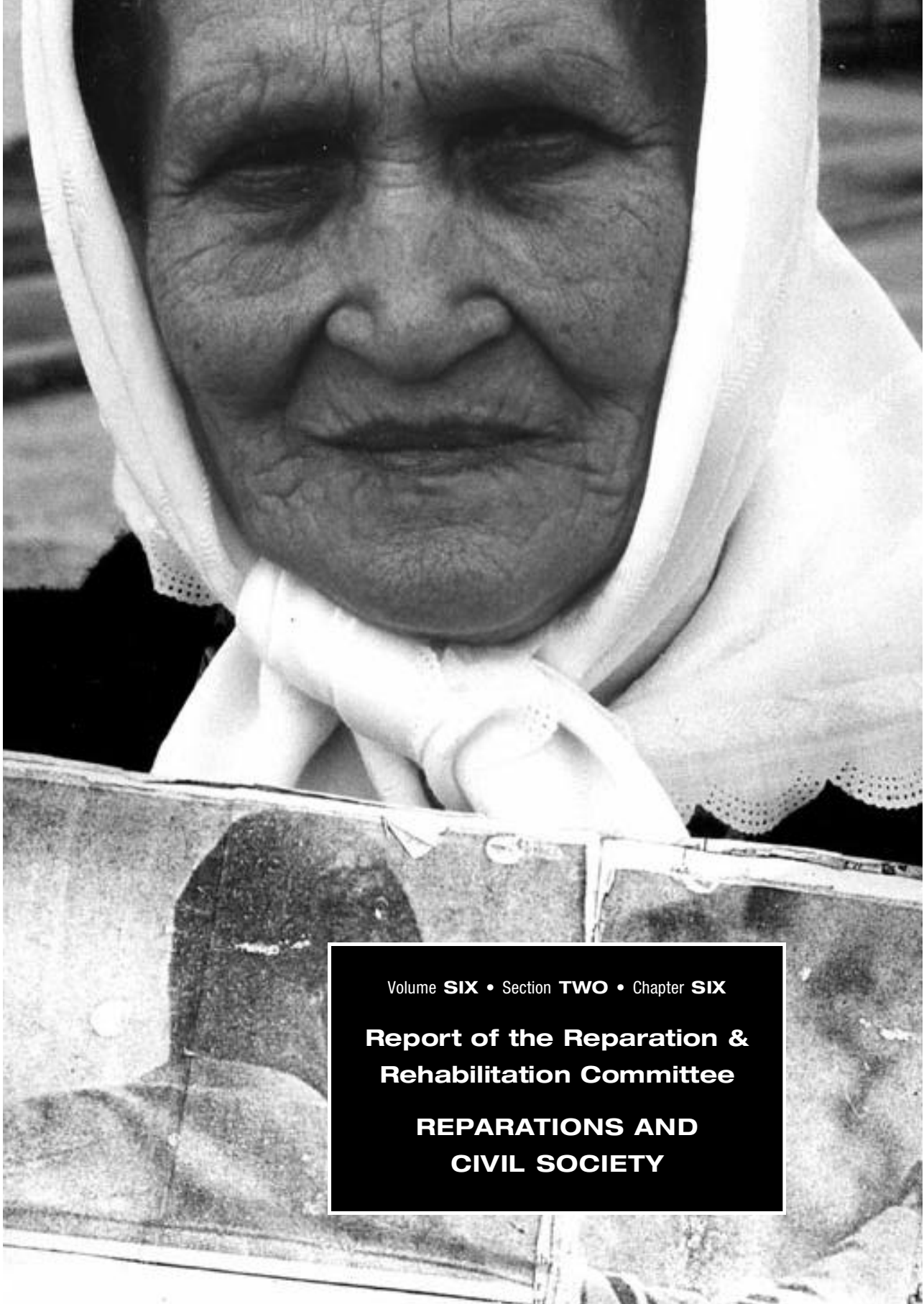
this. Rustenburg Platinum, owned by the Anglo American subsidiary, Johannesburg Consolidated Investments, adopted schizophrenic policies that saw the company recognise NUM representatives in South Africa but not on the other side of the Bophuthatswana border.

58. When Botha's reforms of apartheid only elicited increased labour unrest, and economic sanctions looked set to force the regime to default on its debt, business leaders broke ranks with the government, and a delegation, including Mr Gavin Relly, flew to Lusaka to meet with African National Congress (ANC) leaders. Yet just two years later, in 1987, after the declaration of the second state of emergency, Mr Relly described the national alert as 'necessary'. 'Open minds' closed again once mass detentions brought a modicum of quiet to the townships and factory floors, and once debt payments had been successfully rescheduled by agreement with the International Monetary Fund.

59. The extent of Anglo American's 'real and permanent contribution to the well being of the people of southern Africa' and its founding 'economic nationalism' must be judged according to its deeds. Nor can its 'deeds' be represented by cases of its magnanimity when these stand out as exceptions against a general rule of profiteering based on racist systems of exclusion, indignity, manslaughter and expropriation. Even in terms of the modernisation thesis the corporation propounds in its literature – 'the slow march to modernity' – Anglo American fails. The basic premise that a modern, non-racial capitalist economy will engender full democratic rights for all South African citizens presumes the necessity of coerced labour and racist employment policies, because it is precisely on these practices that its empire was built. The estimated R20 billion that the corporation 'exported' in offshore investments between 1970 and 1988 cannot have benefited the modernisation project it claims to cherish.

THE MINING COMPANIES: THE CASE FOR REPARATIONS

60. A reparations claim against corporations like Anglo American would be based on the extent to which decades of profits were based on systematic violations of human rights. In legal terms, this could be based on the principle of 'unjust enrichment'. 'Unjust enrichment' is a source of legal obligation. Actions based on 'unjust enrichment' are common to most modern legal systems. These kinds of claims give rise to an obligation in terms of which the enriched party incurs a duty to restore the extent of his/her enrichment to the impoverished party. Put differently, the impoverished party acquires a legal right to claim that the extent of the other's enrichment be restored to him/her if it was acquired at his/her expense. (...p156)



Volume **SIX** • Section **TWO** • Chapter **SIX**

Report of the Reparation & Rehabilitation Committee

REPARATIONS AND CIVIL SOCIETY

Reparations and Civil Society

1. The Truth and Reconciliation Commission (the Commission) seized the imagination of many South Africans and, from the start of its work, initiatives aimed at healing and reparation sprang up all over the country. They provide an example of the enormous value of the role of civil society in the work of bringing about the healing and reconciliation our society so urgently needs. They also demonstrate the fact that reparation is a multi-faceted process and can be approached from many sides by many people. In other words, it needs to be seen as a national project to which we are all committed as South Africans.

CREATIVE APPROACHES TO REPARATION AND HEALING

2. There are many examples of organisations, individuals, artists and events that have used creative approaches to begin to address the issues of healing and reparation. That they have seldom been given the same amount of publicity as the Commission itself does not detract from their importance. It would be true to say that some of the most profound experiences of reconciliation, acknowledgment and healing happened in intimate spaces away from the public gaze. This is as it should be, since it is in those intimate spaces that peoples' most powerful emotions reside. Many of these initiatives have a great impact on peoples' lives because details of the victim's experience and interactions between participants can be freely expressed.

3. This chapter outlines some such forums or creative expressions by various civil society groups and individuals.

The story I'm about to tell

4. One such example is a theatrical play called *The story I'm about to tell*. This was (and still is) an initiative using acting, audience participation, real-life recollections of violations and an improvised script that was true to life events.

5. The actors are survivors of gross human rights violations, and indeed only act in the sense that they are on a stage engaged in a performance of their experiences. Their role changes to that of facilitators when, importantly, the play does not end, but moves on to include the audience in an interactive debate and discussion.

6. An individual who gave testimony at Commission hearings, Mr Duma Khumalo (a former death row prisoner), says that audiences seem to open up more and travel much further into the past than occurred at the formal Commission hearings. Members of audiences have expressed their difficulties about opening up and speaking of the past, which they had often kept secretly to themselves.

7. One such powerful encounter occurred whilst performing the play in Germany. The widow of a man killed by the South African Defence Force (SADF) approached the actors, saying that she had always felt that she would die in unresolved pain. However, through experiencing the stories retold in the play, she found herself able to forgive and let go.

8. The play was staged at the Grahamstown Arts Festival, one of South Africa's major arts festivals. After the play, an elderly white South African man approached one of the players, Ma Mlangeni, embraced her, sobbing, and then left without saying a word. For the actors, no words were necessary: such was the power of this intimate encounter.

9. In another instance, an audience member asked Duma Khumalo: 'How did you feel when you were about to die?' Mr Khumalo recalls being shocked that no one had previously felt able to ask him this. He attributes this to the unique power of the play. He summed up his experiences of performing in the play as 'a piece of delicious cake'.

10. Far from being simply a forum for profound moments of healing, the play has also proved a catalyst for expressions and questions that were often not articulated in the context of the Commission, especially those that were conflictual or anti-reconciliatory. While performing in South Africa, a youth expressed his sense of injustice at having to witness lies by perpetrators, asking, 'How do they expect us to feel?' In some instances, when the play was touring London and Great Britain, there were exchanges and debates between members of the audience about who had benefited from apartheid.

11. *The story I'm about to tell* is an ongoing initiative and many requests have been made for it to be staged in township contexts. Importantly, the play has received sponsorship from the Department of Arts, Culture, Science and Technology.

The Healing of Memories Project

12. The Healing of Memories Project is based in Cape Town and was established to facilitate the healing process of individuals and communities. It originated as the Chaplaincy Project of the Trauma Centre and is now the Institute of Healing of Memories.

13. One of the main techniques used by the project is workshops. The workshops were developed by the Religious Response to the Commission, now the Centre for Ubuntu and the Healing of Memories.

14. Each workshop is an individual and collective journey aimed at exploring the effects of the apartheid years. The emphasis is on dealing with these issues at an emotional, psychological and spiritual – rather than at an intellectual – level. Time is given for individual reflection, creative exercises and opportunities to share in a small group. Typical themes that arise are anger, hope, hatred, joy, isolation, endurance and a discovery of the depths of common humanity shared. The workshops end in a liturgy/celebration.

15. The collective and uniquely spiritual focus of this initiative marks it as one of the more profound treatments of the challenge of healing.

The Khumbula Project

16. Khumbula was launched in Mbekweni, Paarl on 16 December 1998. A non-governmental organisation registered as a Section 21 Company, Khumbula aims to address the conditions under which ex-combatants of the South African liberation struggle find themselves. It has also recently launched an educational initiative.

17. Driven by volunteers, Khumbula's main aim is the exhumation of former Umkhonto we Sizwe (MK) cadres who died outside the borders of South Africa and assisting families to rebury the remains of their loved ones. A significant number of witnesses who approached the Commission requested assistance in locating and reburying their loved ones in a culturally appropriate way.

Khulumani support group

18. The Centre for the Study of Violence and Reconciliation played a significant role in the establishment of the victims' support group commonly known as

Khulumani. The philosophy behind this initiative is a belief that the violations of the apartheid era not only left deep psychological wounds in peoples' minds, but also left people with a sense of isolation and feelings of disconnectedness. Being part of a victims' support group was seen by many as having a therapeutic effect.

The Northern Province and Mpumalanga branches of the South African Council of Churches

19. The Mpumalanga Provincial Chapter of the South African Council of Churches played a significant role in providing emotional and spiritual support, especially during the hearings.

CIVIL SOCIETY AND THE CAMPAIGN FOR REPARATION

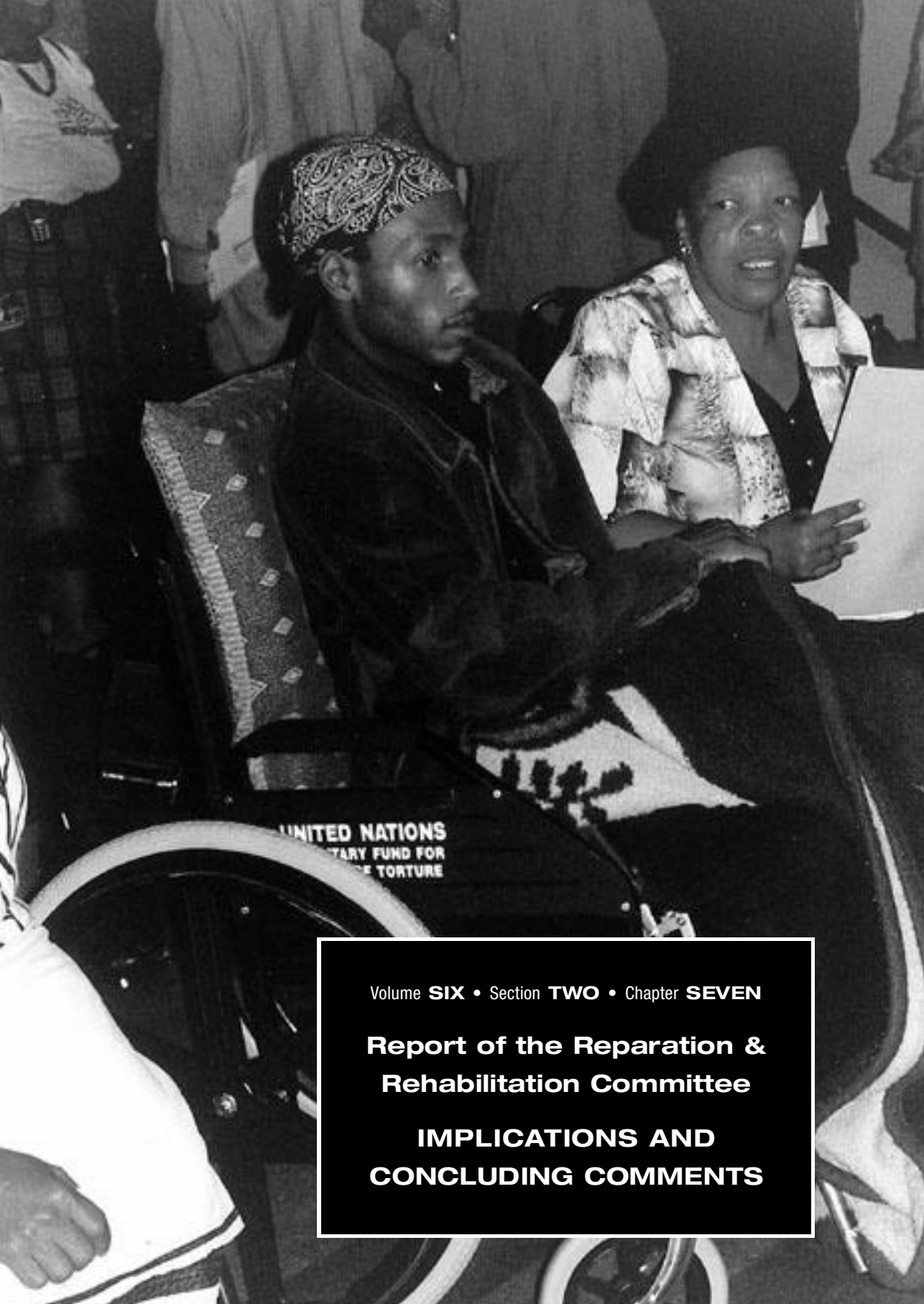
20. Khulumani and some representatives of the faith community have publicly campaigned for the implementation of the Commission's Reparation and Rehabilitation policy.

21. Khulumani has not only mobilised the South African government and local business but has, in consultation with sister organisations such as Jubilee 2000, continued to emphasise the responsibility of local business and international governments and banks in respect of reparation and rehabilitation.

22. The Northern Province branch of the South African Council of Churches, under the leadership of Reverend Mautji Pataki, has also continued to play a significant role in campaigning for the restoration of the dignity of witnesses through a government-led reparation and rehabilitation programme. Their focus has been on mobilising government support at a provincial level, and exerting pressure on it to spearhead service delivery.

23. It is the Commission's view that, while government is both legally and morally obliged to pay reparation to individual victims, the responsibility for reparations goes far wider. With regard to the financial cost of reparation, the Commission believes that business, in particular, should bear some of the burden.[75] More broadly, however, other institutions of civil society, and indeed all South Africans, should be part of a national project of reparation and rehabilitation. (...p160)

75 See this section, Chapter Five.



Volume **SIX** • Section **TWO** • Chapter **SEVEN**

Report of the Reparation & Rehabilitation Committee

IMPLICATIONS AND CONCLUDING COMMENTS

Implications and Concluding Comments

If you saw me at a distance, you would think I was an ordinary person. Even if you get closer, you still couldn't tell. Maybe if you observed me very carefully, you might notice that I seem somehow alone, even in the middle of a crowd.

You would be right. But you would also be wrong. For I am never truly alone. Thousands of people are always with me. My head is so crowded with ghosts I sometimes think it will burst. My ears ring with cries from the voices of the dead.

My dreams flame with horror. My memories are grey with ash.

The Survivor, Jack Eisner

1. The issue of reparation and rehabilitation is real for every victim, though to varying degrees. As history takes the country further and further away from the historical moment of the negotiated settlement in South Africa, and as other challenges, especially that of HIV/AIDS, press ever more insistently on the national consciousness, it may become more and more tempting to deal dismissively with the issue of reparation and rehabilitation. There may be those who feel that there are things that cannot be repaired or rehabilitated. This too may discourage further consideration of the issue. Moreover, it may be argued that there is something very positive about a country that wishes to move forward.

2. Although we may currently be experiencing fatigue about the consequences of the past, it remains true that if we do not deal with the past it will haunt and may indeed jeopardise the future. We need to remember that the Truth and Reconciliation Commission (the Commission) was established in large part because of the dangers of inappropriate forgetting. We acknowledged then and must remember now that moving forward requires acknowledgement of the past, rather than denial. To ignore the suffering of those found by the Commission to be victims would be a particular kind of cruelty. After all, it was the testimony of these victims that gave us a window onto how others saw the past and allowed us to construct an image of the future.

3. There has been a tendency to dismiss those declared as victims by the Commission as an 'elite victim group'. It needs to be borne in mind that, given

the systemic abuse committed during the apartheid era, virtually every black South African can be said to be a victim of human rights abuse. By using the fact that they testified as evidence of their 'elite' character, these critics are in essence propounding the astounding argument that these victims should be punished (denied legitimate expectations) for having come forward.

4. There were very many victims of apartheid and, certainly, those who came before the Commission are only a subset of a much larger group. This is why, when balancing individual and socially oriented reparations, the Commission sought to address the specific needs of those who came before it in order to contribute to the wider truth about the nation's history, whilst at the same time addressing the broader consequences of apartheid. It is almost impossible to design a reparation programme without leaving some gaps. Nevertheless, the fact that not all victims will receive individual financial grants cannot be allowed to prevent at least some clearly deserving victims from getting such awards.

5. The reality is that a specific group of victims was identified via a legislated and broadly accepted process. While their circumstances are possibly more representative than otherwise, their uniqueness lies in the fact that they chose to engage in the process.

6. There are major challenges for the reparation and rehabilitation process. As indicated in earlier chapters, it is often difficult to distinguish victims from non-victims and even to isolate key events that caused subsequent problems in people's lives. It is not always possible to draw a clear line between a gross violation of human rights and the more general features of oppression. It is difficult to know where, in the ongoing development of individuals, families and communities, one could measure the effects of human rights abuses, even if such measurement were theoretically possible. Given the very limited resources in South Africa, very little of this work can be done.

7. Besides, even if South Africa had unlimited resources at its disposal, much of the damage that has taken place is irreparable. Human development in the context of abuse and violation is not infinitely reparable, and part of the task for healing in South Africa lies in accepting what cannot be done.

8. The acceptance of limitations, however, does not mean the abdication of responsibility, but rather a sober assessment of what can and cannot be achieved.

9. It is this assessment that must form the basis of our future growth as a nation. Poverty and the economic implications of the AIDS epidemic make economic considerations important in the rehabilitation process. The line between victims and non-victims is often obscure; hence it may be ethically problematic to provide victims with preferential access to services such as education, housing and employment. It is, moreover, common knowledge that many public sector services – such as health, welfare and education – are woefully under-resourced in South Africa. Wishing that things were different will not make these problems go away. Again, attempts to give preference to victims in these services could potentially meet with resistance because there is not, in any case, enough to go around.

10. Despite this, preferential opportunities on the basis of need for victims across the political spectrum may be important symbolic acts: they would communicate that the current leadership takes seriously what South Africans have endured, and signal a commitment to establishing a just and humane society in which human rights are respected.

11. Given resource constraints, creative ways of generating funds earmarked for rehabilitation services should be considered. These could include tax incentives to encourage private sector businesses to contribute to a specific post-Truth and Reconciliation Commission Fund. The economic and social implications of a time-limited taxation levy on wealthier South Africans' earnings also need to be considered.

12. However funds are generated or redirected from other budgets, it is important that we do not forget the high levels of emotional pain in our country and the fact that we need to build up services to deal specifically with these. Public sector mental health provision is inadequately resourced at present and there is insufficient training and ongoing support for frontline helpers across a range of sectors including education, labour, safety and security, defence, health, and welfare. Resourcing is an issue, and there is a lack of creative thinking about making services physically, linguistically and culturally acceptable to communities. Professional mental health and welfare organisations should be encouraged to share information on successful projects, on methods of assessing impact and on improving the cost-effectiveness of such endeavours. Professional services should act in concert with community-based services. The combination of professional expertise and community-driven support is likely to provide the most cost-effective, helpful and culture-friendly mix.

13. Within the public health sector, dedicated posts for working on rehabilitation and reparation issues need to be established countrywide. The reparation and rehabilitation aspects need to be emphasised for a limited period, after which time these posts could become part of the general public mental health pool. It is important to attract talented and energetic people to such posts. In this respect, the secondment of personnel from other sectors (the health system, the non-governmental organisation (NGO) sector, higher education and the private sector) should be considered.

14. Symbolic reparations such as monuments and museums are important but should ideally be linked with endeavours that improve the everyday lives of victims and their communities. One way of combining the two aims is to involve victims prominently in the design and/or manufacture of monuments and in the running of museums. There are already good examples of this in the country.

15. There is much to do, and not all our ideals can be realised. But the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) gave an undertaking that something would be done and, for the sake of the future, steps must be taken to take the process forward. Furthermore, much of the current order's legitimacy rests on a fair and appropriate response. The issues, problematic though they are, cannot be ignored.

16. It cannot and must not be forgotten that the Act allowed for reparations for those who testified before the Commission and were subsequently identified as victims. While the recommended reparations are not and cannot ever be proportionate to the harm suffered, reparations may be understood at least as an act of good faith and a serious attempt to alleviate some of the material and psychological trauma that victims endured. Today, when the government is spending so substantial a portion of its budget on submarines and other military equipment, it is unconvincing to argue that it is too financially strapped to meet at least this minimal commitment.

17. In this context, the argument that individual reparations come at the cost of social reparations is hardly persuasive; the two are not mutually exclusive within the context of broader budgetary priorities.

18. As we showed earlier in this section, the legal and normative arguments are unassailable. It may be recalled, too, that the overarching goal of reconciliation and national unity, as expressed in the Constitution and the founding Act, was born of a fragile balance with consequences that go far beyond the Commission itself.

19. The challenge to decision makers is how to acknowledge those who actively engaged with the legal framework of the Act and were found to be victims of gross human rights violations. They must honour the social contract in which these victims engaged, while at the same time adequately acknowledging those who did not or were not able to engage in the process, without overvaluing or undervaluing either party.

20. The Reparation and Rehabilitation Committee (the RRC) believes that its recommendations – which emphasise both individual and collective reparations – represent a blueprint for a workable solution to this pervasive tension.

21. The challenge to us all is to honour the process and to take responsibility for shaping our future. If we ignore the implications of the stories of many ordinary South Africans, we become complicit in contributing to an impoverished social fabric – to a society that may not be worth the pain the country has endured. (...p165)

Volume **SIX** • Section **TWO** • Chapter **EIGHT**

Report of the Reparation & Rehabilitation Committee

ADMINISTRATIVE REPORT

Administrative Report

INTRODUCTION

1. Unlike the other statutory Committees of the Truth and Reconciliation Commission (the Commission), the Reparation and Rehabilitation Committee (RRC) began the bulk of its administrative work at the tail end of the processes of both the Human Rights Violations Committee (HRVC) and the Amnesty Committee. The RRC received its first list of victims'[76] findings from the HRVC in September 1998, a month before the Commission went into suspension. Since then its work has increased progressively as more victims have been referred to it.

2. To date, the RRC has processed and submitted to the President's Fund 17 088 of the total of 19 890 victim claims received.[77] This chapter focuses on the administrative and management aspects of the RRC and its functions.

THE REHABILITATION AND REPARATION COMMITTEE

3. With the handover of the Final Report in October 1998, the Commission was suspended and the activities of the RRC statutorily placed under the auspices of the Amnesty Committee in accordance with an appropriate amendment to the Commission's founding Act, the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act). Once that Committee had completed its work, the Commission and its three Committees reconvened on 1 June 2001.

4. At this stage, the RRC consisted of a chairperson, an executive secretary, co-ordinators based in satellite offices, victim consultants and an administrative co-ordinator and staff. The three satellite offices were based in the Eastern Cape (East London), Gauteng (Johannesburg), and KwaZulu-Natal (Durban). Regional staff represented a crucial point of access for victims, enabling them to interact directly with the RRC. Because the Commissioners and RRC members had now departed the scaled-down Commission, members of staff in charge of processing claims became the public face of the Commission.

76 See discussion on use of the term victim, this section, Chapter One, footnote 7.

77 See section on 'Interim Reparation Statistics' below.

5. Following negotiations between the government and the Commission, it was agreed that the RRC would be given an extended mandate to initiate the delivery of urgent interim reparations (UIR) on behalf of government. This became the primary function of the RRC after the finalisation of the drafting of the Reparation and Rehabilitation policy document. UIR entailed the promulgation of regulations (3 April 1998); the distribution of the promulgated reparation application form to all those witnesses who had been found to be victims; the determination of harm suffered, and recommendations to the President's Fund on appropriate reparations on a case-by-case basis.

6. As explained in the Final Report, the Act provided for the granting of UIR as a means of fast-tracking assistance to victims urgently in need of immediate intervention as a consequence of the violation(s) they had suffered. Although the legislators had initially conceived of this measure as applying only to a small fraction of victims, an analysis of the impact of the violations in the current lives of victims showed that this category was far larger than had been anticipated. This, together with delays in finalising a final reparations package, as well as a substantial allocation to the President's Fund, undoubtedly broadened the notion of 'urgent' and gave momentum to a more inclusive approach to UIR.

7. The following sections describe the implementation of UIR and the challenges that arose during this process.

IMPLEMENTATION OF URGENT INTERIM REPARATIONS

Administration

8. Once the HRVC had referred its victim findings to the RRC, the RRC notified each victim of the findings and sent her or him an individual reparation application form, as required by the Act. The Commission had earlier decided not to elicit the required information at the initial statement-making stage for two reasons. First, the human rights violation statement did not constitute a sworn affidavit. Second, the Commission was reluctant to raise expectations concerning reparations before a finding had been made, in order to avoid disappointment in those instances where it might make a negative finding or where it might be unable to make a finding because of insufficient corroboration.

9. Moreover, because only declared victims were eligible for reparation, the RRC eventually decided to limit access to reparation application forms to those who

had been declared 'victims' by the Commission. The risks and benefits of making application forms available at public offices such as post offices or municipal structures were considered at length by the RRC. Again it was eventually decided that public access would create confusion and lead to raised expectations on the part of those who did not make human rights violation statements to the Commission.

10. Individualised application forms greatly limited the possibilities of such confusion and disappointment, and this route was encouraged and approved by the Auditor-General's office as the safest and most controllable approach. Each form was given an individualised 'TRR' identification number in order to prevent the unauthorised distribution or submission of applications by persons other than the victims, which would allow fraudulent claims to be made.

11. These and other security measures were deemed necessary in order to reduce potential abuse of the process and the misspending of taxpayers' money.

12. The reparation form (in the form of a sworn affidavit) gathered information related to the harm[78] and suffering endured as a result of the gross human rights violations, under the categories of housing, health, mental health or emotional state, education and an 'other' category. In addition to completing the form, victims were required, where possible, to submit additional corroborative documentation. The administrative and security measures that had to be put in place and the submission of extensive corroborative documentation established a tension between the need for speedy implementation (in the face of pressing trauma-related needs) and the necessity to maintain strict and unavoidable administrative control in order to ensure accuracy and financial accountability. This tension affected both the RRC – keen to deliver as soon as possible – and those applicants who had completed application forms, who often perceived requests for additional information and documentation as superfluous and overly bureaucratic.

Outreach and assistance to victims

13. Each regional office received batches of notifications and reparation application forms and was responsible for the co-ordination and dissemination of forms to victims.

78 Categories of harm were derived from the Act's definition of 'victim' (section 1(1)(xix)). They were: physical or mental injury, emotional suffering, pecuniary loss, or a substantial impairment of human rights.

14. In line with the Commission's policy of pursuing a victim-centred approach in its work, the RRC attempted to find ways of dealing with what might be seen as a bureaucratic and potentially alienating process in as humane a way as possible. Consequently, rather than expecting applicants to approach what consisted of no more than four small offices based in city centres, the RRC employed field-workers – or what were called Designated Reparation Statement Takers (DRSTs) – as a way of reaching out to applicants in their communities. Another reason for employing DRSTs was to promote the speed and efficiency of the process. A return rate of 92 per cent of application forms is testimony to the success of this approach.

15. The importance of the reparation application in assessing the needs of victims and the desire to provide as much back-up as possible for applicants required that DRSTs be responsible for:
    a locating the recipient, especially where the address given was limited;
    b assisting with any language and translation difficulties encountered;
    c explaining, where necessary, what was meant by each question on the form;
    d assisting in the gathering of any statutory supportive documentation that was required to process the application;
    e assisting in the location of a Commissioner of Oaths to sign the application;
    f being a supportive presence during what was usually an emotionally difficult time, when the victim recounted the consequences of the violation.

16. The desired profile of a DRST was that s/he be community-based, know the locality in which s/he would be working and possess the know-how to access basic facilities such as photocopying, Commissioners of Oaths, the required documentation and so forth. An international funding agency, USAID, funded the salaries and training of the DRSTs.

Assessing applications and the President's Fund Process

17. Once the forms were completed, they were forwarded to the relevant regional office where they were checked for completeness and then forwarded to the national office in Cape Town. On receipt they entered a systematic information flow involving numerous checks to avoid duplication, clarify discrepancies and rectify any omissions. After this, each form was assessed and individual recommendations were made on the basis of the responses made by each applicant. Prior to the suspension of the Commission, the assessment of applications was the responsibility of RRC members. Subsequently, it became the responsibility chiefly of the chairperson of the RRC.

18. The assessment established what harm and suffering had taken place, who the beneficiaries were, how many dependents were involved and who they were, and the consequences of the violation in terms of housing situation, emotional state, medical state, educational situation and other aspects.

19. The assessor then made a broad recommendation for (a) service intervention(s), categorising evident needs and monetary grants according to the schedule set out in the Final Report.[79]

20. This assessment, together with the application form, was then forwarded to the President's Fund.

The RRC's relationship to the President's Fund and Department of Justice

21. The RRC enjoyed an interdependent relationship with the President's Fund. The mandate of the Act, as well as the regulations governing interim reparations, clearly demarcated each body's responsibilities.[80]

22. The RRC was responsible for making individualised recommendations, both for a required service and a monetary grant, and the President's Fund was responsible for implementing those recommendations – that is, making the payments and informing recipients of the RRC's recommendations and of the name of the government official in their province who would act as a conduit through which they would gain access to services in the relevant department or departments.

False perceptions about the role of the RRC

23. Both victims and the public developed a perception that reparation matters (administration *and* implementation) began and ended within the domain of the Commission. As far as they were concerned, if the other two Committees of the Commission dealt with their affairs, so too did the RRC. This perception led inevitably to the belief that the RRC had reparation funds under its direct control, leading to many direct approaches for assistance.

79 Volume Five, Chapter Five, paragraphs 54–66.

80 Sections 4(f)(ii); 25(b)(i) and 42 of the Act, and the regulations to the Act.

24. This misperception was further perpetuated by inaccurate media reportage. Media campaigns were directed at the Commission, charging it to speed up the delivery of reparation awards.

25. This ongoing misperception left the RRC and the President's Fund with the responsibility of correcting and responding to the many complaints and enquiries it received from victims. In the face of extremely scarce human resources, this made working conditions extremely difficult. From the outset, the Fund employed three people, including the Director. Given the administrative responsibilities of processing all forthcoming applications and preparing them for payment, in addition to fielding the many enquiries that came in, a considerable burden was placed on already severely strained resources. Complicated enquiries were referred back to the RRC's offices, which employed two enquiry secretaries to deal with problems of this kind.

The process followed by the President's Fund

26. Once forwarded to the President's Fund, application forms were registered and prepared for payment and service recommendation. Victims were sent a letter from the President and a letter from the President's Fund. This included the amount of the financial grant they were to receive and the name of an official in the Department of Welfare who would assist them in accessing the services recommended by the RRC. This usually meant referring the individual to the relevant government department.

Interim reparation referral

27. This referral process lay at the heart of the interim reparation process in that it emphasised a reparative intervention based on the reported consequences of a gross human rights violation and did not focus merely on making a financial grant. The fact that this aspect of the programme has so significantly failed to deliver so far is extremely disappointing. The Commission's policy recommendations published in its Final Report depended on a carefully balanced reparation package.

28. The referral process was discussed and formulated in conjunction with the Inter-Ministerial Committee on Reparation, chaired by the then Minister of Justice, Mr Abdullah Omar. Minister Geraldine Fraser-Moleketi, then Minister of Welfare and Population Development, volunteered that her Ministry would serve as the conduit through which victims could be channelled to other government departments. This offer was not in line with the initial policy direction of the RRC, which preferred the location and responsibility of the referrals to be in an office like the Presidency, so that it would command co-operation from all government ministries.

29. Despite its reservations, the RRC decided to co-operate with this suggestion. In October 1998, Minister Fraser-Moleketi provided the framework for the following referral process through her Director-General's Office. The following memorandum, dated 14 October 1998 and written to the Minister of Welfare by the Director General of Welfare, Ms Luci Abrahams, outlined the Department's planned approach. It was forwarded to the RRC with the names of allocated officials by province.

1. The Department of Welfare in Provinces should be the focal point for referrals.

The President's Fund refers the victim to Provincial Head of Department for Welfare and the victim's application form is forwarded to the HOD. A copy of such a referral is sent to the Provincial Director General and the National Department of Welfare.

The President's Fund informs the victim that the Provincial Government has been requested to render services.

The Provincial Head of Department of Welfare constitutes an Inter-Departmental Committee (sanctioned by the office of the Premier and Provincial Director-General) comprised of senior representatives at provincial line function department.

The Inter-Governmental Committee decides which provincial department/s should render services to the victim.

Departmental services offices or institutions to give service to the victim.

Reports on services rendered to be given to the Provincial Head of Department of Welfare for channelling to the Commission and the President's Fund with copies to Provincial Director-General and the National Department of Welfare.

There should be a two-week turn around period for processing of applications and referrals.

The period within which the process is to be finalised will be four to six weeks.

2. Services provided should include the following:

Trauma Counselling and support even if the event happened a long time ago
The National Victim Empowerment programme makes provision for assistance to victims of all forms of crime and violence

Provincial victim empowerment forums should be set up and engaged as a contact point with service providers in government and NGO sector

Provincial networks on violence against women co-ordinate related services to abused women

A list of contact persons in the provinces is attached

3. Information on records of individuals and communities should be made available by the TRC.

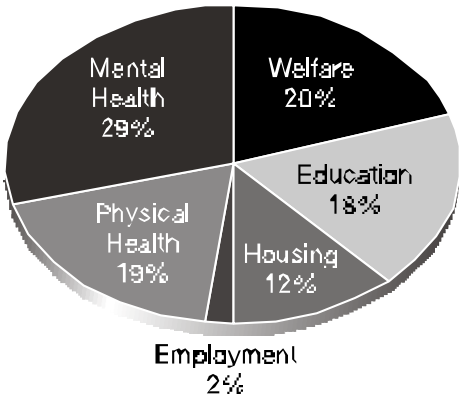
Services recommended by the RRC

30. As of 5 May 2001, the President's Fund compiled statistics reflecting which services were being recommended by the RRC, using a sample of 14 160. The following picture emerged:

Totals of recommended service interventions according to provinces, as of 06.11.01

Province	Education	Housing	Employ-ment	Physical Health	Mental Health	Welfare
Gauteng	1697	569	194	2154	3101	1897
Eastern Cape	1219	380	136	1398	2154	1298
Northern Cape	36	6	7	73	81	30
Free State	133	67	27	217	292	148
Northern Province	225	271	27	199	303	376
Mpumalanga	347	169	45	381	606	381
North West	259	70	40	425	564	361
Western Cape	411	153	71	488	719	388
KwaZulu-Natal	4675	4184	281	4273	6596	4822
Totals	**9002**	**5869**	**828**	**9608**	**14416**	**9701**

National Interventions



31. These tables and graphs represent what the RRC officially recommended. However, the RRC has not been given reports on the actual implementation or assistance rendered to individual applicants. Information has been requested on many occasions from the Ministries of Justice and Constitutional Development, Welfare and Population Development, as well as the Social Cluster under the leadership of Dr Ayanda Ntsaluba, Director-General of Health. Up to the time of finalising this report, the Commission has been unable to establish how many approaches were made by victims and to what degree assistance was facilitated.

32. The failure of the responsible government bodies to provide the required information, combined with the fact that victims return constantly to the President's Fund and the RRC empty-handed, points to a complete breakdown in the agreement forged between government (the Inter-Ministerial Committee on Reparation) and the RRC, as recorded in the quoted memorandum of 14 October 1998.

33. The appalling failure to meet the basic urgent needs of victims partly affirms the Commission's recommendations that the implementation of the reparation and rehabilitation policy should be facilitated through the office with the highest authority, so as to ensure co-operation and accountability on the part of government departments.

CHALLENGES IN PROCESSING APPLICATIONS

Uneven flow

34. The uneven flow of application forms being received by the RRC meant that, when there was an increase in the forms received, the time it took to process them also increased. This was especially true of the period May 1999 to July 1999.

35. Four extra application form administrators were employed for the RRC, and the President's Fund was also obliged to employ additional staff. This enabled applications to be processed within a six-week period (three weeks at the RRC and three at the President's Fund).

36. At the same time, it is important to highlight that the Reparation and Rehabilitation process was at all times desperately under-resourced. The Commission's position was that the role of the RRC should be to help initiate reparation processes. Because the process would ultimately be finalised within

government, this is where full capacity should be developed. The result of uncertainty regarding the locus of responsibility for the reparation process meant that the RRC operated on an *ad hoc* basis and was, given the task at hand, ever under-resourced.

Distribution of awards

37. In addition to prioritising the speedy delivery of payment to victims, it was also necessary to synchronise the receipt of payment with an official communication from the President's Fund, informing victims of the outcome of their applications.

38. Payments were, in the main, made directly into individual banking accounts, using an electronic banking system (the BDB Data Bureau System). Whilst this was the quickest and most secure way of effecting payment, one had to ensure that the letter from the President's Fund reached the recipient by post before the money was transferred into the individual's account. Postal delays were potentially problematic in that a recipient might be unaware that a payment had been made, or might spend the money without realising where it came from or what it was intended for (for example, to facilitate access to a recommended service). This early warning system is essential and should be maintained for the future, even where the payment is sent by registered post (in this case by the Department of Justice). Pressure to deliver should not compromise providing such crucial information to recipients.

Challenges relating to payment

39. The President's Fund reports two major problems with effecting payment:
    a Invalid account numbers: The RRC, lacking the authority to check the validity of account numbers with banks, was unable to pick up errors in this respect at the application form checking stage. Where an account number turned out to be invalid, the President's Fund would try to contact the recipient by post or telephone and request that a valid bank account be submitted.
    b Valid accounts that had closed down: As a result of the pervasive poverty of most victims, accounts that had been opened for the purpose of receiving payment quickly became dormant in the absence of funds being transferred. Although special arrangements had been made with the Banking Council of South Africa to avoid this frustrating situation, many banks were not flexible.

In the event of the transaction being rejected due to closed bank accounts, the President's Fund would contact the recipients and inform them of the situation.

Alternative methods of payment

Requests for cheques

40. Some recipients would request that the payment be made by cheque. This practice was agreed to only in exceptional cases, and only after the President's Fund had made direct contact with the requesting individual.

Postbank payments

41. The Postbank is not on the BDB (electronic banking) system. Requests made to deposit into post office accounts were forwarded to the post office head office. Composite cheques were made out to batches of recipients – usually about ten at a time – and the funds were then paid into their accounts.

Special banking arrangements for victims

42. The RRC set up meetings with the General Manager of the Banking Council of South Africa to propose an arrangement whereby recipients of reparation, already of limited income, might encounter an 'account friendly' service that would accommodate minimal financial traffic or activity. The dilemma, as indicated above, was that, if the time between opening an account and being paid interim grants exceeded a certain number of days, the automatic banking system of any given bank would close down the account.

43. In November 1998, the Banking Council informed the RRC that a number of banks had responded positively to its request and were willing to use special savings accounts to assist victims of gross human rights violations. This positive response must be qualified, as the banks in question, although helpful in bringing the RRC's direct attention to existing products, did not initiate any new or tailor-made banking products. The banks that indicated their co-operation were: ABSA, First National, Cape of Good Hope, Meeg Bank Limited and Mercantile Lisbon, Saambou and Standard banks.

44. In retrospect, the most positive aspect of these discussions with banks through the Banking Council was that the RRC was furnished with a list of contact personnel in the banks. These lists were distributed to regional offices, enabling regional

co-ordinators to contact the personnel in the event of a reported problem. The banks' official 'co-operative' stance provided the necessary leverage to get bank accounts re-opened without resistance. In the main though, victims were obliged to use the banking products of various banks without special arrangements being made.

Disputes over the guardianship of funds

45. The RRC was very careful to make sure that all parties concerned agreed on the name of the account into which the interim grant would be paid. This assurance was certified by means of an affidavit. However, it was occasionally brought to the attention of the RRC that a person failed to behave in good faith in respect of an agreement that had been reached. In such cases, the RRC made clear how seriously it viewed such breaches and, as far as possible, facilitated fair conduct and adherence to the original commitments.

Problems and challenges encountered by regional offices

Victims who approached the Commission after the cut-off date for making the initial human rights violation statement

46. The fact that that only those declared to be victims by the HRVC or Amnesty Committee were eligible for reparation was constantly brought to the RRC's attention. The cut-off date for submissions of human rights violations (HRV) statements (December 1997) presented a number of difficulties, as many people felt they had been unable to make a statement for a number of legitimate reasons. This was especially true in KwaZulu-Natal, where many victims had been advised – either by their political party or by their traditional leadership – not to approach the Commission. The initial statement cut-off date was extended in an attempt to accommodate this group, and as many as 3000 statements were submitted at the eleventh hour.

47. The challenge for regional RRC staff was to explain the Commission's closed-list policy, often in the face of a situation where individuals who were clearly victims of political violence had missed the opportunity to make an HRV statement.

Difficulty locating victims

48. Regions and the respective fieldworkers struggled to locate victims who had moved after making their initial statement to the Commission; whose recorded

addresses were incomplete or inaccurate, or who lived in remote and inaccessible areas. This was especially marked in the Northern Province and northern KwaZulu-Natal.

49. Local radio and press were used on many occasions to call on victims either to approach regional offices or to meet at local venues where they could be assisted in completing application forms. This produced only sporadic results, but did have the effect of encouraging a number of people to make contact. *Radio Zulu, Lesedi FM, Ilanga* and the *South Coast Herald* in KwaZulu-Natal and the Free State were generous in their allocation of free air time and column space.

Providing documentation

50. Supplying the necessary supporting documentation with the application form proved to be one of the biggest delaying factors in the application process. Many individuals simply did not have original birth or marriage certificates. They then had to produce affidavits as official proof of the relevant information.

Accessing commissioners of oaths

51. Because the application form was itself an affidavit, each application had to be attested to by a commissioner of oaths. This proved to be a major, recurrent problem in rural areas, and further delayed the process. In some regions it was reported that police officers who were commissioners of oaths were reluctant to assist. Their attitude was perceived as a political or personal reluctance to support the process.

Copying documentation

52. Many people were approached in domestic situations where no photocopying facilities were available. Again, this meant delays in processing applications. Though the RRC purchased a mobile photocopier for each region, this did not solve the problem.

Inaccessible roads

53. The RRC experienced great difficulty in accessing victims in the Northern Province during the months of March to July 2000, owing to flood damage. Four-wheel drive vehicles had to be used to reach applicants.

Mistrust of the process

54. For a number of reasons, some victims felt that the Commission's mandate was a pretence that would inevitably fail to deliver anything constructive. As a result some identified victims, on receiving application forms, would send the field-worker away, presumably waiting to see if delivery seemed likely before inviting the fieldworker to return. This further delayed the process.

55. Another difficulty was that many individuals associated the Commission with the ruling political party. This issue was often raised directly with staff, whom were regularly accused of delaying or pushing forward the applications of certain individuals because of some perceived political or personal bias.

Increasing efficiency of application form recovery

56. A number of factors enabled the RRC to improve its processing times. Regional co-ordinators monitored the efficiency of DRSTs, and the analysis of performance indicators enabled the RRC to identify those who regularly took longer than the two-week turn-around period to deliver completed application forms. The contracts of these DRSTs were not extended. In this way, the national DRST team was right-sized, leading to a better quality of assistance and reducing the number of forms that had to be referred back for further information. The added incentive of a higher remuneration rate when assessing applicants helped consolidate improved performance levels.

Negotiating assistance to those who visited regional offices

57. Many victims approached regional offices directly. Staff had to exercise a great deal of creativity in limiting expectations of direct assistance from the Commission while, at the same time, providing adequate support.

58. It should be noted that the idea that the Commission would assist and support victims was founded in the spontaneous commitments made by Commissioners serving on panels during the human rights violations hearings. Although such commitments were understandable in the traumatic environment of the time, these declarations were made before a reparation policy was in place, and left the RRC with a legacy of perceived undertakings that could not possibly be met and which, in turn, led to a great deal of frustration from victims.

CAPTURING REPARATION APPLICATION FORM INFORMATION

59. When the interim reparations regulations were promulgated, it became clear to the RRC that the information submitted by applicants should be captured onto its database. This was discussed with the President's Fund, as the RRC had neither the staffing resources nor the mandate to proceed with this. Although the President's Fund undertook to carry out this responsibility, it later emerged that this information had never been captured.

60. In November 2000, the Department of Justice approached the Commission with a request that applications be captured. Cabinet had concluded that the information on the application forms should be available in a more user-friendly format. The Department allocated R350 000 for this purpose, of which the RRC used R150 000 to contract a data-capturing company. The capture of all forms currently on hand was completed by February 2001.

61. The value of this project was that any number of variables related to an individual victim or applicant could now be isolated. For example, it is now possible for the Department of Housing to request all the names, identification numbers, addresses and verbatim comments related to a housing recommendation made by the RRC. This applies equally to other departments and reparations areas: education, medical, mental health, symbolic, welfare and employment.

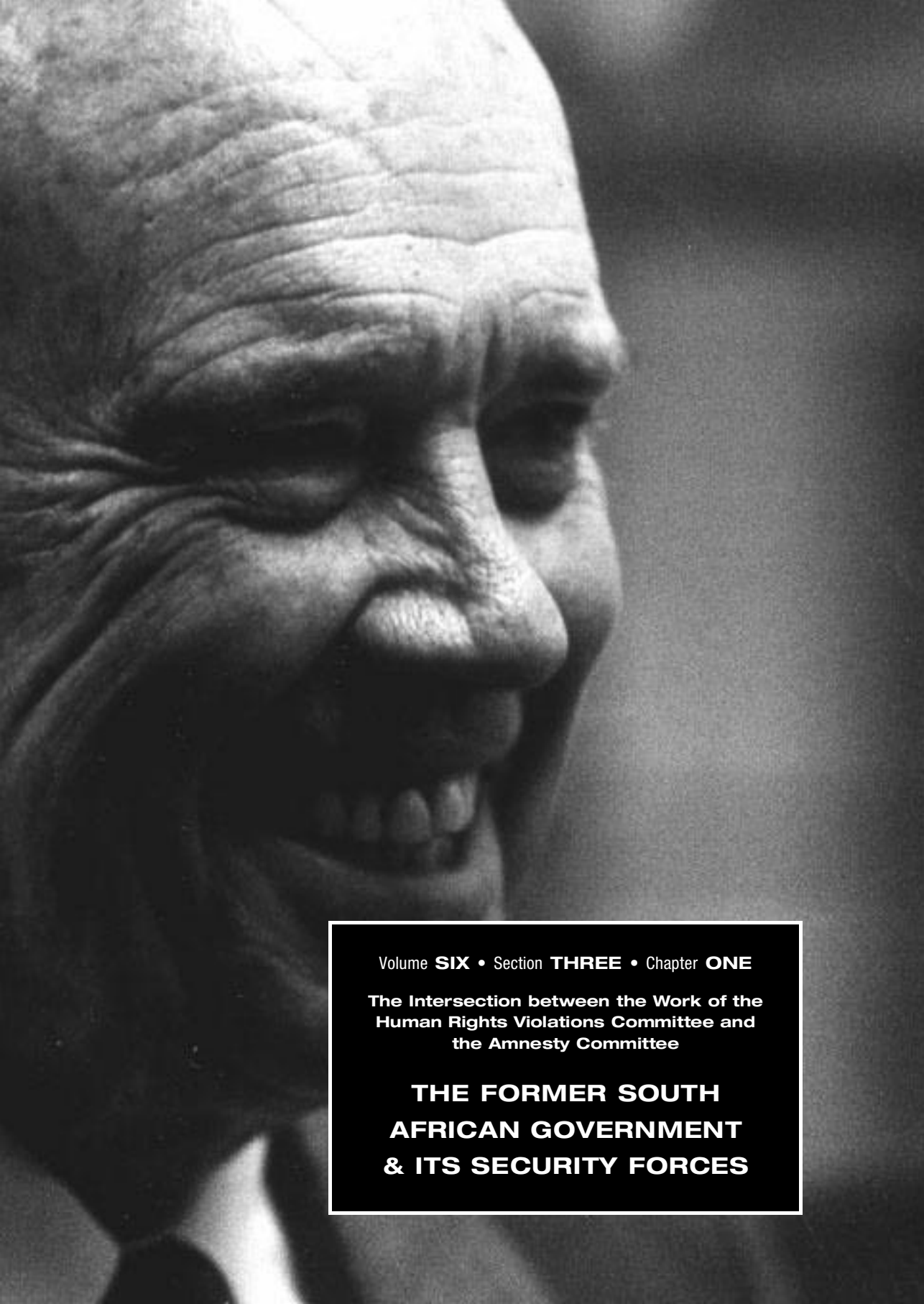
INTERIM REPARATION STATISTICS

62. In the three and a half years since the adoption of the regulations for interim reparations, the RRC completed the following:
    a As at 30 November 2001, 22 274 victim finding notifications with reparation application forms had been sent out via regional offices and field workers to survivors and/or their relatives.
    b Of these, 20 389 applications were returned (representing a 92 per cent return rate).
    c The RRC was able to access, process and make recommendations on 17 016 of these returned applications. These were then forwarded to the President's Fund in the Department of Justice and Constitutional Development.
    d Interim grants to the value of R50 million were awarded by the President's Fund to assist individuals to access the recommended services.

e The unreturned applications (1821) were re-sent to identified recipients, using alternative addresses if provided. Where possible, the voters' role was used (under the auspices of the Independent Electoral Commission (IEC)) to find new addresses. If and when these are returned, they will be processed by the President's Fund.

f The RRC has been unable to trace 1770 identified victims, for whom no identifiable addresses or identity numbers were provided. Their names are on record and will be given to the Presidents' Fund. Unidentified victims mentioned in amnesty hearings make up 20 per cent of the untraceable potential recipients. Their names are unknown to the Commission.

g The RRC believes that the four years of collecting detailed profiles of the consequences of gross human rights violations for identified victims will assist in the costing and development of an acceptable final reparation policy. (...p181)



Volume **SIX** • Section **THREE** • Chapter **ONE**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE FORMER SOUTH AFRICAN GOVERNMENT & ITS SECURITY FORCES

The Former South African Government and its Security Forces

PART ONE: OVERVIEW OF AMNESTY APPLICATIONS FROM MEMBERS OF THE SECURITY FORCES: 1960–1994

■ INTRODUCTION

1. The Truth and Reconciliation Commission (the Commission) found the state – and in particular its security agencies and affiliated policy and strategy formulation committees and councils – to be the primary perpetrators of gross violations of human rights committed during the thirty-four years it was mandated to investigate. [1]

2. Some 50 per cent of all amnesty applications received from members of the security forces related to incidents that occurred between 1985 and 1989. No applications were received in respect of incidents that occurred in the first decade of the Commission's mandate and few applications were received for the pre-1985 and post-1990 periods. Despite this, evidence received by the Commission shows that the security forces were responsible for the commission of gross human rights violations during both of these periods.

3. Most of the applications were received from members of the Security Branch, both from Security Branch headquarters and from the nineteen regional Security Branch divisions. These applications and the ensuing amnesty hearings provided new and compelling detail about how the Security Branch understood and participated in the political conflict.

4. On the other hand, despite the fact that the South African Defence Force (SADF) was responsible for numerous violations, especially outside of South Africa,

1 For an overview of the role of the security forces in suppressing resistance and countering armed actions by the opponents of apartheid, refer to Volume Two, Chapter Two, p. 42; Chapter Three, p. 165; Chapter Seven, p. 577. Refer also to the Regional Profiles in Volume Three. For a summary of the findings made against the state, refer to Volume Five, Chapter Six, p. 212ff.

very few SADF members and operatives applied for amnesty. The major SADF applications related to incidents committed inside South Africa that were either already in the public domain or were connected to applications by Security Branch applicants.

5. Inside the country, the SADF was involved in the development and management of national security policy, especially with respect to the National Security Management System (NSMS) and the development of the strategy of counter-revolutionary warfare, which provided the framework in which gross violations of human rights took place.

6. The dearth of applications reflects the general reluctance of SADF members to participate in the amnesty process.

7. The small number of applications for external operations contrasts strikingly with the Commission's conclusion that the regions beyond South Africa's borders bore the brunt of the counter-revolutionary warfare waged by the South African security forces, including the police, the defence force and intelligence.[2]

8. No members of the National Intelligence Service (NIS) applied for amnesty. This was consistent with their stated position that, as members of a non-operational structure, they were not directly involved in the commission of gross violations of human rights.

STATISTICAL OVERVIEW[3]

9. A total of 293 members of the former government's security forces applied for amnesty. Of these, 256 (87.4%) applied for offences committed while they were South African Police (SAP) force members; thirty-one (10.6%) applied for offences committed while they were SADF members; two applied for offences committed while they were SAP members and later SADF members; two applied for offences committed while they were in the Department of Prisons; one applicant was the Minister of Law and Order and two applicants' specific affiliation is not known. The overwhelming majority (229, or 78%) of the SAP members were based in the Security Branch at the time of the violation.

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2 Volume Five, Chapter Six, p. 257, para 16; Volume Two, Chapter Two.

3 The statistics in this section are based on amnesty matters for which the Amnesty Committee made written decisions. It thus excludes all those who were refused amnesty administratively at the outset of the process because the applications failed to meet the most basic criteria for amnesty. Thus all obviously criminal matters, and matters otherwise out of mandate (e.g. offences committed after the cut-off date) were immediately excluded and applicants received pro-forma refusals. As a consequence, the statistics in this section do not correlate with those referred to in the report of the Amnesty Committee.

10. Only thirty-one of the amnesty applicants were members of the SADF. Moreover, the greater part of this batch of applications related to violations committed by SADF members inside South Africa. Only five SADF applicants applied for amnesty for external violations, despite the large numbers of violations reported as a result of their activities in neighbouring countries.[4]

11. Two of these applications were from white conscripts. Medic and conscript Sean Mark Callaghan applied for and was refused amnesty for acts of omission regarding his role while attached to a Koevoet unit during 1983, and conscript Kevin Hall was granted amnesty for his role in killings committed as part of a unit on patrol during the mid-1970s.[5]

FACTORS IMPEDING AND ENCOURAGING APPLICATIONS

12. The most striking aspect about the applications from the state is that, on the whole, security force members who applied to the Commission for amnesty were not supported by politicians and policy-makers at whose behest they had operated. While there were significant applications from command levels, this was by no means exhaustive and the majority of applicants were the 'trigger-pullers'.

13. In the early days of the Commission, most members of the former security forces viewed the amnesty process with antipathy and deep suspicion. Many of them were bitter and confused. They had committed their careers (and indeed their hearts and minds) to defending the interests of the former regime. Now that the ANC was in power, they found themselves in the spotlight, torn between the need to account for their actions and their fear as to what might happen if they did. Many were angered by what they saw as betrayal by their former political masters as every man scrambled to save himself. Moreover, despite the fact that the negotiated settlement, the Interim Constitution and the ensuing legislation required that the amnesty provisions be even-handed, state perpetrators of human rights violations continued to be wary of the Amnesty Committee and the Commission as a whole.

14. A number of factors eventually persuaded state operatives to participate in the process:

4 Volume Two, Chapter Two.

5 See further Volume Four, Chapter Eight.

Threat of prosecution

15. The granting of amnesty based on individual disclosure was built on what was described as the 'carrot and stick' approach. In other words, if you came forward and told all (other factors being equal), you would be granted amnesty. If you did not, you could face prosecution for your crimes. Hence, some members of the security forces submitted applications for amnesty because they knew they would be found out and prosecuted.

16. There is no doubt that, without the prosecution of Colonel Eugene de Kock, the Commission would have received far fewer amnesty applications. In October 1996, De Kock, the former commander of the C1/Vlakplaas[6] unit, was found guilty on eighty-nine charges and sentenced to two life terms plus 212 years' imprisonment. De Kock was one of the first to submit an application for amnesty to the Amnesty Committee, leading to a stream of applications from co-perpetrators. Indeed, the number of applicants in De Kock-related incidents accounts for 48% of all Security Branch applications.

17. The Amnesty Committee also received applications from Northern Transvaal security force operatives and several from the SADF following an extensive investigation by the Transvaal Attorney General's Office. Similarly, when the Eastern Cape Attorney General's Office investigated the disappearance of the 'PEBCO[7] Three' and the killing of the 'Cradock Four', a number of applications were received from the Eastern Cape Security Branch.

18. Likewise, following an investigation by the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation led by Judge Goldstone, and a later investigation by the Natal Attorney-General's Office into the activities of the Port Natal Security Branch, a number of applications were received from members of that branch.

19. Conversely, in a number of instances, it is clear that applicants chose not to apply for incidents where they believed that there was little investigative interest or likelihood that the state would make headway with a case against them. Applications from Civil Co-operation Bureau (CCB) operatives, for example, referred to only a handful of incidents committed in the Western Cape, despite their involvement in a far wider range of unlawful activity both inside and outside South Africa.

6 See Part Three of this chapter.

7 Port Elizabeth Black Civic Organisation.

Protection from civil liability

20. Although amnesty granted by the Amnesty Committee provides protection from civil liability, the various South African indemnity laws do not.[8] The former security forces enjoyed extensive indemnity under the law, which covered actions arising from unrest policing and the apprehension of political suspects. Such indemnity did not, however, apply to abuses committed during covert operations. Many members applied for amnesty in order to avoid being privately sued.

Official interventions

21. Urged by a former state attorney, Mr Jan Wagener, General van der Merwe, the former Commissioner of Police, approached the Commission to discuss the concerns of security force operatives. He afterwards convened a meeting of members of the former Security Branch and assured them that they would have the backing of the generals for actions undertaken in the course of their duty, provided that such actions had been authorised.

22. Discussions were also held between former SADF generals and the Amnesty Committee. The generals were concerned about the fact that, while the legislation gave both the Amnesty Committee and the Commission a mandate beyond South Africa's borders, amnesty granted by the Amnesty Committee did not preclude a foreign state from seeking to pursue prosecution. Because an amnesty granted in South Africa has no validity in international law, the former SADF leadership advised its members not to apply for amnesty for actions outside South Africa.

23. Amnesty applications from former SADF members were channeled through a 'nodal point' set up by the South African National Defence Force (SANDF)[9] and run entirely by former members of the SADF. The purpose of the nodal point was to channel requests from the Commission. Members of the former SADF were encouraged to work through the nodal point when applying for amnesty. As noted earlier, few applications for amnesty were received from SADF-linked

8 In order to open the way for negotiations, new indemnity provisions were introduced to allow for the return of the exiles and the release of those serving sentences for political offences. For a detailed description of the indemnity laws and processes that began during the negotiations period and ended only when the Commission began its work, see Volume One, Chapter Four.

9 After 1994, the national defence force changed its name from the South African Defence Force (SADF) to the South African National Defence Force (SANDF).

operatives, and the Commission received a strong impression that the nodal point acted as a gate-keeper rather than facilitator for amnesty applications.

VIOLATIONS BY CATEGORY

24. Security force applicants applied for a total of 550 incidents, eighty-six of which encompassed a number of separate acts.[10] Examples of these were assaults/torture during interrogation between 1984 and 1989; the arson/bombing campaign by the Northern Transvaal Security Branch in 1986 to 1988; various Stratcom[11] activities between 1977 and 1994; supplying the Inkatha Freedom Party (IFP) with weapons between 1991 and 1992, and the intimidation of named civilians from 1974 onwards.

25. The 550 incidents involved or resulted in the following 1583 acts:[12]

Abductions	80
Attempted abductions	2
Arms caches	9
Bombing and arson	83
Attempted bombing and arson	4
Cover-up[13]	8
Body mutilation/destruction	44
Disinformation/discrediting actions	21
Fraud and theft	34
Attempted fraud/theft	9
Illegal weapons	4
Intimidation	72
Killings[14]	889
Attempted killings	143
Torture/assault	98
Other	42

10 As early as 1996, the Amnesty Committee decided to deal with incidents rather than individual acts in order to make it possible to deal with groups of applicants who had been involved in the same incident but who may have committed a number of different acts. Thus, when dealing with applications, the Committee decided to focus on specific incidents, with each incident logically comprising a number of different acts/offences.

11 Strategic communication or Stratcom: a form of psychological warfare waged by both conventional and unconventional means.

12 These statistics count major acts rather than each offence associated with an incident. For example, the 'Cradock Four' incident would be counted as abduction, killing and body mutilation. In numerous incidents, applicants applied for a range of associated offences, such as use or transport of an illegal weapon, crossing a border illegally, and so forth. These associated acts have not been counted.

13 This figure counts applicants who applied only for covering-up an offence – for example, applications from Stratcom operatives for being associated with the cover-up related to the death of Mr Neil Aggett in detention in February 1982. It must be noted that virtually every offence committed by a member of the security forces includes an element of subterfuge and cover-up. In this regard, this statistic represents a massive under-count.

14 This figure includes the killing of 624 persons in one single incident – see para 36.

26. The eighty-six incidents for which there were a number of acts or victims or outcomes can be classified according to the following violations:

Abduction	2
Bombing and arson	1
Body mutilation/destruction	1
Disinformation/discrediting actions	4
Fomenting violence	27
Fraud and theft	5
Illegal weapons	4
Intimidation	21
Killing[15]	3
Attempted killings	6
Torture/assault	17
Unspecified	4
Weapon modification	7

27. The majority of incidents (446) were committed while the applicants were employed by the SAP's Security Branch:

Violations by date

28. Some 50 per cent of all incidents for which amnesty was sought occurred between 1985 and 1989. A far smaller number of applications was received for incidents occurring during the pre-1985 and post 1990 periods, and none for the first decade of the Commission's mandate period:

1960–1969	0
1970–1979	29
1980–1984	86
1985–1989	274
1990–1994	83
Multiple periods	47
Unspecified	31

15 Acts of intimidation of a single person or family over a limited period of time have been counted as one specified act of intimidation although several separate acts may have been involved. However, where a single person or family or organisation was targeted over a lengthy period (often over years) this has been counted with the 'process' or 'umbrella event' violations.

Violations by region

29. The 550 incidents were spread over the regions as follows:

Homelands	19
Orange Free State	24
Cape	48
Natal	49
Transvaal	307
Outside SA	73
Multiple place[16]	19
Unspecified	11

30. Over 100 of the 307 incidents (56%) that occurred in the Transvaal appeared in two applications covering Stratcom activities. The overwhelming majority of incidents took place in the Transvaal.

31. Seventy-three, or some 13 per cent, of incidents took place outside of South Africa: Angola (2), Botswana (14), Lesotho (8), Mozambique (5), Namibia (10), Swaziland (29), Tanzania (1), United Kingdom (1), Zambia (2) and Zimbabwe (1). The majority of external incidents for which there were applications (some 40%) took place in Swaziland, which was regarded as a police rather than a military domain.

Violations by rank

32. It was possible to determine only 862 ranks out of a possible 1222 across the 550 incidents. Just over 48 per cent of all applicants were lower-ranking personnel at the time the violation was committed, while just under 52 per cent were commissioned officers (lieutenant and above). The overwhelming majority of incidents for which there were applications involved several applicants of varying ranks and appear no different from routine operational profiles. This challenges the view that violations were committed by small renegade groups of operatives.

33. The fact that senior personnel drew on trusted operatives of considerably lower rank in a routine chain of command suggests that such operations were part of normal police duties. Moreover, three former heads of the Security Branch

16 Some incidents took place over more than one region or country. For example, several MK operatives were abducted from Swaziland and tortured, assaulted or killed in Transvaal or Natal.

applied for amnesty, two of whom went on to become Commissioners of Police, the highest position in the SAP. One former cabinet minister responsible for Law and Order also applied for amnesty.

Violations by race and gender

34. All of the applicants were male, and some 255 (86%) were white. Only seven of the black security force applicants were *askaris*[17] A significant proportion of black applicants had already given statements to the Attorney-General and several were potential state witnesses.

35. All the black security force operatives who applied for amnesty were of extremely low rank, often despite lengthy periods of service. This is doubtless the result of the racism inherent in the former SAP.

TYPES OF VIOLATIONS (MOST COMMON CATEGORIES)

Killings and attempted killings

36. Killings were by far the largest category of violation for which amnesty applications were received. However, the numbers need to be approached with caution. One soldier applied for a single incident that resulted in 624 killings, during the SADF raid on Kassinga in Southern Angola on 4 May 1978.[18] Almost all of the remaining 265 relate to the killing of political activists, especially those believed to have had links with the ANC and Umkhonto we Sizwe (MK).

37. In sharp contrast, most of the killings recorded in the human rights violations data are associated with public order policing or so-called 'riot control'.[19] Only two amnesty applications were received in this category.

38. The number of attempted killings reflects those individuals targeted in failed operations as well as those injured 'in the crossfire' where such information was specified. In many instances, however, no such detail was given and this figure is thus a significant under-count. For example, this figure does not include

17 Former members of the liberation movements who came to work for the Security Branch, providing information, identifying and tracing former comrades.

18 Johan Frederich 'Rich' Verster was refused amnesty for his involvement in the Kassinga massacre on 4 May 1978 and granted amnesty in chambers for several attempted killings of SWAPO personnel and other incidents that took place in Namibia.

19 Volume Two, Chapter Three, pp.174–87.

those present in a building or residence when it was attacked, unless they were named as having been injured.

39. Similarly, incidents involving 'weapon modification' are counted separately, unless deaths or injuries were specified or known of. 'Weapon modification' involved tampering with or modifying a weapon with the intention of making it lethal to the user, and thus constitutes attempted killing.

40. Forty-four of the applicants in the 'killing' category applied for amnesty for the mutilation and destruction of the bodies of their victims. The purpose of such mutilation was to disguise the fact that the victim had been killed. In some instances, bodies were completely destroyed by burning or the repeated use of explosives. In others, bodies were placed on limpet mines or landmines, which were then detonated in order to make it appear that the victim had blown himself up while laying them.

41. The eighty-three successful and four attempted cases of bombing and arson are counted separately. These include forty-eight attacks on homes using petrol bombs or other explosive devices, twenty-one cases of bombing of non-residential buildings as well as several attacks on installations or government buildings. Only six of the eighty-four cases were arson attacks on vehicles.

42. It should be noted, however, that the statistics do not in any way represent the full extent of this practice. Members of a covert unit of the Northern Transvaal Security Branch applied for an unspecified number of attacks on activists' homes using either petrol bombs or other more lethal explosive devices in several townships during 1986 and 1987. One applicant estimated that he was involved in between thirty and forty such attacks, another in as many as sixty.

Torture and assault

43. The Amnesty Committee received applications specifying only ninety cases of torture or assault. In addition, seventeen applications or investigations involved the use of torture and assault against an unspecified number of victims. A small number of applications involved torture in formal custody. These figures stand in sharp contrast to the 4792[20] torture violations recorded in HRV statements.

20 This figure is based on torture violations inside South Africa (i.e. excluding ANC camp torture) as reflected in the Final Report.See further Volume Two, Chapter Three, p. 190, para 103.

44. These low figures may be partly explained by the fact that perpetrators seldom seem to have regarded torture as a major violation. Evidence of torture often emerged only during amnesty hearings and then as part of an amnesty application for an abduction or a killing, not as a human rights violation in its own right. Numerous applicants admitted that psychological and physical coercion was routinely used in both legal detentions and unlawful custody.

45. Further, although the Amnesty Committee received a number of applications for killings in unlawful custody, it received applications for only two of the fifty-nine known deaths in legal detention[21]: those of Mr Steve Biko and Mr Stanza Bopape. In addition, several detainees [22] appear to have been formally released, but handed over to members of C1/Vlakplaas or other Security Branch operatives and killed.

Intimidation and disinformation

46. The majority of the ninety-one incidents in this category relate primarily to the so-called Stratcom activities of the Witwatersrand Security Branch. Acts of intimidation included harassing individuals by damaging their property; constant and obvious surveillance; making threatening phone calls, and firing shots at houses or throwing bricks through windows. Apart from one or two isolated incidents, no similar applications were received from regions outside of the Witwatersrand, despite the fact that such forms of intimidation were fairly routine elsewhere.

47. The twenty-five incidents involving discrediting or disinformation also relate mainly, though not exclusively, to Stratcom activities. These were not exclusively carried out by the Witwatersrand Security Branch.

Fomenting violence

48. Twenty-seven applications confirmed earlier suspicions about the state's involvement in fomenting the violence and bloodshed that engulfed areas of South Africa in the 1990s. The Amnesty Committee heard evidence that support, arms and training were given to the IFP – mainly by Vlakplaas/C1 – and that

21 See Volume Two, Chapter Three, pp. 208–-11.

22 These include two unknown PAC detainees [AC/2001/194]; MK Scorpion (possibly Mr Ronald Madondo – AC/2000/151); Mr Gcinisizwe Kondile [AC/1999/037], Mr Johannes Mabotha [AC/2000/084] and an unknown detainee [AC/2000/081].

support and arms were provided to the homelands in order to back attempted coups and promote destabilisation amongst the police and the military.

49. Six such incidents occurred during the 1980s and involved the provision of paramilitary capacity to the IFP (Operation Marion) and an attempt to set up an Inkatha-like organisation in the Eastern Cape/Ciskei/Transkei area (Operation Katzen).

PART TWO: ANALYSIS OF AMNESTY INFORMATION: 1960–1994

EXTRAJUDICIAL KILLINGS

50. The Commission identified several types of extrajudicial killings: targeted killings or assassinations; killing following abduction and interrogation; ambushes; entrapment killings, and killing of own forces.

51. Applications were received for 114 incidents involving 889 killings. The Kassinga raid alone accounts for 624 deaths. The killings took place in the following time-periods and regions:

• 1970–1979:	Cape	1
	Transvaal	2
	Outside SA	627
• 1980–1984:	Cape	3
	Transvaal	13
	Natal	2
	Outside SA	13
• 1985–1989:	Cape	20
	Transvaal	67
	Natal	42
	Orange Free State	4
	Homelands	15
	Outside SA	44

Targeted killings

52. Applications were received for the assassination of seventeen high-profile political leaders both inside and outside South Africa. [23] In addition, applications were received for the attempted or planned assassination of several others. [24]

53. Applications were received for targeting the homes of activists living inside the country, leading to the deaths of twenty-eight people. Of these, at least twenty-four were killed in two attacks in Natal and KwaZulu [25] In what became known as the 'KwaMakhutha massacre', thirteen people, mostly women and children, were killed by an IFP hit squad, armed and trained by the SADF as part of Operation Marion, on 21 January 1987.[26] Kommandant Jan Anton Nieuwoudt [AM3813/96; AC/2001/264] and Andre Cloete [AM5726/97; AC/2000/224] of the SADF were respectively granted and refused amnesty for their role in Operation Marion.[27] An SADF operative was refused amnesty for his part in the attack.

54. In the 'Trust Feeds massacre',[28] which took place on 3 December 1988, eleven people attending an all-night funeral vigil were killed in an attack on a house believed to be occupied by United Democratic Front (UDF) supporters. The attack was planned by the local Joint Management Centre (JMC) in collaboration with local IFP leaders. None of the victims was an UDF supporter. The chairperson of the local JMC was granted amnesty for the attack.

55. Applications were received from Northern Transvaal Security Branch operatives [29] for the deaths of four people killed during their campaign of bombing local activists' homes in the Pretoria region. None of the four killed was a target in the attacks.

56. Applications were received for the targeting and killing of eighteen individual MK or APLA personnel outside South Africa. Targeted killings were generally

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23 Outside South Africa: Ruth First, Jabulile Nyawose, Petros Nyawose, Jeanette Curtis Schoon, Vernon Nkadimeng. Inside South Africa: Griffiths Mxenge, Siphiwe Mtimkulu, Topsy Madaka, Qaqawuli Godolozi, Sipho Hashe, Champion Galela, Matthew Goniwe, Sparrow Mkhonto, Fort Calata, Sicelo Mhlawuli, Fabian Ribeiro, Florence Ribeiro.

24 Dikgang Moseneke, Smangaliso Mkhatshwa, Abdullah Omar, Gavin Evans, Albie Sachs.

25 From 1972, KwaZulu comprised twenty territorial fragments scattered throughout the province of Natal. During the period of transition in the early 1990s and as the KwaZulu Administration was dismantled, all areas in the province came to be known as KwaZulu/Natal and, following the April 1994 elections, as KwaZulu-Natal.

26 Volume Two, Chapter Five, pp.464–9.

27 Volume Two, Chapter Five, pp. 464–9.

28 Volume Two, Chapter Three, p. 198ff.

29 AM5183/97;AM2776/96;AM2773/96;AM2777/96;AM2775/96.

conducted at night and, in several instances, resulted in persons other than the target being killed. In at least two incidents, children were the victims.

57. In addition, applications were received for the killing of persons in two large-scale cross-border raids. Security Branch Headquarters, Western Transvaal and Soweto Security Branch operatives applied for amnesty for their role in identifying targets for the SADF Special Forces raid into Gaborone, Botswana on 14 June 1985, in which twelve people were killed.[30] Members of C1/Vlakplaas and Security Branch Headquarters applied for amnesty for the killing of nine people in a raid into Maseru, Lesotho on 19 December 1985.[31]

58. Applicants testified that when cross-border raids were being planned before the mid-1980s, *ad hoc* groups would be set up to identify and collect intelligence. Such groups would consist of representatives from the relevant Security Branch Headquarters desk, as well as Security Branch divisional offices with specific intelligence expertise, the NIS, SADF Military Intelligence and Special Forces. Thus, for example, the following structures engaged in target identification for the Gaborone raid: the Africa Desk at Security Branch Headquarters; the Western Transvaal, Soweto and Transvaal Security Branch offices; NIS; SADF Military Intelligence (in all probability the Home Front sections of the Directorate of Covert Collection (DCC) as well as of the Directorate (South Africa) and Special Forces.

59. Although the applicants professed that it was not policy to target civilians not associated with MK or living in the country where targets were based, they admitted that civilians were 'caught in the crossfire'. Moreover, despite applicants' claims that a number of targets were removed from the original Botswana raid list because of the presence of children and Batswana citizens, both children and non-South African civilians were killed in the raid.

60. A number of applicants from different regions testified that, in 1985/86, a more formalised structure known as TREWITS was established to conduct target identification [32]. Although based in Section C2 at Security Branch Headquarters, personnel from both SADF Military Intelligence and NIS was

30 AM4032/96;AM4122/96;AM4126/96;AM4149/96;AM4152/96;AM4389/96;AM4513/96;AM7040/97; AM4125/96 and AM4386/9.

31 AM0066/96;AM3764/96;AM3765/96;AM4385/96; AM4396/96 and AM4157/96.

32 See Volume Two, Chapter Three, pp. 275–98 for a discussion on the establishment of TREWITS and target development.

permanently seconded to TREWITS. Applicants also referred to regional TREWITS meetings made up of representatives from the different intelligence structures.

61. Three applications were received from former SADF personnel in connection with their work on target identification structures. One was received from Commandant Jan Anton Nieuwoudt, a member of the Home Front Section of Military Intelligence, responsible for target development.

62. The second application was received from Jacobus Adriaan Huisamen, who served as an SADF Military Intelligence representative on TREWITS in the early 1990s. His application was refused administratively at the outset of the process, as it failed to identify specific violations that had resulted from the targets he had developed. In his application and supporting documentation Huisamen made available to the Commission's investigative unit, he made it clear that he believed that target information provided by TREWITS was used operationally and led to the commission of gross violations of human rights that included killing.

63. In 1986, Captain Henri van der Westhuizen, a member of Military Intelligence involved in target identification, began working closely with the Security Branch in Ladybrand. He was later assigned responsibility for working on target intelligence on MK in Lesotho. At this stage he was based in the projects section of Military Intelligence whose primary focus was monitoring the activities of the ANC. He played a role in establishing a target development group that functioned first as part of Military Intelligence and later (from 1987) as part of Special Forces Headquarters. This group worked in close liaison with TREWITS.

64. Captain van der Westhuizen testified that intelligence was collected on ANC and SACP personnel and facilities in Lesotho. Once sufficient information had been collected, it was presented to the General Staff of the SADF for possible action. Evidence from Security Branch applicants in joint operations with Special Forces supports the view that, at least as far as external targets were concerned, authorisation took place at a high level in the SADF.

65. Applications were received for the targeted killings of fourteen of the fifty-two MK personnel[33] listed on the ANC submission as having died in Swaziland 'at enemy hands'. The majority of these applications were joint C1/Vlakplaas and Eastern Transvaal operations.

33 In fact there are sixty-two names. However the list includes those killed in the two Piet Retief ambushes in 1988 as well as some duplication where persons have been listed under both MK and birth names.

66. Captain Hendrik 'Henri' van der Westhuizen applied for amnesty for the attempted killings of Mr Albie Sachs in Mozambique in 1987 and 7 April 1988 respectively. His application was granted [AM9079/97; AC/2001/257].

67. No applications were received for the following targeted killings of high-profile political activists: Mr Abram Okgopotso Tiro (Botswana, 1 February 1974); Mr John Dube, aka Boy Mvemve (Zambia, 12 February 1974; Dr Richard Turner (Durban, 8 January 1978), Mr Joe Gqabi (Zimbabwe, 31 July 1981), Ms Victoria Mxenge (Durban, 1 August 1985); Mr Toto Dweba (Eshowe, Natal, 20 August 1985); Ms Dulcie September (France, 29 March 1988); Dr David Webster (Johannesburg, 1 May 1989), and Dr Anton Lubowski (Namibia, 12 September 1989).

68. No applications were received for the attempted killings of Mr Godfrey Motsepe (Belgium, 2 February 1988 and 27 March 1988), Ms Joan and Mr Jeremy Brickhill (Zimbabwe, 13 October 1987); the Revd Frank Chikane (1989), and Fr Michael Lapsley (Zimbabwe, 28 April 1990).

69. Of the twenty-one[34] people recorded in the ANC submission as having been killed in Botswana, eleven were killed in the 14 June 1985 Special Forces raid on Gaborone. No applications were received for six of the remaining ten killings. Botswana was regarded as the responsibility of the SADF. C1/Vlakplaas and the Western Transvaal Security Branch both testified to close co-operation with the Special Forces group tasked to work on disrupting the ANC's activities in Botswana.

70. No applications were received for the following large-scale cross-border raids:
    a Matola, Mozambique, 30 January 1981 by SADF Special Forces: sixteen people were killed;
    b Maseru, Lesotho, 9 December 1982 by SADF Special Forces: forty-two people were killed;
    c Matola, 23 May 1983 by the South African Air Force: six people were killed;
    d Zambia, Zimbabwe and Botswana, 19 May 1986 (the so-called EPG raids) conducted by the SADF, and
    e Umtata, 17 Oct 1993 by the SADF: five youths were killed.

34 The MK submission list gives twenty-three names but two are duplicated.

71. No amnesty applications were received with regard to twenty-nine of the forty-five[35] people recorded as having been killed in the 9 December 1982 raid on Maseru. Applications were received for only nine of the remaining sixteen people who were killed in the subsequent December 1985 raid. No applications were submitted for the remaining seven deaths.

72. No applications were received for four or possibly five killings in Mozambique, excluding the deaths in the Matola raid. No applications were received for five of the seven deaths listed in Zambia.

73. As noted above, Security Branch operatives involved in the process of target identification made application for their involvement in the June 1985 Gaborone raid. Special Forces members who conducted the raid did not apply.

Ambushes

74. The Amnesty Committee received amnesty applications for seven ambushes. Five ambushes took place between 1986 and 1988. Informers and/or agents played a role in five cases. In the remaining two, captive MK personnel were used to lure targets to the place where the ambush took place. The following cases illustrate the nature of these violations:
    a Two unknown MK Special Operations operatives were killed in the Western Transvaal in 1972. The incident followed the arrest of a number of Special Operations personnel, one of whom was allegedly induced to lure two operatives into South Africa. The applicant, Willem Schoon, was granted amnesty [AC/2001/193].
    b On 14 August 1986, two MK operatives, Jeremiah Timola (aka Tallman) and Mmbengeni Kone (aka Bernard Shange), were killed by C1/Vlakplaas and Eastern Transvaal Security Branch operatives while infiltrating South Africa. A Security Branch source, Shadrack Sithole, responsible for their transport, was also killed. At the same time, the two MK operatives responsible for transporting them to the Swaziland border were ambushed on the Swazi side of the border and one of the two, Mr Mzwandile Radebe, was killed. The survivor, Mr Vusumuzi Lawrence Sindane, escaped but was captured a day later. All of the applicants were granted amnesty for the killing of the MK operatives, but three applicants were refused amnesty for the killing of Mr Shadrack Sithole, the Security Branch source.[36]

35 Forty-eight names appeared on the list, but three are duplicated.

36 See Volume Two, Chapter Three, pp. 246–8 for further detail.

c Ms Lita Mazibuko was responsible for the transport arrangements of two groups of MK personnel in June 1988. Her handlers at Piet Retief Security Branch provided transport and drivers. Both groups were ambushed and killed on 8 and 12 June 1988 after which Mazibuko was paid for her services. She was subsequently apprehended by MK intelligence and severely tortured. Her handler, Flip Coenraad Theron, testified that, on her return to South Africa, she reported to him and was paid a further sum for her involvement.

Deaths in unknown circumstances

75. According to an MK list, 197 combatants died inside South Africa during the Commission's mandate period, the overwhelming majority of them being killed in combat situations. The MK list includes the names of the twenty-eight people for whose killings amnesty applications were received.

76. The Commission accepts that many operatives infiltrating South Africa were armed and that in this process, situations of combat arose. However, the possibility that some of these were not actually skirmishes but ambushes cannot be ruled out. Aside from the element of surprise, the security forces were able to choose the ambush ground, the targets were outnumbered and the security forces were able to deploy highly-trained personnel in the form of Special Forces, C1/Vlakplaas or the Special Task Force. In short, claims of deaths during attempted arrest should be regarded with scepticism.

77. In many instances, those who were killed were not identified at the time and were buried as paupers. Some were identified but their families were not informed of their deaths. As a result many post mortems and inquests were not properly conducted or subjected to independent scrutiny.

Entrapment operations and incidents in which weapons had been tampered with

78. Entrapment operations often involved supplying ANC and MK operators with modified weaponry such as hand grenades, limpet mines, landmines, guns and ammunition. Members of the Technical Section of Security Branch Headquarters admitted in amnesty hearings that a common *modus operandi* was to modify weaponry to make it lethal to users by such methods as zero-timing. There are numerous instances of combatants being killed by their own weaponry.

79. The Amnesty Committee received applications for seven entrapment operations in which forty-five youth activists were killed. These operations tended to target youth groups like South African National Student Congress (SANSCO) and the Congress of South African Students (COSAS), which were active in townships that the Security Branch regarded as hot spots. Such youth groups were infiltrated with a view to identifying and eliminating key leaders.

80. Using *askaris* posing as MK operatives, the security forces offered young men arms, training and transport out of South Africa. The *askaris* then lured them into ambushes or gave them zero-timed explosive devices with which they blew themselves up. Arrest was not regarded as an option in any of these operations: the intention was always to kill.

The 'COSAS Four'

81. Three COSAS members were killed and one was seriously injured in an entrapment operation organised by the West Rand Security Branch in Krugersdorp on 15 February 1982.[37] The operation entailed detonating explosives in a pump-house on an abandoned mine where an *askari*, whom the youths believed to be an MK operative, had promised to give them basic military training.

82. The applicants were, by majority decision, refused amnesty for this operation. The Committee felt that the decision to eliminate the group was not justifiable and that the applicants had failed to make use of other options available to them, such as arrest and arraignment, or preventive detention under the prevailing security legislation [AC/2001/198].

Operation Zero Zero

83. In June 1985, an entrapment operation[38] was conducted in the East Rand townships of Duduza, Tsakane and Kwa-Thema by a joint team from Security Branch Headquarters. General Johan van der Merwe, then second-in-command of the Security Branch, sought and received approval for the operation from then Minister of Law and Order, Louis le Grange.

84. The group of youths was infiltrated by Constable Joe Mamasela, who masqueraded as an MK operative.[39] Mamasela showed the young men how to detonate a

37 Volume Two, Chapter Three, pp.257–8.

38 Volume Two, Chapter Three, pp. 259–61, and Volume Three, pp. 628–631.

39 Although Constable Joe Mamasela played a role in many such incidents, he never applied for amnesty.

hand grenade and supplied them with grenades whose timing devices had been reduced to zero seconds. The person with whom Constable Mamasela had initially established contact, Congress Mtsweni, was given a zero-timed limpet mine to ensure that he did not survive to identify Mamasela. At midnight on the night of 25 June 1985, eight of the COSAS members were killed and seven were seriously injured as they attempted to throw the grenades at their chosen targets. Fifteen Security Branch operatives, including the head of the Security Branch and other senior personnel, applied for and were granted amnesty for the operation [AC/2001/058].

85. ***The 'Guguletu Seven'***

On 3 March 1986, seven operatives were killed in Guguletu, Cape Town, by a combined C1/Vlakplaas, Western Cape Security Branch and Riot Squad team. The group of youth activists had been infiltrated by C1/Vlakplaas operatives (working in conjunction with the Western Cape Security Branch), who provided them with weapons and training. Only one of the seven had apparently previously received military training from MK. The applicants presented conflicting evidence as to whether the intention had been to arrest or kill the activists. Two C1/Vlakplaas applicants were granted amnesty for this operation [AC/2001/276].

The 'Nietverdiend Ten'

86. On 26 June 1986, a joint operation by the Northern Transvaal Security Branch and SADF Special Forces led to the killing of ten youths from Mamelodi near Nietverdiend in the Western Transvaal.[40] The youths believed they were en route to Botswana for military training.

87. The applicants testified that this was one of several joint operations undertaken by Special Forces and the Northern Transvaal Security Branch. The role of the Security Branch was to identify the targets and that of Special Forces to carry out the operational aspects.

88. In this case, Constable Joe Mamasela, who had transferred to the Northern Transvaal Security Branch after his former C1/Vlakplaas commander Brigadier Cronje became divisional commander, was responsible for identifying the individuals. On the night of 26 June 1986, Mamasela drove ten young activists to the location in the Nietverdiend area.

40 Volume Two, Chapter Three, pp. 264–5.

89. The youths were ordered out of the minibus at gunpoint and injected with a chemical substance by Commandant Dave Trippet (deceased). Now unconscious, they were bundled back into the minibus and driven into Bophuthatswana by Special Forces operative Diederick Jacobus Vorster. A limpet mine and an AK47 were placed in the minibus, an accident was staged and the minibus was set alight.

90. The bodies were burnt so severely that identification was difficult, and there is some confusion about who was killed in this incident. These difficulties were compounded by the fact that the operation was followed by a second entrapment operation, also involving youths from Mamelodi, who became known as the 'Kwandebele Nine' (see below).

91. Mr Vorster testified that, following these operations, he had requested not to be deployed on such missions, both because of security concerns and because he did not believe that such operations were the proper function of a soldier. The applicants were granted amnesty.[41]

The 'Kwandebele Nine'

92. On the night of 15 July 1986, just two weeks after the killing of the 'Nietverdiend Ten', nine youths were shot dead and their bodies set alight in a house in Kwandebele.[42] The youths had been expecting Constable Joe Mamasela, who had offered to provide them with arms and training, but when they opened the door to him, Northern Transvaal hit squad members burst in. The youths were lined up and shot. Captain Hechter poured petrol over the bodies before setting them alight. The applicants were granted amnesty for this operation [AC/1999/248; AC/1999/030; AC/1999/033].

Jeffrey Sibaya and Mpho

93. In June 1987, Constable Joe Mamasela, posing as an MK operative, lured Mr Jeffrey Sibaya and a man known as 'Mpho' (possibly Mr Moses Lerutla) out of the township. Believing they were being taken for military training, the men followed Mamasela to a place north of Pienaarsrivier where they were beaten, kicked and then strangled to death by Northern Transvaal Security Branch operatives. Their bodies were subsequently placed on a landmine on a road in Bophuthatswana, which was then detonated. The applicants were granted amnesty for this operation [AC/1999/030; AC/1999/032].

41 AM3761/96;AM3759/96;AM3760/96; DJ Vorster AM5641/97;AM3799/96;AM5443/97;AM5471/96; AM4149/96;AM4125/96;AM2776/96;AM2773/96.

42 Volume Two, Chapter Three, p. 264.

The 'Soweto Three'

94. The Soweto Intelligence Unit (SIU) received information that a local Soweto activist, Casswell Richard Nceba, and other Soweto Youth Congress (SOYCO) members were involved in a campaign of intimidation, including attacks on the homes of policemen and informers. They also believed it possible that the group was in contact with MK structures. As a result, an *askari* attached to the SIU, Constable Moleke Peter Lengene, infiltrated SOYCO.

95. Constable Lengene supplied the group with AK47s, hand grenades and an SPM limpet mine. He later drew in two Vlakplaas *askaris* who provided training in the use of these weapons.

96. At this stage, the commander of the SIU, Lieutenant Anton Pretorius, approached the divisional commander of the Soweto Security Branch, Brigadier Sarel Petrus Nienaber, who granted permission to launch an entrapment operation. On 2 July 1989, three members of the SOYCO group were supplied with zero-timed limpet mines: Mr Nceba was killed when the zero-timed limpet mine detonated, Mr Bheki Khumalo was shot dead and Mr Richard Ngwenya died from injuries sustained after being shot.

97. The applicants were granted amnesty for the operation [AC/2001/007]. However, when granting them amnesty the Amnesty Committee had the following to say:

We must express our concern at the practice of giving training to these activists in the use of sophisticated and dangerous weaponry and then justify the need to act pro-actively by killing them, advancing the reason that they (activists) had become dangerous resultant to that training. In the present matter, Nienaber stated that the police created 'a monster' when they gave training to the activist. We agree with these sentiments. It however begs the question whether there were indeed no other available methods short of 'creating a monster' that could have been effectively used to obtain the required information [AC/2001/007].

98. In most of the above cases, the applicants admitted that they had not known the identity of the targets at the time. On their own evidence, they made little attempt to establish the identities of the individuals concerned, nor to check whether the Security Branch already had information about them and whether prosecutions would have been possible. On the other hand, one also needs to approach the version of events the applicants presented to the Amnesty

Committee with some caution. It may well be that applicants intended to give the Amnesty Committee the impression that they were mere pawns in the hands of their superiors, rather than active players with a far greater knowledge and understanding of the operations in which they were involved.

Killing of own people

99. The Amnesty Committee received security force applications for sixteen deaths in this category.

100. Four of the killings occurred in the 1980/81 period: two were *askaris* killed by C1/Vlakplaas because their loyalties were questioned, and two were alleged informants.

101. Applicants from C1/Vlakplaas, Security Branch Headquarters, Northern and Eastern Transvaal and the Eastern Cape Security Branches applied for amnesty for the killing of four black policemen, the wife of a policeman, two *askaris* and two sources between 1986 and 1989. C1/Vlakplaas and Port Natal Security Branch sought amnesty for the killing of three *askaris* in the post-1990 period. In addition, C1/Vlakplaas operatives applied for amnesty for the killing of two former *askaris* who had escaped.

102. With the exception of one *askari* who was killed by white members of C1/Vlakplaas on a drunken spree and two who were killed during ambushes, the remaining *askaris* appear to have been killed for fear that they might disclose evidence about hit squad activities.

103. Only in one instance, that of the 'Motherwell Four', were the perpetrators charged and convicted.

104. In addition to the above killings, C/1Vlakplaas and operatives from the Technical Division of Security Branch Headquarters applied for amnesty for the attempted killing of former Vlakplaas commander, Captain Dirk Coetzee. Although the attempt failed, it resulted in the killing of human rights lawyer Bheki Mlangeni.

Killings during an arrest or while in custody

105. Amnesty applications were received for approximately twenty-three killings committed while people were either being arrested or in custody. Eleven people

died while they themselves were being arrested, and five others were also killed during arrests. A further three died as a result of torture or assault[43] and four were killed during their detention or on their release.

Abductions/disappearances

106. Evidence from amnesty applications and hearings reveals that the Security Forces (including covert units, the Security Branch and the SADF) engaged in abduction operations inside and outside South Africa. The main purpose of the abductions was interrogation, killing or recruitment.

107. Of the eighty[44] abductions for which amnesty applications were received, only three people were abducted prior to 1980. Two of these were subsequently charged and one was returned to Swaziland. Twelve people were abducted between 1980 and the end of 1984. Abductions increased sharply between 1985 and 1989, and a total of sixty-two applications were received for this period. Forty-one of the people abducted were killed, two or possibly three were recruited and the fate of the remainder is unknown. Applications were received for two abductions and killings in 1990. In some cases, fairly high-profile individuals were abducted with a view to killing them, and interrogation seems to have played a secondary role. In other cases, those abducted were interrogated, beaten and released.

108. Several abductions were associated with the assassination of fairly high-profile activists. These include Messrs Griffiths Mxenge, Siphiwe Mthimkulu and Topsy Madaka, the 'Pebco Three' and the 'Cradock Four'.

109. Thirty-nine out of the total number of eighty abductions were MK or ANC-linked. Twenty-four of these occurred inside South Africa, where the usual method was interrogation followed by killing. Eighteen of the victims are known to have been killed, seven by the Northern Transvaal Security Branch and ten by the Port Natal Security Branch, while the fate of four[45] remains unknown. The remaining two of the twenty-four internal abductees survived.

110. All the internal abductions for which amnesty was sought occurred after 1986, with sixteen in 1987 and 1988. The dramatic upsurge in the killing of internal

43 Steve Biko, Stanza Bopape and Sam Xolile, aka Valdez Mbathani.

44 This figure excludes the abductions allegedly carried out by the SADF in Kwandebele.

45 Moabi Dipale, Nokuthula Simelane, Moses Morudu and Peter Thabuleka.

activists confirms the Commission's earlier finding that the practice of killing people outside South Africa became widespread in response to the intensified internal uprising of the mid-1980s.[46]

111. Seventeen of the abductions involved MK operatives based outside South Africa's borders. Of these, only Mr Cleophas Ndlovu and Mr Joseph Nduli, who were abducted in 1976, were formally detained and charged. Mr Herbert Fanele Mbale was abducted in 1972 and was returned to Lesotho following a formal protest from the Lesotho government.

112. A strong motive for the remaining external abductions seems to have been that the targets were regarded as key persons in MK's military machinery. The intention was to interrogate and if possible recruit them. Where the attempt at 'turning' failed, the victims were killed. Amnesty applicants confessed to three such killings, namely those of Messrs Jameson Ngoloyi Mngomezulu, Mbovane Emmanuel Mzimela (aka Dion Cele) and Ms Phila Portia Ndwandwe (aka Zandile). A further five, and possibly six[47], are said to have been recruited. The exact fate of the remaining five[48] is unknown.

113. In addition to the above MK abductions, the brother of an MK operative was abducted and killed by C1/Vlakplaas[49] and another internal activist[50] was killed while being abducted or arrested by the Transkei Security Branch and C1/Vlakplaas *askaris*.

114. Three amnesty applications dealing with the abduction and torture of local activists were received from SADF members in different regions of the country. In his application, Major Gert Cornelius Hugo referred to Orpheus, an operation that was designed to destroy the leadership and second tier leadership of the UDF. Hugo testified that the targets were abducted and taken to one of several abandoned premises at Barkly Bridge, Newton Park and Fairview, Port Elizabeth, where they were interrogated and tortured. According to Hugo, who was involved in providing logistical support, the operation began in the Eastern Cape in 1986 but later became a national operation and continued through 1987.

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46 Volume Two, Chapter Three, pp.287–9, and Volume Five, Chapter Six, p. 214ff.

47 Gaboutwelwe Christopher Mosiane, Vikelisizwe Colin Khumalo, Michael Dauwanga Matikinca, Ernest Nonjawangu (the 'Bhunye Four' abducted from Swaziland in April 1984), Glorius 'Glory' Lefoshie Sedibe, aka September, and possibly Jabulani Sidney Msibi, again both taken from Swaziland

48 All were abducted from Lesotho, the 'Ladybrand Four' (Joyce Keokanyetswe 'Betty' Boom, Tax Sejaname, Nomasonto Mashiya and Mbulelo Alfred Ngono), abducted in late December 1987 or early 1988, and Simon Mokgethla, aka Old Timer, abducted in mid-1986 [AC/2001/257].

49 Japie Maponya, brother of Odirile Maponya, aka Mainstay.

50 Batandwa Ndondo.

115. When the Commission asked the SADF about Operation Orpheus, the SADF denied its existence. However, applications received from Messrs Johan Edward Moerdyk [AM2001/031; AM7218/97] and Frans Nyoni Mandlazi [AM5027/97; AC/2001/277] concerning abductions in Kwandebele and the Eastern Transvaal reveal a similar *modus operandi* to that described by Hugo. Although Mandlazi was granted amnesty for the incidents for which he applied, Moerdyk's application was refused, as he had sought amnesty for knowledge of rather than participation in such abductions and torture.

Torture

116. As discussed above, a very small proportion of security force applicants applied specifically for torture violations. When prompted, however, several applicants gave vivid and sometimes horrifying testimony of torture techniques used by members of the Security Branch and the SAP. One applicant described it thus:

> CAPT. ZEELIE: *... there were methods used, common assault, slapping with an open hand or with fists. Then there was also the tube method that was used and at that stage we used a wet bag that was pulled over a person's head ... and basically the person was suffocated for a short while. And then we also used shock methods where, at that stage, two electrical wires which were connected to a telephone-like device, was attached to the person. We would at that stage put a stick between a person's teeth so he can bite on it and then the telephone handle was turned and this sent a shock through the person, and at that stage that also sort of suffocated the person.*
>
> *And then what I can recall now is the method of a broomstick where a person is handcuffed and his hands are pulled over his knees and the broomstick is pushed in-between, through his arms and legs and he's hung between two tables, and it is in that position that he is questioned...*
>
> *... you took the person's mind and you made him believe that something could happen to him ... I took a hand grenade and it was a hand grenade that has been secured, there's no explosives in it, there's no detonator that could go off. And then that hand grenade, this is what I did, I would for example, take it and have the person hold it between his legs while his hands are bound behind his back and then psychologically you made him believe that if he opens his legs the hand grenade will drop to the floor and it will blow him up. .. and then, for example, we also used methods where persons would be assaulted by an interrogator and then the assault would be ceased and then perhaps the following*

day you would use another interrogator and that interrogator would be the so-called 'nice guy' and he would speak nicely to the person and then psychologically that man will, this guy who is nice to him, he would trust this guy more and supply information to him …

… I will honestly say that it was general practice in the Police and specifically in the final years where I was involved in the Security Branch. There was never any person that was ashamed to say that he had assaulted a person or had applied certain techniques in order to obtain certain information. (Bloemfontein hearing, 9 October 2000.)

117. General Erasmus, who was Divisional Commander of the Eastern Cape and Witwatersrand Security Branches at the time of Mr Stanza Bopape's detention and death, told the Committee that he accepted that violence was used as part of interrogation. He confirmed that, while members of the Security Branch were never instructed to use torture, members of the police engaged in such practices with the tacit approval of their seniors (Pretoria hearing, 4 June 1998).

118. Yet, despite such testimony, two former commanding officers of the Security Branch and the SAP, Generals Johan Coetzee and Johan van der Merwe, denied that torture was condoned at a senior level. General Coetzee said that, where persons were found using such methods, the case would be investigated and, where sufficient evidence existed, the offending party would be charged. However, aside from one incident in which two police officers had been charged and convicted, he was unable to specify any other incident or produce any documentation or evidence showing that such action had been taken.

119. General van der Merwe, who applied for amnesty for his involvement in the cover up of the actions of Security Branch members involved in the killing of Mr Bopape, told the Amnesty Committee that torture and deaths in detention 'would be a very serious embarrassment for the South African Police and the national government'. He testified, however, that there was some sympathy for members who used torture 'in an effort to obtain information which could have led to the saving of lives'. Yet he insisted that they would have had to face the consequences of their actions. Police members who engaged in torture were aware of the seriousness of the offence and the 'dangerous position that could have come about if this matter was handled in the wrong manner'. He believed that offenders would not repeat their mistakes and, for this reason, he did nothing further about it. Ultimately, General van der Merwe conceded that his refusal to warn police members that the practice of torture would not be tolerated

amounted to a condonation of the practice and the protection from senior officers (Pretoria hearing, 1 September 1998).

Arson and sabotage

120. The 1980s saw a pattern of state-directed sabotage and arson, authorised from the highest levels of government. The Amnesty Committee received applications for eighty-three incidents of bombing or arson.

Attacks on buildings

121. Attacks on offices included the 1982 bombing of the ANC offices in London, Cosatu House and Khotso House, all operations that were authorised at the highest level.[51] At the amnesty hearing into the bombing of Cosatu House, the Congress of South African Trade Unions (COSATU) produced evidence of forty-six attacks on their offices around the country.

122. Applications for amnesty were received for over twenty attacks on offices or buildings, including the following:
    a The bombing of Community House in Salt River, Cape Town on 29 August 1987. Tenants of the recently completed building were to include COSATU and several anti-apartheid organisations and non-governmental organisations (NGOs). Operatives from the Western Cape Security Branch, Security Branch Headquarters and SADF Special Forces applied for and were granted amnesty for this incident [AC/2002/150 AC/2002/042].
    b An arson attack on Khanya House, the Pretoria offices of the South African Catholic Bishops' Conference on 12 October 1988, leading to the building being extensively damaged by fire. Members of C1/Vlakplaas and the Technical Section of Security Branch Headquarters applied for and were granted amnesty for this incident. A number of people were in the building at the time of the attack [AC/2000/215].[52]
    c An explosion at the offices of the Early Learning Centre in Athlone Cape Town on 31 August 1989, minutes before the Cape Youth Congress were due to hold an executive meeting there. Members of Region Six of the CCB, an SADF Special Forces covert unit, were refused amnesty for lack of full disclosure [AC/2001/232].

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51 Volume Two, Chapter Two, p. 157; Volume Two, Chapter Three, p. 289; Volume Two, Chapter Three, p. 29.

52 AM5283/97;AM3765/96;AM3745/96;AM0066/96;AM4129/96;AM5184/97;AM4361/96;AM5452/97; AM4076/96;AM3916/96;AM3811/96;AM3922/96;AM3812/96;AM5451/97;AM3584/96;AM3764/96; AM5183/97;AM4358/97;AM3721/96.

Attacks on homes

123. There were also applications for forty-eight attacks on houses by petrol bombing, other 'home-made' devices or, in the case of credibility operations,[53] modified grenades. A covert unit of the Northern Transvaal Security Branch, acting in concert with certain members of the SAP's Special Investigation Unit into unrest, was responsible for a number of petrol bomb and pentolite bomb attacks on the homes of activists in Mamelodi, Atteridgeville, Tembisa, Ekangala, Moutse and Pietersburg. At least three people are known to have died in these attacks.

Stratcom[54] operations

124. Several applications related to activities in the mid-1970s by Stratcom operatives. These applications provided details of a range of threatening actions including vandalising cars and property and making threatening phone calls. Condoned by commanders, this behaviour developed into more serious attacks such as throwing bricks through windows, blackmail, loosening bolts on car wheels and firing shots at homes.

Credibility operations

125. Attacks on installations were used to provide credibility for deep-cover agents and sources. This was the method used by the SIU during the 1980s. Applications were received from members of the SIU for approximately fourteen credibility operations, including several grenade attacks on houses using modified grenades, as well as a range of attacks on installations. These included blowing up railway lines, attacks on administration board offices and detonating dummy explosive devices on the property of a councillor and a university official. A more serious operation included the placing of explosive devices outside migrant hostels.

Illegal weapons

126. Amnesty applications for dealing with the illegal movement of arms were dealt with in Chambers.[55]

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53 Credibility operations were designed to provide cover for deep cover agents.

54 Strategic communication or Stratcom: a form of psychological warfare waged by both conventional and unconventional means.

55 See this volume, Section One, Chapter Three for more information about chamber matters.

127. Some applications in this respect related to operations where the Security Branch was attempting to establish the credibility of a source or agent. Others involved Stratcom operations like the Krugersdorp incident where an arms cache of Eastern Bloc weapons was planted and then 'discovered,' providing the pretext for an SADF raid into Botswana[56] A number of applications involved establishing private arms caches in the 1990s, ostensibly to provide access to weapons in the event of the failure of negotiations and the outbreak of civil war.[57]

128. At least seven applicants from C1/Vlakplaas applied for amnesty for unlawfully transporting massive quantities of arms of Eastern Bloc origin from Koevoet in Namibia to South Africa. These were weapons that had been seized in the course of the Namibian war and were transferred and stored in an armoury belonging to Vlakplaas.[58]

129. However, the bulk of applications relating to the provision of unlawful weapons concern the supply of weaponry to the IFP in the 1990s.[59] These applications[60] came principally from C1/Vlakplaas and described how weapons seized in Namibia were supplied to the IFP on the East Rand and Natal. Several C1/Vlakplaas applicants also applied for amnesty for training the IFP in the use of such weaponry. Some of the applicants testified that the provision of arms was done with the approval of Security Branch Headquarters and was in line with a policy of support for the IFP.

130. C1/Vlakplaas operatives also applied for amnesty for the provision of weapons for the attempted overthrow of the then Chief Minister of the Transkei, General Bantu Holomisa. Testimony at the amnesty hearings confirms that this was done at the request of SADF operatives.[61] Kommandant Jan Anton Nieuwoudt of the SADF applied for amnesty for the attempt to overthrow General Holomisa in the Transkei in November 1990, but later withdrew his application.[62]

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56 AM4120/96;AM4152/96;AM4362/96; AM0066/96 and AM4396.

57 AM3766/96 and AM4358/96.

58 AC/2001/162; AC/2001/178; AC/2001/192; AC/2001/199; AC/2001/202; AC/2001/210; AC/2001/214.

59 See Volume Two, Chapter Seven,pp. 605–10 for further detail on the provision of weapons to the IFP.

60 AM5666/97;AM3764/96;AM3762/96;AM2775/96;AM2538/96.

61 AM 0066/96; AM3764/96;AM3766/96; AM5183/97 and AM4358/96.

62 The Amnesty Committee also received several applications from members of C1/ Vlakplaas for their role in providing Kommandant Jan Anton Nieuwoudt with arms to be used in the coup. At the time Kommandant Nieuwoudt was based in IR-CIS, allegedly a private company that provided an intelligence capacity to General Oupa Gqoza, Chief Minister of the Ciskei, but in fact a front for the SADF.

131. The Amnesty Committee heard that the armoury was moved from Vlakplaas during the Harms investigation (East London hearing, 19 April 1999) and transferred first to Daisy farm (owned by Security Branch Headquarters) and then to Mechem, a subsidiary of Armscor. However, operatives continued to have access to the armoury long after they ceased to be members of the SAP. In one instance, Mr Phillip Powell of the IFP received from Colonel de Kock six 10-ton truckloads of weapons, said to be a fraction of the remaining armoury. At the time of this handover, in October 1993, Colonel de Kock was no longer a member of the SAP.[63]

132. Evidence that emerged before the Amnesty Committee confirmed the long-held view that the Security Branch was involved in the conflict in the 1990s. Colonel de Kock and others of his operatives asserted in their applications that the provision of arms was authorised by the commander of Group C, Brigadier 'Krappies' Engelbrecht and the head of the Security Branch[64], General SJJ 'Basie' Smit.

133. Mr Gary Leon Pollock, who was based first at Alexandra Security Branch (a sub-branch of Witwatersrand) and later at the Natal Security Branch, confirmed that these actions were in line with Security Branch policy at the time. He testified that, following what he described as 'the severe lowering of morale and confusion among Security Branch personnel that accompanied the negotiations phase,' generals from Security Branch Headquarters visited the Alexandra Security Branch. The generals assured members that their 'tasks were still the same' and would in fact be increased to strenthen the bargaining positions of the National Party in the negotiating process. These 'tasks' involved creating an environment of instability and eroding the credibility of the ANC.

134. Pollock, who testified at the Security Forces hearing in November 2000, applied for amnesty for number of incidents, which included the supply of weapons to the IFP; warning IFP hostels of impending police raids; discharge of firearms in Alexandra at night to intensify residents' insecurity, and furnishing the IFP with the names of ANC members.

63 Volume Three, Chapter Three, p. 318ff.

64 By that stage known as Crime Combating and Investigation following the re-organisation of the SAP in the 1990s.

JOINT OPERATIONS OF THE SECURITY BRANCH AND SPECIAL FORCES: EXAMPLES OF CASES WHERE SPECIAL FORCES DID NOT APPLY FOR AMNESTY

135. Members of the SADF did not seek amnesty for any external operations, even where the planning of such operations took place inside South Africa. In a number of cases, however, applications were received from Security Branch operatives for their role in operations conducted with or by Special Forces operatives. In other words, we learn about the following cases from applications by the Security Branch and not from the SADF itself.

Nat Serache

136. On 13 February 1985, a Special Forces team attacked the house of Mr Nat Serache in Gaborone, Botswana. According to applicants, MK members infiltrating South Africa used Mr Serache's home as a transit facility. Several days before the attack, a planning meeting attended by General Stanley Schutte, then head of the Security Branch and General AJ 'Kat' Liebenberg, then head of Special Forces, was held at a Security Branch safe house in Ottoshoop, Transvaal. The attack was launched that night, injuring Mr Serache and another person.

Vernon Nkadimeng

137. On 14 May 1985, Vernon Nkadimeng (aka Rogers Mevi), a senior ANC/SACTU official,[65] was killed in a car bomb explosion in Gaborone, Botswana. The divisional commander of the Western Transvaal Security Branch, Brigadier Wickus Loots, and the commander of the Zeerust Security branch, Captain Rudi Crause, applied for amnesty for their role in providing target intelligence on Mr Nkadimeng and MK Jackie Molefe to Commandant Charl Naude, then operational commander of Barnacle, approximately one month before the operation.

The Gaborone raid, 1985

138. On the night of 14 June 1985, the eve of the ANC's consultative conference in Kabwe, Zambia, Special Forces conducted a government-sanctioned cross-border raid into Gaborone, Botswana, killing twelve people. Security Branch

65 South African Congress of Trade Unions

operatives from Security Branch Headquarters and the Western Transvaal and Soweto divisions applied for amnesty for identifying targets and supplying intelligence. The applicants testified to attending high-level meetings at Security Branch and Special Forces Headquarters at which generals from the SAP and SADF were present. One operative testified to accompanying Military Intelligence and Special Forces personnel to Cape Town to brief Ministers le Grange and Malan several days before the raid.

139. A Special Forces operations centre was set up at Nietverdiend near the Botswana border, and SADF forces were assembled to strike at Botswana should the Batswana Defence Force retaliate.

Aubrey Mkhwanazi and Sadi Pule

140. On 31 December 1986, the Western Transvaal Security Branch heard from a source that two MK operatives, Aubrey Mkhwanazi (aka Take Five) and Sadi Pule, were staying in a house in Ramoutse, Botswana. Acting immediately on this information, they were authorised by Security Branch Headquarters to approach Special Forces with a view to conducting an operation. A raid was launched that night, leading to the death of a 72-year-old Batswana national, Maponyana Thero Segopa. Both of the intended targets had apparently been warned of an impending attack and were not in the house at the time.

The McKenzie car bomb

141. On 9 April 1987, Ms Mmaditsebe Phetolo, a Batswana national, and two children were killed when a car bomb exploded outside their home in Gaborone, Botswana. The explosion was the result of a failed operation undertaken jointly by the Northern and Western Transvaal Security Branches and Special Forces/ Barnacle operatives. The bomb had been placed in a secret compartment in a vehicle belonging to a Northern Transvaal Security Branch source, Charles McKenzie. McKenzie, who had successfully infiltrated MK Special Operations in Botswana, had transported arms into South Africa for MK.

142. According to applicants, the intended targets of the operation were Messrs Johannes Mnisi (aka Victor Molefe), Lester Dumakude and Ernest Lekoto Pule, all Special Operations operatives. The plan was to deliver the vehicle to the MK operatives and to detonate it by remote control while they were in the vehicle. Alternatively the bomb would detonate when the secret compartment in which

the arms were stored was opened. However, McKenzie was already suspected of being a spy and was apprehended by MK on his arrival in Bostwana. McKenzie was allegedly not aware of the bomb. His vehicle was parked in a street in Gaborone, Botswana, where it exploded several days later, killing Ms Phetolo, her seven-year-old daughter and infant niece.

143. As Special Forces operatives were responsible for the Botswana leg of the operation, it is not known whether the explosion happened accidentally or whether Special Forces detonated the bomb.

144. Amnesty applications were received from Brigadier Cronje and two Section A[66] operatives, from two members of the Western Transvaal Security Branch who assisted with the operations, and from General Johan van der Merwe, who authorised it.

The Oasis Motel

145. Applicants from the Western Transvaal and Soweto Security Branches testified that they took part in two aborted operations with Special Forces in August or September 1987. The aim had been to kill several prominent MK and SACTU leaders based in Botswana who were allegedly in the process of setting up MK or Industrial Combat Units within the Post and Telegraphic Workers' Association (POTWA), a trade union in South Africa. Special Forces called off the first attempt for reasons unknown to the applicants. In the second operation, an explosive device was set up in the room of the Oasis Motel, where the targets were due to meet a source of the Soweto Security Branch, SWT 180. When they did not arrive for the meeting, the device was dismantled.

The Bulawayo operation

146. On 11 January 1988, a car bomb exploded outside a house in Harare, Zimbabwe. During the subsequent trial it emerged that the incident had been an operation conducted by the Zimbabwe cell of the CCB.

147. According to evidence at the trial, Mr Kevin John Woods, a Zimbabwean citizen recruited by the NIS, had received information that MK was using the house as a transit facility. He later received instructions from Pretoria to liaise with the

66 Section A monitored the activities of Indian, coloured and white activists and organisations.

CCB cell with a view to launching an attack on the transit facility. The CCB cell assembled a car bomb and recruited Mr Amon Mwanza, an unemployed Zimbabwean citizen, to drive the car to the targeted house. The car was detonated outside the house, killing Mr Mwanza and severely injuring a resident of the house.

148. Kevin Woods and three members of the CCB cell, Barry Bawden, Philip Conjwayo and Michael Smith, were sentenced to death for this operation. The sentence was later commuted to life imprisonment. Mr Woods, the only one of the four to apply for amnesty, later withdrew his application.

Patrick Vundla and the arms cache

149. A number of Security Branch operatives applied for their role in one, or possibly two, operations involving the establishment of an arms cache in Krugersdorp on 28 March 1988 [AC/2001/228 & AC/2001/119]. The applicants were Messrs JH le Roux [AM4148/96], JC Meyer [AM4152/96] MJ Naude [AM4362/96], EA de Kock [AM0066/96], JC Coetzee [AM4120/96] and WF Schoon [AM4396/96].

150. Brigadier Schoon, head of Group C at Security Branch Headquarters, told the Committee that he was approached by the Chief of the Army, General AJ 'Kat' Liebenberg, and asked whether the Security Branch could establish and then 'discover' an arms cache of Eastern Bloc weapons. The arms cache could be ascribed to MK units in Botswana, thus providing a pretext to launch an attack. The SADF seems to have been having difficulty in getting political authorisation for the proposed operation and was hoping that this would tilt the balance in their favour. Brigadier Schoon's allegation could not be tested, as General Liebenberg was no longer alive and none of the SADF personnel had applied for amnesty for this incident.

151. An arms cache was duly established at Krugersdorp and later 'uncovered' by the Security Branch. Brigadier Schoon and one of his operatives accompanied Generals Liebenberg and Joubert to Cape Town to be on standby should they be required to brief the relevant ministers. The proposed attack was authorised and conducted on 28 March 1988. The target and outcome of this attack is not clear.

152. On the same day, a separate 'hot pursuit' operation was launched on an alleged transit house in Botswana. This followed the capture of one and the killing three

days later of three MK operatives near Derdepoort, Thabazimbi by an SADF patrol. Mr Vuyo Moleli (aka Kagiso Mogale or Vito), the captured operative, was handed to the Western Transvaal Security Branch. During interrogation, they established that his unit had stayed overnight at a transit house in Botswana. They then handed him over to Special Forces who launched an attack on the house, killing a senior MK commander, Mr Patrick Sandile Mvundla, (aka Naledi Sehume) and two women, both of whom were Batswana nationals. Mr WJ Loots [AM4149/96; AC/2001/228] was granted amnesty for this incident.

153. While it is possible that the above two incidents are in fact one, detail from the amnesty hearing seems to suggest two separate incidents.

Other operations

154. Some of the other operations in which SADF personnel have been implicated by Security Branch personnel include:
    a The bombing of two houses in Mbabane, Swaziland, on 4 June 1980 in which MK operative Patrick Mmakou and a seven-year-old boy, Patrick Nkosi, were killed.
    b The abduction from Swaziland and subsequent torture of ANC member Dayan 'Joe' Pillay on 19 May 1981.
    c The killing of seven COSAS activists and the injuring of eight people on the East Rand on 26 June 1985 in a Security Branch operation code-named Operation Zero.

PART THREE: KEY SECURITY FORCE UNITS INVOLVED IN GROSS HUMAN RIGHTS VIOLATIONS

SECURITY BRANCH HEADQUARTERS

155. The Headquarters of the Security Branch was based in Pretoria. Until 1992, the Security Branch was organised centrally, with headquarters in Pretoria and nineteen regional divisions (excluding South West Africa).[67]

67 In the 1990s, the Security Branch was renamed Crime Intelligence and Investigation and fell under the same division as the old Criminal Investigation Department (CID), and several of the regional divisions were combined. However, for the sake of simplicity and because the bulk of applications fall into the pre-1990 period, this report has not distinguished between the pre- and post-1990 periods.

156. A total of eighty-one applicants applied for amnesty for offences committed while based at Security Branch Headquarters. Forty-seven of these applicants were based in C1/Vlakplaas.

Case study: C1/Vlakplaas

157. Thirty-five of the forty-seven Vlakplaas members who applied for amnesty were white Security Branch operatives and seven were black. Only five C1-based *askaris* applied for amnesty.[68]

158. Vlakplaas is a 44-hectare farm just outside Pretoria. C1 was ostensibly a rehabilitation project for 'reformed members' of the liberation movements. However, beyond the employment of *askaris* as trackers of MK and APLA combatants, there is no sign that any rehabilitation took place.

159. From its inception through the 1980s, C1/Vlakplaas was deployed in the following ways:
    a assisting in the tracking and identification of members of the liberation movement who had received military training and were active in MK and APLA structures;
    b conducting covert cross-border operations (Swaziland remained the pre-eminent area of activity, always in close liaison with the Eastern Transvaal Security Branch division), and
    c conducting internal covert operations, either where a political decision or the command structure of the Security Branch decided on a covert operation or during the routine deployment of *askaris* in regions. In some instances this was at the request of the divisional or local branch; in others as an outcome of the tracking work being undertaken.

160. *Askaris* were former members of the liberation movements who came to work for the Security Branch, providing information, identifying and tracing former comrades. A number were also operationally deployed.

161. Former members of the liberation movements became *askaris* if they defected from the liberation movements of their own accord or if they were arrested or captured. In some cases, attempts were made to 'turn' captured MK operatives using both orthodox and unorthodox methods during interrogation. Other

68 At least two others applied for amnesty but subsequently withdrew their applications.

askaris were MK operatives who had been abducted by the Security Branch from neighbouring states.[69] Several abductees remain disappeared and are believed to have been killed. The threats of death used to 'turn' *askaris* were not idle. Amnesty applications revealed that several operatives were killed for steadfastly refusing to co-operate.

162. *Askaris* were primarily used to infiltrate groups and to identify former comrades with whom they had trained in other countries. At the Pretoria hearing in July 1999, Mr Chris Mosiane testified:

In the initial stages askaris were used as police dogs to sniff out insurgents with white SB [Security Branch members] as their handlers. Black SB were used to monitor the ***askaris****.*

163. *Askaris* were initially treated as informers and were paid from a secret fund. Later, they were integrated into the SAP at the level of constable and were paid an SAP salary. While deployed in the regions, they were paid an additional amount, which was usually generated by making false claims to a secret fund. After successful operations they usually received bonuses.

164. The *askaris* used Vlakplaas as an operational base and resided in the townships where they attempted to maintain their cover as underground MK operatives. Although a few *askaris* escaped, most were far too frightened to attempt it. At his amnesty hearing, Colonel Eugene de Kock[70] testified that he had set up a spy network amongst the *askaris* and used electronic surveillance. He told the Amnesty Committee that he had also established a disciplinary structure to deal with internal issues and other infractions by *askaris* and white officers. However, *askaris* who exceeded their authority in operational situations or criminal matters were seldom punished.

165. Generally *askaris* were extremely effective. Because of their internal experience of MK structures, they were invaluable in identifying potential suspects, in infiltrating networks, in interrogations and in giving evidence for the state in trials.

166. A large number of white C1 operatives were drawn from Koevoet, the SAP Special Task Force or had specific counter-insurgency experience. Several had explosives training while a small number were former detectives who could 'arrange scenes' after covert operations in order to ensure they would not be traced to the security forces.

69 See Chris Mosiane interview, below.

70 See further details on Eugene de Kock below (para 170 onwards).

167. In August 1980, Captain Dirk Coetzee was appointed commander of Vlakplaas. Under his command, C1/Vlakplaas members were drawn into other operational tasks, both within and outside South Africa. Coetzee and two black Vlakplaas operatives applied for amnesty for a number of operations.

168. Captain Jan Carel Coetzee assumed command of the unit after Dirk Coetzee was transferred to the uniform branch of the SAP at the end of 1981. Lieutenant Colonel Jan Hatting 'Jack' Cronje became commander of Vlakplaas in early 1983, with Jan Coetzee serving as second in command. Cronje, who had been a part of the SAP contingent in Rhodesia in 1974 and 1975 and afterwards did 'border duty' at Katimo Mulilo in SWA/Namibia, brought to the unit a far wider experience in the use of unconventional methods of counter-insurgency warfare.

169. Brigadier Cronje applied for amnesty for numerous offences committed during his subsequent appointment as divisional commander of the Northern Transvaal Security Branch, but for only two operations conducted as commander of C1/Vlakplaas. Both these operations confirm the continued use of C1/Vlakplaas as an operational unit. The first was the 22 November 1983 cross-border attack on Mr Zwelibanzi Nyanda, a member of MK's Natal urban machinery in which both Mr Nyanda and fellow-MK operative Keith McFadden were killed. The second was Operation Zero Zero, an entrapment operation which led to the deaths of eight and severe injuries to seven COSAS youths.

170. In 1983, during Cronje's term of office, another veteran of the Rhodesian and SWA/Namibian wars, Captain Eugene de Kock, was transferred to C1.[71] He remained as commander of C1 until 1993, when he left the SAP as a colonel with a payout of over R1 million.

171. In May 1994, Colonel de Kock was arrested and subsequently convicted. He applied for amnesty [AM0066/96] for incidents associated with[72]:

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71 Constable Eugene Alexander de Kock joined the SAP in January 1968 and spent nine months at Police College before being sent to Rhodesia to do 'border duty.' In 1978, he was deployed to the Security Branch office at Oshakati and on 1 January 1979 was transferred to the newly established Koevoet unit, attached to Security Branch Headquarters. De Kock himself engaged in numerous 'contacts' in the four years he spent as the head of a highly successful Koevoet unit. While still at Koevoet, De Kock had been identified as one of the operatives to take part in the bombing of the ANC offices in London, for which he was awarded the highest decoration, the SAP Star for Outstanding Service.

72 AC/1999/0242; AC/1999/0345; AC/1999/0349; AC/1999/0350; AC/2000/040; AC/2000/057; AC/2000/084; AC/2000/085; AC/2000/086; AC/2000/089; AC/2000/087; AC/2000/090; AC2000/152; AC/2000/215; AC/2001/002; AC/2001/004; AC/2001/006; AC/2001/047; AC/2001/049; AC/2001/058; AC/2001/063; AC/2001/081-MK; AC/2001/094; AC/2001/095; AC/2001/108; AC/2001/141; AC/2001/146; AC/2001/148; AC/2001/167; AC/2001/171; AC/2001/179; AC/2001/225; AC/2001/227; AC/2001/228; AC/2001/231; AC/2001/241; AC/2001/252; AC/2001/272; AC/2001/273.

- over seventy killings, of which twenty-six were committed outside South Africa, including five of *askaris* or ex-*askaris*;
- nine abductions, three of which were committed outside South Africa;
- sabotage of five buildings;
- supply of weapons for attempted coup in the Transkei, and
- supply of weapons to the IFP.

172. During his amnesty hearings, De Kock repeatedly said that he took overall responsibility for the operatives under his command.

173. Fifteen of the killings for which De Kock sought amnesty were committed in the post-1990 period and fell into three broad categories. The first category reflected a continuation of C1's earlier cross border operations and involved the killing of six people in Botswana in April 1990 (the Chand incident). The second category related to the killing of own forces where it was feared they would disclose the nature of previous covert operations or, in the case of the attempted killing of Captain Dirk Coetzee, where they had already done so. The third category consisted of two incidents in which nine people were killed and which arose from operations related to the new focus for combating crime. In the first incident, Vlakplaas operatives applied for amnesty for covering up the killing of four alleged arm smugglers on 21 April 1991 in an abortive entrapment operation near Komatipoort. In the second incident, De Kock and his operatives ambushed a vehicle near Nelspruit on 26 March 1992, killing all four unarmed occupants, allegedly to foil a planned armed robbery. The leader of the group, Mr Tiisetso Leballo, a former driver of Ms Winnie Madikizela-Mandela, was later apprehended, interrogated and then shot dead. The applicants, who were denied amnesty, claimed that they believed the planned armed robbery to have been aimed at securing funds for the ANC.

174. In addition to killings, applicant De Kock and some of his team applied for a range of offences relating to the supply of weapons to the IFP in Johannesburg and Natal and to SADF operatives and agents involved in the attempted overthrow of Chief Minister Bantu Holomisa in the Transkei.

175. The Amnesty Committee also received applications for the killing of seven *askaris* from Dirk Coetzee and Eugene de Kock of C1/Vlakplaas and several of their operatives, and from Port Natal Security Branch operatives: Nkosinathi Peter Dlamini and Ace Moema were killed while Coetzee was commander of Vlakplaas, and Pat Mafuna was killed on an unknown date between 1982 and 1986. Moses

Nthelang was killed in a drunken frenzy after he reported having lost his firearm. The remaining three (Brian Ngqulunga, Neville Goodwill Sikhakane and escaped *askari* Johannes Temba Mabotha) were killed in the post-1990 period. Following the disclosures of Butana Nofomela and Dirk Coetzee in 1989, there was increasing fear that *askaris* would reveal the workings of C1/Vlakplaas.

176. The story of Mr Tlhomedi Ephraim Mfalapitsa, aka Francis Tladi [AM3592/96] provides insight into the experience of *askaris.* Mr Mfalapitsa left South Africa in 1976 and joined the ANC in exile. He underwent military training, was deployed on missions into South Africa and finally ended up at military headquarters in Zambia.

177. After the bombing of Nova Catengue camp in 1979, the ANC became extremely edgy about security. It was at this stage that Mr Mfalapitsa found himself party to the torture of suspects during interrogation and witnessed the killing of an operative by other members of his unit. He testified to the Amnesty Committee that he became increasingly disillusioned with the ANC and, in November 1981, returned to South Africa and handed himself over to the SAP:

    I told the South African Police that I am not interested in joining either side of the conflict. I wanted them to debrief me and set me free because there was nowhere else to go and this is my country. And it was my experience and my arrest in Botswana, I saw many people who were stateless, who had no place to go. … And then, they refused me. They said they could not let me, after having been in military structure in which Joe Modise is the Chief of the armed forces of the MK. So I helped and I was forced to join the South African Police. (Johannesburg hearing, May 1999.)

178. In January 1982, Mr Mfalapitsa was enrolled as an *askari* at C1/Vlakplaas. Shortly afterwards, he was approached by a neighbour's son, Mr Zandisile Musi, who asked him for help in leaving South Africa. Musi, whose two brothers had left South Africa with Mfalapitsa, had no idea that he had changed sides. Unsure whether this was a trap, Mr Mfalapitsa reported the request and was instructed to continue posing as an MK operative.

179. C1 commander Jan Coetzee asked for and received authorisation for an entrapment operation. On instructions from Coetzee, Mfalapitsa offered to train Zandisile Musi and his friends. On the appointed day, he took the four youths to an outbuilding on a disused mine near Krugersdorp where explosives had already been laid. Mfalapitsa left the building and the explosives were detonated, killing three and severely injuring Musi.

Eastern Transvaal Security Branch

180. The divisional headquarters of the Eastern Transvaal Security Branch was based at Middelburg, with branches in Ermelo (a sub-branch in Piet Retief), Witbank, Nelspruit, Secunda, Lebombo and Burgersfort. Members of the Eastern Transvaal Security Branch were also based at several border posts, including Oshoek, Golela, Houtkop, and Nerston.

181. Seventeen members of the Eastern Transvaal Security Branch applied for amnesty for fifteen incidents committed between the late 1970s and 1988. These incidents included twenty-five killings, seven abductions and at least three instances of torture and/or severe assault.

182. With minor exceptions, the applications relate to cross-border action against MK operatives in Swaziland or entering South Africa from Swaziland. The ANC submission records a total of at least fifty-two deaths of Swaziland-based MK operatives 'at enemy hands'. A further eight on the list were killed near Piet Retief while infiltrating South Africa, as were several other MK combatants. The above applications account for only fourteen of these.

183. Members of the Eastern Transvaal Security Branch sought amnesty only for operations that were conducted jointly with other Security Branch divisions, principally C1/Vlakplaas, and for which the Amnesty Committee had already received applications.[73] Amnesty was granted in thirty-eight cases, partially granted in two and refused in one instance.

184. One case involved ANC intelligence operative Jabulani Sidney Msibi, a former bodyguard of ANC President Oliver Tambo. The situation arose because members of the Branch suspected that they had been infiltrated by the ANC. When suspicion fell on a Nelspruit Security Branch operative, Warrant Officer Malaza, he allegedly confessed, naming Msibi as his handler. He was then instructed to set up a meeting with Msibi in Swaziland. Msibi was abducted and taken to Daisy Farm.

185. Although the Eastern Tramsvaal Security Branch claimed that Msibi became an informer, De Kock denied this at his amnesty hearing. Addressing Mr Msibi's family, he said:

73 Note, for example, a late amendment to the application by FHS Labuschagne during the section 29 process, which the Amnesty Committee later rejected.

And I just want to tell you that his dignity and his integrity, his faith and his loyalty in the ANC, remained unscathed consistently and that is how he died. He was the sort of man who I, at any time, would have wanted in my life with me at my darkest hours. That is the kind of person I would have wanted with me. In my limited capacity as a human being, he has all the respect that I could muster and I believe that if any of my members have the courage of their conviction and if they would speak the truth, they would underwrite what I have just said, that he is worthy of respect of the party and the people whom he served at that time.

Within my limited capacity as a human being and my even more limited capacity due to my special circumstances, I would like to say that regarding me, he was one of the ANC's and the country's most loyal supporters. He stubbornly refused that anything should break him or his loyalty, and I would just like to tell the family that. (Hearing, August 2000.)

186. Shortly after his release from detention, Mr Jabulani Msibi was killed in unknown circumstances.

Far Northern Transvaal Division

187. The Far Northern Transvaal Security Branch was based at Pietersburg and had branches in Nylstroom, Thabazimbi, Ellisras, Louis Trichardt, Messina, Tzaneen, Phalaborwa and Giyani. Its area of operation included three international borders: Mozambique, Zimbabwe and Botswana.

188. Nineteen applicants from the Far Northern Transvaal Security Branch applied for amnesty for two separate incidents.

189. The first was for the killing of six MK operatives at Alldays on 10 July 1986 and for perjury committed during the inquest into the deaths. This matter was investigated by the Transvaal Attorney-General after one of the participants in the ambush made a statement to the effect that he had led the six into the ambush without any intention of arresting them. Several of the applicants had been advised by the investigating team that charges of murder were being considered. Only five out of fourteen applicants were granted amnesty for the Alldays ambush [AC/1999/176].

190. A second set of applications involved two acts of illegal entry and theft from the ANC and COSATU offices in the 1990–92 period. One applicant sought amnesty

for both incidents. Six applicants were granted amnesty for the latter incident [AC/1997/071; AC/2001/234].

Western Transvaal Security Branch

191. The divisional headquarters of the Western Transvaal Security Branch was based in Potchefstroom, with branches and sub-branches at Zeerust, Rustenburg and Klerksdorp. Security Branch operatives were also based at the Derdepoort, Kopfontein and Buffelsdrifhek border posts with Botswana.

192. Eleven members of the Western Transvaal Security Branch applied for amnesty. The eleven included two divisional commanders and the branch commander of Zeerust. The thirteen incidents applied for involved thirty-three killings, numerous attempted killings and several counts of assault or torture.

193. Amnesty was granted in thirty-four instances, refused in two and partially granted in three.[74]

Soweto Security Branch

194. A key component of the Soweto Security Branch was the SIU[75], which ran a number of covert agents and sources both inside and outside the country.

195. Twenty-two members of the Soweto Security Branch, including three divisional commanders and at least eleven members of the SIU, applied for amnesty for twenty-nine incidents committed between 1980 and 1992. These incidents involved at least twenty-two killings, two abductions/torture and approximately fourteen sabotage and/or credibility operations.

196. Four of the killings resulted from Soweto Security Branch operations. Soweto Security Branch members either provided intelligence for or participated directly in the other operations.

197. Most of the incidents applied for were so-called 'credibility operations', conducted by members of the SIU in order to build up the credibility of sources

74 With regard to target identification for the Gaborone Raid, applicants were granted amnesty for the targets in respect of which they specifically remembered supplying information.

75 Soweto Intelligence Unit.

or to facilitate infiltration by deep-cover agents. These operations covered a range of activities such as the establishment of arms caches, the sabotage of offices and installations and attacks on homes and hostels.

198. Amnesty was granted in seventy-six instances, refused in four, conditionally granted in five and granted/refused in three. No decision was handed down in one instance, in which the applicant had died.

199. During the hearing concerning the abduction of Ms Nokuthula Simelane, aka Sibongile, a 23-year-old University of Swaziland student and member of MK's Transvaal Urban Machinery, sharp differences emerged between the various applicants as black members of the SIU challenged the version of white applicants.

200. The Amnesty Committee heard evidence that, in the early 1980s, two deep cover agents of the SIU, RS269 (Sergeant Langa, aka Frank or Big) and RS243 (Sergeant 'Terror' Mkhonza, aka Scotch) infiltrated MK's Transvaal machinery with the help of an informer, SWT66 (Nompumelelo).

201. Early in September 1983, Mkhonza was instructed by his MK contact to meet Sibongile (Ms Nokuthula Simelane) at the Carlton Centre, Johannesburg. After the meeting, Mkhonza led her to the basement parking area where they were seized by waiting SIU members and bundled into the boot of a car. Ms Simelane was, according to all applicants, severely assaulted and brutally beaten.

202. She was subsequently transferred to a farm near Northam in the current North West. Here she was held in a room in an outside building for a period of approximately four to five weeks. Lieutenant Willem 'Timol' Coetzee, Warrant Officer Anton Pretorius and Sergeant Frederick Barnard Mong were tasked with interrogating and recruiting Ms Simelane. When she was not being interrogated, Ms Simelane was under constant guard by black members of the SIU. At night, she was cuffed and chained to her bed with leg irons. The black members, who were responsible for guarding her, slept either in or outside her room.

203. Black SIU applicants, Constables Veyi and Selamolela, testified that she was repeatedly and brutally tortured throughout her stay on the farm, finally becoming 'unrecognisable'. The white applicants denied this vehemently.

204. According to their evidence, the victim had been severely assaulted during the first week and had, on more than one occasion, been put in a dam after soiling

herself while being tortured. However, they alleged that, after the first week, she agreed to work for them and that they spent the remaining weeks of her 'detention' preparing her for her work as an agent. Thereafter, they claimed that they returned her to Swaziland with the help of Sergeants Mothiba and Langa, both since deceased. After that they lost contact with her.

205. This testimony was challenged by Veyi and Selamolela, who testified that the victim's physical state made it extremely unlikely that she could have been in a fit state to be returned to Swaziland. Constable Veyi testified that he had last seen Ms Simelane bound and in the boot of Lieutenant Coetzee's car and that Sergeant Mothiba had told him that she had been killed.

206. In refusing amnesty to applicants Coetzee, Pretorius and Mong, the Amnesty Committee said of Ms Simelane:

During her detention for a period of approximately five weeks, she was continuously and very seriously assaulted by the group of Security Police, under the command of Coetzee, who held her captive. All attempts to extract information concerning MK or its operations as well as attempts to recruit her to become a Security Police informer, were fruitless. Due to the prolonged and sustained assaults, Ms Simelane's physical condition deteriorated to the extent that she was hardly recognisable and could barely walk. Ms Simelane was last seen where she was lying with her hands and feet cuffed in the boot of Coetzee's vehicle. She never returned to her familiar environment in Swaziland ... and has disappeared since. It is not necessary for the purpose of this matter to make a definitive finding on the eventual fate of Ms Simelane. [AC/2001/185.]

Witwatersrand Security Branch

207. The divisional headquarters of the Witwatersrand Security Branch was based at John Vorster Square in Johannesburg. Seventeen of its members sought amnesty for various offences committed between the late 1970s and 1992. Two members of the Eastern Transvaal Security Branch, one of whom was the divisional commander, applied for amnesty for assisting with the disposal of the body of Mr Stanza Bopape, a detainee who died in Witwatersrand Security Branch custody.[76]

76 See Volume Two, Chapter Two, pp. 212–14, and Volume Three, Chapter Six, pp. 620–24.

208. The nature of the violations for which amnesty was sought included scores of Stratcom operations (see below); eleven specified acts of torture and/or assault and a number of unspecified acts of torture and/or assault; numerous instances of attempting to cover up offences committed by the police; involvement in some seven acts of sabotage and bombing (including the bombings of Cosatu House and Khotso House); several attempted killings; several instances of supplying weapons to the IFP in the early 1990s, and one killing.

Stratcom and Intelligence Johannesburg

209. Intelligence Johannesburg (IJ) was a unit at John Vorster Square whose functions included routine intelligence tasks such as surveillance and recruitment, unlawful tapping of telephones and interception of mail. IJ was also involved in a number of activities connected to Stratcom operations.

210. The Amnesty Committee received an application from Lieutenant Michael Bellingan [AM2880/96], who was attached to IJ between 1984 and 1986. Two other applications regarding Stratcom operations were received from members of the Witwatersrand Security Branch, Paul Francis Erasmus [AM3690/96] and Gary Leon Pollock [AM2538/96]. All three applicants applied for a range of unlawful operations, broadly classified as disinformation, propaganda and 'dirty tricks'.

211. Stratcom (Strategic communication) was a form of psychological warfare waged by both conventional and unconventional means. Its earlier activities involved random acts of intimidation such as the vandalising of property, the making of threatening phone calls and so on. Later it involved actions such as the unlawful establishing of arms caches in an attempt to establish the credibility of Security Branch agents or to provide a pretext for actions such as the SADF raid into Botswana in 1985.

212. From 1984, following the appointment of Brigadier Gerrit Erasmus as head of the Security Branch, Stratcom actions became less random and more co-ordinated. This shift coincided with the formal adoption of Stratcom as state policy in 1984 and the establishment of a sub-committee Tak Strategiese Kommunikasie (TSK – Strategic Communications Branch) as part of the Secretariat of the State Security Council, with representatives from the Security Branch, Military Intelligence and the NIS.

213. Former Minister of Law and Order Adriaan Vlok testified that Stratcom was an official policy of the government and conceded that it was engaged in unlawful actions. An example of a Stratcom action, he told the Amnesty Committee, might include spreading disinformation about an individual in order to cause people to suspect him of being an agent or even attack him.[77]

214. Applicants Erasmus and Bellingan testified that there were two kinds of Stratcom, loosely referred to as 'soft' and 'hard' Stratcom. Propaganda and disinformation made up the 'soft' side of Stratcom while 'hard' Stratcom referred to 'active measures'. Mr Bellingan cited the examples of the bombings of Cosatu House and Khotso House and the 'Cry Freedom' incident. He said that the use of 'hard' Stratcom came about as a consequence of intensifying resistance, which led to the adoption of the strategy of counter-revolutionary warfare.

215. The bulk of the incidents for which the applicants sought amnesty fell broadly within the range of 'soft' and 'hard' actions. They included: graffiti, fake pamphlets, pouring paint remover over vehicles, disrupting protest gatherings though the use of stink bombs or teargas, theft, threatening phone calls, blackmail, framing, assault, slashing of car tyres, bricks through windows, loosening wheel nuts and bolts of vehicles, firing shots at houses, and arson and petrol bomb attacks on vehicles, homes and buildings.

216. Erasmus, Bellingan and Pollock all testified that one of the aims and strategies of Stratcom was to sow division among 'the enemy'. According to Bellingan, intelligence reports were used to expose ideological rifts in organisations and then find ways to exploit the differences. The effect would be to 'divert their time and effort and resources away from us and as far as possible, against each other'.

217. Several of the incidents for which applicant Pollock sought amnesty fall into this category. He testified that the strategy of the Alexandra Security Branch in the early 1990s was to increase tensions between the IFP and those Alexandra residents perceived to be ANC supporters. Incidents included driving through Alexandra at night firing randomly, and furnishing the names of ANC members to the IFP.

West Rand Security Branch

218. The divisional headquarters of the West Rand Security Branch was based at Krugersdorp, with branches at Roodepoort and Vereeniging. Five members of

77 Pretoria hearing, 20–30 July 1998.

the Branch applied for amnesty for six incidents. These include one abduction (which ended in a killing); three attempted killings; the establishment of an arms cache used as a pretext for a raid on Botswana in which three persons were killed, and two acts of sabotage (see above).

219. Amnesty was granted to all but one of the five.

East Rand Security Branch

220. The East Rand Security Branch was based in Springs, with branches in Benoni and Germiston. Amnesty applications for two incidents were received from five applicants, including both divisional commanders. The incidents involved eight killings and at least seven attempted killings (all in Operation Zero Zero) and an attack on the home of a political activist. All applicants were granted amnesty.

Port Natal Security Branch

221. The divisional headquarters of the Port Natal Security Branch was based at CR Swart SAP Headquarters in Durban, with branches or operatives based at Port Shepstone, Scottsburgh and Stanger.

222. Port Natal Security Branch played an extensive role in relation to MK activities in and from Swaziland. Like its counterparts in other parts of the country, it set up a Terrorist Detection or Tracing Unit in the mid-1980s. The unit was headed by then Major Andrew 'Andy' Russell Cavill Taylor and established a significant *askari* base, drawing additionally on the resources of the Pietermaritzburg-based Natal Security Branch and operating throughout the province. Most amnesty applicants applied for offences committed while they were part of this unit.

223. The *askari* unit operated from a number of safe houses and farms in Natal and established its main centre at a farm near Camperdown. The unit's primary task was tracing, apprehending and interrogating MK suspects, but as an operational unit it was also able to take proactive and reactive measures.

224. One of the ANC's submissions to the Commission notes a significant number of losses amongst its Natal operatives during the 1980s, with the number of operatives killed or disappeared rising sharply in 1987 and 1988. The rising number of deaths in these years coincides with the establishment of the Natal *askari* unit.

225. Sixteen members of the Port Natal Security Branch, including the divisional commander and the head of the Terrorist Detection Unit, applied for amnesty for twenty incidents committed between the late 1970s and 1991. These incidents involved more than ten abductions and seventeen killings, almost exclusively committed by members of the Terrorist Detection/*askari* unit between 1986 and 1990. The Amnesty Committee also received several amnesty applications for numerous acts of torture in the 1970s, including one from Colonel Taylor.

226. Applicants were granted amnesty in fifty-two instances and refused in four (the abduction and killing of Ms Ntombi Khubeka – see below). In five instances no decision was made as the applicant, Colonel Taylor, had died before the hearing.

227. Six members of the Port Natal Security Branch based in the Terrorism Investigation Section and two C1/Vlakplaas operatives applied for amnesty for their role in the abduction, death and subsequent disposal of the body of Ms Ntombikayise (Ntombi) Priscilla Ngcobo (née Khubeka) in April or May 1987.

228. Ms Khubeka lived in KwaMashu near Durban, and was suspected of acting as a co-ordinator between the external and internal units of MK. Two C1/Vlakplaas *askaris*, Xola Frank Mbane and a Mr Dube, made contact with her.

229. Mr Mbane drove Ms Khubeka to Battery Beach from where she was abducted by the Port Natal team, blindfolded, bound and taken to an abandoned shooting range at Winkelspruit, south of Durban. Still blindfolded, she was interrogated by a team consisting of Colonel Andy Taylor, Captain Hentie Botha, Sergeant Laurie Wasserman, Sergeant Cassie van der Westhuizen, Joe Coetzer and Warrant Officer 'Bossie' Basson.

230. Captain Botha testified that the interrogation lasted approximately fifteen to twenty minutes and that Taylor struck her approximately ten to fifteen times with a sjambok. Sergeant van der Westhuizen's testimony suggests that the interrogation lasted an hour. Both of these accounts were disputed by *askari* Mbane, who alleged that the interrogation lasted for about two hours and that he could hear her 'screams of pain' from where he waited outside.

231. Ms Khubeka's dead body was dumped near the Bhambayi informal settlement, some distance away from her home. Later Captain Botha established that her family was unaware of her death and appeared to believe that she had gone into exile. It was subsequently rumoured that she had left the country for

Mozambique because of the attentions of the Security Branch. It was only after the application was received by the Amnesty Committee that it became possible to discover what had happened to Ms Khubeka. Cases like this demonstrate the value of the principle of requiring full disclosure before amnesty is granted.

232. The Commission exhumed remains believed to be Ms Kubeka's from a pauper's grave at Charlottedale Cemetery in Stanger. In a post-mortem examination, a pathologist concluded that the remains matched those of Ntombi Khubeka. A single metallic object of approximately 10 mm in length fell from the skull and was later identified by a ballistics expert as a spent 7.65mm bullet. The University of Glasgow made a positive facial identification of the skull. Following a challenge by the applicants, the findings were confirmed by the SAPS Forensic Science Laboratory in Pretoria.

233. Applicants Botha, Du Preez, Wasserman and Van der Westhuizen were refused amnesty for failing to make full disclosure. Applicants Radebe and Baker, who were neither present during the interrogation nor involved in the disposal of the body, were granted amnesty for her abduction.

Natal Security Branch

234. The Natal Security Branch was based in Pietermaritzburg, with branches or operatives based at Ladysmith, Greytown, Kokstad and Matatiele. Natal Security Branch operatives were also based at the Sani Pass and Boesmansnek Border Posts with Lesotho. Amongst the Branch's divisional commanders was Brigadier Jacobus Hendrik 'Jac' Buchner.

235. As mentioned above, the Natal Security Branch participated in the work of the *askari* unit and owned one of the farms from which the unit operated. It was on this farm near Elandskop that the bodies of three abductees were exhumed.

236. Applications were received from five members of the Natal Security Branch for six incidents committed between 1980 and 1988. These incidents included four killings, an attack on a homestead belonging to an IFP member as part of establishing credibility for a source, and an attempted abduction.

237. Amnesty was granted to all applicants for all incidents excluding an attempted abduction in Swaziland.

Northern Natal Security Branch

238. The Northern Natal Security Branch was based at Newcastle, with operatives based at Vryheid, Empangeni, Eshowe, Jozini, Ndumo, Melmoth and Nongoma.

239. Two applications were received from the Northern Natal Security Branch for an abduction and two killings, one in 1980 and one in 1985. Both applicants, warrant officers at the time, were granted amnesty for the 1980 killing, but the applications for the 1985 abduction and the killing of Mr Jameson Ngoloyi Mngomezulu were refused.

Eastern Cape Security Branch

240. The divisional headquarters of the Eastern Cape Security Branch was based in the Sanlam building in Port Elizabeth, where several detainees lost their lives at the hands of the Security Branch. The headquarters later moved to Louis Le Grange Square. Branches and sub-branches were based in Uitenhage, Cradock, Grahamstown and Fort Beaufort.

241. Twelve members of the Eastern Cape Security Branch, including two divisional commanders, applied for amnesty for eight incidents. A Security Branch informer, Patrick Mncedisi Hlongwane, also applied for amnesty for a number of incidents. Applications were also received from members of the C1 (Vlakplaas) unit and from the Technical Division of Security Branch Headquarters for their participation in Eastern Cape Security Branch operations.

242. Incidents applied for include nine or possibly ten abductions and fifteen killings that occurred between 1977 and 1989. Only three of the victims appeared to be directly linked to MK structures (Gcinisizwe Kondile, Siphiwe Mthimkulu and Topsy Madaka). Eight of the remaining twelve were prominent political figures (Steve Biko, the 'Pebco Three' and the 'Cradock Four'), three were Security Branch operatives and one was an informer (linked to the 'Motherwell Four').

243. Applicants were granted amnesty in ten instances and refused in eighteen[78] Mr Hlongwane was refused amnesty for all acts associated with his activities as an informer for the Eastern Cape Security Branch in the 1980s.

78 Steve Biko, the 'Pebco Three', the 'Cradock Four', the 'Motherwell Four', the torture of Mkhuseli Jack.

Border Security Branch

244. The Border Security Branch was based in East London, with branches at Queenstown, Aliwal North, King William's Town and Elliot.

245. The Amnesty Committee received an application from a former Divisional Commander of the Border Security Branch, then Colonel Johannes Lodewikus Griebenauw, and one from one of his subordinates for their role in assisting the SADF in an operation code-named Katzen.[79] They were both granted amnesty. Major General Griebenauw, then still a Colonel, also applied for amnesty for his role in securing jobs in the SADF for two Transkei Security Branch operatives who were facing charges arising from the killing of MK operative Sithembele Zokwe in Butterworth in the Transkei on 11 June 1988. This application was refused, as no offence was specified.

Western Cape Security Branch

246. The divisional headquarters of the Western Cape Security Branch was based at Caledon Square and later in Loop Street in Cape Town.

247. Five members of the Western Cape Security Branch applied for amnesty for five incidents and an unspecified number of incidents involving torture. The five incidents included three acts of sabotage, one killing and one attempted killing. Several of the applicants belonged to the Terrorist Tracking Unit.

248. Amnesty was granted in all but two incidents.

Orange Free State Security Branch

249. The Orange Free State Security Branch was based at Bloemfontein with a branch at Ladybrand and a sub-branch at ThabaNchu and Bethlehem. Orange Free State Security Branch operatives were also based at several border posts with Lesotho.

250. Nine applicants from the Orange Free State Security Branch applied for twelve specified incidents. These included four abductions, four attempted killings, torture, and a number of attacks on houses or vehicles using petrol bombs. Applicants

79 Johannes Lodewikus Griebenauw [AM5182/97], Phillip Jacobus Fouche [AM6742/97].

in three incidents were divisional commanders: then Lieutenant-Colonels Johan van der Merwe, Dirk Genis and Eben Coetzee. An informer, later a police recruit, sought amnesty for some of the above incidents as well as an additional eight incidents. Amnesty was granted in eleven instances and refused in eighteen.

Northern Cape Security Branch

251. The Northern Cape Security Branch was based in Kimberley and included a branch at Vryburg.

252. The branch commander of Vryburg applied for and was granted amnesty for an attack on a church conducted in co-operation with C1/Vlakplaas.

Northern Transvaal Security Branch: A case study

253. The Northern Transvaal Security Branch was based in Pretoria and was responsible for Pretoria and its environs, including the black townships of Mamelodi and Atteridgeville. The Branch had sub-branches in Brits and Bronkhorstspruit, from where it monitored Kwandebele. Brigadier Jan Hattingh 'Jack' Cronje was the divisional commander during the key period for which most applications were received. During this period, Brigadier Cronje also served in an official capacity on the JMC.[80]

254. Thirty members of the Northern Transvaal Security Branch applied for amnesty for sixty incidents committed between 1981 and 1990. Several operatives, including the Divisional Commander, also sought amnesty for a number of attacks on the homes of activists in the mid-1980s. In addition, two applications were received from members of the Western Transvaal Security Branch, six from the SADF Special Forces and five from members of other SAP units for a number of joint operations or incidents in which they had participated. An application was also received from the commanding officer of the Security Branch and from the Chairperson of a security sub-committee of the Northern Transvaal JMC for incidents that they had authorised.

255. Approximately twelve of the incidents involved torture or serious assault. There were twenty-two abductions; forty-five killings, three of which took place outside South Africa's borders; sixteen bombing/arson attacks on homes, and an

80 Joint Management Committee.

undisclosed number of attacks on the homes of activists, either with petrol bombs or with more lethal explosive devices.[81]

256. Amnesty was granted in 120 instances, refused in nine, conditionally granted or granted/refused in five. No decision was taken in two instances where the applicant was deceased and in one where the application was withdrawn.

257. Most of the violations for which amnesty was sought emanated from a covert group under the command of Lieutenant Jacques Hechter.

258. Attacks on the homes of activists took place primarily in Mamelodi, Atteridgeville, Brits and Tembisa. Targets of abductions and killings tended to be MK operatives or those suspected of being linked to MK members. Targets for intimidation tended to be those involved in mass campaigns. In several instances, these attacks led to deaths.

259. A pentolite bomb was thrown at the home of the Ledwaba family shortly after midnight on 18 September 1986. There were nine people in the house at the time of the attack, including a 62-year-old woman and children under the age of fifteen. The target of the attack, Ms May Ledwaba, was unharmed but Mr Walter Ledwaba, a relative, was killed and Mr Julian Selepe lost a hand and suffered severe damage to his leg [AM4158/96; AM2776/96; AM3759/96; AM2773/96].

260. In February 1987, the home of Mr Scheepers Morodu, chairperson of the Mamelodi Students' Congress, was petrol-bombed. Mr Morodu was uninjured, but his eleven-year-old niece, Sanna Puleng Letsie, was killed. Lieutenant Willem Johannes Momberg, Sergeant Eric Goosen, Captain Jacques Hechter, Brigadier Jan Hattingh Cronje and Brigadier Gilles van de Wall, who chaired the security sub-committee of the Northern Transvaal Joint Management Centre, applied for and were granted amnesty for this incident [AC/2001/061].

261. Approximately three months later, Scheepers Morodu was detained by the Northern Transvaal Security Branch. During interrogation, Lieutenant Hechter and Sergeant van Vuuren subjected him to various forms of torture, including electric shock, suffocation and assault. Eventually he agreed to become an informer. At the amnesty hearing into his torture, Mr Morodu testified that:

81 These are not mutually exclusive categories: many incidents involve multiple violations, where a person may be abducted, tortured and then killed. Similarly killings include those killed during an attack on a home.

This act ruined my life and I could not walk safe in the township and each and every person suspected me … I wouldn't have collaborated with them and they knew that for a fact when they interrogated me and that is why they brought in Mr Mamasela to come and talk to me – whereby I even refused. And when one of them left the office, Joe Mamasela told me in no uncertain terms that I am going to die if I don't work with them. (Pretoria hearing, 21 March 1999.)

262. Morodu also testified that he has had to continue to receive medical treatment as a consequence of his torture:

My last operation was last October 31st ... According to that doctor they said my nose was the bone which separates the two nostrils was went to the other side. I think it is as a result of them kicking me in my face.

263. The covert operational unit was also involved in a number of abductions and killings. Lieutenant Hechter testified at the Masuku hearing on 26 March 2000 that:

It started with petrol bombs and then, as we began to target the more serious activists, it went over to bomb attacks and then there were specific activists who were removed and eliminated from society.

264. The covert unit was also involved in the following operations:
    a On 6 May 1987, Mr Joe Tsele, a UDF activist, was shot dead in his home in Bophuthatswana by Joe Mamasela.[82]
    b On the night of 15 July 1986, nine youths were shot dead and their bodies set alight in a house in Kwandebele. This operation happened just three weeks after ten youths had been killed near Nietverdiend (see above).
    c In the same month, Messrs Jackson Maake, Andrew Maponye Makope and Harold Sello Sefolo were abducted and taken to an abandoned Portland Cement Company property near Pretoria. Here they were interrogated and shocked with high voltage electricity until they were dead, one by one. Mr Sefolo, the last to die, witnessed the deaths of Mr Maake and Mr Makope. The bodies of the three were taken and placed on a landmine on an abandoned road in Bophuthatswana. The landmine was then detonated.[83]
    d Shortly after the above operation, an unknown person was abducted and taken to a deserted area in Bophuthatswana. Applicant Constable Sampina Bokaba testified that Hechter questioned Sefolo and, dissatisfied with his

82 Volume Two, Chapter Three, pp. 232–3.

83 See Volume Two, Chapter Three, pp. 238–9.

responses, tied a wire around his neck and strangled him, with the assistance of Warrant Officer van Vuuren. Sefolo's body was then dumped in the veld with a tyre placed around his neck. Petrol was poured over him and he was set alight.[84]

e In 1987, an unnamed man believed by the Security Branch to be a member of MK was picked up for questioning. He was driven into Mamelodi by between six and eight operatives, including Brigadier Cronje, the Divisional Commander of Northern Transvaal Security Branch, and asked to identify houses where MK members were hiding. When he was unable to identify a single house, he was assaulted by the operatives. Captain Prinsloo testified that he throttled the captive until his body became limp and sank to the ground. Lieutenant Momberg and Sergeant Goosen picked the victim up and placed him on a landmine, which was then detonated. Lieutenant Momberg, who lit the fuse, testified that he heard the explosion as he 'walked away from this scene towards the bus and climbed in'. The group then went back to Pretoria (Pretoria hearing, 1999).

f Amnesty applicants confirmed that Sergeant David Mothasi and Mrs Busisiwe Irene Mothasi were killed by members of the covert unit at their home in Temba, Bophuthatswana on 30 November 1987, allegedly on the instructions of the Divisional Commissioner of Police, Brigadier Stemmet.[85] They further testified that there had been no instruction to kill Mrs Mothasi, and that her killing by Constable Joe Mamasela was unauthorised. In his section 29 appearance before the Commission, Mamasela claimed that his instructions were that both Sergeant and Mrs Mothasi and their five-year-old son were to be killed, but that he had spared the life of the child. Constable Mamasela did not apply for amnesty.

265. Lieutenant Jacques Hechter of the Northern Transvaal Security Branch (see above) also acted as the link with an SADF Special Forces covert operational unit that was involved in conducting joint operations with the Northern Transvaal Security Branch. Brigadier Cronje testified that Brigadier Schoon, head of Section C (terrorist investigations) at Security Branch Headquarters, instructed him to work with the SADF's Special Forces. This confirmed Brigadier Cronje's opinion that the Security Branch was now engaged in all-out war. At the Security Forces hearing that took place from 2–10 October 2000, he testified that:

84 Hearing 27 March to 7 April 2000. See Volume Two, Chapter Three, p. 238; AC/1999/032,AM2777/96, AC/1999/030,AM2776/96, AC/2000/107,AM5460/97.

85 See Volume Two, Chapter Two, p. 271.

[Special Forces] was the special combat unit working with covert actions. If Brigadier Schoon gave me instruction to work with Military Intelligence I would not have considered than an instruction [for] war, but the instruction to work with Special Forces was a direct instruction to get involved in direct military warfare. I accepted Brigadier Schoon's instruction and respected it as an instruction to get directly involved with military action in a military way. It was therefore no longer normal policing actions or tasks which I had to carry out. My responsibilities were therefore far wider.

266. The covert unit undertook at least three joint operations with SADF Special Forces (see below).

Section C

267. Like its counterpart at Security Branch headquarters, Section C was the so-called Terrorist Investigation Unit. As an investigative rather than intelligence-gathering unit, its function was to investigate all matters relating to MK and other armed formations.

268. Nine Northern Transvaal Security Branch operatives based in Section C applied for amnesty for a number of abductions and killings committed between 1986 and 1987.

269. During 1986, an MK elimination unit (sometimes referred to as the 'Icing Unit') was active in the Northern Transvaal and Bophuthatswana area.

270. On 18 March 1986, Mr Patrick Martin Mahlangu, who was allegedly linked to the Icing Unit, was abducted from his Mamelodi home by Vlakplaas *askaris* purporting to be MK operatives. He was taken to a place near Northam in the Transvaal and was strangled en route by Colonel Marthinus Dawid Ras. His body was placed on top of approximately eight kilograms of TNT, which was detonated in an attempt to make it appear as if he had blown himself up while laying a landmine.

271. In September 1986, four members of the Icing Unit (Messrs Jabu Masina, Ting-Ting Masango, Joseph Makuru and Neo Potsane) were detained and later sentenced to death. At around the time of their arrest, a fifth member of the unit, Mr Justice Mbizana (aka Mandla Shezi) disappeared and none of the other four

knew what had happened to him. Ten Northern Transvaal Security Branch operatives, including the Divisional Commander, Brigadier Cronje, the head of Section C, Major Sarel du Plessis Crafford, and his second-in-command, Captain Hendrik Prinsloo, applied for amnesty for his abduction [AC/2001/248]. Five of the ten applicants admitted in their applications that they had been responsible for killing Mr Mbizana.

272. On 14 October 1986, Captain Prinsloo (then head of Section C) instructed Constables Mathebula and Chenny William More of Section C to go to the house of Mr Moses Morudu, who was also suspected of being linked to the 'Icing Unit'. Their orders were to pretend to be MK operatives and to persuade Mr Morudu to go into exile. Morudu agreed to go with them and was handed over to white members of Section C. He was taken to a farm near Hammanskraal where he was held for approximately one week, during which time he was interrogated by members of both Section C and the covert unit, including Lieutenant Hechter and Constables van Vuuren and Mamasela.

273. Constables Mathebula, More and Matjeni applied for amnesty for this incident[AC/2000/010]. They testified that they had no idea of Morudu's ultimate fate, except that he disappeared from the farm after a week. The Morudu family believed that he had gone into exile but realised that something must have happened to him when he failed to return with the other exiles after 1990.

274. Another killing linked to Section C of the Northern Transvaal Security Branch was that of Mr Ernest Ramango, alleged to be a Security Branch source (Source 402) but suspected of being a double agent. Mr Ramango was picked up, interrogated and assaulted and given a poisonous drink. He was transported to Mamelodi in an unconscious state and placed on top of a landmine, which was then detonated. Captain JJH van Jaarsveld confirmed that Ramango had been one of his sources but had later reported to Major SdP Crafford [AM3761/96]. J P Roodt [AC5466/97] and D J Kruger [AM5233/97] applied for and were granted amnesty for the murder of Ramango and related offences [AC/1999/307]. Major Crafford [AM5468/97; AC/2000/110] also received amnesty for his role in this murder.

275. In June 1987, Jeffrey Sibaya and a man known as Mpho were killed by members of the covert unit and Section C[86]. Although no specific mention is made of Mr Sibaya's link to the 'Icing Unit', applicant Van Vuuren suggested that Mr Sibaya

86 See above, para 93.

had been connected to the death of Sergeant Seuntjie Vuma, for which members of the 'Icing Unit' had been sentenced to death [AM2777/96].

276. Mr Petros Lubane was suspected of being a courier for Mr Siphiwe Nyanda (aka Gebuza), head of the MK's Transvaal Machinery and allegedly involved in reconnoitering Wachthuis, the SAP headquarters. Mr Lubane was abducted by Constables More and 'Bafana' Mbatha on 17 September 1987 on the instructions of Captain Prinsloo. He was taken to a farm near Rust-de-Winter in the Transvaal, where he was held, interrogated and tortured for a number of days. After unsuccessful efforts to recruit him as an informer, Captain Prinsloo and Major Crafford decided that he should be killed. When authorisation was received from Divisional Commander Brigadier Cronje, Mr Lubane was given a poisoned beer. He fell unconscious and was placed in a hole in the ground before being shot in the head. His body was then blown up with explosives. The black constables were instructed to help their white colleagues comb the area for pieces of flesh. These remains were placed in the hole, which was now much larger because of the explosion. A second explosion ensured that all traces of Mr Lubane were obliterated.

277. Mr Lubane's family has requested that the site where he was killed be identified so that they can look for fragments of his remains and perform the customary burial rites.

The South African Defence Force

278. General Johannes Jacobus 'Jannie' Geldenhuys, Chief of the SADF, General Andreas Jacobus 'Kat' Liebenberg, Chief of the Army, Admiral Andries Petrus 'Dries' Putter, Chief of Staff Intelligence,[87] and Brigadier Christoffel Pierre 'Joffel' van der Westhuizen, Officer Commanding Eastern Province Command applied for amnesty for Operation Katzen, an attempt to establish a surrogate force in the Eastern Cape as well as the overthrow of the Ciskei government of Lennox Sebe. Amnesty was granted [AC/2000/192; AC/1999/243; AC/2000/037].

87 Admiral Putter subsequently withdrew this application.

279. The following members of the SADF applied for amnesty for their role in destabilising the homelands:
    a Captain Henri van der Westhuizen for his role in providing arms to General Oupa Gqozo (granted in Chambers) [AM5462/97; AC/2001/212];
    b Kommandant Jan Anton Nieuwoudt for his involvement in the attempt to overthrow Chief Bantu Holomisa in the Transkei in November 1990 (application later withdrawn); and
    c Clive Brink for his involvement in the killing of Messrs Onward Guzana and Charles Sebe on 27 January 1991 (application later withdrawn).

280. The Amnesty Committee also received several applications from members of C1/Vlakplaas for their role in providing Kommandant Jan Anton Nieuwoudt with arms to be used in the coup [AM8079/97; AM3766/96; AM4358/96]. At the time Kommandant Nieuwoudt was based in IR-CIS, allegedly a private company which provided an intelligence capacity to General Oupa Gqoza, Chief Minister of the Ciskei, but was in fact a front for the SADF.

Northern Transvaal Security Branch and Special Forces Joint Operations

281. Giving evidence before the Amnesty Committee, Major General Abraham 'Joep' Joubert [AM3799/96] testified that the new Chief of the Defence Force, General Johannes Jacobus 'Jannie' Geldenhuys, had informed him that the government planned to expand the state of emergency countrywide in June 1986. General Geldenhuys instructed him to draw up a plan showing how Special Forces could provide support for the Security Branch internally. While it is clear from other evidence brought before the Commission and the Amnesty Committee that co-operation between Special Forces and the Security Branch pre-dated 1986, such co-operation probably related to external operations for which the Security Branch provided target intelligence.

282. According to General Joubert, Officer Commanding Special Forces[88]:

    At this stage, everybody of importance had realised that the unconventional and revolutionary methods provided the only hope of success. The fact that Special Forces was involved on an internal level, confirmed this.

88 A veteran of the war in Namibia and Angola, recipient of the Southern Cross Medal and other awards, and past chair of the SWA Joint Management Committee.

By this time it was also clear that the ANC was not going to be stopped by normal conventional methods and that revolutionary methods would have to be used. As the institution for external operations, Special Forces would also have to intensify its external operations. (Amnesty hearing into the death of the 'Nietverdiend Ten' and other incidents: AC/1999/188.)

283. General Joubert testified that the decision to involve Special Forces internally confirmed the recognition that 'unconventional and revolutionary methods offered the only hope of success'.

284. Joubert's plan involved killing ANC leaders and others making a substantial contribution to the struggle, and destroying ANC facilities and support services. Because the SAP and not the SADF were primarily responsible for the internal security situation, the plan foresaw that the Security Branch would be responsible for the identification of potential targets for killing. Thereafter both forces would jointly decide on operations and their *modus operandi* which, once they had been authorised by the respective commanders, would be executed by Special Forces.

285. General Joubert envisaged that this plan would be implemented in three 'hotspots': the Northern Transvaal, the Witwatersrand and the Eastern Cape.

286. After outlining the plan to General Geldenhuys at a function at Armscor in April or May 1986, General Joubert received the go-ahead. He testified that he believed that the plan had been vetted by General Johan Coetzee, then Commissioner of Police.

287. Generals Geldenhuys and Coetzee were earlier questioned by the Commission in connection with the amnesty applications of Joubert and others.[89] They both denied authorising the plan and neither applied for amnesty, although they were given notice as implicated parties.

288. The involvement of Special Forces in 'unconventional and revolutionary' activities was clearly unlawful. This meant that such operations had to be conducted in a covert manner. They required a partial restructuring of the covert operational structures of Special Forces. Special Forces' covert operational capacity had been known initially as D40, later as Barnacle, and in the mid-1980s as the CCB.

89 Armed Forces hearing, 8–9 October 1997.

289. Amnesty applications in respect of General Joubert's plan related only to joint operations conducted with the Northern Transvaal Security Branch. It is not known what operations were conducted in co-operation with the Security Branch in the Witwatersrand area, although General Joubert denied that any other killings took place as a result of the above plan. A sworn statement that forms part of an amnesty application by a Soweto Security Branch applicant refers to two of the Special Forces applicants, one of whom is implicated in the bombing of a building.

290. Members of Northern Transvaal Security Branch and several Special Forces operatives sought amnesty for three operations conducted in terms of the joint plan, including the killing of the 'Nietverdiend Ten' on 26 June 1986, the killing of Mr Piet Mbalekwa Ntuli, minister in the Kwandebele government, on 29 July 1986 and the killing of Dr Fabian and Mrs Florence Ribeiro on 1 December 1986.

291. A further joint operation between Special Forces and Section A of the Northern Transvaal Security Branch was conducted in April 1987. This operation involved the attempted killing of MK Special Operations operatives in Botswana and resulted in the killing of three Batswana citizens. (See 'The McKenzie car bomb' above). Applications were received from Brigadier Cronje and two Section A operatives; from two members of the Western Transvaal Security Branch who assisted with the operation, and from General Johan van der Merwe who authorised it. In line with their policy of not seeking amnesty for external violations, members of Special Forces did not apply for amnesty.

Operation Katzen

292. Brigadier Christoffel Pierre 'Joffel' van der Westhuizen devised Operation Katzen[90] in response to intense pressure from high-ranking members of the security forces and the political leadership of the National Party to stablise the security situation in the Eastern Cape. In the short term, Operation Katzen aimed to fracture resistance politics in the Eastern Cape by creating an organisation along the lines of Inkatha. In the longer term, its ambitious plan was to lay the basis for a new constitutional dispensation in the region, allowing for African involvement in local and regional political structures.

293. Applicant Van der Westhuizen testified that the broad outline of this plan was in line with the thinking of State Security Council (SSC) structures at the time.

90 See Volume Two, Chapter Five, pp. 435–40.

Operation Katzen was approved by both the Chief of the Army, General 'Kat' Liebenberg, and his superior, the Chief of the SADF, General Jannie Geldenhuys, and put into operation.

294. By January 1987, the following actions had been taken:
    a *Iliso Lomzi* had been established by anti-Sebe forces as the pro-government 'resistance movement' and had undergone training.
    b Charles Sebe, who had been identified as the leader of *Iliso Lomzi*, had been sprung from prison in Middledrift by members of Special Forces/CCB.
    c Kwane Sebe, son of Lennox Sebe and head of the Ciskei Police Elite Unit, and his second in command had been kidnapped and were being held in the Transkei.[91]
    d A shadow cabinet for the Ciskei had been established and plans had been made to topple the government.
    e A Stratcom plan aimed at discrediting Lennox Sebe had been put into effect as part of the plan to remove him from power by force.

295. By now Brigadier van der Westhuizen had been transferred to the Witwatersrand Command. He told the Amnesty Committee that Operation Katzen was terminated at this time. Yet despite his protestations, an attempted coup did take place in February 1987. Although Brigadier van der Westhuizen claimed that this no longer had the support of the SADF, he conceded that it was the direct result of Operation Katzen.

296. Planning documents submitted to the Amnesty Committee in connection with Operation Katzen make generous use of terminology such as 'permanently disappear', 'take out', 'get rid of' and similar expressions. Applicant van der Westhuizen denied that such terminology was intended to mean killing, although he continued to make the somewhat fantastic assertion that only 'an uninformed person who could possibly read the Plan, could be encouraged to kill or kidnap or discredit' those so identified as targets for 'removal'.

297. Van der Westhuizen's testimony was contradicted by that of Brigadier Johannes Lodewickus Griebenauw, divisional commander of the Security Branch in the Border Region. Griebenauw testified that he had been instructed by his superiors to participate in Operation Katzen. He said that he had had reservations about

91 The Amnesty Committee also received applications from members of the Ciskei Elite Unit, who sought amnesty for the torture of several detainees who had been detained in the aftermath of Charles Sebe's escape from prison and in connection with the activities of *Iliso Lomzi*.

this, particularly after *Iliso Lomzi* started engaging in 'certain [...] acts of terror' (East London hearing, 7 April 1999).

At that stage ... I found it hard to swallow as a policeman, because on the one hand I was trying to combat terrorism and on the other hand, I was aware of people who were being trained as terrorists. (East London hearing, 7 April 1999.)

298. In November 1986, one of his operatives had reported back to him from Operation Katzen meetings held in the Transkei, giving him the impression:

that what we were now concerned with was killing, actual, physical killing and physical removal, and that was probably the biggest reason that I withdrew and why I asked Head Office that we as the police should withdraw completely. (East London hearing, 7 April 1999.)

Directorate of Covert Collections-linked applications

299. The applications from Directorate of Covert Collections (DCC) personnel indicate that the SADF's involvement in the destabilisation of the homelands did not end with Operation Katzen. However, as two of these applications were withdrawn and the third was decided in Chambers, little new detail emerged regarding the incidents in question.[92]

300. Besides these applications, a further two operatives linked to the DCC, Johan Frederich Verster and Leon Flores, formerly a Vlakplaas member, applied for amnesty for various operations aimed at discrediting the ANC in the 1990s.

301. The role and functions of the DCC came under the spotlight after a raid on DCC premises by the Goldstone Commission in November 1992. Following this raid, then President de Klerk ordered an investigation headed by South African Air Force general Pierre Steyn. Drawing on two earlier investigations conducted by the SADF's Counter-Intelligence Unit as well as the NIS, General Steyn concluded that DCC personnel were involved in a range of unlawful activities. These included the planning and execution of coups in the Ciskei and Transkei; manipulating important role players in the Transkei and Ciskei; involvement with the IFP; fanning unrest through killing, arming of political factions and intimidation actions; participation in planning to escalate violence in order to thwart the government's reform initiatives, and corruption with regard to illegal arms deals.

92 See Volume Two, Chapter Seven,pp. 616–23 regarding destabilisation of the homelands in the 1990s.

302. The investigation by General Steyn also revealed that several members of the CCB, including its second in command, Dawid Fourie, Wouter Basson, 'Staal' Burger and 'Chappies' Maree, had been employed by the DCC following its dismantling.

303. The applications by DCC personnel provided some confirmation of these allegations.

CCB Region Six

304. The activities of Region Six of the CCB surfaced during the investigations into the Lubowski and Webster killings. According to evidence presented to the Amnesty Committee, the SADF decided to establish an internal region of the CCB, namely Region Six, in 1988.

305. Eight applications for amnesty were received in connection with the activities of Region Six.[93] These involved the attempted killing of UDF Western Cape Chair Abdullah Omar, the planned killing of Mr Gavin Evans, an End Conscription Campaign member, the bombing of the Early Learning Centre in Athlone Cape Town on 31 August 1989, and the harassment of Archbishop Desmond Tutu in Cape Town in 1989.

306. Applicants from Region Six claimed that the operations applied for were the only internal operations of Region Six. They stressed that the CCB had been a long-term plan, the fruition of which was cut short by the disbandment of the organisation in 1990.

307. The identity of Region Six had remained top secret even within the network of CCB operatives. Because there was only one amnesty application, there is still very little knowledge about the internal operations of the CCB.

93 Major General Edward Webb, GOC Special Forces and 'Chairman' of the CCB; Colonel Pieter Johan 'Joe' Verster, 'Managing Director' of the CCB; Wouter Jacobus Basson, aka Christo Brits, co-ordinator of Region Six; Daniel du Toit 'Staal' Burger, manager of Region Six; Leon Andre 'Chappies' Maree, Region Six, responsible for Natal; Carl Casteling 'Calla' Botha, Region Six, responsible for Transvaal; Abram 'Slang' van Zyl, Region Six, responsible for the Western Cape, and Ferdinand 'Ferdi' Barnard.

PART FOUR: ACCOUNTABILITY, DISCIPLINE AND THE ROLE OF LEADERSHIP

ACCOUNTABILITY

308. In theory, the Commanding Officer of Security Branch Headquarters was accountable to the Commissioner of Police. However, because he had direct access to the Minister, he had considerable autonomy in authorising operations.[94] For example, in Operation Zero Zero (1985), the bombings of Cosatu House (1987) and Khotso House (1988) and the 'Cry Freedom' incident (1988), communication seems to have taken place directly between the Minister and the Officer Commanding the Security Branch.

309. The Officer Commanding's second in command could authorise operations when his superior was not present. Thus, Brigadier Jan du Preez, second in command in the early 1980s, is said to have authorised several operations, including the entrapment operation in which three COSAS youths were killed in February 1982. According to Brigadier Schoon, Brigadier du Preez was functionally senior to the divisional commanders with whom he shared the same rank.

310. Where both the Officer Commanding and his second in command were unavailable, it appears that in certain circumstances Brigadier Schoon, head of Group C (counter-terrorism) and one of the most senior officers at Headquarters, was able to issue such authorisation. He appears to have provided a crucial line of communication and authorisation, and several applicants in divisional offices cite him as their line of communication. Following the killing of the Ribeiros[95], General Coetzee testified that, as Commissioner of Police, he telephoned Brigadier Schoon directly following allegations of security force complicity and instructed him to make enquiries of Brigadier Cronje, the Divisional Commander in whose jurisdiction the killing had taken place, and to report back to him and the Security Branch chief.

311. During the execution of an operation, operational commanders were allowed considerable discretion. According to applicants, it was not always possible to set guidelines and standing orders because decisions frequently had to be made

94 It should be noted, however, that throughout the Commission's mandate period, Commissioners of Police were in most instances former Commanding Officers of the Security Branch.

95 Volume Two, Chapter Three, p. 231.

quickly. Brigadier van der Merwe told the Amnesty Committee that planning was usually done:

on the ground level by members who knew the circumstances and who were involved with the execution. [He] … just accepted that the people who were involved were experienced, competent and that they would have the ability to manage and execute it.[96]

312. Extrajudicial killings formed part of a counter-revolutionary strategy authorised by the state at the highest level.[97] Targets included civilians who were either political opponents or supporters of the liberation movements.

313. Applicants in numerous hearings testified that those who assisted MK operatives by providing logistical support such as finance and transport and safe houses were also regarded as legitimate or justifiable targets.

314. It would appear that most internal targets for elimination were decided at a divisional level, as emerged at the 'Pebco Three' and Ribeiro hearings. Lieutenant Jacques Hechter told the Committee that targets for elimination were decided on 'an *ad hoc basis*', particularly those who were high-profile activists or 'untouchables' who could not be prosecuted in a court of law.[98]

315. However, such decisions were made within a broader national context: the former in response to an instruction from the Minister of Law and Order to 'stabilise the Eastern Cape by all means' and the latter in response to an instruction by Security Branch Headquarters to work with Special Forces.

316. Colonel de Kock and other applicants said that, because external operations put operatives in a far more vulnerable position, they always sought approval for these from Security Branch Headquarters. Major Williamson testified at the Pretoria hearing on 15 September 1998:

the impression that I probably got at the time … was that if one was carrying out an operation which was on behalf of the State ... if a problem arose we would have the backing of the State. I never got the impression that it was like the movies you see where James Bond or somebody gets called in and the

96 Pretoria amnesty hearing, 21 April 1999.
97 Volume Five, Chapter Six, pp. 214–18.
98 Pretoria Hearing, 28 February 1997.

Minister says to him: 'I want you to go and kill somebody in the Bahamas but if you are caught we don't know who you are.' I had the feeling that we had the backing of the State and that if necessary they would take the necessary pain.

317. Many applicants testified that they worked in a culture where information about clandestine and covert activities was tightly guarded and details were not widely circulated beyond those requiring specific knowledge. Adherence to the 'need to know' principle was regarded as essential in order to maintain the integrity of intelligence gathered and to ensure that operations were not compromised. This was especially so in covert operations, where every attempt was made to ensure that actions could not be traced back to their origins. Unlike clandestine acts, where the aim was to prevent information leaking prior to an operation, secrecy surrounding covert operations had to be maintained in perpetuity. In this context then, asking questions of commanders and colleagues was regarded as taboo. Major Craig Williamson told the Committee that anyone asking questions 'on an ongoing basis … would definitely have been moved out of security branch headquarters'.

318. The 'need to know' principle extended to reporting on operations. Again, according to Major Williamson: 'what the commanders at that level and the politicians needed to know was the result of the operation and nothing further'. Applicants made it clear that their commanders expected to be told very little. But, said Williamson, 'the General had the right to know and the prerogative of using the right to know was the General's.[99]

319. However, said Williamson, there was 'a tendency in a social environment for lapses to occur'. Captain van Jaarsveld of the Northern Transvaal Security Branch pointed out that:

one of those anomalies in the Police … (the) need to know was sustained on an official level, but when people met informally, like at a braaivleis, they discussed these matters. (Pretoria hearing, 5 May 1999.)

320. The 'need to know' principle helped prevent knowledge emerging as to who was responsible for covert operations. At another level, however, it appears to have operated together with another well-known security principle, that of 'plausible deniability'. Testimony to the Amnesty Committee on a number of matters clearly revealed that, in deciding 'who needed to know', there was a

99 Pretoria hearing, 5 May 1997.

tendency to try to protect those higher up the command chain. At the Stanza Bopape hearing in Johannesburg (23–27 February 1998), General van der Merwe was asked why he had not informed his minister. He responded:

You must remember I was head of the security branch and the head security adviser and General Erasmus was head of the most important – and I think the burning point in South Africa – and we would have placed him in an impossible situation. They would not have had any other choice to comply with what we did. It would have been disadvantageous to them and it would have made them vulnerable and we would have used them as a rubber stamp and it would have been unethical. And because of that reason I took the decision on my own. And in all honesty I believed that it was in the best interest of the Minister and the government and the whole situation …

… let's just look at what would have happened in the practice if I decided to approach the Minister. Would he have been able to handle this on his own? Wouldn't it have been put to him that he should advise the President and the President would have approached the State Security Council. Where would all of this have ended? The Minister had no more capacity in order to decide about this issue than me. I was responsible for the maintaining of law and order. The Minister was purely the political head. So his capacities were more restricted… So the Minister by knowing about this, could not have attributed to improve the situation as far as I'm concerned. But if I asked him to help with this, in order to maintain the smokescreen he would have had to answer questions to Parliament and he would have made himself guilty of telling untruths. And right through the whole issue he would have followed the same behaviour we did, and for him and the government it could have been very dangerous. You must remember that we were willing to do this in the interest of that which we tried to achieve, which was public order. Something we considered very heavily at that stage. And also to protect the interest of the government. And if the Minister himself would have become involved it would have meant that those interests we wanted to protect, we would have jeopardised them.

321. In line with the above principles, orders were almost always verbal and tended to be conducted on a one-to-one basis. Written reports contained the barest detail. A lexicon of euphemisms, shrugs and winks developed. Discussions were brief, heavily dependent on body language and on a shared sense of purpose. Thus verbal, one-to-one commands ensured an absence of witnesses and documentary evidence, while obscure language allowed commanders to claim that they had misunderstood or misinterpreted a communication, providing enormous scope for denial of involvement and/or authorisation.

AUTHORISATION OF UNLAWFUL ACTIVITIES

322. Increasingly, as time went on, the security forces used unlawful and criminal actions, particularly extrajudicial killings, to respond to the political situation. By now, the condonation and tolerance of extrajudicial activity had led to a culture of impunity throughout the security forces.

323. The Commission noted a number of words and phrases in security policy documents, speeches in Parliament and elsewhere in the mid-1980s such as: '*elimineer*' (eliminate); '*uithaal*' (take out); *'fisiese vernietiging – mense, fasiliteite, fondse*' (physical destruction – people, facilities, funds); '*maak 'n plan*' (make a plan); '*uitwis*' (wipe out). Numerous amnesty applicants, including senior personnel, confirmed that they had understood such words to mean killing. Major Williamson told the Committee that he understood 'these words to have a simple meaning and that is to get rid of, kill, destroy'.

324. Despite this, former Minister Vlok and Generals van der Merwe and Coetzee continued to assert that at no stage did the State Security Council (SSC) authorise any policies that included extrajudicial killing. Indeed they went further, saying that the SSC neither authorised nor recommended any illegal action, although Mr Vlok did concede that certain Stratcom activities approved by the SSC could be regarded as unlawful. They did, however, agree that operatives could have 'misunderstood' their intentions. Mr Vlok said, for example, that the phrase 'destroy the enemy' could have been understood in a literal sense.

325. This position appears to have been an attempt to support Security Branch applicants in their efforts to gain amnesty while, at the same time, exonerating those in command and political authority. The Commission did not support the arguments put forward by former Minister Vlok and Generals van der Merwe and Coetzee.[100]

326. The applications referred to below, which covered a range of violations, involved direct political authorisation:

100 Volume Five, pp. 214–19.

a In 1982, amnesty applicant General Petrus Johannes Coetzee said he was instructed by then Minister le Grange to assemble a team to strike at the offices of the ANC in London in the United Kingdom, saying that this was 'the decision of the government' (Pretoria hearing, 22 February – 5 March 1999).

b In 1985, Minister le Grange allegedly authorised a plan,[101] codenamed Operation Zero Zero, to issue hand grenades to a number of young COSAS activists on the East Rand.[102] As a result of this operation, seven youths were killed and eight severely injured when they attempted to detonate the hand grenades as instructed.[103]

c In 1987, Minister of Law and Order Adriaan Vlok authorised the destruction of Cosatu House, national headquarters of the trade union federation, in central Johannesburg. A C1/Vlakplaas team, with assistance from the Witwatersrand Security Branch as well as the technical and explosives sections at Security Branch Headquarters, undertook the operation on the night of 3 May 1987, extensively damaging the building.[104]

d In July 1988, Minister Vlok authorised the placing of dummy explosives in several cinemas around South Africa, to provide a pretext for the seizure and banning of the film *Cry Freedom* about the death of detainee Steve Biko at the hands of the Port Elizabeth Security Branch. This action was undertaken after numerous unsuccessful attempts to force the government-appointed Publications Control Board to ban the film. In the words of Mr Vlok, 'we had walked the legal way ... I judged the risk that this film would have and it would be so inciteful that this risk was too big'.[105]

e In August 1988, Minister Vlok was allegedly ordered by State President PW Botha to render Khotso House 'unusable', but to do so without loss of life. According to Mr Vlok and General van der Merwe, the Security Branch had evidence that arms were stored on the premises and that people with MK links had been seen entering the building. Mr Vlok further testified that, although he had not been given specific instructions to bomb Khotso House, neither he nor General van der Merwe was able to think of a legal way to carry out Mr Botha's instructions. He said, moreover, that Mr Botha's injunction to ensure that there was no loss of life led him to believe that Mr Botha was suggesting the use of unlawful means. The operation, conducted by C1 with assistance from the Witwatersrand Security Branch and the

101 As Le Grange is deceased, his authorisation cannot be confirmed. However, Delport gave evidence that Le Grange visited the East Rand shortly after the incident and congratulated him.

102 See 'Operation Zero Zero' in Part Two of this chapter.

103 Evidence relating to the entrapment differs between the applicants and the survivor.

104 Cosatu House hearing, 21–31 July 1998, and Volume Two, Chapter Three, p. 289.

105 Johannesburg hearing, 20–31 July 1998.

explosives section at Security Branch headquarters, took place on the night of 31 August 1988. Following this operation, both Minister Vlok and General van der Merwe were involved in the cover-up.[106]

327. The above incidents demonstrate that there was direct political authorisation for clearly unlawful activities that included killing. In addition, evidence was led that a number of cross-border operations had been authorised by the state, and General Coetzee testified to involvement in the 1982 Maseru raid and the 1985 Gaborone raid.

328. Applicants gave further evidence of high-level political authorisation at a meeting of the senior national and divisional leadership of the Security Branch in early 1985. The meeting was addressed by then State President PW Botha who commanded them to bring the security situation under control by 'whatever means possible'. This was interpreted as authorisation to use unconventional and unlawful methods.

329. One of the arguments presented by representatives of the National Party and certain high-ranking security and intelligence officials is that the CI/Vlakplaas unit was a renegade gang, acting outside of official policy.

330. It is indeed so that higher authorisation was not conclusively established in a number of operations conducted by C1. However, with regard to one matter, that relating to the killing of Mr Griffiths Mxenge in November 1981, the Amnesty Committee commented as follows:

With regard to [Dirk Coetzee], there was no direct evidence to confirm that he acted on the orders of Van der Hoven [Divisional Commander of Port Natal] or Taylor [Section C, Port Natal]. In fact, it is a matter of public knowledge that Van der Hoven and Taylor denied any involvement; they did so during their recent trial in which they were co-accused with the applicants on a criminal charge in respect of this very incident. While there may be some doubt about the identity of the person or persons on whose advice, command or order, the first applicant acted, the fact that he acted on the advice, command or order of one or more senior members of the Security Branch, admits of no doubt; particularly if regard is had to the following:

106 Khotso House hearing, 20–31 July 1998, and Volume Two, Chapter Three, p. 291.

- *He knew nothing about Mxenge and had never heard of him;*
- *He was not based in Durban, but in Vlakplaas near Pretoria. It is inconceivable that he would have, on his own, come all the way to Durban to launch an operation of this magnitude;*
- *Being from Pretoria, he must have been given the necessary logistical and other support on the orders of someone who was his superior;*
- *In order to carry out the operation he requested that Joe Mamasela, who was at that time based in the North West area, be brought to Durban. This was done; Mamasela was released and sent to Durban to be part of the squad;*
- *The murder was indeed covered up and the truth did not emerge until later when it was revealed by the first applicant. This give credence to the allegation of Security Branch involvement on a high level as alleged by first applicant;*
- *An amount of three thousand rand (R3 000.00) was paid to the second and third applicants and to Mamasela by the Security Police, for their part in the killing of Mxenge. [AC/1997/041.]*

331. The scenario sketched by the Amnesty Committee is, in the Commission's view, of more general applicability to many of the other killings committed by C1/Vlakplaas.

332. The consistent pattern of violations committed by both C1/Vlakplaas and other regions provides compelling evidence that operatives were pursuing a policy that was widely accepted and broadly authorised. Moreover, considerable evidence was led during amnesty hearings that supported the Commission's viewpoint that unlawful activity was widely condoned. The Commission bases this viewpoint on the following evidence:

Failure to discipline

333. There was a consistent failure to discipline those who behaved in an unlawful manner. Applicants cited numerous incidents in which senior personnel failed to take action against subordinates who had committed transgressions.

334. Brigadier Cronje, Divisional Commander of the Northern Transvaal, was present when Captain Hendrik Prinsloo assaulted an unknown MK operative. Yet, even when Captain Prinsloo began to throttle the victim, he made no effort to stop the assault. The victim died of strangulation.

335. On 6 May 1987, Constable Joe Mamasela is alleged to have shot dead Mr Joe Tsele when his instructions had simply been to check whether he was at home. Brigadier Cronje, who was present during the incident, testified that he had seen no point in reprimanding Mamasela as the covert unit had intended to kill Mr Tsele in any case.

336. On 30 November 1987, the covert operational unit killed police officer David Mothasi and his wife Busi Irene. Applicants said there had been no instruction to kill Mrs Mothasi. Joe Mamasela, who was responsible for the killing of Mrs Mothasi, was neither reprimanded nor disciplined.

337. On 12 June 1988, detainee Stanza Bopape died while being tortured with electric shock treatment. Those responsible reported the matter to their Divisional Commander, Brigadier Gerrit Nicholas Erasmus, who in turn informed the Officer Commanding the Security Branch, General Johan van der Merwe. Not only did Brigadier Erasmus and General van der Merwe then conspire to cover up the death of Mr Bopape, but they also failed to take any disciplinary actions against those responsible.

338. In June 1986, Mr Jabulani Sydney Msibi, a prominent MK operative, was abducted from Swaziland on instructions from Security Branch Headquarters. He was subsequently transferred to Daisy Farm where Captain de Kock and another severely assaulted him in the presence of Brigadier Herman Stadler, head of the Intelligence Section of Security Branch Headquarters. Brigadier Stadler instructed Captain de Kock to stop the assault, but took no further action.

339. In December 1985, General van der Merwe, then second in command of the Security Branch, authorised a raid on Maseru, Lesotho, that left nine persons dead, including three Lesotho citizens. When informed of this situation in early January, the Commissioner of Police, General Coetzee, took no action against General van der Merwe. This contradicts his testimony in an earlier Commission hearing, in which he testified that he had taken action whenever he received evidence of unlawful activity. On the contrary, Brigadier van der Merwe's promotion to General and his appointment as Commanding Officer of the Security Branch from the beginning of January 1986 went through as planned. In his defence, General Coetzee said that he had reported the matter to Minister le Grange and it had been up to the Minister to decide whether action should be taken. He further testified:

On that particular day in the context of what was happening then and then in the milieu that reigned there, if I had gone to the Minister and said 'and now I think criminal prosecution has to be instituted against General van der Merwe', he would have shown me the door and said 'listen here, you are out of your mind' because he believed it was in the interest of the country and that was the general thought or the general train of thought not only with the National Party but also with the government then. (Pretoria hearing, 3 March 2000.)

340. This provides conclusive evidence that he condoned the action.

Cover-ups

341. Further evidence that unlawful behaviour was widely condoned may be found in the many cover-ups that took place. In many instances, operatives – often with the sanction and assistance of those in higher command – played an active role in covering up unlawful activity. Types of cover-up included:

Placing arms at the scene of an ambush

342. On 8 June 1988, a joint C1/Eastern Transvaal team ambushed a vehicle they believed would be carrying armed MK operatives near Piet Retief. Three women and a man, all unarmed, were killed. In order to give the impression that a shoot-out had occurred, shots were fired from inside the vehicle and arms were planted in the vehicle.

343. Eugene de Kock testified that he had informed his superior, Brigadier Schoon, that there had been a 'problem with regards to the weapons', but that it had been rectified.

Appointing as investigating officers one of the operatives who had been involved in an incident

344. In many instances, applicants testified that they had both participated in an operation and acted as investigating officer afterwards, thus ensuring that the true facts did not emerge. In the two June 1988 Piet Retief ambushes, for example, then Captain Frederick Pienaar, commander of the Piet Retief sub-branch, initially acted as the investigating officer, despite the fact that he had been part of both operations. Further, in an arson attack on the Ledwaba home by the covert unit of the Northern Transvaal Security Branch, Sergeant Goosen,

who had accompanied Lieutenant Hechter on the operation, later attended the scene and described how he 'purposely destroyed evidence in order to protect the real perpetrators, including myself'.

Using Stratcom activities to turn attention away from the perpetrators and cast blame on other parties

345. In many cases, an attempt was made to lay the blame on a third party. For example, former minister of Law and Order Adriaan Vlok testified that he himself was party to the attempt to lay blame for the Khotso House bomb on MK operative Shirley Gunn. Ms Gunn was subsequently detained.

346. The use of Eastern Bloc weapons in many operations was a further means of disguising the identity of the perpetrators. It is significant that security force operatives had easy access to, and carried around an armoury of, such weaponry.

347. Northern Transvaal operatives testified that their *modus operandi* with regard to extrajudicial killings was to get rid of bodies by blowing them up. This not only destroyed evidence, but also created the impression that the victims had killed themselves while laying a landmine, making them appear incompetent and poorly trained.

348. In some cases, measures were taken to perpetuate the myth that a victim who had been killed was still alive. For example, following the killing of Messrs Siphiwe Mthimkhulu and Topsy Madaka, the Port Elizabeth Security Branch abandoned Mr Madaka's car near the Lesotho border and continued to harass their families to reinforce the impression that they were still alive. Similarly, before being killed by the Northern Transvaal Security Branch in 1986, Patrick Mahlangu was forced to write his family a letter which was then posted in Botswana, thereby creating the illusion that he had gone into exile. His family believed this and eagerly awaited his return in the early 1990s.

349. Some applicants testified to even more malicious behaviour. Those who applied for the killing of Ms Phila Portia Ndwandwe in October 1988 testified that they had spread a rumour that she had been recruited as an *askari*. Friends and family testifed that they had come to accept this painful fact and, following the disclosure of the facts surrounding her killing, were ridden with guilt by their failure to believe in her integrity.

350. In other examples of deception, Major Craig Williamson testified that the Security Branch had been responsible for the story that had surfaced, suggesting that Mr Joe Slovo had been responsible for the death of his wife, Ruth First.

351. Captain Willem Coetzee testified that he had given Major de Kock a letter to place at the ambush scene of three SANSCO[107] students in February 1989 to suggest that they had been killed by the ANC, following suspicions that they were informers.

352. As the above examples demonstrate, many of these Stratcom operations not only turned attention away from the perpetrators but cruelly increased the trauma of victims' families.

Giving false evidence to inquest and other courts and Commissions of Inquiry

353. The Amnesty Committee heard evidence of Security Branch members providing false information to inquest and investigative proceedings.

354. During the inquest into the Piet Retief ambushes, for example, false evidence included the fact that the first group had been unarmed. Further, Major de Kock's command of the second operation was not disclosed.

355. When questions were asked in Parliament about the *askari* who had killed MK suspect Batandwa Ndondo, the name of the *askari* was formally changed so that Minister Vlok would not be lying when he told Parliament that the individual was not in the employ of the SAP.

Complicity by other parts of police/security structures

356. Numerous applicants testified to complicity in unlawful activity by other security force structures. In several incidents, evidence was led about approaches to border patrol units or those stationed at border posts to ensure free passage for covert units. Furthermore, several names of investigating officers attached to the Detective Branch repeatedly came up as having played the role of 'sweeper' – in other words, being responsible for ensuring that the identity of perpetrators remained concealed.

107 South African National Student Congress.

Failure to ask questions

357. While Mr de Klerk and others have consistently denied knowing that the security forces were involved in illegal action, the Commission was struck by the fact that, in numerous cases, nobody appears to have asked any questions. Applicants themselves occasionally expressed their amazement at such disclaimers.

358. For example, former Minister of Foreign Affairs Roelof 'Pik' Botha, Dr LD 'Niel' Barnard, and General Coetzee all testified that when they had convened for the State Security Council at 11am on 20 December 1985, they had been unaware of the raid on Maseru the night before. They further testified that the raid had not been reported at the meeting nor had there had been any discussion about it. The astonishing failure even to mention the raid is best expressed by General van der Merwe, who testified as follows:

[By] lunch, it was headline news in the newspapers and no-one asked any questions.. One would have expected that if they did not know who it was, the State President would have at least asked the Chairperson of the CIC: 'What is going on here? A number of MK members were killed in Lesotho and this is an essential aspect of the threat with regard to us' and he would have wanted to know who was responsible for it.. [No] member of the SSC [who] had security background and who received information about this threat, could have pretended for any moment that the only people who had the capabilities of doing such things would be the Security Forces of South Africa. Anyone who pretended not to have that knowledge and wanted to blame any other body for this operation, would have been extremely naive and extremely ignorant at that stage. (Pretoria hearing, 29 February 2000.)

359. In his evidence before the Amnesty Committee, Mr Vlok testified that there were no questions in the State Security Council about the Cosatu House and Khotso House bombings. He testified that, at the next SSC meeting, he had been congratulated by the State President for the Khotso House incident. However, despite the fact that there had been specific input about the problems Khotso House was giving at the previous meeting, nobody asked any questions or commented on the destruction of the building.

360. This determination to ask no questions seems to have been replicated through out the command structures of the Security Branch. For example, when asked to get rid of 'a package' (the body of Stanza Bopape), Brigadier Schalk Visser,

divisional commander of the Eastern Transvaal, told Brigadier Gerrit Erasmus that he did not want to know the details.

361. According to Brigadier Cronje:

All actions under my jurisdiction which happened in this manner were taken up in situation reports which were sent through on a daily basis to my head office. The procedure was that further reports with this information would then have been passed on to the State Security Council. Events which took place under my command in the Security Branch in Pretoria were, therefore, passed on to Head Office and must have been taken up in reports to the State Security Council … I do not believe anyone in my Head Office could have been so naive as to believe that the ANC were killing and attacking their own people. They must have known what the true facts were. (Johannesburg hearing, 21 October 1996.)

362. Applicant Craig Williamson, who was a political appointee on the President's Council in the late 1980s, commented:

Once it got up to the NGBS (NJMC), it became the political control level where a deputy minister then received the information from the civil service below – and when I say civil service I include the security forces – and this information was then fed up via the [Work Committee] and the State Security Council and on a political level I believed directly either to Cabinet or to the State President … Once the information had arrived at the NGBS and then to the State Security Council, the information was in political hands. (Pretoria hearing, 14 September 1998.)

363. At the same time, the clandestine and covert nature of much of the Security Branch's work meant that, while certain information circulated and was discussed in formal forums, other mechanisms operated to ensure that sensitive information was kept under wraps. It became clear in many matters before the Amnesty Committee that, while the *fact* of an incident was passed on, in terms of covert rules, the *detail* in respect of Security Branch involvement was not.

364. On another level, of course, this is nonsense. A number of the people who were killed were extremely well-known and their deaths could hardly have been ignored. For example, Brigadier Schoon testified he had first learned of the death of Ms Jeanette Curtis Schoon and her daughter Katryn Schoon in the newspapers and at the morning 'Sanhedrin'. Asked who would have reported it, he replied 'The desk that dealt with that same file, that would be the A Section'.

Williamson testified that some time after that he had organised for an explosive device to be put into an envelope:

[T]here was an intelligence report to the effect that there had been an explosion … in the office of Ruth First and that she had been killed and at the next … Sanhedrin when this point was just noted, Brigadier Goosen looked up, looked at me, nodded his head and that was it. (Pretoria hearing, 14 September 1998.)

365. Not only would these incidents have been reported but, unlike most victims of MK action, most of these victims would have had Security Branch files, requiring an entry. For example, where members of the Soweto Intelligence Unit or the Northern Transvaal Security Branch were involved in attacks on individuals' homes, the attacks but not the authors were reported. However, to use the Northern Transvaal Security Branch as an example, it would have been inescapably evident to Group B at Security Branch Headquarters that the homes of some forty to fifty activists had been attacked by 'unknown perpetrators' between February and May 1986.

366. It is extremely unlikely that security and intelligence forces would have made no effort to know who was assisting them in their task, especially given the general policy to promote divisions. Asked whether people attending the 'Sanhedrin' could 'have believed that forces other than their own were ... responsible', Williamson replied:

During my time in the Security Forces, I certainly … didn't believe that it was the fairies … I believed that there was a co-ordinated counter-insurgency strategy being applied. (Pretoria hearing, 16 September 1998.)

Line of command

367. It can be seen from the above that the unlawful operations for which the Amnesty Committee received applications tended to conform to routine lines of command within the Security Branch and reflected a similar *modus operandi* across the country. This does not mean that all operations were centrally organised and directed by the SSC or Security Branch Headquarters. Although the overall strategy and planning was authorised at the highest level of the government and the state, under the prevailing culture of impunity many operations were initiated and carried out at the lower levels.

368. Whether operations were politically authorised or initiated at lower levels, they tended to function according to relatively routine lines of command and communication. For example, even in covert operations, those in charge often tended to follow the courtesy rule of informing commanders in whose area such activities were to take place, thus widening the circle of exposure and experience and encouraging further activity along similar lines. This was particularly so when the operation was politically authorised or conducted by a Headquarters component.

369. Lower ranks were inducted into covert and unlawful operations via their normal command structures, thus legitimising and normalising such activities. The heightened sense of being at war, combined with the strongly hierarchical structure of the Security Branch, made those who were drawn into such operations feel privileged and honoured.

370. Juniors were often drawn into operations without being aware of their nature or of the individual roles they were expected to play. Thus, for example, Captain Abraham Kendall, Branch Commander of Bronkhorstpruit Security Branch (a branch of Northern Transvaal), testified that he was asked to accompany Brigadier Cronje and Lieutenant Hechter to the house of the Chief Minister of KwaNdebele. While Brigadier Cronje and Captain Kendall were inside meeting the Chief Minister, Lieutenant Hechter placed a bomb under Mr Piet Ntuli's car. Asked whether he realised that Ntuli was about to be killed, Kendall responded:

I suspected that as Hechter was lying in the back of the vehicle, there would be dirty tricks. If I have to think back thirteen years, I cannot think that I thought that somebody was going to die. I wasn't part of that Security Branch, within the Security Branch plan, if we have to put it that way, I had never been a member of such activity. I was a small man, who carried small secrets around with me at that stage. (Pretoria hearing, 9 April 1999.)

371. Captain Kendall was later transferred to Security Branch Headquarters and applied for amnesty for instructing members of the Eastern Cape Security Branch to throw a petrol bomb at the home of the Revd Allan Hendrickse after he had embarrassed the tricameral parliament by going to a 'whites only' beach. Kendall also sought amnesty for his part in the 'Cry Freedom' operation.

372. Given the overwhelming evidence in this respect, the Commission concluded that the leadership of the Security Branch and a significant proportion of the military leadership were involved in unlawful covert operations. Former State President FW de Klerk has suggested that such activity was unauthorised and undertaken

by groups of renegades or 'bad apples'. The placing and promotion of personnel suggests that those in charge of the Security Branch were well aware of the existence and effectiveness of covert operations. Officers such as General Gerrit Erasmus, Brigadier Nicolaas van Rensburg and Major Hermanus du Plessis, all of whom had a long history of committing abuses, were not only promoted but, by the end of the 1980s, were based at Security Branch Headquarters. Thus, not only were their activities endorsed, but they were placed in a position where they were able significantly to influence and direct security policy from national headquarters.

CONCLUDING COMMENTS

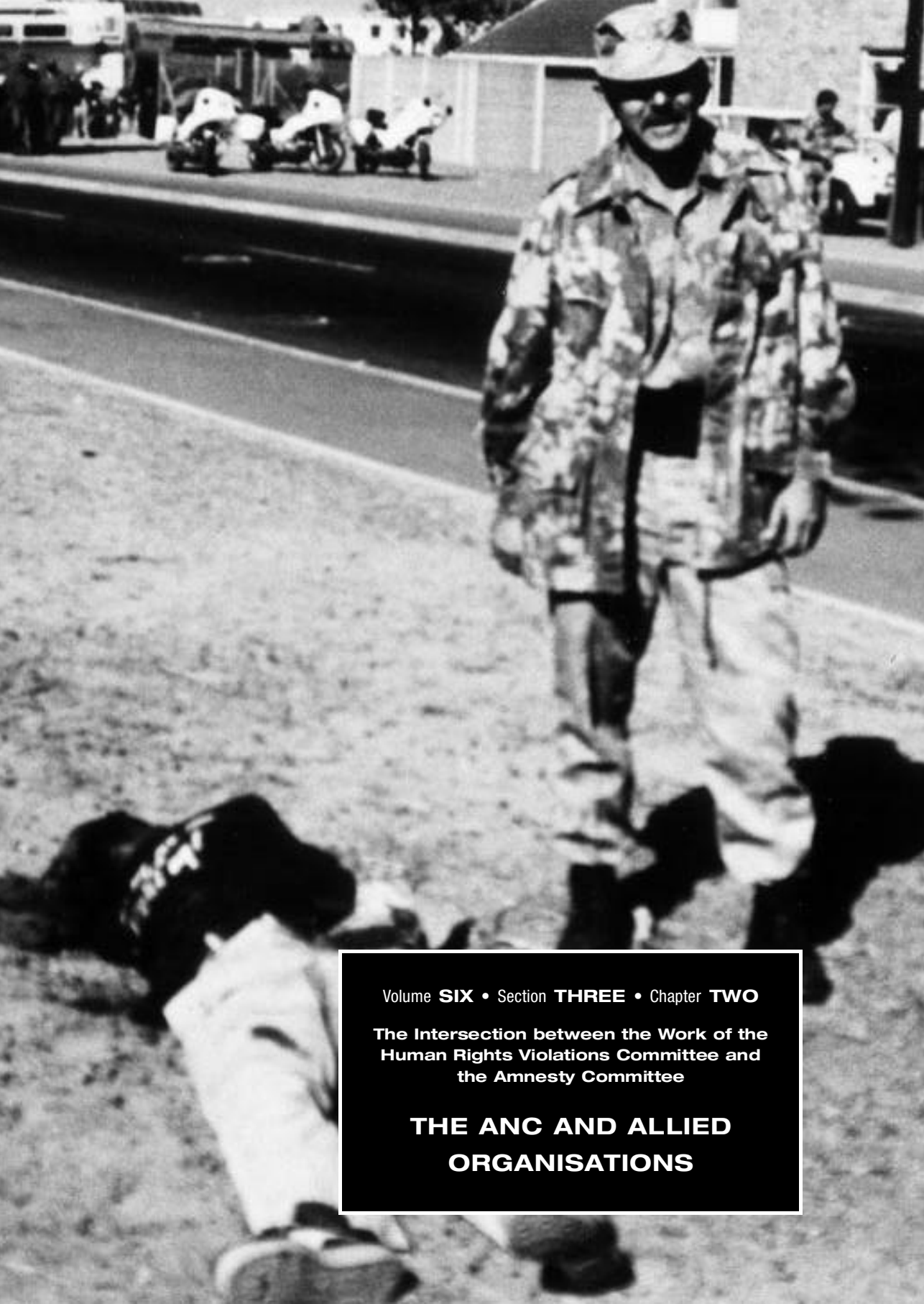
373. The purpose of this chapter was to examine the extent to which the amnesty process enlarged the Commission's knowledge of the human rights violations committed by the state. By employing the 'carrot and stick' principle adopted in the founding Act, it was hoped that state perpetrators, amongst others, would take advantage of the opportunities offered by the legislation and, in the process, shed light on state involvement in gross violations of human rights.

374. This chapter has shown that the appeal to self-interest in the legislation was a wise one and that, where perpetrators saw the benefit to themselves, they came forward and applied for amnesty. From these applicants, the Commission and indeed South Africa was able to learn a great deal.

375. Unhappily the former SADF, advised that the Commission could offer them no safety from prosecution for the many violations its members had committed in countries outside South Africa, made pitifully few applications.

376. One of the most shameful aspects to emerge from the amnesty process was the failure of the political leadership to stand by those who committed violations at their behest and in their name. In several amnesty hearings, the disdain, contempt and betrayal of those who had expected better of their leadership is evident.

377. One of the more remarkable strengths of the Commission itself was that it has opened the way for the stories of individual people. The amnesty process continued the work of the Commission by helping to find people who would not otherwise have been found and by helping to lead families to a truth that would otherwise forever have been denied. Without some of these applications, many deaths and disappearances would have remained unexplained. (...p264)



Volume **SIX** • Section **THREE** • Chapter **TWO**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE ANC AND ALLIED ORGANISATIONS

The ANC and Allied Organisations

PART ONE: OVERVIEW OF THE ANC AND ALLIED AMNESTY APPLICATIONS: 1960–1994

■ INTRODUCTION

1. The purpose of this chapter is to review the information that emerged out of the amnesty process of the Truth and Reconciliation Commission (the Commission) in respect of the African National Congress (ANC) and its allies and to consider its intersection with information that emerged through the processes of the Committee on Human Rights Violations (HRVC).

2. Broadly speaking, ANC-related amnesty applications can be divided into a number of categories. The first concerns applications from members of the ANC leadership. These were accompanied by a 'Declaration of Responsibility' and became known as the 'collective responsibility' applications. The second were applications from Umkhonto we Sizwe (MK) operatives. The third were applications from self-defence unit (SDU) members, who can claim some level of practical and moral authorisation from the ANC.[108]

3. A fourth category of applicants was made up of civilians who were members of, or who acted in the name of, or in support of the ANC. In this category, the political and moral responsibility of the ANC and those who acted in its name was considerably less. This is even so when considering applications from members of organisations that operated internally during the final years of the ANC's exile from South Africa. The most prominent example is that of the United Democratic Front (UDF). Although the UDF and its affiliate organisations associated themselves with the ANC and its goals and principles, they operated as independent organisations.

108 The ANC Declaration embraces SDU members.

4. This chapter will also distinguish between applications that relate to the period prior to the lifting of the banning order on the ANC (1960 to 1989) and those that relate to the period from 1990 to 1994 – that is, from when the ban on the ANC was lifted and negotiations began until 10 May 1994, the closing date of the Commission's mandate.

STATISTICAL OVERVIEW

5. A total of 998 persons who were members or supporters of the ANC or related organisations applied for amnesty for 1025 incidents. Only twenty-six (or 3 %) of these applicants were female.

6. The regional breakdown was as follows:

Transvaal	628	(61 %)
KwaZulu/Natal	170	(17 %)
Eastern Cape	61	(6 %)
Homelands[109]	56	(5 %)
Western/Northern Cape	33	(3 %)
Orange Free State	20	(2 %)
Outside South Africa	19	(2 %)

7. The annual breakdown was as follows:

1960–1969	20	(2 %)
1970–1979	35	(3 %)
1980–1984	113	(11 %)
1985–1989	339	(33 %)
1990–1994	493	(48 %)
Non-specific	25	(3 %)

109 Excluding KwaZulu, which is counted with Natal.

8. The 1025 incidents involved the following acts:[110]

Killings	464	(17%)
Killings[111]	24 incidents	(1%)
Attempted killings	1118	(42%)
Attempted killings[112]	67 incidents	(3%)
Assaults	56	(2%)
Abductions	58	(2%)
Robberies	84	(3%)
Arson, public violence, etc.	140	(5%)
Attacks using explosives	320	(12%)
Illegal possession of arms and ammunition	153	(6%)
Infiltration/distribution of weapons	24	(1%)
Other	151	(6%)

OVERVIEW OF APPLICATIONS

9. ANC-related amnesty applications far outnumber those from other protagonists in the political conflict, yet it can be seen from the figures that the number of applications was not large, fewer than a thousand in all. It is of some interest why people did or did not apply for amnesty.

Loyalty to the ANC

10. One reason ANC members gave for applying for amnesty was that the very idea of a South African truth commission originated from within the ranks of the ANC. Hence, many ANC applicants expressed a desire to participate in the amnesty process in order to support the new democratic government and its programme of political and economic transformation.

11. Yet, although the ANC had promoted the idea and led the legislation through parliament, the party appeared divided on the issue. Some of its leadership stated publicly that ANC members need not submit amnesty applications, on the grounds that the ANC had engaged in a just war against apartheid. Finally,

110 As early as 1996, the Amnesty Committee decided to deal with incidents rather than individual acts in order to make it possible to deal with groups of applicants who had been involved in the same incident but who may have committed a number of different acts. Thus, when dealing with applications, the Committee decided to focus on specific incidents, each comprising a number of different acts/offences.

111 Where exact number of victims is unknown.

112 Where exact number of victims is unknown.

following a meeting between the Commission and the ANC leadership, the ANC agreed to persuade its members to submit amnesty applications. This opened the road to substantial numbers of amnesty applications from MK operatives, as well as the 'collective responsibility' applications by ANC leadership figures.

Desire for reconciliation

12. For others, amnesty applications represented a commitment to reconciliation. Mr Frans Ting Ting Masango [AM7087/97] told the Amnesty Committee at the Pretoria hearing on 8 June 1999:

We are all South Africans and the past should remain what it is, the past. There should be that reconciliation. We should go forwards with our lives and try to build together South Africa. That's why I basically applied for amnesty.

13. At the same hearing, Mr Neo Potsane [AM7159/97] expressed himself thus:[113]

Well I want to put it this way now, when this idea of Truth and Reconciliation now first came into this country and was in actual fact adopted, I've always supported it. I supported it because I felt we cannot stand at one place pointing fingers at one another, looking at the past as something that is – should dominate our lives … I felt that was the opportunity that I will never let … pass me. I had to jump in and actually now also extend my hand of friendship to the victims or the people that suffered because of my actions in pursuit of democracy and I'm happy today that I'm here, sitting here explaining my actions so that you know, other people can understand why I did those things.

14. Some operatives expressed a wish to take responsibility for their actions, particularly towards their victims. In Pretoria on 14 June 1999, the Mr Lazarus Chikane told the Amnesty Committee:

My motive for being here is to actually show that the family finally knows who actually was part of the activities of eliminating their brother, their parent, their father and for that reason, I felt motivated to come here, simply because it wouldn't have been fair on them not to know who actually carried out this attack on their father. For that reason I feel that because there was no (indistinct), there was no investigation, or suspicion against me, it really touched me deeply, to have to come out and expose myself, to say I was part of that type of activity.

113 Mr Masango and Mr Potsane applied for and were granted amnesty for the killing of Mr David Lukhele, former minister of KaNgwane, in April 1986 [AC/1998/0048; AC/1999/0257; AC/2000/142]. They and two others had been convicted of the killing and sentenced to death, but their sentences had been commuted to twenty-five years' imprisonment on appeal. The four were released in the early 1990s in terms of a deal struck between the ANC and the former government.

Criminal and civil action

15. Many ANC members and MK operatives had already served prison terms and even spent periods on death row for the offences for which they sought amnesty. Some who had received indemnity from criminal prosecution during the early 1990s wished to avoid or prevent possible civil claims that might be brought against them.
16. Some who had already faced convictions and punishment expressed a desire to have their criminal records expunged, although many applicants appeared unaware of this dimension of the amnesty process.

17. Although few amnesty applicants for MK actions in the period 1960 to 1989 appear to have been motivated by fear of prosecution, political violence between 1990 and 1994 was the subject of ongoing prosecutions during the life of the Commission and provided a genuine incentive for amnesty applications. A number of ANC members had been sentenced to prison terms in the post-1994 period for incidents relating mainly to SDU activities or the political conflict in KwaZulu and Natal, and made amnesty applications as sentenced prisoners. Where charges were pending or trials were in progress, cases were suspended pending the outcome of their amnesty applications.

Problems experienced by MK operatives applying for amnesty

18. The dissolution of MK as an organised formation and the disintegration of its networks made it difficult to trace operatives. The Commission's founding Act, the Promotion of National Unity and Reconciliation Act, Act 34 of 1995 (the Act) required individual applications, and MK operatives were faced with making the difficult decision of whether or not to apply for amnesty – separated as they were from their former comrades, operating without structures of any kind and trained in a culture of underground work and secrecy.

    MR LALLA: *What you must take into account, that now we were at home, there was no Umkhonto we Sizwe, there was no structure, there was no command and control. We are now left on our own to pick up the pieces. How do I have responsibility of an individual when the structure legally has folded? (Durban hearing, 4 April 2000.)*
    ADVOCATE BOSMAN: *And do you know whether anybody else in that group had applied for amnesty at all for this incident?*
    MR MDLULWA: *I don't know, because we are all over South Africa, we are not*

communicating with each other. (Johannesburg hearing, 22 May 2000.)
MR BUHALI: *When the thing of the TRC started, first I was not fully briefed as to what is going to happen considering the TRC, and when I made the application I had not met my Commander then because I did not know his address. (Johannesburg hearing, 13 July 2000.)*

Low levels of civilian applications

19. By far the greatest number of casualties inside South Africa arose out of violent community conflicts into which ordinary residents were mobilised or drawn. This category was not reflected in amnesty applications from any side of the conflict, including that of the ANC and its allies.

Poor representation of SDU applications

20. Although SDU members applied in large numbers, these applications did not, in the view of the Commission, adequately reflect the full scope of SDU activity. One of the reasons for this was because SDU activity continued in certain areas after the cut-off date for applications.

21. In one significant case, the local ANC political leadership in Tokoza, which had had a strong relationship with the SDUs in the area, threw its weight into promoting amnesty applications. Meetings were held and questions answered. Assistance was provided with completing forms. As a result, approximately 200 SDU members from Tokoza applied for amnesty for very serious violations. Most had never been charged for these offences and were motivated by an appeal to their sense of political duty and the national imperative for reconciliation. The Tokoza SDU case points to the merit and feasibility of political parties investing energy at local level.

Low levels of applications in KwaZulu/Natal

22. As with the IFP, the scale of the violence in KwaZulu/Natal is not reflected in the volume of amnesty applications from the ANC in this region. Here again, the vast majority of incidents were inter-civilian.

23. It is possible that political developments after 1994 may also have played a role in inhibiting applications. In the immediate post-1994 era, the national ANC strategy for ending the bloodshed in KwaZulu-Natal was one of incorporation and appeasement of the IFP and a reluctance to inflame the still-simmering

conflict. This period of rapprochement resulted in a tendency to draw a veil of silence over the bloody past and a tacit agreement to suspend blame. According to the ANC:

The apartheid counter-insurgency machinery inserted itself into the IFP and, as it carried out its murderous campaign, cloaked itself in IFP colours, whereas the genuine leaders and members of the IFP had nothing to do with planning or carrying out any acts of violence originally conceived of by themselves.[114]

24. The 'special case' character of the region is also reflected in ongoing suggestions for a special amnesty for KwaZulu/Natal matters, possibly a 'blanket amnesty' for perpetrators in that region.

25. Moreover, as the majority of the KwaZulu/Natal ANC applicants were in jail at the time of making their amnesty applications, they suffered from the same serious problems faced by all applicants in prison, primarily a lack of legal advice. Although some prisoner applicants were assisted to some extent by the ANC, and the ANC leadership visited prisoners in an effort to facilitate their amnesty applications, this collective political advice did not adequately substitute for individual legal advice.

26. One of the consequences of this was that applicants were unable to obtain clarity on what acts or incidents to apply for. Thus an applicant might list only a single incident where a number of related offences should have been specified. For example, one applicant, Mr Skhumbuzo Chris Masondo [AM4183/96] believed he had only to apply for offences for which he had been convicted and he later spoke about many other offences at the hearing. These latter matters were excluded by the Amnesty Committee.

27. Another applicant testified about how helpless prisoners felt when faced with applying for amnesty:

MR LAX: *But you did understand that you were supposed to tell the full truth when you filled out this application?*
MR MSANI: *Yes, I did explain initially that in jail the brain doesn't function properly when we are in jail. We are like children when we are in jail. The brain*

114 Submission of the African National Congress to the Truth and Reconciliation Commission in reply to Section 30[2] of Act 34 of 1996, on the TRC, 'Findings On The African National Congress', October 1998, point 28.3, submitted by Thenjiwe Mthintso.

is actually sort of disturbed to a certain extent when you are in jail. (Pietermaritzburg hearing, 23 November 1998.)

28. Another problem was that many perpetrators involved in the same incident were scattered throughout the country in different prisons and were unable to contact one another. This tended to discourage applications, as applicants feared implicating others.

'Declaration of Responsibility'

29. In line with the ANC's position that its leadership accepted full political and moral responsibility for the actions of its members, large numbers of National Executive Committee (NEC)[115] members and those involved in ANC hierarchies submitted collective amnesty applications to the Commission. These were framed in a general ANC 'Declaration of Responsibility'. The declaration reads as follows:

We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the African National Congress (hereinafter referred to as the ANC), elected and/or appointed to serve in various structures including its highest organ, the National Executive Committee, do hereby make the following declaration:

During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.

In the course of our people's struggle, with the intent to induce the apartheid government of the National Party to abandon apartheid with its concomitant violent repression, and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, ***inter alia****, established its military wing, Umkhonto we Sizwe, through which it prosecuted an armed struggle.*

At all material times, Umkhonto we Sizwe operated under the political authority, direction and leadership of the ANC.

Due to its peculiar circumstances, and the attacks mounted upon it by its adversary, the apartheid government, the ANC established various organs at

115 The highest elected body of the ANC.

various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.[116] *Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and, in some instances encouraged the establishment of self-defence units (SDUs), which played a critical role in the defence of defenceless communities.*

In the event, and to the extent that any of the activities of any of the above-mentioned institutions and structures including the SDUs could in any manner whatsoever be regarded as the kinds of acts or omissions or offences envisaged in the Promotion of National Unity and Reconciliation Act, we collectively take full responsibility therefore applying for amnesty in respect thereof.. [AM5780/97.]

30. The 'Declaration' applicants did not specify particular acts but attempted to take collective responsibility for actions that may have resulted in gross human rights violations either by the ANC's military operatives or by the SDUs.

31. Although initially granted amnesty by the Amnesty Committee, these amnesties were subsequently overturned in the Supreme Court. The applications were considered again by the Amnesty Committee and were refused. The Committee found that the applications did not comply with the requirements of the Act as they did not specify particular acts, omissions or offences.

116 See list of Acronyms in this volume.

PART TWO: ANALYSIS OF AMNESTY INFORMATION: 1960–1989

UMKHONTO WE SIZWE (MK) AND THE ANC: 1960–1990

32. The Commission received a significant number of applications relating to the activities of MK in the period 1960 to 1989. One hundred and eighty persons, including eight females, sought amnesty for 420 incidents in the period 1960 to 1989.[117]

33 Applications ranged from individual operatives applying for amnesty for one or more acts, to units of operatives applying for a range of activities, to applications from command personnel based in the neighbouring states and in Military Headquarters (MHQ) in Lusaka, Zambia.

34. The regional breakdown of incidents was as follows:

Transvaal	285
Natal	80
Western Cape	7
Orange Free State	2
Eastern Cape	1
KwaNdebele	5
Transkei	5
Bophuthatswana	3
Venda	1
Non-specific[118]	31

35. The annual breakdown was as follows:

1960–1969	19
1970–1979	23
1980–1984	87
1985–1989	268
Non-specific[119]	23

117 A small amount of duplication may have occurred where applicants described the same incident in slightly different ways.

118 The last category includes incidents that took place throughout South Africa and/or neighbouring countries (e.g. weapons infiltration from Swaziland to Transvaal and Natal).

119 The last category also covers activities that took place over many years (e.g. the provision of weapons from 1978 to 1989).

36. Of the 420 incidents, 338 relate to actual attacks, while eighty-two relate to associated activities such as leaving South Africa illegally, escape from custody, possession of explosives or involvement in ongoing activities such as military training, infiltration of arms and operatives and aiding MK operatives. Included in the eighty-two are seven persons who applied for amnesty with respect to their convictions for terrorism without detailing specific acts. Three persons also sought amnesty for acts of sabotage.

37. The 338 attacks involved some 1276 separate incidents:

Killings	106
Attempted killings (specified)[120]	807
Attempted killings	22
Robbery (weapons and vehicles)	14
Attacks using explosives (sabotage)[121]	315
Arson (petrol bomb attacks)	6
Other	6

38. Possession of illegal arms and ammunition is not specified in these attacks since all such MK attacks involved such possession. Most applicants were granted amnesty in this regard.

39. Amnesty was granted for 412 of the 420 incidents, seven were refused, and one was partially granted and partially refused. Two applicants were struck off the hearings roll. Mr John Itumeleng Dube [AM5310/97] was refused permission to add two additional incidents to his amnesty application.

Overview of MK's armed actions: 1960 to August 1990

40. On 8 April 1960, some three weeks after the Sharpeville massacre, the former South African government banned the ANC along with the PAC. This put an end to decades of largely peaceful protest by the ANC and, over the year that followed, the ANC adopted a strategy of armed resistance. MK was officially launched on 16 December 1961.

120 This number is somewhat inflated by the use of judicial charge sheets which tend to list all persons involved as cases of attempted killing, even if they only experienced minor trauma such as shock. Hence this figure does not refer to injury only, although it does include all specified injuries.

121 Of the 315 attacks using explosives, thirty-two involved attacks on individual homes (usually those of police and community councillors) and sixteen involved landmines.

41. Between 1961 and 1963 there were some 190 actions, undertaken mainly by regional operatives in Johannesburg, Durban and Cape Town. These were almost entirely aimed at installations.

42. The Commission received five applications from MK operatives for this very early period of sabotage. These were from Mr Ronnie Kasrils [AM5509/97; AC/2001/168], Ms Eleanor Kasrils [AM7725/97; AC/2000/067], Mr Ben Turok [AM3723/96; AC/2001/013], Mr Muzivukile Curnick Ndlovu [AM5952/97] and Mr Billy Nair [AM5613/97; AC/2000/170], who applied for amnesty for over fifty acts of sabotage and related acts (such as theft of dynamite or escape from custody) in and around Durban and Johannesburg. All were granted amnesty.

43. Armed actions inside South Africa were, by and large, terminated with the arrest of key members of MK's high command in Rivonia in July 1963, all of whom were subsequently sentenced to life imprisonment. Mr Nelson Mandela, arrested a year earlier, was also sentenced to life imprisonment at the Rivonia trial. One of the Rivonia trialists, Mr Ahmed Kathrada [AM6240/97; AC/1999/0199] applied for and was granted amnesty for the offences for which he was convicted. No significant armed actions were undertaken by MK inside South Africa between 1964 and 1975, although several infiltrations led to arrests and the imprisonment or killing of MK operatives.

44. The 1976 student-led uprising inside South Africa injected new life into the ANC. From 1976 to 1984, there was a steady incremental growth in armed attacks, and approximately 265 incidents were recorded. These included attacks on police stations and assassinations.[122]

45. During this period the ANC's Special Operations Unit launched several high-profile armed attacks on economic and energy installations, infrastructure and police stations, as well as an attack on the South African Air Force headquarters in Pretoria, in which nineteen people died. In terms of casualties, this was the largest attack in MK history. Other high-profile attacks included the 1980 SASOL attacks, the 1982 attack on the Voortrekkerhoogte SADF base, attacks on police stations and the 1982 sabotage attack on the Koeberg nuclear power station.

122 For example AM5307/97,AM5886/97.

46. The Commission received amnesty applications in respect of seventy-nine incidents in this period. These were largely from the command personnel of Special Operations then based in Maputo, Mozambique, and the Transvaal military machinery based in Swaziland. In some cases, operatives also applied.

47. MK activity inside South Africa peaked between 1985 and 1988. The number of incidents increased from forty-four in 1984 to 136 in 1985 and 228 in 1986. Numbers continued to escalate, with 242 incidents in 1987, and peaked in 1988 with 300 incidents as a result of increased resistance to the municipal elections of October 1988. In 1989 the number of incidents dropped by nearly a third to 216. This period also saw a diversification of targets and an increase in attacks on public places where civilians were at high risk.

48. In February 1990 the ANC was unbanned, but the armed struggle was only suspended in August of that year. Armed actions continued, although they were fewer in number. According to police statistics, there were some eighty armed attacks between January and the end of May 1990. These resulted in three deaths (two police officers and one civilian) and eleven injuries (six police officers and five civilians). In general, the attacks were on the homes of perceived collaborators and police officers, police stations and fuel and electricity installations.

49. Police documentation obtained by the Commission suggests that the total number of incidents (including skirmishes, failed sabotage attempts and so on) for the period October 1976 to May 1990 totalled approximately 1555. [123]

50. The armed struggle was suspended by the ANC with the signing, on 6 August 1990, of the Pretoria Minute, the terms of which were spelt out in greater detail in the DF Malan Accord. MK was formally disbanded on 16 December 1993.

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123 These statistics were obtained from police documentation submitted to the Harms Commission of Inquiry and were drawn from the records of the Security Branch. The Commission concluded that these figures and details were numerically reliable as they had been compiled for police and not for public use. In other words, no purpose would have been served by falsifying them. Furthermore, no other incidents came to light through the Commission's work that did not appear on these lists, further confirming their general accuracy. Naturally, the Commission did not necessarily adopt the same characterisation of the incidents.

An important comment regarding numbers must be made here. The Commission has, through amnesty applications and its own investigations, established that there were a number of 'false flag' operations in which members of the security forces engaged in acts of sabotage. While these were included in the police statistics used above, the Commission has not included these known cases in the numbers cited above. There are, however, doubtless other 'false flag' incidents which remain uncovered, but it is unlikely that these would affect the general trends indicated above.

ANC Targets

51. ANC targets remained fairly constant and, with certain exceptions, MK operatives remained within these boundaries:
    a economic, communications and energy installations and infrastructure (electricity substations, oil refineries, telecommunications structures, etc.);
    b government buildings and infrastructure and other apartheid symbols (courts, post offices, government offices);
    c security force targets (personnel and physical structures of the police and military); and
    d individuals identified as 'collaborators' (councillors, state witnesses, suspected informers and defectors).
    e In addition, some targets related to specific campaigns being supported by MK, such as labour actions and anti-election campaigns.

52. The stated objective of MK was never to engage in operations that deliberately targeted civilians or indeed white people. Targets were not selected on the basis of race, and most attacks were aimed at the state, its organs and 'collaborators'. Attacks on 'collaborators' form a significant proportion of MK armed actions. According to Mr Aboobaker Ismail, who gave evidence at the hearing on the Church Street bombing in Pretoria on 4 May 1998:

    This was never a target, an attack against whites. We never fought a racist war. We fought to undo racism … We never set out deliberately to attack civilian targets. We followed the political objectives of the African National Congress in the course of a just struggle. However, in the course of a war, life is lost, and the injury to and the loss of life of innocent civilians sometimes becomes inevitable. The challenge before us was to avoid indiscriminate killing and to focus on enemy security forces … Whilst Umkhonto we Sizwe had the means to attack civilians, it would have been very easy to come to various houses and shoot people, Umkhonto never did that sort of a thing. It did not take the easy route. Instead it concentrated on military targets, on state infrastructure, often at the cost of the lives of its own cadres.

53. Despite these noble intentions, the majority of casualties of MK operations were civilians. These civilians included those that members of the ANC apparently regarded as legitimate targets: 'collaborators' in the form of councillors, state witnesses at the trials of ANC members, suspected informers and the like. In other words, they were 'deliberately targeted civilians'. For example, in the period 1976 to 1984, of some seventy-one deaths as a result of MK actions, nineteen were members of the security forces and fifty-two were civilians.

54. The ANC Kabwe Conference held in Zambia in June 1985 showed a hardening in the ANC's attitude towards civilian casualties. Two days before the Conference, South African security forces launched a cross-border raid on residences in Gaborone in Botswana, killing twelve people.[124] According to the ANC, none of the casualties were MK operatives. This attack on what the ANC described as 'very, very soft targets' formed the background to the Conference. The ANC submission to the Commission states that the Conference:

> r*eaffirmed ANC policy with regard to targets considered legitimate: SADF and SAP personnel and installations, selected economic installations and administrative infrastructure. But the risk of civilians being caught in the crossfire when such operations took place could no longer be allowed to prevent the urgently needed, all-round intensification of the armed struggle. The focus of armed operations had to shift towards striking directly at enemy personnel, and the struggle had to move out of the townships to the white areas.*

Security force targets

55. A large number of amnesty applications related to attacks on police, military personnel and buildings.[125] The bomb outside the Johannesburg Magistrate's court was planned and authorised by Siphiwe Nyanda, then head of the Transvaal military machinery and chairperson of the Swaziland Regional Politico-Military Council (RPMC). Nyanda decided to plant a mini-limpet mine in order to lure members of the South African Police (SAP) to the chosen area. A larger bomb placed in a car nearby would then be detonated by means of a remote control device. Four police officers were killed in the explosion and several others were injured, including a few civilians.[126]

56. Mr Heinrich Johannes Grosskopf [AM5917/97], a young white man from an Afrikaans background, left South Africa in early 1986 to join the ANC in exile. While in Lusaka, he was recruited to Special Operations. About six months were spent planning his infiltration, target and means of attack. Ultimately, the SADF's Witwatersrand Command was selected as the target. Mr Grosskopf gave his evidence at a hearing in Johannesburg on 20 November 2000:

124 See Volume Two, Chapter Two, page 146.

125 See, for example AM5303/97,AM7164/97,AM5293/97.

126 AM7500/97,AM5303/97,AM5313/97.

A great amount of thought and planning went into considering the political content and consequences of an attack on this military headquarters in central Johannesburg. ... The object of the operation was to attack military personnel inside Wits Command by blast damage to the building. The intention was therefore not to attack sentries or military personnel or civilians for that matter outside the command, the intention was to bring the car bomb into actual contact with the Wits Command building so that the effect of the explosion would be maximised.

57. They decided to plant a bomb in a car with an automatic gearbox that would be able to move itself up to Wits Command without a driver before the bomb exploded.

58. No one was killed in the blast, but about sixty-eight people were injured. Grosskopf subsequently travelled to MK military headquarters in Lusaka where he reported back to his superiors and was debriefed by MK personnel. Grosskopf, Aboobaker Ismail and Johannes Mnisi were granted amnesty for the attack [AC/2000/248; AC/2001/003].

59. A number of applications related to skirmishes in which security force personnel and MK members were injured or killed[127] or sabotage attacks on security force buildings and personnel.

Attacks on black security forces

60. Black security force personnel were prime targets for attack. The fact that they lived in the townships meant that they brought the apartheid regime onto home ground, making them extremely dangerous to local residents. They were seen as the enemy within. Many MK attacks on security force personnel took place while they were off duty, often while they were at home with their families. Of the sixty-one MK attacks on the security forces in 1986, twenty-three (roughly one third) were on the homes of police officers, and resulted in four deaths and nine injuries.[128]

127 See, for example, AM5298/97.

128 See, for example, AM 7193/97, AM6207/97AM5305/97,AM6059/97.

Attacks on collaborators with apartheid political structures

61. There were many attacks on the homes of people involved with the tripartite parliamentary elections and other structures that were regarded as illegitimate. For example, four of the five attacks carried out in 1986 and 1987 by Mr Velaphi Dlamini, a local MK operative in Soweto [AM3887/96; AC/1999/0317], targeted male and female councillors. Family members, children and visitors were sometimes casualties of these attacks.

62. The most common forms of attack were grenades thrown at or into houses at night, sometimes accompanied by shooting. Limpet mines were also occasionally used. MK applicants tended to describe such attacks as 'intimidation' rather than as attempted assassinations.

    MS MTANGA: *Mr Ndlovu, when you got your instructions were you told what was the intention? Was the intention just to throw the hand grenade and kill people or to just throw it?*
    MR NDLOVU: *Okay. My answer will be twofold. One, carrying an order you do what you're told but the intention was not to kill. But there was a likelihood that somebody could actually die, knowing the kind of weapon that I've used.*
    MS MTANGA: *How were you going to ensure that no one was killed?*
    MR NDLOVU: *I was not going to ensure when a person gets killed or not. The point I'm trying to make here, knowing the nature or the type of weapon that I used, somebody could have died but that was not the intention, to kill a person. (Mr Hluphela Morris Ndlovu, Pretoria hearing, 14 June 1999.)*

63. Eight of the thirty-three limpet mine sabotage operations carried out by the Ahmed Timol MK unit were on the homes of persons associated with local or parliamentary government structures such as the President's Council and the Management Committees. The limpet mines were timed so that they would explode outside houses between midnight and 04h00. No injuries or deaths resulted. Amnesty applicant Jameel Chand [AM7026/97] stated that:

    It was only after our Commander (Prakash Napier) had received confirmation that we would carry out the action. The unit always carried out the attacks between 11pm and 4am. We would also monitor the scene of the intended action. The limpet would be placed in a location that would not cause injury or death. If explosion did not take place within the time it was scheduled to have we would contact the police and inform them of the device. We would also do dummy runs and evaluate afterwards. (Amnesty granted in chambers.)

64. The killing of homeland politician Mr David Lukhele[129] provides an example of the assassination of a civilian politician that was approved by MHQ. Lukhele was a prominent leader in the KaNgwane homeland and was perceived as supporting the proposed incorporation of this homeland into Swaziland, a move fiercely resisted by many residents. For this he was regarded as a collaborator and members of the Elimination Unit identified him as a possible target.

65. They sought and received approval from MHQ in Lusaka and, on 6 June 1986, Mr Neo Griffiths Potsane entered Mr Lukhele's home in Mamelodi township and opened fire with an AK47, killing him, while Mr Obed Jabu Masina waited outside. The shots also killed Lukhele's sister, Ms Elizabeth Busisiwe Dludlu, and injured Lukhele's wife.

Attacks in public places

66. MK operatives detonated explosives in public places where civilians were present and died. Amnesty applications were received for a number of the most well-known 'public place' bombs. The applicants put forward a range of explanations for these attacks.

67. In the case of the Durban Why Not/Magoo's Bar bomb[130], the Benoni Wimpy Bar[131] bomb and the bomb detonated near the Juicy Lucy restaurant in Pretoria, applicants explained that their intelligence and reconnaissance had led them to believe that security force members frequented these places. Despite the fact that no or very few security force members were injured in these attacks, the applicants continued to hold the view that the venues were appropriate targets. The Amnesty Committee accepted that the operatives had acted 'in good faith' although they pointed out that, in retrospect, their intelligence had been faulty or simply wrong. Amnesty was granted in these cases [AC/2001/128; AC/1999/294].

68. Applicants in respect of two car bombs detonated in public places explained that these were placed outside the offices of security force structures: the South African Air Force headquarters in Pretoria and the Security Branch offices in Witbank. The civilians killed or injured were not the intended target. Similarly, the ANC landmine campaign was aimed at security force patrols even though the casualties were overwhelmingly civilian.

129 AC/1998/0048; AC/1999/0257; AC/2000/142.

130 AM7032/97,AM7139/97,AM7679/97,AM7096/97,AM4028/96,AM4026/96.

131 AM5300/97,AM5725/97,AM5301/97,AM4351/97.

69. Amnesty applicants for the Ellis Park stadium car bomb[132] and the bomb at the Wild Coast Casino[133] in the Transkei explained that these were intended to send messages to the white community and the Transkei homeland respectively regarding the futility of apartheid. Similarly, a number of facilities such as segregated 'whites only' bus stops were apparently selected in order to highlight apartheid discrimination.

Bombs outside security force offices

70. Car bombs were detonated outside buildings housing security force offices. The offices were located in the busy central areas of towns, in buildings shared by other civilian offices. Thus, although the intended targets were members of the security forces, the casualties were predominantly civilian passers-by. According to Mr Aboobaker Ismail, testifying at the hearing on the Church Street bombing (Pretoria, 4 May 1998):

If we were to accept that nobody would be killed at any stage, then we wouldn't have executed the armed struggle. You often found that the security forces themselves had based themselves in civilian areas and the choice then is always 'do you attack them or not'?

71. The car bomb that exploded outside the headquarters of the South African Air Force in Pretoria became known as the 'Church Street bomb'. The explosion claimed more casualties than any other single MK attack, killing nineteen people, including the two MK operatives themselves, and injuring more than 200 people. Three persons applied for and were granted amnesty for aspects of this operation: Mr Aboobaker Ismail, Mr Johannes Mnisi (MK Victor Molefe) and Ms Hélène Passtoors [AC/2001/003 and AC/2001/023].

Landmine campaign

72. Landmine operations began in late 1985 under the overall command of MHQ and were approved by ANC President Oliver Tambo. In terms of ANC policy, only anti-tank landmines were approved for use; anti-personnel mines were specifically excluded. The targets were military personnel, both regular and combat

132 The explosive, which was detonated outside the stadium on 2 July 1988 using a remote control device, killed two spectators as they were leaving a rugby match. Thirty-seven others sustained minor and major injuries. Four operatives from MK's Special Operations unit, including its commander, were granted amnesty [AC/2001/161].

133 Two people were killed and several others injured in the explosion on 18 April 1986. Three MK operatives were granted amnesty [AC/99/0181 and AC/2000/240].

units made up of farmers in the militarised border zones near Swaziland, Zimbabwe and Botswana. The landmines were placed mainly in the border areas by operatives sent in via these countries.

73. The campaign was halted by the ANC in late 1987 due to the high number of civilian casualties. According to police records, at least twenty-one landmines were detonated, causing twenty deaths. Only one of those killed was a member of the security forces. The others were civilians, divided more or less equally between black and white. Nineteen security force members were injured during the campaign as against forty civilians, of whom twenty-nine were black and eleven were white. Three landmines were placed in the Western Transvaal, thirteen in the Eastern Transvaal and twenty-five in the Northern Transvaal. A further twenty landmines were discovered and defused.

74. Two batches of amnesty applications were received and granted in respect of the landmine campaign. The first was from two members of the command structure based in Swaziland, Mr Siphiwe Nyanda [AM6231/97] and Mr Solly Shoke [AM5303/97] and one of their operatives, Mr Dick Mkhonto [AM5304/97], who planted landmines in the Eastern Transvaal and applied for amnesty for at least seven incidents. The second batch was from three operatives who laid landmines in the Messina area in the Northern Transvaal in November 1985, resulting in eight explosions: Mr Mzondeleli Nondula [AM7275/97], Mr Mthetheleli Mncube [AM5829/97] and Mr Jabulani Mbuli [AM6046/97]. All were granted amnesty [AC/2000/111; AC/1999/0054, and AC/2001/093]. No applications were received with regard to the three incidents in the Western Transvaal or the handful of landmines placed in the Northern Transvaal in 1986 and 1987.

75. Mr Dick Mkhonto, one of the operatives involved in placing the landmines, spoke of careful reconnaissance at the White River hearing on 2 May 1999:

After the reconnaissance we found that that place was only used by the military and the police and there were no inhabitants around that area. The only people who were using that road, it was used for logistical supply for the people who were in the border, who are working around the fence of Swaziland and South Africa. Then it was taken into consideration that there were no civilians who are using those roads. We have stayed there for three days reconnoitring that place.

76. Despite this reconnaissance, the landmine was detonated by a vehicle driven by black civilians on 28 March 1987. Four of them were killed and the fifth was injured.

77. In a landmine incident[134] on 15 December 1985, the Van Eck and De Nysschen families were on holiday on their game farm in the Messina area when their vehicle detonated a landmine. Four children, aged between three and nine years, and two women were killed in the blast. Mr Johannes Frederick van Eck and his eighteen-month-old baby boy, Mr de Nysschen and his daughter survived this ordeal, although they were seriously wounded.

78. The former head of the ANC's military intelligence, Mr Ronnie Kasrils, initially applied[135] for amnesty for the provision of:

maps of border areas and the farm and security network. Instructions were given on reconnaissance methods and planning and on the collecting of data. When farm labourers and civilians were killed and injured in some of these explosions, MK Commanders, myself included, visited these areas with instructions to our operatives to exercise greater caution and be stricter with their reconnaissance. In the end these operations were called off. During this period I was working mainly with Paul Dikaledi (deceased) and Julius Maliba (deceased). (Hearing, 24 July 2000.)

ANC violations against its members outside South Africa

79. Although the Commission received significant information from the ANC through its submissions, its own commission reports and certain internal files, it received very few individual amnesty applications in respect of ANC violations against its own members outside South Africa. Twenty-one persons in all applied for incidents outside South Africa's borders. These applications came primarily from members of the ANC's Security Department (NAT) and camp commanders. Nine applications were later withdrawn. The remaining twelve applications covered nineteen incidents involving various offences against persons suspected of infiltration or defection in Angola (seven incidents); Zambia (nine); Mozambique (one); Botswana (one), and Swaziland (one). The incidents included four killings, three cases of negligence that contributed to deaths, one attempted killing, three abductions and twelve cases of assault of persons in the ANC's custody. Amnesty was granted to all twelve applicants in respect of all nineteen incidents.

134 Three MK operatives were granted amnesty [AC/2001/093].

135 When the applicant's legal counsel argued that the applicant was not in a position to identify particular incidents in respect of which he would qualify for amnesty, his application was struck off the roll.

80. The four killings are: the assassination of suspected defector Mr Sipho Ngema[136] in 1988 in Swaziland; the killing of suspected defector Mr Monde Mpatheni[137] after he and Mr Joe Mamasela were abducted in Botswana in 1981; the execution of Mr Thabo Naphatli Mokudubete (MK Rufus)[138] in Viana camp in 1984, and the killing of an unknown ANC member called 'Shorty'[139] in 1981 in Zambia.

81. Two members of the ANC's Security Department applied for amnesty for the deaths of three prisoners in their custody. According to the applicants, their negligence may have contributed to the deaths, and the applications described some of the dire conditions under which prisoners were held. Mr Thabo John Sphambo [AM5097/97; AC/2000/149] was granted amnesty for negligence contributing to the death of Mr Eric Pharasi in 1981 at Quibaxe, also known as Camp 13.[140]

82. Similarly, Mr Mzwandile Alpheus Damoyi [AM6303/97; AC/2000/149], a camp commander at Camp 32, applied for and was granted amnesty for the deaths of Mr Zaba Madledza and Mr Edward Masuku in 1984 and 1985. Madledza and Masuku were both inmates at the camp.

83. Amnesty applications were also made for several cases of beating during interrogation.[141]

84. Mr Moruti Edmond Noosi (MK Stanley) [AM6307/97] was granted amnesty for an assault on Mr Don Sipho Mashele (MK Ben Maseko) in the early 1980s. Noosi was a senior member of the administration of Camp 32 where Mashele was being held. Noosi admitted that assault was not permitted in terms of ANC camp regulations.

136 AM6403/97.

137 AM5294/97,AM5297/97.

138 AM7058/97.

139 AM3592/96 TE Mfalapitsa.

140 The ANC's confidential submission lists a Motlalentoa Pharasi (MK Elick Mabuza) who 'died as a result of excessively harsh treatment after committing breaches of discipline' in 1981.

141 AM5095/97,AM3592/97,AM5100/97,AM5295/97.

Discipline

85. The Commission did not hear of any specific cases where operatives were censured or punished for improper action or unauthorised operations. However, some amnesty applicants made general reference to operatives being recalled to MHQ or to the frontal command and being asked to account for or explain their actions. The approach adopted when operatives strayed beyond their mandate appears to have been one of 're-education'. The ANC submission to the Commission asserts that:

maintaining discipline in guerrilla and conventional armed forces is also fundamentally different. In the case of a guerrilla force, discipline flows from a thorough understanding of the political objectives of the armed struggle, not from the threats of court martial or punishment.

86. At the Durban hearing on 27 September 1999, Mr Aboobaker Ismail explained the ANC's approach:

Comrades were called in, they were talked to, people were asked to explain what they were doing, what their objectives were. In this case [Magoo's Bar], had comrade Robert come back, we would have spoken about it, looked at the way he went about it, what were the failures … what was he trying to do, what was the outcome of it, how could we have improved it? Any suggestion that we would simply mete out punitive action against operatives who in good faith went to carry out an operation, is not so. I don't think this was the style of the ANC, certainly that was not my approach to command.

87. Operatives responded in different ways when asked if they still considered that their targets had been 'legitimate'. Some insisted they had not changed their minds. However, when Mr Raymond Lalla [AM2756/97], head of intelligence of the Natal machinery based in Swaziland, was asked whether the two car bombs that exploded in Durban in 1984 hit legitimate targets, he seemed less confident.

MR MAPOMA: *Can it be fairly put that these targets which were ultimately hit were in fact wrong targets?*
MR LALLA: *I think it's a bit difficult for me to answer that question. I think the best person to answer the question was Rabbit himself and Rabbit perhaps could provide some explanation as to why and whether the legitimacy of it or not, but in my personal opinion, looking from afar, a lot of civilians lost their lives and personally I'm not sure whether I can call it a legitimate target. (Pietermaritzburg hearing, 4 September 2000.)*

88. Mr Lalla had been part of the structure commanding the operative ('Rabbit') authorised to launch car bomb attacks, but had not been involved in selecting the targets.

89. Another amnesty applicant, Mr Rodney Abram Moeketsi Toka [AM6034/97], testified that a mission in which a baby girl was killed when a grenade was thrown into the home of her father, a police officer, had been regarded as a failure by the unit:

The intelligence gathered was totally inappropriate … no man in his good senses can rather throw a grenade when he knows that there is only a baby and a mother in the house. (Pretoria hearing, 29 January 1999).

90. Early signs that the ANC was concerned about the nature of certain attacks made by operatives emerged in late 1987. Late that year ANC President Oliver Tambo called in all members of MHQ and expressed his concern at the number of unnecessary civilian casualties in certain attacks, particularly those involving the use of anti-tank landmines. The landmine campaign was then suspended. Tambo also tasked MHQ with ensuring that all operatives fully understood ANC policy in respect of legitimate targets. Failure to comply with these orders would be considered a violation of policy and action would be taken against offenders.

91. Senior commanders were then sent to all the forward areas to raise these concerns with MK structures and, where possible, to meet with units. The command structures in the forward areas were told to contact all command structures in their units, whether or not they had been involved in attacks of this nature, and to ensure that all units and operatives were entirely clear on ANC policy regarding legitimate targets.

92. In August 1988, the NEC issued a statement specifically dealing with the conduct of the armed struggle in the country. While the NEC reaffirmed the 'centrality of the armed struggle in the national democratic revolution and the need to further escalate armed actions and transform our offensive into a generalised people's war', it also expressed concern at the recent spate of attacks on civilian targets and stated that some of the attacks were carried out by MK operatives motivated by anger in response to state repression.

Unfinished business

93. The hearings pointed to the legacy of bitterness and pain felt by ANC members who had experienced the harsh hand of NAT. These experiences of assault left more than physical scars on the recipients. At the Johannesburg hearing on 17 July 2000, Mr Mashele (see above) testified that, despite remaining with the ANC as a disciplined member, he had never received an apology for being assaulted by Mr ME Noosi [AM6304/97].

MR MASHELE: *We met at Luthuli House [ANC Head office]. I met him, I asked him what he did there because I'm fully convinced it was not motivated by any good intentions, that he must apologise to me for that and this was done seriously because I wanted him to take an opportunity then to apologise to me. It was around 1994 or 1995.*
MS MAKHUBELE: *Yes and what was his response?*
MR MASHELE: *He never apologised, and moved away from me. Turned his back against me. …. I met him on maybe two or three occasions at the general practitioner, which is my practitioner, and you know, this thing is straining our relationship, especially when we meet because he just looks at me and he doesn't care. You see, he doesn't want to extend, you know, even a smile, to show that I recognise you, you see? And recently we met at a funeral, he also you know, exhibited the same – I don't know whether to call it arrogance or what.*

94. At the same hearing, Mr Noosi responded:

MR NOOSI: *I saw him at Luthuli House; that was when he said I should apologise to him personally.*
JUDGE DE JAGER: *What did he say why should you apologise, what have you done to him?*
MR NOOSI: *He said because I've assaulted him, I assaulted him.*
JUDGE DE JAGER: *And did he tell you what you've done to him?*
MR NOOSI: *No, he said I assaulted him and I said to him no, I can't apologise to you because I was not doing that for my personal interests, I was doing it for the organisation. If you want an apology, the ANC has apologised. That's what I said to him.*

95. The hearings also highlighted the trauma suffered by families whose members went into exile but never returned. In Johannesburg on 22 May 2000, the Mokudubete family told the Amnesty Committee of the difficulties they had

encountered in obtaining information from the ANC as to the fate of their family member, Thabo:

When the MK cadres returned from exile after the unbanning of the ANC, we received some rumours that he died in exile ... As a result of this we started making enquiries and follow-ups. We went to Shell House at ANC Headquarters but because each time we went there, we were meeting different people, eventually ended up not getting the full story. I know that at the end they typed an unsigned statement to say that he died in exile. On our own, we requested a death certificate from court and [it] was issued to us. At some stage Chris Hani visited my father and confirmed that my brother had died but they were still to make more investigations into his death, most unfortunately he [Hani] was killed before returning to us. Up to this moment, we do not know how my brother met his death. I would appreciate it from the applicant to tell us how my brother died.

96. Cases where ANC members were executed by their own organisation left a particular legacy of trauma. Eighteen-year-old Sicelo Dlomo, a member of the Soweto Students Congress and a volunteer worker for the Detainees' Parents' Support Committee, was shot dead in Soweto on 23 January 1988. He had experienced several periods of detention and had become well-known through his testimony on a video called 'Children of Apartheid'. Dlomo's mother, Ms Sylvia Dlomo-Jele, told the Commission:

I want these people who killed my child to be found out and I want them to appear and explain what happened. I think maybe that can really satisfy me and console my spirit. (Johannesburg hearing, 15 February 1999.)

97. It was widely assumed that the security forces had assassinated Dlomo. However, one of the Commission's investigators obtained information from sources within the police that a particular Special Operations operative, Mr John Itumeleng Dube, had killed Dlomo. On being questioned by the investigator, Dube confessed to his role and submitted an amnesty application for the killing, along with two other members of his MK cell. Dube [AM5310/97] testified that Dlomo had been recruited into one of his cells. He said he became suspicious of Dlomo and instructed a member of his unit to execute him in the presence of other cell members. They followed his instruction. Ms Dlomo-Jele experienced tremendous shock when she learnt that her son had been killed by his own friends and comrades, all of whom had remained close to the family after the killing. She died a month after the amnesty hearing. Dube and three others were granted amnesty for the killing [AC/2000/019].

98. MK operative Joel George Martins [AM6450/97; AC/2000/157] testified about how he assassinated ANC supporter Benjamin Langa in Pietmaritzburg on 20 May 1984. Langa, a member of a politically active family, was a local activist known to Martins. His brother, Mr Mandla Langa, was a writer of note in exile and another brother, Mr Pius Langa, was a prominent human rights lawyer involved in defending political activists on trial.

MR MARTINS: *I enquired why they had such an instruction and they told me that a certain Ralph who was their commander in Swaziland, had given them that instruction to kill Ben because Ben had basically sold out 'comrades'.*
MR VAN DEN BERG: *Did you question the instruction?*
MR MARTINS: *No, I did not question the instruction, I could not question it – if you'll recall, you know, the early 80s, you know, anything that came from the ANC was hardly questioned, especially from operatives in the country in a word, you know, this was an impeccable source where it came from an MK guy who had just come back from the front, so yes, I did not have a basis on which I could question it. … The three of us walked up to Benj's apartment. We got there, I knocked, Benj asked who it was. I answered that it was me. He knew who me was. He then said 'come in'. These two guerrillas walked in and, ja, they shot and killed him and immediately after that we ran to the car and we drove off. (Pinetown hearing, 17 June 2000.)*

99. Mandla Langa told the Commission about his sense that this matter had never really been dealt with:

There was at the beginning quite a lot of confusion. I have a memory of the time when this was announced and when this came out that it was because Ben had been labelled an informer and I remember that there was a sense of disbelief among my – I was in Lusaka at the time – among the comrades, my colleagues were there, you know, the broader community in exile, all the way since from 1984 through today I have not received any feedback from my comrades which could have made me know or understand or feel that they felt that Ben had been an informer. …. I have yet to find somebody who will say to me that they really did believe that Ben had been this or that. (Pinetown hearing, 17 June 2000.)

100. The ANC commander apparently responsible for giving the order, Mr Edward Lawrence, aka Fear or Ralph, later came under suspicion by the ANC and was detained and interrogated. Under questioning, he confessed to being a police spy and subsequently died in ANC custody. According to the ANC, therefore, the killing of Benjamin Langa had taken place on the orders of a government

agent, as opposed to a genuine ANC order. According to the ANC Submission to the Commission:

In a few cases, deliberate disinformation resulted in attacks and assassinations in which dedicated cadres lost their lives. In one of the most painful examples of this nature, a state agent with the name of 'Fear' ordered two cadres to execute Ben Langa on the grounds that Langa was an agent of the regime ... Once the facts were known to the leadership of the ANC, President Tambo personally met with the family to explain and apologise for this action.

101. However, security police amnesty applicants denied that Lawrence was an informer.[142]

102. Killings of suspected defectors also took place outside the borders of South Africa. Mr Kevin Mabalengwe Mandlakomo [AM6403/97; AC/2000/230] applied for and was granted amnesty for the assassination of Mr Sipho Ngema in a restaurant in Manzini, Swaziland, on 6 January 1988.

103. Mandlakomo was deployed to Swaziland in 1987 as part of a four-person unit made up of himself, Thabiso, Dumele Xiniya and Shezi. The other three are now deceased. Ngema was believed to have defected in 1986 and was suspected of having played a 'pointing out' role in the events leading to the assassination of senior MK official Cassius Make and others in Swaziland on 9 July 1987. Mr Mandlakomo described the killing of Ngema at a Johannesburg hearing on 20 November 2000:

MR MANDLAKOMO: *It was in a restaurant, a Mozambique Restaurant in Manzini. .... You know, people were drinking, some were eating and we found him. He was seated in a corner.*
MR KOOPEDI: *And what did you do? Did you say anything to him? What happened?*
MR MANDLAKOMO: *No, I just told him to identify himself to confirm that he was Sipho and he did.*
MR KOOPEDI: *And thereafter?*
MR MANDLAKOMO: *I shot him.*
MR KOOPEDI: *How many times?*
MR MANDLAKOMO: *Four times.*
MR KOOPEDI: *Where on his body did you shoot him?*
MR MANDLAKOMO: *At the chest and head.*

142 Evidence of Eugene de Kock, amnesty hearing into the killing of ANC operative Zweli Nyanda, 14 June 1999, Pretoria.

104. Mandlakomo and Dumele then left the restaurant and climbed into the getaway vehicle. The group then drove to Mbabane. No one was ever charged for the killing.

105. In an interview with the Commission, Vlakplaas Commander Eugene de Kock denied that Ngema was ever a source, but testified that one of the assassins had been. This allegation was not investigated.

POPULAR RESISTANCE: 1960–1990

106. The second cluster of applications relating to events prior to 1990 is from civilians who engaged in various forms of protest, both peaceful and violent. During the 1980s, the ANC called on South Africans to 'make the townships ungovernable'. Yet, while the UDF and its affiliates attempted to structure peaceful campaigns and programmes, their supporters often acted on their own initiative and translated the militant rhetoric and slogans of the UDF and ANC into violent actions.

107. While MK operations formed a significant component of resistance in the pre-1990 period, its estimated 1500 operations pale beside the scale of protest action by civilian opponents of the apartheid government inside South Africa. Police statistics[143] cite tens of thousands of cases of what they described as 'unrest', including over 900 cases of burning and 'necklacings' between September 1984 and 31 December 1989. While these figures must be viewed with caution, there is little doubt that the wave of protest that swept South Africa prior to 1990 was extensive, leaving hardly any town untouched.

108. Ninety-nine persons, all male, applied for amnesty for 'internal protest' and UDF-related activities covering 104 incidents or events in the pre-1990 period. Of these, twenty-one are not linked to the UDF, either because they predate its launch or because they are applications from persons not clearly aligned to the organisation.

143 See, for example, the submission to the Commission by the Foundation for Equality before the Law, headed by Major General Herman Stadler and other retired officers of the SAP, April 1996.

109. These 104 incidents include 214 separate acts as follows:

Killings	79
Attempted killings	34
Assault	18
Arson/public violence	27
Abductions	17
Robbery	14
Illegal possession of arms and ammunition	4
Other[144]	21

110. The regional breakdown is as follows:

Eastern Cape	38
Transvaal	36
Natal	15
Western/Northern Cape	11
Orange Free State	2
Venda	1
Unspecified	1

111. The annual breakdown is as follows:

1960–1969	1
1970–1979	11
1980–1984	11
1985–1989	61
1990–1994[145]	18
Unspecified	2

112. Amnesty was refused for eleven incidents, partially granted for three and granted for ninety.

144 The last category covers cases that generally did not involve gross human rights violations, including, for example, refusal to serve in the SADF, spraypainting of political slogans, illegal gatherings and the like.

145 Although this section covers the pre-1990 period, these incidents are included here as they specifically relate to the UDF. Most took place in the early months of 1990.

Group attacks

113. Many of these attacks were spontaneous and unplanned, but several had some organisational links. The application by Mr Mziwoxolo Stokwe [AM6538/96] offers a compelling example of the latter. At his amnesty hearing, Stokwe explained that a certain Mr Skune Tembisile Maarman, aged nineteen, was identified as an informer used by the police to identify 'comrades'. At the Port Elizabeth hearing on 17 July 1999, he described how Maarman was killed on 6 April 1985:

    One night we had a COSAS[146] meeting, when I was chairing, and in that meeting we took a decision to kill Maarman because he was dangerous to us. … And we sent a few 'comrades' to go and kidnap [him] from the disco. We were about 200, ± 200 people at that night. Mr Maarman was brought to us by the delegation and we stoned him into death. Thereafter we burnt him with a tyre on his neck. But only eight people were charged for the killing and I was accused number one.

114. After the arrests, information emerged that a woman who had also participated in the killing, Ms Cikizwa Ntiki Febana, was going to be a state witness at the trial. On 14 December 1985, she too was killed.

115. Stokwe expressed a wish to contribute to reconciliation and building a united community that knew the truth about the events of the past. The families of the victims supported his application, which was granted [AC/1999/240].[147]

116. In many instances, applicants explained that their actions were spontaneous and often came about in direct response to clashes with police. UDF supporter, Justice Bekebeke [AM6370/97; AC/1999/203], applied for and was granted amnesty for the killing of Municipal Police officer Lucas Tsenolo 'Jetta' Sethwale in Paballelo township in Upington in the Northern Cape on 13 November 1985. The turbulent events of the previous three days had enraged residents, and Mr Bekebeke described this as a 'crowd attack' during a period of conflict.

117. Mr Bekebeke was part of the well-known trial of the 'Upington 26' in which twenty-five residents were convicted of the killing in terms of the 'common purpose' doctrine. The twenty-sixth person was convicted of attempted murder. Fourteen of the accused were sentenced to death, including Mr Bekebeke. Many of the convictions and all of the death sentences were overturned on appeal. Mr Bekebeke was given a ten-year prison sentence but was released as a political prisoner in January 1992.

146 Congress of South African Students.

147 See also AM5487/97,AM6400/97,AM6401/97,AM6402/97,AM6601/97,AM0148/96.

Robberies on farms

118. The Amnesty Committee also heard applications from UDF supporters who planned and participated in robberies, often on farms, largely for the purpose of acquiring arms.

119. Five UDF supporters from Kubusi township, Stutterheim in the Eastern Cape, applied for and were partially granted amnesty for five attacks on white civilians, mainly living on farms, during the period January to March 1990 [AC/1999/0277]. The applicants were Messrs Randile Bhayi [AM0122/96], Jimmy Nokawusana [AM1977/96], Mziyanda Ntonga [AM2018/96], Melumuzi Nokawusana [AM2009/96] and Bonakele Bhayi [AM2770/96].

120. In their applications, they sketched the turbulent political history of the township since 1985, including serious clashes with security forces. They testified that local farmers served as police reservists and had played a role in other forms of political repression. As a consequence, groups of up to forty youths, including the applicants, had embarked on raids and robberies on white farmers. In most instances, the motive was to acquire weapons and ammunition. In some of the attacks, farmers or farm workers were shot and injured. Amnesty was granted for four of the attacks and refused for one.

121. In a similar case, three UDF supporters applied for amnesty for an attack on a farm in Paarl outside Cape Town on 15 April 1986. The three applicants, Mr P Maxam [AM1283], Mr T Madoda [AM0865/96] and Mr CS Ndinisa [AM3802/96], were members of the UDF-affiliated Paarl Youth Congress in Mbekweni township outside Paarl. The three applicants testified that the purpose of the robbery had been to obtain weapons to defend themselves against the police and the Azanian People's Organisation (AZAPO), which they believed was being supported by the police.

122. The three applicants, together with four or five other 'comrades', set out to rob the farm where they had been told weapons were available. During the robbery, Maxam shot and killed the domestic worker, Ms Anne Foster, and the gardener, Mr John Geyser. Madoda and Ndinisa expressed their shock at the killings, which had not been part of the plan. The group fled and several were later arrested, convicted and sentenced for the robbery and the killings. All three were granted amnesty for the robbery, but only Ndinisa and Madoda were granted amnesty for their role in the killings.

PART THREE: PERIOD OF TRANSITION: 1990–1994

■ INTRODUCTION

123. While it was possible to draw a sharp distinction between those involved in the clandestine military operations of MK and those engaged in other forms of protest in the pre-1990 era, such distinctions become far less clear in the early 1990s. During this period, the borders began to blur as MK operatives became involved in community SDU structures and activities and civilians were increasingly drawn into paramilitary activities. The categories described in this section must, therefore, be seen as overlapping, with players moving from one to another and frequently inhabiting two or more simultaneously.

124. The Pretoria Minute between the former government and the ANC was signed on 6 August 1990. It included an announcement that the ANC would suspend its armed struggle with immediate effect, based on the presumption that the negotiations process would, amongst other things, lead to a suspension of 'armed actions and related activities' by the ANC and its military wing MK.

125. However, in the light of the widespread violence that almost immediately erupted in the Pretoria-Witwatersrand–Vereeniging (PWV) area and spread to other parts of the country, the ANC gave its support to the formation of SDUs in order to protect communities from violent attack.

126. In September 1990, Mr Nelson Mandela publicly pledged the support of MK members to help form and train SDUs. The violence was so extensive that the ANC's Consultative Conference in December 1990 asserted that, 'in the light of the endemic violence and the slaughter of innocent people by the regime and its allies, we reaffirm our right and duty as a people to defend ourselves with any means at our disposal'. The Conference resolved 'to mandate the NEC to take active steps to create people's defence units as a matter of extreme urgency for the defence of our people.'[148]

127. The SDUs were conceived as tightly structured paramilitary units with a specific command and control system. Their members were to be highly trained and

148 Conference resolution on negotiations and suspension of armed actions, in the report on the ANC National Consultative Conference, Advance to National Democracy, Johannesburg, 14–16 December.

subject to a high degree of discipline. MK members were envisaged as playing an important role in the establishment of these structures.

128. While the ANC was concerned that formal MK involvement would jeopardise negotiations, it approved the involvement of individual MK members in community defence. MK Military Headquarters (MHQ) was to play a limited and secondary role, although certain members of MHQ were given the task of assisting SDUs with organisation, training and the provision of weaponry. Various clandestine units were set up for these purposes. The general approach, however, was that the overall control of the SDUs was to remain with community structures and that MK operatives were to participate as members of the community.

129. The ANC told the Commission that it had no records of MK's role in the SDUs, since they were not HQ-controlled structures:

MR ISMAIL: *Senior ANC leaders decided that selected SDUs should be assisted in those areas of the Reef which were hardest hit by destabilisation. Selected members of MK, including senior officials from the Command structures, were drawn into an ad hoc structure to assist with the arming of units and to train and co-ordinate efforts in self-defence in these communities; this was done on a need-to-know basis. (Pretoria hearing 4 May 1998.)*

130. Although the conflict in the 1990s took place primarily between the IFP and the ANC, its roots were deeply complex. Ethnicity, age, gender, language and social position played their part in the upheaval and fed into long-standing differences between urban dwellers and rural migrants. Migrants found themselves in conflict with town dwellers. In the reports of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation[149], Justice Richard J Goldstone commented at length on the structural, linguistic and social cleavages that fed into the conflicts in the Tokoza[150] area. The Goldstone report into violence in Tokoza noted that

the political rivalry between hostel-dwellers and shack-dwellers, Zulu-speakers and Xhosa-speakers, Zulus and Xhosas, and migrant workers and those who have their families with them, all tend to resolve themselves into a very simple IFP/ANC tension.

149 1992–95.

150 Report of the Committee of Inquiry into the Phenomenon and Causes of Violence in the Thokoza area, under the chairmanship of Mr MNS Sithole, November 1992.

131. These deep-seated dimensions of the conflict are a significant feature of the amnesty applications by SDU members (and many applications from all political groupings relating to the 1990s). While inherently a political conflict, testimony by applicants points to a range of complex social and other factors that formed part of the warp and woof of local conflicts.

CATEGORIES OF VIOLATIONS COMMITTED BY MK

Offensive armed actions

132. Some applications for armed actions apply to the period January to August 1990, before the suspension of armed struggle. Thereafter, certain MK operatives engaged in armed actions on their own initiative, often based on what they described as the 'command initiative' delegated to MK operatives. Although the bulk of MK applications relate to the activities of SDUs, a small number relate to incidents undertaken at the initiative of MK operatives. On the whole, these were 'own missions', unauthorised by the ANC. They include assassinations, armed robbery, skirmishes with security forces, internal clashes and the possession and provision of firearms, ammunition and explosives.

133. On 25 May 1993, the ANC Youth League (ANCYL) and the Congress of South African Students (COSAS) organised a march to the Bophuthatswana Consulate in Kimberley in the Northern Cape to hand over memoranda of protest to the Consulate and the SAP. As the marchers began to disperse, one of the protesters threw a hand grenade at the building. It bounced back towards the crowd and exploded, killing ANC marcher Mr Ezekial Mokone and wounding up to forty others.

134. Northern Cape Regional MK Commander Khululekani Lawrence Mbatha [AM3363/96] and ANCYL member Walter Smiles [AM3365/96] applied for amnesty for the incident. Mr Sipho Moses Mbaqa [AM0010/96] and Mr Nkosinathi Darlington Nkohla [AM0013/96], who were convicted of the attack, also applied for amnesty although they denied involvement in the incident.

135. Mbatha told the Amnesty Committee that he had instructed Smiles to throw the grenade. He said that as commander he had discretionary powers to act in circumstances where no direct instructions from the civilian leadership (from whom he took instructions) could be obtained, and that he had acted within the scope of his express or implied authority.

136. This operation was contrary to the ANC's suspension of armed struggle. It was not committed in the execution of an order on behalf of or with the approval of his organisation. On the contrary, the local ANC leaders under whose authority he fell conceded that he had given an assurance to the local Peace Committee[151] that the march would be a peaceful event. Indeed, the grenade was thrown while the local chairperson of the ANCYL was asking marchers to disperse peacefully.

137. Thus Mbatha acted contrary to the express undertakings given by his organisation. Any bona fide belief that he was acting within the scope of his authority was further contradicted by his behaviour after the event. He did not report to his leaders about the event which, had it been carried out within the policy of the organisation, would surely have been approved by them.

138. The Amnesty Committee found the evidence of Walter Smiles to be contradictory and unreliable. Both he and Mbatha were denied amnesty [AC/2000/053 and AC/2000/241]. Mbaqa and Nkohla were also refused amnesty as they maintained that they had not committed any offence or delict and thus fell outside the ambit of the requirements of the Act.

Robberies

139. The transition period (1990 to 1994) was a difficult time for many MK operatives. In exile, the ANC had provided basic necessities and provisions and supplies for operational purposes. Back home, MK structures dissolved, MK operatives dispersed and the old support base fell away.

140. In testimony before the Commission, it emerged that while robbery remained contrary to ANC policy, the ANC turned something of a blind eye to acts of robbery for operational purposes – that is, robberies to secure weapons or money for logistics.

141. For example, a senior MK operative, Mr Japie Aaron Mkhwanazi [AM6215/97] deployed an MK operative to establish an SDU to counter the IFP-aligned 'Black Cats' gang in Ermelo in the Transvaal. At the Ermelo hearing on 28 August 1998 he testified that he was aware that the operative had engaged in armed robberies:

151 Peace Committees were established across South Africa during the early 1990s to monitor political protests and state action and ensure liaison between the various groups involved so as to avoid violent confrontations.

I know that that is not the policy of the ANC; but the situation under which we lived at the time was that we had no alternative … The instruction that I gave was that he [MH Gushu] should form and arm the self-defence units. It was therefore up to him to take the necessary steps as to how the self-defence units should be armed and that's what decision he took: armed robbery.

142. Mr VL Dlamini, an MK operative who was active in SDUs in the Transvaal, concurred:

There is no policy [supporting] robbery in the ANC but with regards to the needs of the units on the ground you would try to raise funds in any way. Even then the leaders would not expressly give you authority to involve yourself in robberies but would only say that whatever you do you should not compromise the movement … (Johannesburg hearing, 30 September 1999.)

143. The security forces were the most obvious and popular targets for such robberies, although private persons and businesses were also targeted for vehicles and money. As a result, there were several amnesty applications for acts of robbery by both MK and SDU personnel, some of which resulted in injuries and deaths.

144. Mr Pumlani Kubukeli [AM5180/97], an MK operative deployed in Umtata in the Transkei, was tasked with the training and provisioning of new recruits. Due to budgetary constraints, it was decided that alternative means of obtaining the requisite finance should be employed. Kubukeli and two others robbed the Engcobo Wiers Cash and Carry store. There were no injuries or damage. The three were later arrested, convicted and sentenced to prison terms for armed robbery.

145. On 17 August 1992, four ANC members, including at least two MK members, shot and killed Mr André de Villiers outside his farmhouse in Addo, Port Elizabeth. Mr de Villiers was due to testify at the forthcoming inquest into the killing of activist Mathew Goniwe and others. Mr Thamsanqa Oliver Mali [AM0124/96] asserted that they had been told by Chris Hani to use their own initiative to acquire arms.

146. The robbery went wrong and Mr de Villiers was fatally wounded and other family members were fired at. A few days later the group was arrested and eventually sentenced to long prison terms. The leader of the group, Mr Xolani Ncinane, died in prison; another member escaped. The remaining two, Mali and Mr Lindile John Stemela [AM0125/96], applied for amnesty. Mali was granted

amnesty; Stemela, who was not an MK member but a recent SDU recruit, was refused amnesty [AC/1999/0234].

147. The ANC distanced itself to some extent from their application. At the Port Elizabeth hearing on 19 January 1999, ANC representative Thembisi Mbatha told the Commission that:

Our investigation with our Port Elizabeth office could not establish that a meeting between SDUs and the late comrade Chris Hani was held in early 1992. Secondly, it is sad that the name of Chris Hani, because he is not there to answer for himself, should be used to support the amnesty applications. According to our comrades in Port Elizabeth, the motive for the incident was armed robbery and not political at all. We have unfortunately not been able to trace the Xholani Tjebilisa to which they refer as their commander.

148. A more common form of robbery was to attack police or police stations in order to secure weapons. Mr Moses Vuyani Mamani [AM6141/97] was part of a group of four MK operatives who attacked and robbed the Frankfort police station in the Ciskei on 12 August 1992 in order to acquire weapons. One police officer was shot and wounded in the attack. Mr Mamani was granted amnesty [AC/1999/0354].

Skirmishes with police

149. Skirmishes with police usually occurred when operatives were in possession of weapons and wished to avoid arrest or were being pursued by police.

150. Mr Wilson Mokotjo Sebiloane [AM1701/96], a former COSAS activist, left South Africa to join the ANC in 1986. On 25 May 1991, one month after his return from exile, his vehicle was pulled over by the police. Fearing arrest, he attempted to shoot his way out, injuring both police officers. He was captured, convicted and sentenced to 13 years' imprisonment. Sebiloane was granted amnesty [AC/1997/0035].

Possession and distribution of arms and ammunition

151. Thirteen applicants applied for amnesty for the possession of arms and ammunition, while another seventeen applied for the infiltration and supply of arms.

Shell House shooting

152. Perhaps the best-known case involving ANC trained personnel in this period was the shooting outside the ANC headquarters at Shell House and its offices at Lancet Hall in Johannesburg on 28 March 1994. The event, in which IFP marchers were shot dead by ANC security guards, took place one month before the first democratic elections of April 1994.

153. Ten ANC security personnel applied for amnesty for the Shell House shooting, and three applied for the shooting outside the Lancet Hall offices. Two of the latter subsequently withdrew their applications.

154. Although it is clear that the applicants believed that they were under attack, the Amnesty Committee found no evidence of an attack on Shell House by the IFP marchers. Objective ballistic and medical evidence indicates that the shooting was without justification as most of the deceased were shot after they had turned back. The applicants admitted that they might have shot at the marchers as they were running away. All eleven applicants were granted amnesty [AC/2000/142].

SELF-DEFENCE UNITS 1990–1994

Background to self-defence units

155. In the period 1990 to 1994, self-defence units (SDUs) emerged in many urban townships in the PWV, Eastern Cape, Transkei and Ciskei, Western Cape, Orange Free State and in both urban and rural areas of KwaZulu and Natal. In the PWV and KwaZulu/Natal, the SDUs clashed primarily with the IFP. Elsewhere, a range of localised conflicts involving different protagonists took place. These included clashes with gangster and vigilante groupings (sometimes linked to the IFP), with more anonymous groups and with the police.

156. As violence engulfed many areas, it became increasingly clear that communities could not rely on the security and legal structures of the state to protect and defend them. As a result, many felt compelled to take steps to protect themselves. At the Durban hearing on 1 December 1998, amnesty applicant Jeff Radebe [AM7170/97] argued that:

These self-defence units in fact were imposed on us, by the inability of the security forces that were supposed to protect our people. Instead of protecting

our people, they were the ones that were guilty of atrocities against our people. As a result we had no choice but to make sure that we assist our people in defending themselves. I believe that it is a right of anybody in South Africa to defend himself or herself when attacked. That is the background against which we operated as the ANC.

157. The ANC submission to the Commission is frank about the direction SDU activity took:

Before long there were two kinds of SDUs in existence: genuine community defence groups, and violent gangs presenting themselves as ANC-aligned SDUs … Some SDUs became little more than gangs of criminals at times led by police agents, and inflicted great damage on popular ANC aligned-community structures.

158. Then Deputy President Thabo Mbeki told the Commission that:

there was a basic assumption … that there would be in those communities local political structures, local structures of civil society strong enough to be able to constitute these committees that would then take charge of the self-protection units. I'm saying that was an assumption … when that didn't happen and we moved in a different direction, its clear that we should perhaps have reviewed the matter of that control but we continued to proceed as though you could as ANC arm the units and surrender them to these local civil and political structures to control. An attempt was made to keep an eye on them. I am talking now from the national leadership, from headquarters, and there are instances where we had to intervene when there were all sorts of crazy things that were planned. It may very well be that we should recognise that the situation having changed from the original conception we needed to have taken steps in terms of a control which would be consistent with the changed circumstances, but there was a carry through of a particular concept of self-protection units which was perhaps then not founded on reality with regard to the control and so on within those communities. (Oral evidence at HRV hearing on ANC.)

159. It is probably in the supply of weaponry by MHQ that the strongest case for a link between the ANC and SDUs can be made. According to Mr Ronnie Kasrils [AM5509/97; AC/2001/168], the ANC established an MK unit to assist in arming the SDUs. The unit was made up of himself, Mr Aboobaker Ismail [AM7109/97; AC/2000/153] and Mr Riaz Saloojee [AM7158/97; AC/2001/128]. This unit created DLBs ('dead letter boxes', or arms caches) in the areas badly affected by

violence – including Durban, Pietermaritzburg, Vaal Triangle, East and West Rand, Eastern Cape, Ciskei and the Western Cape. Kasrils liaised with other MK personnel including Mr Jeff Radebe in Natal, Mr Robert McBride [AM7032/97; AC/2001/128] in the East Rand, Ms Janet Love [AM5509/97; AC/2001/028] in the Transvaal and Ms Felicity 'Muff'Andersson [AM6210/97; AC/1997/0057]. Mr Chris Hani also played a crucial role in passing on DLB diagrams and sketches to those responsible in the areas concerned. All of these persons applied for and were granted amnesty. According to Kasrils, the supply of weapons to SDUs throughout the country had ceased by the end of 1993.

160. Aside from three applications from KwaZulu and Natal, the Amnesty Committee dealt with applications from MHQ personnel administratively as they were not directly linked to gross human rights violations. There is, as a consequence, little detail available on the quantities of weaponry involved, the frequency of handover or the subsequent management or retrieval of such weaponry. There are indications that the distribution of weaponry to SDUs by MHQ was done in a fairly limited way. According to then Deputy President Mbeki, who gave oral evidence at the human rights violations hearing on the ANC:

There was not a big massive distribution of weapons by the ANC or MK to ordinary cadres, there wasn't. As that violence from 1990 onwards was mounting one of the strongest demands that came from within the constituency of the ANC was arm the masses. Many of us sitting here had to do very stormy and rowdy and heated meetings contesting that, saying that there are no masses that are going to be armed. But it was a demand to say here we are, you people in the midst of all of this violence you decide to suspend armed action and therefore you demobilise or deactivate MK, and then here we are being killed, and where are the weapons, arm the masses so that the masses can defend themselves. As I say, that many of us sitting here participated in many public meetings where this demand was made very strongly and then we said no, there are no masses that are going to be armed because we are concerned about the consequences of arming everybody. … As a movement we resisted the notion of arming too many people.

When weapons were distributed by people from MK … they were in fact distributed to specific people. It was not like sort of handing out sweets in the street, and clearly the people to whom those weapons would be given would be people that in your best judgement are people who have got the necessary political capacity and the discipline to handle those weapons properly.

161. This assertion is to some extent borne out by the amnesty applications received from MK Command personnel and operatives. Testimony from amnesty hearings indicates fairly strongly that SDUs acquired the majority of their weapons from private sources[152] and not from the ANC.

162. Although the ANC kept its distance from the command and control of most of the SDUs, it was forced to intervene in several instances when SDU structures drifted into criminality or internecine conflicts.

Lines of command and operational practices

163. SDUs were by no means a homogeneous category. Rather they reflected the character of local political developments in particular townships and the diversity of the conflicts they engaged in.

164. In most cases, SDUs had some form of contact with ANC structures, albeit in an *ad hoc* and unstructured way. Some existed in areas where there were no strong ANC branches that could provide political leadership. Some of these were led by MK operatives who had returned from exile and faced strong pressure to initiate and train SDUs. Such MK operatives were unlikely to be high-level ANC personnel.

165. Some – notably the Tokoza SDUs and some of the KwaZulu and Natal SDUs – worked closely with the ANC's political structures. Regular meetings and liaison took place between the ANC branch and the SDU commanders. In many instances the local political ANC structure might even have initiated the formation of the SDU and was able to play a monitoring and disciplinary role. Yet even in these cases, the political link with the ANC was primarily local rather than regional. It was the local ANC branch that played the supervisory role, and the quality of that supervision depended largely upon the quality of leadership and political maturity of the branch leadership. Moreover, the existence of such political control did not lessen the ferocity of the conflicts or the offensive character of the attacks carried out by the SDUs. Thus, despite political control, the Tokoza SDUs engaged in extreme forms of violence.

166. A third version of SDUs may have regarded itself as part of the ANC but, in reality, had little structural or political connection with the organisation. Such SDUs

152 See, for example, AM5594/97.

tended to be established by local communities through civic organisations, street committees or mass meetings. These SDUs might borrow the language and sometimes the structure of more formal ANC SDUs, using terms such as 'orders' and designations such as 'commander'. Such SDUs were particularly evident in the informal settlements in and around townships. Incidents associated with these SDUs tended to be characterised by spontaneous crowd activity and violent collective action. The weaponry involved was often unsophisticated.

Types of violations

167. The SDU amnesty applications cover a very wide range of offences and attacks on a range of targets. Each region had its own particular features. The offences applied for fall into the following broad categories.

Arson attacks on homes and communities

168. Arson attacks were employed as a means of forcibly displacing opponents or suspected 'collaborators' from their homes or, in the case of informal settlements, from entire areas.

169. Mr JM Mabuza [AM7633/97; AC/1999/0053], applied for and was granted amnesty for several arson attacks on homes in the Katlehong area that were believed to be occupied by IFP members or supporters. Some of the attacks were carried out with the assistance of local residents. In his testimony at the Palm Ridge hearing on 8 December 1998, he describes one such incident:

MR MABUZA: *Yes, I was at school, just before lunchtime, as we are still busy at school, we were hearing gunshots outside and we were quite uncomfortable and we couldn't go on. We just decided to go home. On my way home, I was seeing hit squads and the people were being shot at, but fortunately I managed to get home unharmed, but just before I could get home, I saw a house that was on fire. Next to that house, there was a dead body. I went into the house and I put my books there and I took my pistol and I went out. Just in front of my house, there was a group of people that were known to me. I enquired about what was happening in the community. They told me that the fight between the ANC and IFP had started. They said to me I must stop asking questions because things were bad. We went to house number 256 at Hlongwani, that was the same street where I was residing. There were IFP members that were residing there, we used to see them going to the rallies, IFP rallies and meetings*

… We wanted to destroy IFP, because it also managed to destroy us in 1990 as we were unarmed as a community.

MR SHEIN: *But who did you find there?*

MR MABUZA: *We got women there, there were women and children, but I am not a coward, I don't kill women … The community was very angry, as I was still talking to these people, they started to stone the house, and I had to get out of the house. When I went out to the group of people, some women followed me and though the community was very angry, they did no harm to women. I know that my community is not composed of cowards, they don't kill women. …. That is when the house was set alight and the windows were already broken. I can't remember whether it was Aubrey or someone else who put petrol in one of the bedrooms and the dining room. …. I am the one who set the house alight.*

Attacks on hostels

170. Hostels were also attacked. Applicants applied for amnesty for attacks on IFP hostels, which usually involved an exchange of gunfire between SDU members and IFP hostel-dwellers. In one unusual incident, Tokoza SDU members attacked a police patrol and took control of a Casspir[153] Amnesty applicant Mr Radebe [AM0200/96] describes the attack:

We decided that we will shoot the police because of their acts. We shot indiscriminately, we kept shooting, until we got an opportunity to injure some of the policemen. But one policeman I saw in the morning, I realised he was dead. We decided to take the Casspir and use it for counter attacks to the hostel-dwellers, because they had attacked previously during the day. Nyauza was the name of the colleague who drove the Casspir. We proceeded to Katuza hostel, alighted from the Casspir and we knocked at the doors and the windows of the hostel, and we shouted they should wake up and open the doors, we are here to attack. And as they woke up they switched on the lights and we started firing towards them and threw the petrol bombs into their room. It took about some time because we did that to numerous hostel rooms, and we decided it's time to go back now. We went back to the Casspir and we drove towards the first hostel, and we found them standing there amazed as to what was happening, and I do believe that they thought these were police and we started at shooting at them since they were not running away. We shot towards them and we drove towards Phola Park. Just towards Phola Park we decided to stop the Casspir and alight from the Casspir, and walked into the neighbourhood. (Hearing, 8 February 1999.)

153 Armoured personnel carrier.

Abductions followed by executions

171. Abductions of suspects were a particular feature of the East Rand SDUs. The suspects would be taken for questioning and assaulted in order to extract a confession. These appeared invariably to be followed by summary execution. Amnesty applicants often asserted that, after abduction and assault, victims would admit or 'confess' to being IFP members.

Targeted killings

172. Particular persons who had been identified as IFP members or supporters would be targeted for assassination. A public assassination might take place on the spot or at some later date.

173. In one incident, Mr Jerry Chimanyana Motaung [AM5594/97], an MK operative in an SDU in Vosloorus, targeted and attacked two women suspected of being IFP members and of having provided information to IFP hostel-dwellers. However, when questioned at the Johannesburg hearing on 13 October 1998, the applicant was unable to provide any evidence for his suspicions:

MR MHLABA: *Did Patricia and Gladness pose any threat to the wellbeing of the political organisation which you were trying to further the objectives thereof?*
MR MOTAUNG: They never had any interference in our work.
MR MHLABA: *Then why were they attacked Mr Motaung, can you just recap on that, because it is not very clear?*
MR MOTAUNG: *Patricia Motshwene and Gladness Mvelase were members of the IFP, we saw them at the funeral of the IFP and we at the township were fighting against the IFP and these people of the IFP were attacking people and killing people in the township. That is when we realised that the people who were staying in the township, were giving information to other people in the hostel, who were members of the IFP. That is why we took a decision that these people should be killed, because they were giving out the information to the people who were staying at the hostel. These were the people who were more dangerous because they would monitor our movements and give information to those who were living at the hostel.*
ADV GCABASHE: *Could I just ask Mr Motaung, did you have evidence that Patricia and Gladness were involved in those spying activities, that they were giving information to people at the hostel?*
MR MOTAUNG: *We didn't have evidence to that effect, but our understanding*

was that the people who were staying in the township were more dangerous than those in the hostel.

Internal clashes

174. The SDUs were vulnerable to infighting and internal clashes, both amongst themselves and with other ANC members or structures such as the ANCYL. The Tokoza SDU regarded this problem so seriously that it adopted a policy of an 'eye for an eye' or 'kill and be killed': that is, any SDU member that killed another SDU member would himself be killed.

    MR SOKO: *Such a policy helped us not to lose a lot of our members, especially the SDU members. We laid this rule down so that there could be some semblance of order and there should be a framework within which we worked as SDU members not to kill each other, so that people could be prevented from killing each other. (Lucky Soko, Hearing at Palm Ridge, 30 November 1998.)*
    MR RADEBE: *I explained earlier on that there was a hard and fast rule or policy, that is you had taken somebody's life, your life should also be taken. (Patrick Mozamahlube Radebe, Hearing at Palm Ridge, 24 November 1998.)*

175. The most notorious example of this type of intra-organisational conflict was the abduction and killing of nine ANCYL members by a Katlehong SDU on 7 December 1993. The victims, some of whom were 17 years old and younger, were shot, hacked and stabbed to death. Thirteen SDU members were refused amnesty for this violation [AC/1998/0013].

176. The ANC established an SDU in Khayelitsha, Cape Town, to take control of a situation in which local ANCYL members had engaged in violent and/or criminal activities. However, the SDU itself became involved in incidents of violence. Mr Zwelitsha Mkhulwa [AM0665/96] and Mr Ndithini Thyido [AM0755/96] applied for amnesty for the attempted killing of ANC member, Mr Bongani Mpisane, in 1993. A young child, Solethu Ngxumza, was accidentally shot dead in the shooting. Amnesty was refused [AC/1997/0034].

177. Members of an SDU in Philippi, also in Cape Town, were involved in the killing of senior ANC and MK member Mziwonke 'Pro' Jack, in Nyanga on 19 June 1991. Mr Jack's nephew, Andile, was wounded in the attack in which three men opened fire on their vehicle at close range. This was portrayed at the time as an assassination by the security forces or their 'surrogates'. However, the ANC

came to suspect the involvement of its own members and instituted an inquiry. Mr Xola Tembinkosi Yekwani [AM7970/97] applied for amnesty for his role in the shooting. His application was refused [AC/2000/003].

Crowd killings

178. Although SDUs were usually small units, some of the less structured SDUs seem to have operated in conjunction with larger groups of residents or crowds in 'collective action'.

179. Amnesty applicant Foreman Mngomezulu [AM0187/96; AC/2000/048] described himself as a member of the ANC and a deputy commander in the SDU 'responsible for protecting the community'. He applied for and was granted amnesty for his role in an incident that took place in Mandela Section, Daveyton, Transvaal, on 21 March 1992.

180. Patrick Khumalo and Mr Absolom Mnyakeni, who were suspected of killing the Secretary of the Youth League in the area, were violently assaulted and abducted from their home along with two others who were believed to be harbouring them. The four were taken to a nearby sports ground where they were further assaulted with iron bars and sjamboks in front of a 'large crowd of 'comrades' and the community'. Petrol was then poured over them and they were burnt alive.

MS LOCKHAT: *And whose decision was it to burn the two victims?*
MR MNGOMEZULU: *All the 'comrades' took that decision … It was the street committee that came up with the idea and we all agreed. …*
JUDGE DE JAGER: *Could you tell me, did you – were they still conscious when you poured the petrol on them and burnt them, or were they in a coma or unconscious at that stage, what was their physical state when you started the burning?*
MR MNGOMEZULU: *They were still alive.*
JUDGE DE JAGER: *Still standing upright?*
MR MNGOMEZULU: *Yes, they were still conscious. …*
MS LOCKHAT: Tell me, wasn't it you, you also, I think one of the deceased asked for water and you said that they should give them petrol to drink rather? Is that true?
MR MNGOMEZULU: *No, it was the street committee. (Johannesburg hearing, 1 November 1999.)*

Armed robbery

181. SDUs executed a number of armed robberies, targeting both civilians and security forces. Applicants explained that they needed money to buy weapons.

182. Mr Mlungiselele Ndamane, an SDU member in Katlehong [AM3124/96; AC/1999/0231], applied for and was granted amnesty for the armed robbery of a branch of Volkskas bank in February 1992. Mr Zakhele Jan Simelane [AM3122/96; AC/1999/0209] applied for and was granted amnesty for the robbery of vehicles and a bank to obtain money for arms on SDU orders. Mr Molife Michael Selepe [AM7154/97; AC/2000/139] described how a group of Tokoza SDU members staged an armed robbery on the Klipriver police station in order to acquire weapons. Similarly, four members of a newly formed SDU in Heilbron, Orange Free State, robbed a police station of weapons on 8 July 1992.

183. Mr SM Manyamalala [AM3150/96] explained that he was recruited to an SDU in Soweto in 1992. He was ordered to fetch weapons and, in order to obey this order, hijacked a vehicle on 3 February 1993, killing the civilian driver, Mr WS Froneman, and injuring the passenger, Ms Ruth Jennifer Barker.

Attacks on police and skirmishes

184. A number of skirmishes took place between SDU members and the police, often while police were attempting to make arrests. Mr Mxolisi Duma [AM3145/96; AC/1999/0210] was granted amnesty for a shoot-out with police while he was transporting weapons near Soweto in November 1990.

185. SDU members also launched offensive attacks and ambushes on police while engaged in defensive skirmishes. Mr Mhlabunzima Phakamisa [AM0660/96] and Mr Two-boy Vakele Jack [AM0919/96], members of an SDU in Khayelitsha, Cape Town, concealed themselves in a shack and opened fire on an Internal Stability Unit (ISU) patrol on 22 July 1992. Four members of an SDU in the Transkei abducted two policemen from the Bhongweni police station near Kokstad, Transkei, on 17 October 1993. The two police officers allegedly attempted to escape from the vehicle and the SDU members shot them dead. The SDU members claimed that these abductions were in retaliation for the SADF attack on the home of a PAC member in Umtata on 8 October 1993 in which five sleeping youths, including two twelve-year-old children, were shot dead.[154] The two applicants were granted amnesty [AC/1998/0029].

154 See Volume Two, Chapter Seven, p. 600.

Attacks on vigilantes and criminal groups

186. In the period 1990 to 1994, a number of anti-ANC criminal and vigilante groups engaged in attacks on ANC members and supporters. Mr Sandile Birmingham Garane [AM5474/97; AC/2000/117] and Mr Joel Mhlahleni Sishaba [AM5186/97; AC/1999/232] were granted amnesty for the killings of two 'Toaster Gang' members in 1990 and 1993 respectively.

Attacks on transport routes

187. In the Katorus area, particular transport routes became associated with one or other political grouping. Residents of Katlehong became extremely concerned and upset when the railway line that ran past their homes to the hostel became a site of violence. Shots were fired at residents as the train went past and commuters were thrown to their deaths off the train. At the Johannesburg hearing on 24 November 1998, SDU member and amnesty applicant Jeremia Mbongeni Mabuza [AM7633/97] described the reaction of the residents:

We had a meeting one morning. [The residents] would wake up to dead bodies in the morning, these people whose houses were facing the railroad, and we decided to come up with a strategy to stop this from continuing.

188. The residents' first response was to shoot at the train as it went past. Later they decided to destroy the railway line itself.

We went to the railroad as the community and we took the first line, we also used hammers. We counted three times, and we bent the railroad or the rail itself, but that didn't help us in any way. On taking that resolve, we took a cutting torch from some of the Shangaan-speaking or Tsonga- speaking group and we went straight to the rail line. We used this cutting torch to break down this rail line, or to cut this rail line. We did not remove the one piece that we had cut from the line, we just left it there to appear as if there was nothing wrong with the line. This piece remained, the train came as usual and when the train came to the spot, two coaches were derailed, and as this was happening, the shooting was going on.

Lesser offences

189. Offences that did not fall into the category of gross human rights violations included the illegal possession of arms and ammunition, the collection of money

from residents for the purchasing of weapons, reconnaissance work, incitement, public violence and the obstruction of the police in the performance of their duties.

190. Three amnesty applicants, Mr Simphiwe Godfrey Ndlovu [AM7075/97], Mr Thulani Richard Mbatha [AM7027/97], and Mr Aubrey Matlema Maile [AM7694/97], applied for amnesty for doing reconnaissance work, cleaning weapons and similar work with the Tokoza SDUs while they were between the ages of ten and twelve. The three were granted amnesty for the unlawful possession of AK47s and a number of other firearms and ammunition and for obstructing the police in the performance of their duties [AC/1999/0243].

Features of the conflict

191. Spontaneous violence by crowds continued occured during this period, making political control extremely difficult. Many incidents reported to the Commission took place at the hands of large groups of people engaged in collective action. Crowds had a spontaneity and momentum of their own and were unlikely to conform to the discipline of ANC policy or wait for orders or approval.

    MR MSIMANGO: *... we did not plan as such. We would react to what will be happening at the time. We will not sit down and plan the attack but we will just revenge as it happens. (Hearing at Palm Ridge, 23 November 1998.)*
    MR MOPEDI: *Why was it necessary to attack the house in Dube Street?*
    MR NDLOVU: *The attack on that day was prompted by the fact that we lost five of our members the previous Friday and therefore it was necessary for us to avenge their death so that they could learn from this experience that we too can fight back, we are not happy about this. (Hearing at Johannesburg, 24 November 1998.)*

192. Suspicion and unsupported rumour thrived in this tense atmosphere. Mr Bongani Nkosi [AM7268/97], one of the chief commanders of the SDUs in Tokoza, described an incident in which he executed an unidentified person on the spot:

    MR NKOSI: *It was in the morning, I was in my house, I heard a noise outside, I went out. I was wearing nothing on my upper body. I saw people chasing a person. They told me that it was an informer that was there to survey the place, therefore they were chasing him. I went back to my house. Under the table, I took my AK47 ... They brought this person, I gave them the firearm, they*

misfired four times and Sicelo also misfired with four bullets. I took back my firearm, I bridged this firearm. He was at a distance of about 20 meters. I shot only once on the head and he fell. ….
MR SHANE: *Did you know who this person was, the one who died? Did you know his name, did you see him before?*
MR NKOSI: *I just saw this person for the very first time, I did not search for his identity card or something else. We would just do the work, without looking for further details. (Johannesburg hearing, 9 February 1999.)*

193. Many applicants would state that 'it was common knowledge' that so-and-so was an IFP member. Any form of association with the IFP could result in a death sentence. A variety of social and physical markers were used to determine the possible affiliation of a suspect, including clothing, language, physical features, and being seen in a suspect area or suspect taxi.

194. In this heightened atmosphere of revenge and rage even the remains of suspected IFP members were targets of attack. Bodies of 'the enemy' were dug up out of their graves and burnt or dismembered. In several instances, the coffins of deceased persons were seized from hearses and set alight. SDU members described attacking a body in a hearse:

MR MADONDO: *It was myself and Jamani who dragged the coffin out of the hearse. I don't even know where the petrol came from but I saw petrol there and the person was in flames, the dead body was in flames. The only thing that I did was to drag the coffin out of the hearse and it broke.*
MR MOPEDI: *And do you know who was in the coffin?*
MR MADONDO: *No, I did not know. I had Jamani who told me that it was an IFP commander. (Johannesburg hearing, 24 November 1998.)*

195. The polarisation of physical space took extreme forms. Not only in residential areas but on public transport, separation became necessary in order to ensure survival.

196. While the main protagonists were IFP and ANC supporters and members, it was mainly ordinary residents who suffered arson attacks, injuries and even death during the protracted conflict. Taxis, trains, funeral vigils, taverns, the places of ordinary daily life became sites of attack. Residents or visitors who happened to cross into 'enemy' territory were likely to become victims.

197. On the one hand, one of the most significant features of the violence of the 1990s is the total anonymity of the victims from the point of view of the applicants. Civilians were killed simply because they were in the wrong place at the wrong time or because there were suspicions about their allegiance.

198. Furthermore, because clashes between IFP and ANC supporters took the form of skirmishes, with groups opening fire on each other, often at a distance, applicants were frequently unable to state conclusively whether anyone had been injured or killed as a result of their actions, even if they assumed or speculated that deaths and injuries must have occurred. As applicants were usually barely able to recall the year of an incident, let alone the month or day, tracing victims through police and mortuary reports was virtually impossible. Similarly, although the Commission received a number of human rights violation statements relating to these very conflicts, the absence of information about when events took place meant that very few links could be made between victims and amnesty applications.

199. In other cases, victims were well known to perpetrators and life-long neighbours became enemies on the basis of suspect allegiances. In one such case, SDU member Sidney Vincent Nkosi abducted his former friend and neighbour Jabulani from a tavern after his allegiances became suspect. Although Jabulani pleaded for his life, he was taken behind a nearby stadium and shot dead. At the Johannesburg hearing on 2 February 1999, Mr Nkosi, himself a Zulu, told the Commission that:

    MR NKOSI: *He had Zulu friends, and other 'comrades' turned against him because they could see that this person had another agenda that was different from ours. That's when the people started to distance themselves from him. We heard that from other 'comrades' that they could no longer trust him because of his movements. I would like to ask for forgiveness more especially his mother, the one I grew up in front of and his sisters, the whole family. I would like to ask for forgiveness.*

200. The interweaving of local issues with national political issues emerged regularly in the amnesty hearings. Traditional and magical elements were not confined to the witchcraft hearings described in the previous section. Even ANC SDU members drew on traditional and magical elements to protect their members and advance their cause. Several SDU applicants referred to *ntelesi* or other magical dimensions in their testimony.

201. Mr Victor WM Mabaso, who participated in the killing of Mr Stephen Radebe, whom he knew personally, spoke about the role of *ntelesi* at the Johannesburg hearing on 2 February 1999:

MR MABASO: *First of all, he was a member of Inkatha. Secondly, he was an inyanga of Inkatha, and an informer of Inkatha. And he's one person who used to provide them with 'ntelesi' on their attacking sprees or going out to shoot a person. … Something that happened, something that I witnessed, he cut somebody's private parts, a person who was alleged to be an Ikosa (sic) who had alighted from a taxi, and he cut his private parts after he was shot. That is one thing that I witnessed him doing. He also used to give them '**ntelezi**' when they went out to attack Phola Park.*
CHAIRPERSON: *What is **ntelezi**?*
MR MABASO: ***Ntelezi** is a medicine, a kind of medicine that one would use going out to attack, so that the targets should get drunk and not see what's happening, and to protect oneself against bullets in a war situation, and one would easily come back safe*.

202. Inevitably the violence began to eat into the soul of its perpetrators and victims. Many SDU members spoke of the merciless and hard attitude they developed towards their 'enemies'. One SDU member in Katlehong described this attitude while describing the abduction and killing of Mr Beki Khanyile at the Johannesburg hearing on 23 November 1998:

MR MABASO: *Yes he apologised profusely. I was supposed to be sensitive towards his apology, but because we had been harassed and we had suffered a lot, so that we no longer had mercy, we no longer cared, we no longer cared about everything, we had lost heart. And anybody who was operating within the IFP could not have survived, and therefore I issued this order [for his death] after his plea. He cried pleading with us, but then because of the things that he did, remembering the many people who died on Sam Ntuli's memorial service, these were old people who were shot simply because they were wearing Mandela T-shirts.*
CHAIRPERSON: *One last aspect I want to cover with you. It is perhaps a sensitive issue, but I need to know what your attitude would be. When you killed these two deceased, how did you feel yourself?*
MR MABASO: *As I've already explained that the heart, I did not have the heart. I felt nothing. I was not even guilty. Whatever I feel it's now I'm thinking for Beki's family and Stephen because they have lost, I had lost and I know there's*

always a gap when someone dies but at that time I did not have a problem. If it was possible I would kill even ten people because I did not have a heart at that time. I was hurt because of my parents that were killed. I did not have a heart. I was going to do whatever so as to protect myself. (Hearing at Johannesburg, 02 February 1999.)

MR SIBEKO: *Are you by any chance saying the way you were so affected or the way this violence affected you there was no other way in which your community and yourselves could have defended your property without resorting to arms?*

MR MBATHA: *No, there was no alternative because the violence affected everybody, young and old. It is like something that creeps so that when it crawls into a group of people it just destroys everybody.*

POPULAR PROTESTS 1990–1994

203. The Commission received a number of applications from local civilian ANC members or supporters. In the main, these applications cover local level conflicts with perceived enemies and political opponents, as well as incidents of arson and public violence relating to national campaigns and protests.

Clashes with the PAC

204. While clashes with the IFP dominate the picture in the 1990s, there were also several serious outbreaks of conflict between the ANC and PAC – mainly between the youth organisations linked to these bodies, COSAS and the ANCYL on the one hand, and the Pan Africanist Student Organisation (PASO) on the other. This conflict manifested itself in the Eastern Cape, Transkei and PWV townships.

205. In Fort Beaufort in the Eastern Cape, conflict broke out between PASO and COSAS, spilling over into the community. There were attacks on both ANC and PAC members. On 21 February 1993, a large crowd of ANCYL supporters, including Mr Thobani Makrosi [AM0362/96], abducted two women, Ms Nomsa Mpangiso and Ms Nomangwana Mandita. Ms Mandita was later found dead in a street, partially burnt, with a motor vehicle tyre around her neck and a large bloody stone near her head. Medical evidence indicated that she had been set alight while she was alive and had sustained serious head wounds. Ms Mpangiso, who was pregnant, managed to escape. Makrosi was granted amnesty for his role in the abduction of the two women [AC/1997/0022].[155]

155 See also AM3125/96.

Clashes in the homelands

206. Rank and file ANC membership, particularly youth, clashed with the traditional authorities and their political structures in the former homelands, particularly in the Ciskei and Bophuthatswana, which resisted free ANC political activity and threatened to oppose participation in the 1994 democratic elections.

207. Amnesty applications were received in respect of two attacks on suspected African Democratic Movement (ADM) members in the Ciskei. On 26 April 1993, the ANCYL resolved to kill 51-year-old Ms Nohombile Ntombazembi Mphambani, in the belief that she was an ADM member recruiting others to the party in order to attack the ANC. The following day, a group of over 100 youths chased Ms Mphambani and two of her teenage children towards the forest. When they caught Ms Mphambani she pleaded for her life, begging for forgiveness and promising to join the ANC. At its East London hearing on 18 March 1997, the Amnesty Committee heard that her pleas had failed:

    MR MPHAMBANE: *We continued to throw stones at her. She fell on the ground. The others arrived. She was already on the ground. They continued to throw stones at her. Some were beating her on the head with canes. After that when we were sure that she died we left as the 'comrades', we left her body there. We saw her children on the way. They asked if we'd killed their mother. We told them that we'd killed her and we then proceeded to ask which side they belonged to. The daughter then said she is an ANC member. Then she was asked to sing one song of the struggle. She sang.*

208. Seven youth were convicted for the killing. At their hearing the amnesty applicants spoke with remorse about their actions. They were granted amnesty and released from prison.[156]

209. ANC supporters in Bophuthatswana, another homeland ruled by conservative traditional authorities, faced a similarly restrictive political environment post-1990. Two members of the Bafokeng Action Committee and the ANC, Mr Boy Diale [AM0081/96] and Mr Christopher Makgale [AM0080/96], applied for amnesty for the killing of the tribal chairman, Mr Glad Mokgatle, in the Bafokeng district on 29 October 1990.

156 Mzwimhle Elvis Bam [AM0101/96], Sakhumzi Bheqezi [AM0105/96], Andile Namathe Gola [AM0106/96], Dumisani Ernest Mbhebe [AM0102/96], Ndumiso Mdyogolo [AM0103/96], Sikhumbuzo Victor Mphambani [AM0104/96] and Mvuyisi Raymond Ngwendu [AM0100/96].

210. The Amnesty Committee heard testimony on the political and immediate context of the killing. In 1990, the former Bophuthatswana was caught up in struggles to destroy the homeland government of Mr Lucas Mangope and his political representatives. Mangope's appointment of Glad Mokgatle as tribal chairperson was bitterly opposed by the Bafokeng, whose rightful leader had been forced into exile. A group of people, including the two applicants, decided in a tribal meeting to kidnap Mokgatle and wrest from him the keys of the Phokeng Civic Centre from where the tribe's affairs were administered. It was during this attempt that he was killed.

211. Members of the Bafokeng tribe, including the sons of Glad Mokgatle, testified in support of the amnesty application. They argued that amnesty would foster reconciliation and unity in their community. The two were granted amnesty [AC/1996/0001].

Incidents arising from national protest action called by the ANC

212. Several amnesty applications were received in respect of incidents in response to national events or campaigns called by the ANC. For example, the two-day national strike on 3 and 4 August 1992 during the campaign of 'rolling mass action' called by the Tripartite Alliance[157] saw widespread protest.[158] In one incident, two ANC members were granted amnesty for an arson attack on a building society in Ciskei and seven others for an arson attack in King William's Town, Eastern Cape.

Action in the wake of the assassination of Chris Hani

213. The wave of protest and violence that followed the assassination of Chris Hani in April 1993 resulted in large numbers of convictions for public violence, arson and other violence. Amnesty applications were granted for acts of public violence committed by ordinary ANC members at this time.

157 ANC /SACP /COSATU.

158 After the collapse of the negotiations process following the Boipatong massacre, the ANC alliance embarked on a campaign of 'rolling mass action' in an attempt to bring pressure on the National Party to revise its negotiating positions and stop the violence.

KWAZULU AND NATAL AMNESTY APPLICATIONS 1990–1994

Introduction and findings

214. KwaZulu and Natal has been selected as a case study for a number of reasons. First, the violence in KwaZulu was more extreme and widespread than in any other part of the country. Second, the conflict that had begun between the UDF, the unions and Inkatha in the 1980s had, by the 1990s, spread far beyond the urban townships into the rural villages, homesteads and kraals of the region. Third, Inkatha was virtually synonymous with the KwaZulu government and, emerging in the 1990s as the Inkatha Freedom Party (IFP), opposed the positions taken by the ANC throughout the negotiations process. Hence the hostilities continued unabated throughout the early 1990s.

215. The ANC was also an active participant in the conflict, as reflected in the amnesty applications relating to this region. The scale of the violence drew in ANC members at every level: some as active participants in the conflict, some as refugees, others as peacemakers. At a local level, where conflicts erupted in urban townships and rural kraals and villages scattered across the remote hills of the region, there was no possibility of remaining outside the fray. For many, fight or flight became the only options. Self-defence units, made up primarily of young local men, mushroomed in these areas.

Statistics

216. One hundred ANC-linked persons applied for amnesty in respect of seventy-two incidents consisting of 200 separate acts that took place in the KwaZulu and Natal areas in the 1990 to 1994 period. They include fifty civilian ANC members or supporters, twenty MK operatives (including three senior ANC regional leaders) and thirty SDU members. Applications were made primarily by people who were in custody or facing prosecution.

217. The 200 acts included:

Killings	89
Attempted killings	81
Attempted killings[159]	1
Robbery	13
Abductions	1
Assault	1
Arson, public violence	1
Distribution of weapons	4
Possession of weapons	7
Other	2

218. Of these one hundred applications, ninety-three involved hearable matters involving gross human rights violations, while seven were dealt with administratively in chambers. These seven non-hearables involved primarily the illegal possession of arms and ammunition, and were all granted. Of the applications that involved hearings, sixty-eight were granted. Twenty-two were refused. A further three were partially granted and partially refused.

Structures of the ANC and the nature of the conflicts

219. Evidence from applicants suggests that ANC branch structures in KwaZulu/Natal, as elsewhere, played a mixed role regarding the activities of the SDUs. Branches could be and were used to launch attacks in the name of the ANC, but many SDUs appear to have had little or no relationship with their local branch, if indeed there was one. SDUs also emerged in areas where no ANC branches existed.

220. Not one amnesty applicant said that s/he had received authorisation from the ANC regional leadership for these attacks. Several, however, claimed authorisation by their ANC branch or local ANC leader. Regional leadership played a role in the provision of weapons and the training of SDUs.

221. In one of the most direct cases of ANC authorisation at branch level, SDU member Khetha Mpilo Khuzwayo [AM6175/97; AC/2000/004] was granted amnesty for the assassination of Mr Eliakim Makhosi Mthembu and the attempted killing of Mr Amos Sibiya at Mankwanyaneni Reserve, Empangeni, on 3 May 1994. The attack took place between the elections of 27 April and the inauguration of Nelson Mandela as President on 10 May.

159 Unspecified – in other words, the victim was not identified.

222. Mr Khuzwayo and five other SDU members set themselves up beside a road and opened fire on Mthembu's vehicle as he drove by. Mr Sibiya, a passenger, managed to escape. At the Johannesburg hearing on 15 November 1999, Mr Khuzwayo told the Amnesty Committee that he had been given a hit list by his ANC branch chairperson.

MR KHUZWAYO: *After the training, I received a list of people who were supposed to be killed because they were destabilising the ANC campaign which was geared towards the 1994 election. I was informed that by the time the elections come, these people should have been removed.*
MS LOONAT: *Who gave you this list?*
MR KHUZWAYO: *From Shadrack, the chairperson of the ANC at the time.*
MS LOONAT: *Before we proceed with this list, did you always receive instructions only from Shadrack or from other people to commit these attacks on the IFP members?*
MR KHUZWAYO: *Shadrack, as the chairperson of the area, was the one responsible for giving reports to the ANC office and he would also give us feedback on the information he had received from the ANC office.*
MS LOONAT: *How did you get the information from Shadrack? Was it given personally, or did you have rallies, or how was it communicated to you?*
MR KHUZWAYO: *I was not alone, but everyone who had been trained internally received a list of people who should be targeted and killed.*

223. Historical fiefdoms and allegiances in KwaZulu and Natal made it impossible for residents to remain neutral. People's identities were tied to where they lived, to their families, their clans and to local authority figures such as *indunas*[160] and chiefs.

224. This confluence of place and political allegiance could have fatal consequences, as simply being found or seen in the wrong area could result in death. On 28 September 1991, Ms Thembi Victoria Mzquso Mthembu, an ANC supporter, was apparently seen in the HRH compound hostel in Greytown. Because the compound was an IFP bastion, she was assaulted and stabbed to death by ANC members who suspected her of collaboration with the IFP. Three ANC supporters were granted amnesty for the killing [AC/2000/017].

225. The conflict also threw up old rivalries. In some cases, the roots of conflict were found in clashes between extended families. Traditional structures featured prominently

160 Local headmen.

in incidents described by amnesty applicants. While chiefs, *indunas* and other such traditional structures were more common to the IFP, in some cases chiefs were ANC supporters, or different members of a chief's family supported different parties.

226. Mr Celinhlanhla Zenith Mzimela [AM0435/96], the son of an ailing IFP-supporting chief, was an ANC supporter. In 1990, one of his brothers, also an ANC supporter, was killed by local IFP members, including a Mr Gumede, councillor to his father. The dead man was the rightful heir and was killed in order to prevent his succession to the chieftainship, to clear the way for an IFP-supporting brother, Mr Booi Mzimela.

227. In February 1992, Gumede and his people struck again, killing another of the brothers, also an ANC supporter and next in line to the chieftainship.

228. CZ Mzimela then decided to act. He and another brother went to Mr Gumede's house and shot him dead while he was washing. Mzimela was granted amnesty for the killing [AC/1997/0037].

229. This case raises one of the difficult issues that the Amnesty Committee had to deal with in respect of KwaZulu Natal applications in particular – that of personal revenge. In terms of the amnesty criteria, revenge does not qualify as a political objective, and yet it emerged that many incidents occurred in response to previous acts of violence against a perpetrator or his family members. The Amnesty Committee noted, however, that while personal revenge was a feature of the conflicts in the region, the issue had to be seen against the wider backdrop of political conflict and the cycle of violence that gripped villages and townships during this period. Revenge, personal and political, was part of the fabric and momentum of the conflict and could not be separated out from it.

230. In the urban areas, several incidents were connected with crime, migrancy and labour disputes. Some incidents also intersected with other running disputes, such as access to land, or economic conflicts that acquired a political dimension, such as taxi conflicts. In some cases, however, victims disputed the political dimensions of the incidents, arguing that the conflict was simply a faction fight arising from local disputes such as demarcation problems.

231. Many ANC applicants in KwaZulu and Natal acknowledged the gap between the ANC's organisational national policies and the imperatives of the violent situation in which they lived at local level. Thus:

MR MSANI: *It was not the ANC's aim that we should kill people. But it was the situation that forced us to fight IFP. Any ANC member, bottom or up, knew that if you are ANC, you shouldn't attack your political opponent, but because of the situation, we were forced to kill each other, IFP and ANC, because a lot of people were killed, it was the situation that forced us to do that. (Durban hearing, 24 November 1998.)*
MR LUTHULI: *It wasn't my organisation which sent me to kill him, but it was the situation in that area. (Caprivi hearings at Johannesburg and KwaZulu-Natal, 7 April 1998 to 14 September 1998.)*
MR NCOKWANE: *I know that the ANC does not kill, but we killed because we were forced by the situation, where we were being killed without a place where we could voice this out. (Hearing at Durban, 29 April 1999.)*
MR MATJELE: *Since it was twenty days before the elections of 1994, the first elections of this country, the honourable President of the African National Congress, your organisation, President Mandela and other respectable leaders, they were passing information that people should not resort to violence, that was the policy of the ANC, isn't that so sir?*
MR SIMA: *Yes, that is so. But people at grassroots did not actually take it that that should be the case, they were actually perpetrating violence. (Hearing at Pietermaritzburg, 3 February 1999.)*

232. Most ANC perpetrators were themselves victims of the conflict. Several had lost members of their families in the violence. They were often refugees, having been violently evicted from areas, their homes and property destroyed. Some had narrowly escaped death themselves. These applicants repeatedly described the failure of the security forces and the judicial system to take steps against the IFP or other perpetrators. As a consequence of the failure and betrayal by state structures, applicants took up arms in the belief that they were compelled to do so to secure and protect their own lives and property. This 'right to self defence' did not require ANC policy approval.

233. Applicants also interpreted many attacks as defensive, even if they involved offensive means, such as launching an attack on the homestead of an IFP member. They argued that a particular killing or attack was self-defence, in order to halt the source of ongoing attacks on themselves.

234. Several applicants applied for incidents in which they were in fact victims of attacks. The attack on COSATU regional chairperson Muntukayise Bhekuyise Ntuli [AM5201/97] by members of the IFP Esikhawini hit squad on 26 August 1992 is a case in point (see below).

235. Many applicants displayed deep regret and remorse for their involvement in the conflict between the ANC and IFP in the region and explained their actions in terms of the situation that prevailed at the time. They spoke of a yearning for reconciliation.

MR MZIMELA: *Mrs Gumede, I respect you very much. I just want to say how deeply hurt and regretful I am because you have lost your husband and a friend. That was not my aim to just kill your husband. It was the situation that forced me to behave in the manner that I did. … I wish to express my sincere apologies to you. I thank this honourable Commission for having granted me the chance to address Mrs Gumede. (Hearing at Pietermaritzburg, 22 May 2000.)*
MR HLENGWA: *I would like to say to the family and the relatives of Mbeko that I am here today to apologise to them for my actions, and I took the law in my hands, and I'm asking them to please forgive me. It was because of the situation at Umgababa. IFP and ANC were in conflict. Even our minds were not working very well. Therefore I would please like them to forgive me. (Hearing at Pietermaritzburg, 1 February 1999.)*

236. In particular, conflicts that had divided families showed evidence of healing relationships.

ADV MPSHE: *What is the relationship between yourself now and Becker Phoswa's family?*
MR PHOSWA: *I do not know very much, because I am still in prison, but my brothers who are outside and my children, they are saying they have a peaceful relationship. They even visit each other and live together.*
ADV MPSHE: *And I can take it that you are also in a position to, if you are released, if you meet them to go back to them and to get engaged in some kind of reconciliation with them? You prepared to do that?*
MR PHOSWA: *Yes, I will have to continue where they are from now. I also wanted to add Indaba Zimboeza Phoswa came twice to me in prison. We shake, we shook hands and he said, he asked for forgiveness that his son has killed my son and that we were also affected by the political situation and this what created this. This was not supposed to have happened and that he is sorry about it. We shook hands and he also gave me money and food. (Hearing at Pietermaritzburg, 30 July 1997.)*

237. The father of one of the victims responded to Mr Phoswa:

ADV MPSHE: *Now, how did you, how did the death of your son affect you, if it did affect you?*
MR MTHEMBU: *This hurt me a lot, because he was about to be married, but I blame the political situation, because before this political activity in the area, we were living in peace. There was not an IFP or ANC, it was a peaceful situation. Therefore, I blame politics and the organisations which had caused the death of my son.*
ADV MPSHE: *Mr Mthembu, part of the mandate of the Truth Commission is to foster reconciliation particularly between or amongst people who have been torn apart by politics. Do you understand?*
MR MTHEMBU: *That is correct.*
ADV MPSHE: *Now, what is your view about this reconciliation?*
MR MTHEMBU: *I knew that we were not enemies. It was only the politics which infiltrated the area and at the moment, I will say, we have reconciled in the area. People at Patene and Richmond have reconciled and even at Gengeshe and I would like to see peace in this area, because we are not enemies, but the organisations made us to be enemies. Although I lost my son I will still think we should be reconciled.*
ADV MPSHE: *The two applicants, whose evidence you listened to today, they are before this committee, particularly, for amnesty and they are also asking for forgiveness. What is your attitude towards that?*
MR MTHEMBU: *I do forgive them, because I knew we were not enemies. It was politics that caused the animosity in the whole world and even today when we talk to them, they are so nice to us and they also wish for reconciliation.*
MR WILLS: *I have no questions. I would just like to express my great respect for the witness at this stage.*
JUDGE WILSON: *Mr Mthembu, I would like to express the view of the committee, that we sympathise with you in your very tragic loss and we admire this forgiving approach that you have adopted and respect you for the honesty that you have shown in coming to tell us all what your feelings are today. We would like to thank you very much for all you have done here. (Hearing at Pietermaritzburg, 30 July 1997.)*

Types of violations

Group attacks

238. Many applications involved incidents in which groups of ANC supporters clashed with IFP supporters in skirmishes. These attacks took the form of pitched battles and formed part of a cycle of attacks and counter-attacks. Several incidents also involved attacks on individuals by large groups.[161] Such attacks sometimes led to fairly indiscriminate killings, often including the killing of women and children.

239. On 15 March 1992, a group of ANC members launched an attack on Ngcobo's kraal at Nomhele reserve in the Maphumulo district, described by amnesty applicant Mkheyi Khanyile [AM0288/96] as a 'counter-attack'. A 73-year-old woman, a 38-year-old woman and a two-year-old boy were killed in the attack. Amnesty was refused, as the testimony of a young male survivor contradicted the version presented by Khanyile [AC/1997/0045].

Assassinations

240. Most amnesty applications in the KwaZulu and Natal region related to assassinations carried out chiefly by SDU members.

241. Five SDU members in Umkomaas on the Natal south coast targeted and killed a prominent IFP leader, Mr Mkhize, on 7 November 1990, believing that he had led attacks on the ANC in the area. Mr Phelela Bhekizenzo Vitalis Hlongwa [AM3684/96], Mr Fani Simphiwe Mbutho [AM4164/96] and Mr Kwenzakwakhe N Msani [AM3473/96], applied for and were granted amnesty for the attack, for which they had been convicted [AC/1998/0102]. At the Durban hearing on 24 November 1998, Mr Msani described the determination of their group to kill Mr Mkhize:

We have been trying for several times to kill Mkhize, but in vain. We have been shooting at him and actually throwing stones at him, but in vain. It was not that on that day we actually took a decision on that particular day, we have been trying for several times to shoot at him. … We met at a place, at a hill, a sort of a hill place. We held a meeting there and strategised how to attack Mkhize and we knew that he had a gun and he had the official gun and then there and there

161 See for example AM4297/96,AM4314/96,AM0409/96,AM3665/96,AM5023/97,AM3480/96,AM3641/96, and AM3095/96.

we left to attack him … Myself, I shot him, he ran away. I initially explained that Palela Hlongwa and Mabuno actually shot as well, and I actually took the bush knife from Jogolo Cele and then I hit him because he was still moving by then. Then I struck him, using the knife and then I ran away because the police were by then approaching.

242. Suspected informers or ANC members believed to have defected to the IFP were also especially targeted for attack. Mr Thulasizwe Philemon Moses Cele [AM5498/97; AC/1998/0105] was granted amnesty for assaulting and stabbing Mr Zulu to death in Nokweja Location, Ixopo, on 15 July 1993. This was a voluntary application as Mr Cele had never been charged for the offence that he and two other SDU members committed.

Ambushes/attacks on vehicles

243. Some of the most indiscriminate attacks to take place were ambushes on vehicles. In one case, Mr Aaron Zibuse Zulu [AM2186/96] was one of a group of ANC supporters who opened fire on a bakkie[162] in the Table Mountain area near Pietermaritzburg on 2 February 1993. The attackers believed that the vehicle was owned and driven by a local IFP warlord who had attacked ANC supporters. In fact, the bakkie was taking schoolchildren to school. Six children were killed and fifteen survived with serious injuries. Mr Zulu, who has never been charged for this incident, was refused amnesty [AC/2000/162].

244. Three members of an SDU applied for amnesty for an attack on a bus in the Umkomaas area on 27 April 1992. Mr Jabulani Doda Cele [AM3682/96], Mr Jabulani Tunene Ncokwane [AM3694/96] and Mr Isaac Mhlekhona Shange [AM3384/96] had been convicted of the attack. They were aged 18, 23 and 18 respectively and had only very recently joined the ANC.

245. They stopped the bus as it drove along a rural road and ordered women and children to get off. They then allowed passengers who were not from that area to get off as well. They opened fire on the remaining passengers, killing six and injuring eight. Amnesty was granted [AC/2001/088].

MR WILLS: *Did anybody order you to do this attack, or to perform this act?*
MR SHANGE: *We decided as a group, no-one told us. We decided as a group,*

162 A light truck or van.

all of us, we agreed on one thing … The reason we attacked the bus was because we were trying to fight back to the people who forced us to leave our area, or our places. We wanted to stay there as ANC members, freely, and also we wanted to kick out Inkatha members because they were the reason why we were out of our places. We were born there and it was sad and difficult for us to leave our homes. We were forced and we were attacked. That's why we saw it necessary for us to go back. (Hearing at Durban, 26 April 1997.)

Internal clashes

246. Some of the conflicts in KwaZulu/Natal relate to internal disputes within the ANC and its allies. Two ANC members, Mr Thulani Christopher Madlala [AM5993/97] and Mr Happy A Mngomezulu [AM7322/97], were granted amnesty [AC/2000/104] for fatally shooting Mr Mpumelelo Phewa at Wembezi, near Estcourt, on 25 March 1994. The incident took place in the context of violent clashes between ANC members and former ANC members who had joined the South African Communist Party (SACP). Despite the intervention of the ANC, which explained that the ANC and SACP were allies, the fighting continued and more people were killed.

Acting in 'self-defence'

247. Several applicants sought amnesty for incidents in which they themselves were victims of attacks. Regional COSATU chairperson, Mr Muntukayise Bhekuyise Ntuli [AM5201/97], was the victim of an attack by members of the IFP Esikhawini hit squad on 26 August 1992.[163] Union leaders in particular were targeted for attack by IFP members during this period and most had been assigned bodyguards by the ANC, usually former MK members.

248. Mr Ntuli's home was surrounded in the middle of the night and he threw a hand grenade belonging to his bodyguard at the attackers, injuring several of them. Several other homes were attacked by the hit squad that night, and eight people were killed. Mr Ntuli applied for and was granted amnesty for the possession of a hand grenade and the attempted killing of four of his attackers [AC/1998/0061].

163 Members of the IFP's Esikhawini hit squad applied for and were granted amnesty for the attack on Mr Ntuli's home.

Clashes with police

249. Five persons applied for amnesty for incidents involving clashes with police. All were granted. In the main, these clashes took place when applicants were attempting to avoid arrest. For example, MK operative Joel MC Makanya [AM6627/97; AC/2000/058] was granted amnesty for a shoot-out with police in the Umzumbe area while he was transporting weapons from Gamalakhe, Port Shepstone, in July 1991. ANCYL and SDU member Frank B Khanyile [AM6108/97; AC/2000/014] was granted amnesty for an incident in October 1991 when he and others opened fire on a prefabricated police station in Greytown.

Attacks on criminals

250. Eight people applied for amnesty for killing persons whose criminal activities impeded political activities in the area. Mr Bongani Sydney Dunywa [AM7623/97; AC/2000/103] was granted amnesty for his role in implementing 'popular justice'. He participated in the panga[164] killing of Mr Nyani Xolo on 26 October 1990 at Thelawayeka Ward, Paddock, near Port Shepstone. Mr Xolo was believed to be a criminal aiding the IFP and police.

251. In a different type of incident involving 'popular justice', Mr Joe Ngema [AM8078/97; AC/2000/033], who described himself as an SDU commander and a chief marshal in the Umgababa area near Durban, applied for amnesty for two incidents in which alleged criminals were sjambokked[165] and beaten to death in front of residents in June 1993. Mr Ngema alleged that, after incidents of rape and robbery, the perpetrators were found by 'comrades' and brought to a stadium for punishment in the form of lashes. When supporters of the criminals came to intervene, they too were beaten. Two died. The following day, after a second reported rape, the 'comrades' took a man called Etosh to be disciplined. He too was lashed and died of his injuries.

Armed robberies

252. Nineteen persons applied for amnesty in respect of a number of armed robberies. The Amnesty Committee found the majority of these to be criminally rather than politically motivated and consequently refused amnesty. Four ANC

164 A large broad-bladed knife, originally introduced for cutting of cane or bush and often used as a weapon.

165 A sjambok was originally a stout rhinoceros or hippopotamus hide whip. Now often made of other materials, they are used to 'horsewhip' or sjambok victims.

members were refused amnesty [AC/2000/123] for the fatal shooting of Mr Victor Lembede at Ngonyameni Reserve on 21 June 1991 during an armed robbery of his shop.[166] The applicants claimed that the attack was a political assassination as Mr Lembede was allegedly an IFP member. Mr Lembede's son, who was present during the attack, disputed their version and denied that his father was an IFP member. The Lembede family was in fact related to Anton Lembede, a former ANC president. The Amnesty Committee rejected the applicants' version.

Self-defence units and weapons supply

253. The most senior ANC applications received in respect of this region relate to the provision of weapons and training of SDUs by three ANC leadership figures. Mr Jeff Radebe [AM7170/97], Mr Ian Phillips [AM5951/97] and Mr Sipho Sithole [AM5950/97] served on the ANC South Natal Regional Executive Committee in a political capacity and also gave military support to the SDUs involved in the conflict.

254. The method adopted for weapons provision was that a vehicle with weapons loaded into secret compartments was left at a specified site in Durban. Radebe passed the car keys to Sithole who collected the vehicle, offloaded the weapons and secured them. He then distributed them to persons he had identified as trustworthy in different areas, mainly people he had worked with in exile. These persons would then distribute weapons on the ground. At the Durban hearing on 1 December 1998, Sithole told the Amnesty Committee:

I was responsible for setting up structures to ensure that those weapons were infiltrated down into areas, trouble spots where our own people were under attack.

255. Sithole estimated that some 150 AK47s with ammunition and a smaller quantity of grenades were brought in through this arrangement. Around twenty Stechkin and ten Makarov pistols were also brought in, although these were specifically for command personnel's own protection. However, he testified:

The amount of weapons was about 100 to 150 which was very little by the demand that we were getting from the communities. In fact we would run dry most of the time, so we were not in a position to actually effectively organise our own communities in terms of self defence. (Durban hearing, 1 December 1998.)

166 FT Meyiwa [AM4505/96], FM Ndimande [AM6456/97], E Nyawuza [AM3010/96] and NE Nyawuza [AM7807/97].

256. A second regional MK commander also applied for and was granted amnesty for his role in the training of SDUs and the supply of weapons. Mr Ntela Richard Sikhosana [AM6332/97; AC/1999/290] was the Natal Midlands regional commander of MK. He testified that he was involved in the training of SDUs in the Midlands area from November 1992 to April 1994. Mr Sikhosana died in 1998.

257. As in the Transvaal, the evidence from amnesty applications suggests that communities and SDUs also sourced weapons from a variety of other sources, particularly Mozambique. Two members of an SDU in KwaMashu, Mr Thami Peter Mthunzi [AM5259/97] and Mr Timothy Mjabulelwa Tembe [AM5171/97], under the command of MK operative Linda Geoffrey Xaba, were arrested returning from Mozambique on 16 November 1994 in possession of AK47s hidden in their car door. Their passports revealed that they had made many visits to Mozambique during the 1992 to 1993 period.

258. Khetha Mpilo Khuzwayo [AM6175/97; AC/2000/004] was an SDU member in the Empangeni area who received training both locally and in Mozambique in 1992. He was arrested in a stolen vehicle provided by his commander Shadrack in early May 1994. At the time of his arrest he was in possession of two AK47s and ammunition, one Makarov pistol and ammunition, hand grenades and camouflage uniforms. He testified at the Amnesty Committee hearing in Durban on 15 November 1999:

After a while a need arose for us to be able to use bigger firearms, that was the time when we were dispatched to Mozambique, so that we could receive training in bigger firearms as well as in explosives, because our enemies used to attack us using bigger firearms … At that time we were running short of bigger firearms in our area so I had to go to Mozambique to fetch bigger firearms so that our area and other neighbouring areas could receive such weapons for protection … I did not question it when Shadrack gave me a vehicle to take to Mozambique and I would do so as he instructed. On my arrival to Mozambique, I will give that car to Steven Nkenyene and he will return the car with the firearms inside and I would drive the car back into South Africa.

WITCHCRAFT APPLICATIONS 1990–1994

259. While the Amnesty Committee did not initially consider witchcraft to be a political matter, closer study and expert input made it clear that many of these cases were embedded in a political context. As elsewhere in South Africa,

issues of local significance intersected with and were in many ways inextricably locked into national political expression and activity. The motives for the decision to hold a special hearing on witchcraft are argued in the Amnesty section in this volume.[167]

260. In 1979 Venda, the epicentre of witch-hunting cases, became an 'independent' homeland under Chief Patrick Mphephu, later declared President for Life. After his death in April 1988, he was succeeded by Chief Frank Ravele, who ruled until he was ousted in a military coup in April 1990.

261. The period 1988 to 1990 saw an escalation of political unrest and mobilisation in Venda. Much of the protest against the Venda authorities centred around the issue of ritual killings, in which those in power were believed to be implicated. Officials such as cabinet ministers, directors-general and chiefs were alleged to have used ritual murders to achieve their prestige and fortune. Thus ritual killings were a source of both social and political discontent.

262. Professor VN Ralushai, who testified as an expert witness at the Thohoyandou witchcraft amnesty hearings which took place from 8 to 19 May 2000, defined a witch in the context of Northern Transvaal beliefs as 'a person who is believed to be endowed with powers of causing illness or ill luck or death to the person that he wants to destroy'.

263. The February 1990 lifting of the ban on the liberation movements and the release of Mr Nelson Mandela precipitated an extensive mobilisation of youth, who embarked on a number of activities to express their opposition to the old order in Venda. Apartheid legislation had largely transformed traditional leaders into political functionaries who were seen not only as corrupt and self-serving but also as lackeys of the apartheid regime. Accusations of witchcraft were used to destabilise the Ravele government and to focus political protest in an effort to root out traditional superstitious beliefs. Mr Rogers Khathushelo Ramasitsi [AM2723/96] testified as follows at the Thoyohandou hearing on 12 July 1999:

The time [Mandela] was released, I still remember every feeling of the youth here in Venda, particularly in our region, there was a general feeling that we have to be free and that freedom was to come through our contribution … In the urban areas the youth were involved in many things to render the country ungovernable as such. So in the rural areas there came to be a time when things weren't going right, as I can say.

167 Section One, Chapter Three.

264. Part of this wave of political energy was expressed in attacks and attempts to expel suspected witches. Belief in witches, wizards and related supernatural occurrences had long formed part of the fabric of rural Venda life. The association of witches with the political order had politicised the issue. Supporters of the liberation movement in areas where witchcraft was prevalent regarded the chiefs and traditional leaders as the protectors of witchcraft. At the same hearing, Mr David Makana Nemakhavani [AM2725/96] testified that:

Well we actually wanted to evict these people from our village because … those who were ruling were in the old order and as such the central government would then be able to realise that we were not pleased with the way the old order was behaving.

265. Fifty-four individuals submitted applications in respect of twenty-one incidents or attacks linked to witchcraft. All of the incidents took place in the period 1990 to 1994. Of the twenty-one incidents, fourteen took place in Venda, two in the KwaNdebele homeland, one in Gazankulu, three in Lebowa and one in the Eastern Transvaal. Thirteen of the fourteen Venda incidents took place between February and April 1990, shortly after the unbanning of the ANC and other organisations. These applications covered some forty-eight separate acts, including thirty-two killings and three attempted killings or injuries and twenty-three arson attacks on homesteads and kraals. Of the deceased victims, eighteen were female and fourteen were male. Fifteen applicants were refused amnesty in respect of twenty acts – that is, sixteen killings, three cases of arson and one attempted killing. The remaining twenty-eight applications were all granted.

266. The large crowds that took up witch-hunting between February and April 1990 consisted mainly of youth. The majority of the victims were female. In scores of villages in Venda, people accused of engaging in witchcraft were burnt or stoned to death. Others were injured, lost their homes in arson attacks or were forced to flee to distant safe havens. Most of these killings took place in the most remote rural areas of Venda rather than the more urbanised areas of Thohoyandou or Sibasa. The Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province of the Republic of South Africa[168] reports thirty-six registered cases of 'witch killings' in Venda in 1990 alone. A smaller number of attacks took place in other predominantly rural Northern Transvaal homelands such as Lebowa and Gazankulu.

168 The Commission was appointed in 1995 by the Member of the Northern Province Executive Council for Safety and Security, Advocate Seth Nthai. It submitted an interim report in July 1995 and a final report in January 1996.

267. Several amnesty applicants, residents of remote rural Venda villages, explained that, through their actions, they sought to emulate the progressive protest activities of their urban counterparts and shed the label of rural backwardness. In this way, they aimed to contribute to the national democratic struggle. At the Thoyohandou hearing, Mr Ramitsi said:

During that time, it was the time that everyone said that there was a quest for freedom, so there came to be a time when we had to strategise so as to be in form with those 'comrades' in the urban area. As I still remember, our 'comrades' in the urban areas were involved in rent boycotts, consumer boycotts, strikes and all the likes, whereas here in the rural areas there were no such things, so there came to be a time when we thought that for us to contribute in our struggle, we have to remove such obstacles that were making it difficult for us to be free as such, as everybody was thinking that now Mandela is out, we are going to be free.

In the rural villages it was different from urban areas. In the rural areas we grew up with the belief that there are witches surrounding us. They are people who have the power to practice supernatural powers that we cannot see by our naked eyes … So sometimes you found that they were jealous, they inflict diseases on other people, they are causing death to other people. They were crippling people somehow, so they felt that before we get this freedom we are talking about, we must be free of ills amongst us, that's why we said that those witches have to be eliminated before we get that freedom because it is no use getting freedom with obstacles on our doorsteps.

268. Twelve members of the Mavungha Youth Organisation[169] applied for amnesty for the killing of Mr Edward Mavhunga which took place in the Mavhunga area, Venda, on 6 April 1990. Mr Mavhunga was a member of a high-profile family in the area, related to the headman and linked to government. During the celebrations and political activity that followed the unbanning of the ANC and the release of Mandela, he interfered with youth activities and was believed to have been involved in the stoning and beating of youth gathered at a meeting. Village residents called for him to be expelled from the area but he refused to leave. As a consequence, a crowd of thousands of residents descended on his homestead. He was stoned and burnt to death. Amnesty was granted to the twelve applicants [AC/2000/094].

169 AM2717/96,AM2718/96,AM2719/96,AM2720/96,AM2723/96,AM2724/96,AM2725/96,AM2726/96, AM2727/96,AM4300/96, AM4319/96 AM7348/96.

269. Mr Avhapfani Joseph Lukwa [AM3278/96] and Mr Tshamano Edson Tshibalo [AM3277/96] killed nine people and burnt eleven properties at Folovhodwe and Muswodi Dipeni areas, Venda, on 10 March 1990. The two were part of a large crowd that went from house to house. They even targeted Tshibalo's own father's house. Their applications were refused due to lack of full disclosure [AC/2000/094].

270. Mr Josia Mauludzi [AM3282/96], Mr Norman Ramalata [AM3283/96] and Mr Samuel Matala [AM3284/96] applied for the killing of Ms Munzhedzi Emely Makulana in Mufunzi village on 21 March 1990. Members of an informal youth congress met and discussed the relationship between witchcraft and political repression, and decided that witches should be killed. Armed with petrol and tyres, a large group went to the home of Ms Makulana. She was pulled out of her home and assaulted with a sjambok, and petrol was poured over her. She was then burnt to death. Amnesty was granted [AC/2000/094].

271. Mr Marobini George Leshaba [AM4313/96], Mr Harriot Mathebula [AM4188/96] and Mr Muvhulawa Johannes Makananise [AM4301/97] applied for amnesty for the killing of Mr Johannes Soidaha Silema-Malatsi (also referred to as Malatsi or Malatjie) in the Ha Maila area on 19 March 1990. At a youth meeting held that day, four people, including Mr Malatsi, were identified as people who used witchcraft to assist government officials to retain their power. Money to buy petrol and other materials to kill them was collected at the meeting. At a second meeting, involving the wider community, it was resolved that the four who had been identified should be killed. Mr Malatsi, who was at the meeting, was attacked. A tyre was placed around his neck and lit. Mr Malatsi managed to get the tyre off and ran away burning. He was pelted with stones by the crowd, hit with sticks and stabbed. He was further questioned about his alleged witchcraft activities and identified others who worked with him, allegedly the same people identified earlier by the meeting. Tyres and petrol were fetched and he was ordered to drink the petrol. When he refused, petrol was poured over him, he was set alight and tyres were placed on top of him. Finally he died. Leshaba and Makananise were granted amnesty for this incident, but Mr Mathebula, who denied his role in the events, was refused amnesty [AC/2000/094].

272. The Amnesty Committee did not accept that all witchcraft incidents had a political orientation. Some accusations and attacks were clearly rooted in personal jealousies, feuds, local dynamics or relationships. For example, Mr Magome Freddy Tladi [AM2043/96; AC/2000/112] was refused amnesty for the killing of Ms Matule Bapela. Ms Bapela was doused with petrol and set alight in Marishane Village in the Nebo district, Northern Transvaal, on 20 August 1992.

Mr Golden Holiday Sekgobela [AM1026/96; AC/2000/113] was refused amnesty for hacking Ms Poppy Seerane to death on 15 December 1990 in Leboeng, Lydenburg District, Eastern Transvaal.

273. These 'witchcraft killings' were evidently the initiative of youth and residents responding at a local level to a period of political turmoil and transition. Through their actions they sought to express their opposition to the old homeland order and its social underpinnings. The killings provide a good example of how the banners of the UDF and the ANC were used to mobilise and embrace forms of collective social action against perceived oppression. Although the T-shirts, banners, songs and slogans of political organisations were worn, carried or sung during 'witch-hunts', there were virtually no links to formal ANC structures. Most of the killings were essentially spontaneous. There is, indeed, evidence that the UDF and the ANC intervened during the early 1990 wave of witch-hunts in an effort to halt them.

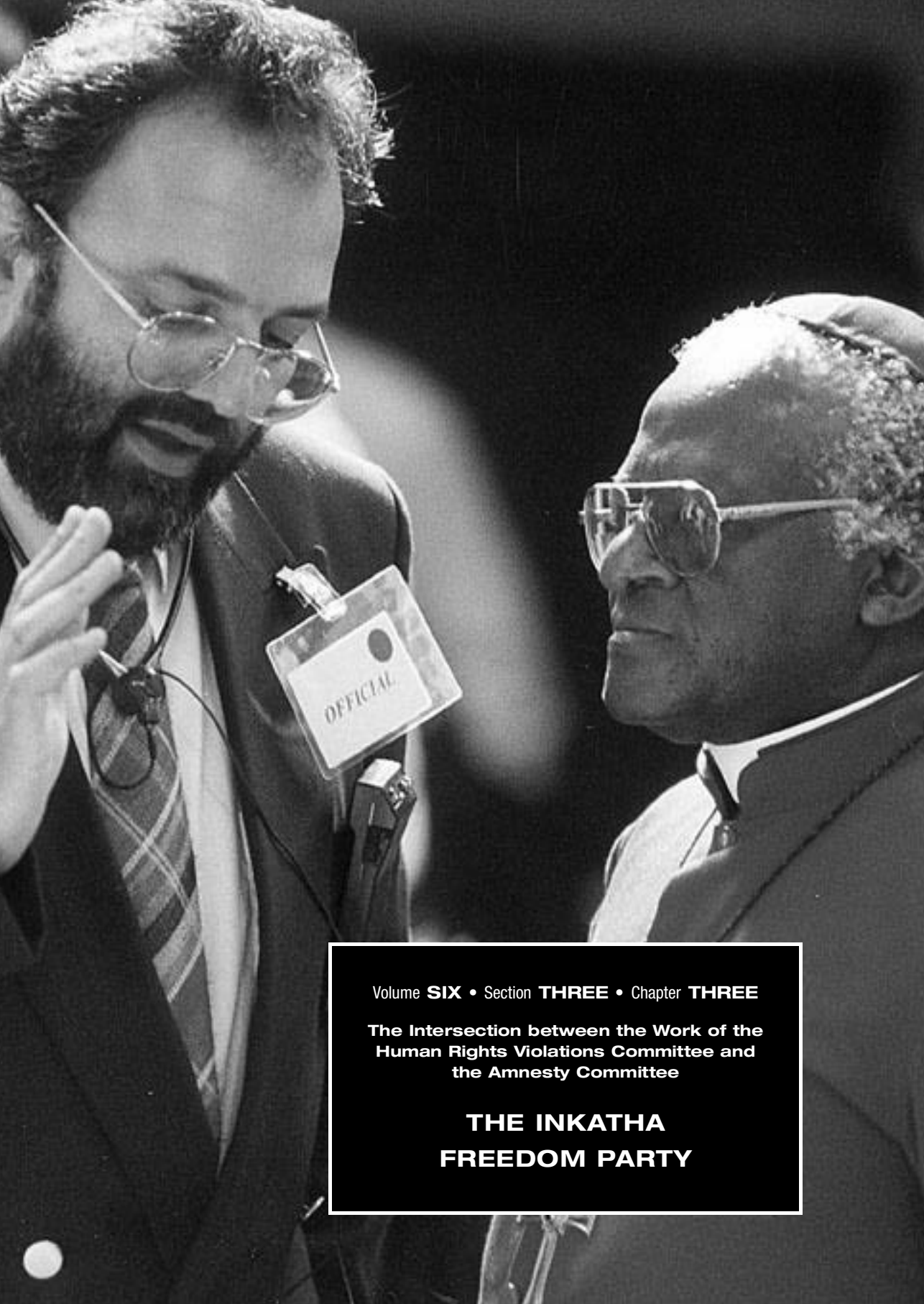
CONCLUSION

274. Amnesty applications in respect of ANC operatives, members and supporters reflect the fact that the ANC was both a formal liberation organisation with an armed wing, as well a 'social movement' that mobilised ordinary citizens who fell outside its formal structures. The ANC sought to spearhead a 'people's war' and to provide the banner under which widespread and varied forms of protest could be enacted by a range of participants. The ANC thus embraced those who acted in concert with its goals although outside its formal discipline.

275. Amnesty applications run the full gamut from leadership figures, MK operatives and SDU members to ordinary rank and file ANC supporters on the fringe of or even outside the organisation. Clearly, the ANC cannot be held accountable to the same degree for the activities of all these groupings.

276. Formal MK operatives constitute the group with the most direct line of command and control within the ANC. The ANC clearly has the highest level of authority in respect of its own trained military operatives who had the most direct line of command and control within the ANC. Secondly, there are SDU members, who clearly had some level of practical and moral authorisation from the ANC, and indeed the ANC Declaration embraces SDU members. Lastly, there are ordinary civilian applicants who acted in the name of or in support of the ANC. The ANC has the most remote level of responsibility for this group.

277. The findings made by the Commission reflect this range of levels of accountability, and have been confirmed. (...p338)



Volume **SIX** • Section **THREE** • Chapter **THREE**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE INKATHA FREEDOM PARTY

The Inkatha Freedom Party

■ INTRODUCTION

1. The Inkatha Freedom Party (IFP) expressed reservations about the Truth and Reconciliation Commission (the Commission) process from the outset. In his submission to the Commission, the President of the IFP Dr Mangosuthu G Buthelezi said that he believed that it would 'neither reveal the truth, nor [would it] bring about the reconciliation we so desperately need in our land'. He went on to say:

   I have decided to come here because we cannot in all conscience remain silent when no effort is made by this Commission to question who has killed 420 of the IFP's leaders and murdered thousands of its supporters. These serial killings are a crime against humanity and demand answers. (IFP Submission, 6 September 1996, p10)

2. Although the IFP appeared before the Commission, the party did not officially cooperate with either the Human Rights Violations Committee or the Amnesty Committee. When he appeared before the Commission, Dr Buthelezi used the opportunity to argue why members and supporters of his party had been drawn into acts of political violence. He told the Commission:

   On no occasion has the Inkatha Freedom Party's leadership ever made any decision anywhere at any time to use violence for political purposes … My own deep convictions that violence is evil and must not be used for political purpose and despite the Inkatha Freedom Party's constant vigil to keep violence out of Inkatha Freedom Party politics, I know that Inkatha Freedom Party members and supporters have been drawn into violence. I say that I am sorry to South Africa for this because, although I have not orchestrated one single act of violence against one single victim of the political violence that has cost us many lives, as the Leader of the Inkatha Freedom Party, I know that the buck stops right in front of me. (IFP Submission, 6 September 1996, p12)

3. The IFP expressed the view that the original source of the violent conflict in the then Natal and Transvaal lay in the adoption of differing strategies to liberating the country. These, the IFP claimed, dated from an historic London meeting in

1979 between the then Inkatha National Cultural Liberation Movement (Inkatha) and the African National Congress (ANC) in exile. The ANC, the IFP noted, chose to embark on a course of armed struggle aimed at destroying all forms of authority – including the homeland government of KwaZulu, the structures of traditional leadership through which local government was administered and the IFP itself. This culminated in the ANC's campaign to render South Africa ungovernable. This, in the IFP's view, was the root cause of the violence.

4. The Commission is of another view entirely. Evidence before its Committees and documents in its possession have shown that the IFP participated in state-sponsored violence and acted as a surrogate for the state against the ANC and its allies. It also sought and received training and arms from the security forces which assisted it in forming death squads. Furthermore, the evidence shows that members of the IFP and KwaZulu Police leadership knew of and participated in the planning of the violence and has no reason or justification in doubting or claiming ignorance of its causes.

5. Several officials of the IFP and the KwaZulu Police were implicated in hearings before the Amnesty Committee. These persons either denied all charges made against them or failed to respond to these allegations, despite the fact that they could potentially lead to their being prosecuted by the Directorate of Public Prosecutions.

6. In 1996, the ANC and the IFP instituted a peace process led by a national ten-a-side committee[170] This was subsequently expanded to include grassroots structures in KwaZulu-Natal. This process has been regarded as the main contributing factor in the decline of political violence in the province. In the interests of consolidating the peace process, the national leadership of the ANC and IFP has had extensive discussions about the granting of a special amnesty to those that did not appear before the Commission in the interests of consolidating the peace process. There has, however, been little public discussion about the nature of the amnesty to be granted or the process envisaged.

GENERAL OVERVIEW OF AMNESTY APPLICATIONS

7. The IFP's policy of non-engagement in the amnesty process adversely affected the numbers of applications received from IFP officials and supporters.

170 Helen Suzman Foundation, Briefing 14, Interview with S'bu Ndebele, www.hsf.org.za/Briefing_14.

8. The incidents for which applications were received took place between 1987 and 1994 when the conflict between Inkatha and the UDF (and later the IFP and the ANC) raged in urban and rural areas of KwaZulu/Natal[171]; Mpumalanga, KwaZulu near Pinetown, and the ANC-aligned communities and IFP-controlled hostels in the Transvaal.

9. Some of the applicants were in the service of the South African Police (SAP), the South African Defence Force (SADF) or the KwaZulu Police (KZP) at the time that they committed the offence/s and alleged that these bodies had colluded in incidents either by acts of commission or omission. Prior to the democratic elections in 1994, applicants applied for amnesty in conjunction with members of right-wing groups such as the Afrikaner Weerstandsbeweging (AWB) who were opposed to the ANC and its alliance partners.

10. All the applicants from the IFP were male. However, a few applicants implicated individual women in their human rights violations.

11. Many IFP applicants had been either convicted of the offences in question and gaoled, or had been implicated in investigations and anticipated prosecution.

12. A total of 109 applications were received from IFP members and supporters in the following categories:

Caprivi trainees

13. The Amnesty Committee received applications from eleven IFP members known informally as the 'Caprivi trainees' (individuals who had received paramilitary training by the SADF in the Caprivi Strip during 1986) or from individuals who later joined the 'Caprivi trainees' at different levels of the structure and were deployed in areas around KwaZulu/Natal. Some former Caprivi trainees, after consultation with one another, approached the Amnesty Committee as a group.

14. Mr Daluxolo Wordsworth Luthuli [AM4075/96], the political commissar and operational commander of the Caprivi unit, testified before the Commission that the Caprivi unit was a covert offensive paramilitary unit within the IFP. He testified that its members were trained by senior commanders of the SADF and

171 From 1972, KwaZulu comprised twenty territorial fragments scattered throughout the province of Natal. During the period of transition in the early 1990s and as the KwaZulu Administration was dismantled, all areas in the province came to be known as KwaZulu/Natal and, following the April 1994 elections, as KwaZulu-Natal.

deployed against the political enemies of the State, namely the United Democratic Front (UDF), the ANC and its allies. The Caprivi trainees were initially paid salaries by the SADF and were later incorporated into the KwaZulu Police, then headed by Dr Buthelezi as Minister of Police. The Amnesty Committee granted all these applicants amnesty, with one exception involving an incident of rape.

The South African Police

15. Two members of the SAP Riot Unit, two members of the SAP and two Special Constables (see below) deployed by the SAP Riot Unit in the Pietermaritzburg and KwaMashu area applied for amnesty for targeted killings. They claimed the killings were at least in line with police policy to support the IFP if not directly authorised by their superior officers in the police. The Riot Unit, the police members and one Special Constable were not categorised as IFP applicants and were later denied amnesty as they were found to have no political motive. However, three of the Special Constables were granted amnesty for their offences.

'Amasinyora' gang

16. One IFP member applied for amnesty for the killing of an ANC member in KwaMashu. He linked the activities of the IFP in this area to the notorious 'AmaSinyora' gang, which had been implicated in a reign of terror during the mid- to late 1980s.

IFP self-protection units

17. Six self-protection unit (SPU) members, who had been trained by the IFP at such informal and formal training facilities as the Mlaba or Amatikhulu camps, applied for amnesty. This number excludes the Caprivi trainees and their operatives who either provided training or attended these camps (together with former members of the SAP's Vlakplaas Unit).

IFP officials

18. The Amnesty Committee received eleven applications from political officials of the IFP. The majority of these were received from IFP Youth Brigade leaders or organisers. Three bodyguards of senior IFP leaders applied for amnesty, claiming they had acted under the instructions of their leaders. A further two applicants were leaders of the *amabutho* (the IFP local military wing).

19. The highest-ranking IFP political official to apply for amnesty was Mr James Mkhazwa Zulu [AM5864/97], regional leader of the lower South Coast. Mr Zulu applied for amnesty in conjunction with four right-wing applicants and another IFP member after all six had been charged with an attack at the Flagstaff police station to obtain weapons.[172] However, Mr Zulu was shot and killed at a taxi rank in Port Shepstone before his amnesty hearing. Several victims testified before the Commission that Zulu had been implicated in a number of assassinations in the lower South Coast area after his family had been killed in political violence. Mr Zulu did not, however, apply for amnesty for any incidents other than the Flagstaff attack.

IFP ordinary members

20. The Committee received seventy applications from ordinary IFP members for human rights violations committed in areas all over KwaZulu/Natal.

ISSUES IMPACTING ON THE AMNESTY PROCESS

21. At the inception of the Commission, the IFP announced that it would not urge its members or IFP victims of gross human rights violations to participate in its processes. In spite of written representations and personal requests by senior members of the Commission, the IFP did not depart from this position until approximately one month before the cut-off date for the submission of victim statements. At this stage, the party called on its members to apply for reparations. Such a shift of position did not, however, occur with respect to the amnesty process.

22. In his submission to the Commission, Dr Buthelezi stated that IFP officials or members who had carried out illegal activities had been acting without instructions and on their own initiative, and had been responding to the violent conflict raging at the time. It is therefore unlikely that potential IFP amnesty applicants, whether or not they were in gaol, had been briefed about the amnesty process by their political leadership. With little hope that the party leadership would assist them, potential applicants faced the risk of having their political bona fides questioned by the Amnesty Committee.

172 See below. See also Chapter Six of this section.

23. Poor literacy amongst some potential applicants also seems likely to have been a factor in the low level of applications. This became clear when, on the eve of the cut-off date, officials of the Department of Correctional Services approached the Commission on behalf of imprisoned IFP members who had requested assistance in making amnesty applications. At the amnesty hearing of Mr Zakhele Amos Zulu [AC/2000/075; AM2099/96], it emerged that his co-accused was also in prison for the same offence[173] but had not applied for amnesty because he was illiterate and had been unable to fill out the necessary form.

24. The extent to which potential applicants were intimidated into not applying for amnesty is difficult to establish. This cannot be discounted, however, given the continuation of political violence during the life of the Commission, particularly in some areas of KwaZulu-Natal. IFP applicants who made allegations of intimidation were found to be in genuine danger and were placed in witness protection programmes.

25. Mr Mbuzeni Nsindane [AM4071/96, AM 3689/96 and AM 4071/96] alleged that a certain Captain Hlengwa had visited prisoners and told them that they should not implicate leaders in the killing of ANC member Mr Thabani Mghobozi at Amahlongwa reserve in Umzinto in 1990. Mr Nsindane told the Amnesty Committee that he feared that disclosing this information would endanger the lives of his family members:

MR WILLS: *So I notice in both your application forms that you make no mention of one, the leadership who knew what you were doing, and second, the other persons, other than your brother, who were involved in the attack. They're not mentioned in your application form, can you explain that?*
MR NSINDANE: *Yes, it is the truth.*
MR WILLS: *But now why didn't you mention these people's names in your application form?*
MR NSINDANE: *I was afraid that they may actually attack my family.*
MR WILLS: *Did any of the parties that saw you from the IFP, influence you in regard to the omission of these names?*
MR NSINDANE: *Yes, it is like that.*
MR WILLS: *Well tell us, who?*
MR NSINDANE: *Mr Captain Hlengwa. He said we shouldn't include people's names. (Pietermaritzburg Hearing, 2 February 1999.)*

173 In an attack on ANC supporters in Ndwedwe in July 1992.

26. Many of the applicants were motivated to apply for amnesty because they were serving long prison sentences. Others had become disillusioned in some way with the part they played in the violent conflict. Mr Daluxolo Luthuli said in a statement attached to his amnesty application:

During the period that I was a hit squad operative I was proud to be a brave soldier fighting for the Zulu nation against communism. I felt my activities were justified and that it was incumbent on me to assist in the fight on the side of the IFP against the ANC. On many occasions, senior IFP officials who respected me for my total commitment to the Zulu cause congratulated me. I had the reputation of being one of the most loyal and effective operatives.

Since my arrest, however, I have had time to contemplate my past in circumstances where I am removed from the extreme political influences to which I was previously subjected. I have come to realise the horror of my past and deeply regret the extensive pain and suffering that I have caused my victims and their relatives …

Whilst I cannot change the past I took a decision during 1994 to assist in whatever way possible to bring an end to the conflict that still rages in KwaZulu-Natal. (D W Luthuli, Statement)

27. Many applicants wished to dispel the notion that they were merely criminals acting in a personal capacity. Mr Gcina Mkhize [AM4599/96], a Caprivi trainee and leader of the Esikhawini hit squad, told the Amnesty Committee:

MR MKHIZE: *I will like to respond to the Chairperson first, before I get to the question. Chairperson, can I please say that the details that I am mentioning here, I do that because in this Commission and in the general public, I appear as a criminal.*

I appear as a person who because of his criminality just wiped out the entire community. Statements made by the IFP, B B Ndlovu that are broadcast on the media implicate me as a criminal.

I would like to make it clear to the Commission and the public that the criminality that they are according me today, started at that time before the training, during the training, and after the training, when I started killing people. That is when the criminality started.

That they taught me.

CHAIRPERSON: *You can proceed. I don't want to hinder you in your evidence,*

I am just saying we don't have to get the very fine detail as to the exact training that you received, but those points that you feel that you wish to stress, be free to do so.

MR MKHIZE: *I would also like to say that coming to this Commission, is not just to seek amnesty. What is more important is to clear my name and explain to the public what happened. It is therefore important that I mention all the details so that everybody will know what happened. (Durban Hearing, August 1997)*

SUMMARY AND ANALYSIS OF AMNESTY APPLICATIONS

Total number received

28. The Amnesty Committee received 109 amnesty applications from persons aligned to the IFP for offences committed between 1983 to 1994 in KwaZulu-Natal and the former Transvaal. In addition, four police officers and three right-wing applicants submitted applications, purporting to be acting on behalf of the IFP. These were not categorised as IFP applicants.

29. The Committee granted amnesty to sixty applicants (57 %) and refused amnesty to forty (38 %). Two applicants were granted amnesty for some incidents but were refused amnesty for others for reasons of motive and proportionality.

30. Most matters were dealt with in a hearing convened by the Amnesty Committee. A total of twelve matters were dealt with in chambers.[174] All applications except one were successful.

31. Three applicants withdrew their applications because they did not meet the legal criteria governing the amnesty process. One application was struck off the roll because the applicant did not attend the proceedings. By far the largest number of applicants had been convicted of their offences before making application to the Amnesty Committee. Some applicants gave testimony about incidents for which they had not been charged. Others were in gaol for offences committed after the Commission's cut-off date in April 1994.

32. The applicants who claimed allegiance to the aims and objectives of the IFP can be divided into the following categories:

174 See this volume, Section One, Chapter Three for more information about chamber matters.

a Caprivi trainees;
b Esikhawini hit squad;
c Self-protection unit members;
d Civilian IFP supporters;
e Political leadership of the IFP;
f KwaZulu Police;
g South African Riot Unit (including Special Constables);
h South African Police;
i The right wing, and
j IFP-linked vigilantes.

33. Many of the IFP applicants applying for amnesty testified that their activities were sponsored by the apartheid government and/ or the homeland government and/ or their political leadership. The Commission was required to investigate these allegations insofar as they shed light on the lines of command, motives and political context in which the IFP applicants were operating. This was particularly necessary in the light of the fact that the leadership of the IFP, unlike other groupings testifying before the Commission, gave no details of human rights violations committed by their members.

Those who did not apply

34. The Amnesty Committee did not receive amnesty applications from any high-ranking members of the national or provincial political leadership of the IFP, nor did it receive applications from senior officials of the KwaZulu Police. Several key members of these groups were implicated by the operational commander of the Caprivi trainees, Mr Daluxolo Luthuli, whose claims were corroborated by ten members of the paramilitary units under his command. The Amnesty Committee relied on these first-hand accounts as well as upon documentary evidence presented to it in order to make certain findings against the above individuals in their personal capacity or as functionaries of the then KwaZulu Government.

35. Similarly, Mr Luthuli and other applicants implicated several regional and local political leaders of the IFP, claiming that they had provided instructions in target selection and logistical support. None of the leadership figures implicated applied for amnesty.

36. The Amnesty Committee was thus presented with evidence from the 'military' operatives of the IFP but received no significant admissions from its political

leadership. The Committee found that the eleven Caprivi trainees had made a full disclosure of facts and were acting in accordance with a political objective, thereby acknowledging that there was sufficient viva voce and documentary evidence to support the veracity of their claims.

37. The Caprivi unit members' legal representative, Advocate A Stewart, explained how the applicants perceived the role of the political leadership of the IFP:

… in addition to which Mr Luthuli and then Mr Mbambo in particular, and some of the other applicants too, discussed really what they saw as the two faces, the private and the public face, to IFP policy. And the public face being one which said, we're a peaceful organisation, we embark only upon peaceful tactics and objectives. But the private face, the one being propagated from the meetings of the cabinet of the KwaZulu homeland through to public meetings, mass meetings, was one of anger and of revenge and of attack, and that was the very real experience of the applicants in the way in which they explained it to the Committee, that public and private face.

And so their understanding is that that was the policy that was being embarked upon and they had it confirmed to them in so many ways. In addition to which it was confirmed to them inasmuch as they were hidden and protected when the arm of the law was able to reach out to them. So in instances where Mr Khumalo was arrested, where Mr Dlamini was arrested, he was whisked out of hospital where he had been lying with his leg up in a sling and he was pulled out of hospital and taken away in a car and then hidden for a long period of time in different places including in Venda and in the Mkuzi camp.

The same with Mr Khumalo when it appeared the police were on his trail, in fact on the one occasion he was arrested and bail was paid, and then he was hidden away and instructed not to go back. And those activities, in hiding and protecting the applicants from the law, in those instances, that was done by senior members in the IFP itself and in the KwaZulu Police, and that gives credence to their claim that this was the policy and this was how they understood the policy to be, that these are the things they should be doing. (Pinetown Hearing, 8 March 1999)

38. A similar situation applied with respect to members of the self-protection units, who were trained in the early 1990s. While the political leadership admitted having trained thousands of people for defensive purposes at various camps in KwaZulu/Natal, not one member of the political or senior military leadership applied for amnesty for any unlawful activities.

39. None of the applicants in the service of the SAP or the KZP at the time of the incidents for which amnesty was sought (including the Caprivi trainees) was supported by applications from their senior officers. There were no applications from senior members of the KZP, despite documentation suggesting that, at the very least, they allocated resources or attempted to cover up the activities of their members. Nor did the Riot Unit members and Special Constables who applied for amnesty receive the support of their commanders.

40. At a local level, although some IFP political leaders assisted applicants in establishing a context for the political violence between the IFP and the ANC in support of their applications, few of those implicated applied for amnesty,

41. Corroborated victim statements before the Commission provide evidence that ordinary IFP members were involved in politically motivated illegal activities. Moreover, the correlation between victims' statements and amnesty applications demonstrates that a very small minority of perpetrators applied for amnesty.

Categories of violations

42. The IFP applicants applied for the following types of violations:
    a targeted killings of ANC supporters;
    b planned attacks on people believed to be UDF or ANC supporters and members of the Congress of South African Trade Unions (COSATU);
    c spontaneous attacks on people believed to be UDF or ANC supporters and COSATU members;
    d revenge attacks on UDF and ANC supporters;
    e attacks on state officials;
    f mistaken identity, and
    g internal IFP attacks.

Attacks by IFP supporters

43. The Amnesty Committee heard that IFP applicants became involved in spontaneous attacks on people they believed to be UDF and/ or ANC supporters. The aim was generally to drive non-IFP supporters out of particular areas, thereby entrenching IFP strongholds. According to Mr Phumlani Derrick Mweli [AM0599/96], the UDF was a threat to the IFP and 'should cease to exist'. Mr Mweli spoke of receiving instructions to further this aim:

MR MWELI: *The instructions would entail killing, to kill and eliminate UDF and in other words UDF should cease to exist.*
MR SAMUEL: *Why did you want UDF to cease to exist?*
MR MWELI: *It's because it was alleged that it was burning people's houses and that they will bring ideas of the communists.*
MR SAMUEL: *So was that your political objective in trying, in carrying out these orders to kill UDF people?*
MR MWELI: *Yes.*
MR SAMUEL: *Now without going into the specific instances that you were charged for, I'd like you to describe and set the background about these skirmishes, the fights that were going on. Without going into individual cases here, tell us ...(intervention)*
CHAIRPERSON: *What, are you talking about skirmishes in which he personally was involved?*
MR SAMUEL: *I want you to speak about those instances where you and the UDF people clashed, in which you were involved, without dealing with specific instances. Just tell us what used to happen when UDF members confronted ANC members, or IFP members. What happened then?*
MR MWELI: *Between IFP and UDF there was enmity, and the two groups were fighting against each other, and each time IFP member would be seen around the area of Penduka we would be killed by the others, and as well as vice versa, each time they would see the UDF members in ...(indistinct) would be killed. So there was that, and the fact that the IFP members, they wanted to eliminate UDF members and they will cease to exist, and ANC people as well, we aimed at killing. Sometimes there will be people killed from IFP's area who will be killed for no apparent reason, for the fact that that person is residing in the area of IFP will be killed for that, without any action whatsoever. (Pietermaritzburg Hearing, 11 February 1999)*

44. Mr Mabhungu Absolom Dladla [AM4019/96] and Mr Nkanyiso Wilfred Ndlovu [AM4058/96] applied for amnesty for an attack on a taxi in the Table Mountain area in which ten people were killed on 5 March 1993.

MR ALBERTS: *Yes, can you explain to us what you hoped to achieve by attacking this kombi?*
MR DLADLA: *Nkanyezini is an ANC stronghold and we people from Mboyi could no longer walk past there. We could no longer go to town to buy. We were imprisoned in our area. Our people would be free to walk after this. (Durban Hearing, 26 March 1998)*

45. The applicants testified before the Amnesty Committee that they had carried out the attack with the intention of killing the occupants of the vehicle whom they believed to be ANC supporters on the grounds that an ANC member called Qeda Zulu had used the vehicle to transport members in the area. The attack had been triggered by an event three days earlier when unknown gunmen had shot and killed six children who were on their way to school. The parents of the children were all Inkatha members. The Committee heard that they and other residents of the Inkatha-controlled area of Mboyi were constantly attacked when they travelled through Nkanyezini, an ANC-controlled area. The applicants testified that, although they had not been instructed by their leaders to shoot and kill the occupants of the minibus, they had taken it upon themselves to do so.

46. The Amnesty Committee accepted the argument that they were 'caught up in the senseless violence in the area between members of the ANC on the one hand and the IFP on the other', and that the offences for which they were convicted and for which they were applying for amnesty were committed in the course of the struggles of the past and were associated with a political objective. Amnesty was granted to Mr Dladla and Mr Ndlovu for the killing of ten people and the attempted killing of six people in their armed ambush of the vehicle [AC/98/0012].

47. Mr Phumlani Derrick Mweli [AM 0599/96], IFP Youth Chairperson, applied for amnesty for killing seven ANC supporters. The killings were preceded by a series of attempted killings and assaults in Imbali, Pietermaritzburg.

48. At the time of the incidents, the Black Local authorities Act 192 of 1982 had come into effect, imposing town councils on a number of townships. In many areas in KwaZulu, the IFP had gained control of these councils, which were perceived to be to be illegitimate by supporters of the UDF. In Imbali, this manifested itself as a battle for territory between Stage 1 (a predominantly UDF area) and Stage 2 (a predominantly IFP area).

49. Phumlani Mweli was between 14 and 15 years of age when he committed offences that were directed indiscriminately at supporters of the UDF. He told the Amnesty Committee that he had received general instructions from IFP leader Mr Abdul Awetha and prominent IFP members Mr Jerome Mncwabe and Mr Gasela to attack members of the UDF who had been identified as 'enemies' because of their residence in an 'IFP area'. Mweli received firearms and ammunition from the IFP leaders. He was also given *muti* (traditional medicine), which

he claimed 'would give us a crave to kill and braveness to kill others but be protected at the same time…' [AC/1999/334]

50. Between 3 and 16 January, Mweli killed seven UDF supporters, including an 11-year-old child, Simphiwe Patrick Majozi, for which offences he was convicted in 1990. He was also responsible for the killing of Mr Stanley Shezi, four attempted killings and two assaults.

51. Mweli killed Mr Vikani Jacobs Sosiba near his home on the instructions of Mr Thu Ngcobo and Mr Gasela. He testified that Sosiba was bringing UDF 'comrades into Stage 2 to attack IFP members' [AC/1999/334]. After an attack on the car of IFP leader Mr Abdul Awetha near a garage in Stage 1, Mweli and Imbali (together with Mr Hoosain Awetha and Mr Bheki Zulu) shot Mr Thokozani Hlela and Mr Linda Moloi near a garage that was regarded as UDF-controlled. Mweli said that he did not know if the deceased had been involved in the attack on the vehicle but that they had killed them in order to send a message that they would defend themselves.

52. On the instructions of Mr Jerome Mncwabe, Mweli then embarked on a random killing spree to scare the UDF into leaving Stage 1. In the process, he killed Mr Sibusiso Mdluli, Mr Simphiwe Majozi and Mr Bhekizulu Gwala.

53. The families of the victims had reservations about whether the applicant had fully disclosed the facts but gestures towards reconciliation were extended between the parties. The Amnesty Committee granted Mweli amnesty on all counts, with the exception of the murder of 11-year-old Simphiwe Majozi. The Committee noted that this murder could not be regarded as an attack directed at a political opponent as there was no evidence connecting Majozi to the UDF.

Caprivi trainees

54. Mr Daluxolo Luthuli [AM4075/96], grandson of Chief Albert Luthuli, was trained in the Caprivi by members of the SADF. He applied for amnesty for twenty-one incidents of murder and attempted murder in KwaZulu/Natal and admitted to giving orders to ten other applicants who were involved in a total of 165 human rights violations. It emerged in his testimony before the Amnesty Committee that he was the political commissar and commander of hit squads that had been trained in the Caprivi in 1986 and at Mlaba camp in 1993.

55. Mr A Stewart, who represented Luthuli and some of the Caprivi trainees, argued before the Committee that structures had already been put into place for the deployment of the trainees once they returned from the Caprivi:

It was clear, in my submission, that on the Caprivi trainees returning to KwaZulu Natal there were structures in place, there was quite a sophisticated idea at least as to how those structures should work. The Caprivi trainees were split up into different groups, as the Committee is well aware, the offensive group, defensive group, contra mobilisation, and so on. And they were each supposed to have their own roles, and they were commanded, below Luthuli, by particular people, and there was the planning committee with the ongoing liaison between the IFP people responsible on the one hand, being chiefly MZ Khumalo and Mr Luthuli, and on the other hand the SADF and the SAP. (Pinetown Hearing, 8 March 1999)

56. Luthuli gave evidence about the first planning meeting he attended on his return from the Caprivi:

I was then taken by M.Z. Khumalo who asked me to go with him to a meeting. We went to 121 Battalion. The people whom I remember present there were Brigadier Van Niekerk, Louis Botha from the Special Branch, J.P. and Jerry. The last two men mentioned were also instructors at Caprivi.

What we discussed was that the trainees were back. In what way were they going to work and their safety was also an issue because they would be working covertly. How were they going to be protected?

This was discussed in detail. We then discussed that they should get contra-mobilisation and then we decided that we should open bases for them all over KwaZulu Natal so that they would be working in collaboration with the defensive group that used to pick up all troublesome individuals in the community. Secondly, the offensive group was supposed to stay in a particular area, because it wasn't supposed to meet with the other groups, because it was only used for attacks.

We found a base for them at Port Durnford where they stayed. We then discussed that since they had no identification, I was then asked with M.Z. Khumalo to talk to Brigadier Mathe, so that identity cards or documents could be made for those trainees. (Hammarsdale Hearing, 11-14 August 1998)

57. Mr Stewart noted that this method of operation worked initially but then began to change.

And at that time it seems that there was an attempt to implement those structures, and ensure that those groupings worked in the way in which it had been planned that they would work.

And the KwaMakutha massacre which took place relatively shortly after the return of the Caprivi trainees, and which was perpetrated in, initially at least, a model way inasmuch as it, there was prior surveillance, there was a reporting back, there was proper planning, there was a proper liaison between the military and military intelligence and SAP security branch on the one hand, and the Caprivi trainees on the other, and then the move in to hit the house. It turned out that it may have been the wrong house, but certainly it turned out that it may not have been planned that so many uninvolved people were murdered. But prior to that it seemed that it was implemented in the fashion that had been intended.

But we also know that, from what Luthuli has told the Committee, that he became, on returning from Caprivi and attending the first planning committee, and seeing the involvement of the SADF through military intelligence, and the SAP through the security branch, he became concerned about the extent to which, as he put it, the Boers were directing things, and the extent to which Inkatha was dependent on the Boers. And he then didn't attend planning committee meetings thereafter, save for one which he was called to, to attend to explain a certain incident.

And so right from then the channels of command started to disintegrate, and although we have statements in the affidavits and on record about how things were intended to happen, and how things were intended, and how orders were intended to be relayed, that as time goes on we see that those structures were operating in the initial planned fashion less and less. There was a level of disintegration, there was a level of informality, whereas at the beginning, for example, reports to MZ Khumalo were done only through Luthuli. It happened fairly soon after the KwaMakutha massacre, for example, that some of the Caprivi trainees were reporting directly to MZ Khumalo themselves. They were going direct to MZ Khumalo themselves to get weapons. (Hearing at Pinetown, 8 March 1990)

58. Many of the Caprivi trainees were then deployed in different units within the SAP or KZP and given appointment certificates.

There was an attempt to offer the Caprivi trainees some sort of cover under the auspices of the KwaZulu Police by the issue of appointment certificates, and even by the stationing of certain of the Caprivi trainees at KZP police stations.

Mr Mkhize, my learned friend Mr Wills' client, being stationed at the police station in Esikhawini, for example. And then, we saw an attempt, and now I use the word integrate, to integrate the Caprivi trainees into the special constable forces of the South African Police, and we have that particularly from Mr Khumalo and Mr Dlamini. Mr Khumalo explains how they were trained at Koeberg, they returned to Pietermaritzburg, they had certain duties there, but in respect of themselves and some of those that were with them, that only lasted a month or two and then they became disgruntled and they left. But all of that is an indication, in my submission, of this lack of formality in the lines of command, and the cross over in areas of responsibility between the formations of the South African Government on the one hand and the formations of the KwaZulu Government and the IFP on the other. (Mr A Stewart, Argument: Hearing at Pinetown, 8 March 1990)

59. The Commission's Final Report contains a summary of the incidents for which the Caprivi trainees applied for amnesty for training and assisting the IFP-aligned Black Cats gang to kill UDF/ANC supporters.[175] Mr Israel Hlongwane applied for amnesty for incidents in Ermelo. He was questioned by his Counsel about the interest the IFP political leadership showed in the activities of the Black Cats.

MR WILLS: *Now, you've indicated in your affidavit, whilst the Black Cats were being trained in Mkuze they were visited by certain person from Ermelo. Can you just tell us about those persons?*
MR HLONGWANE: *Yes, they were visit by Noah Mqobakazi.*
MR WILLS: *And who was he?*
MR HLONGWANE: *Noah Mqobakazi was the chairperson of the IFP and also Mkhonza. Mkhonza was the mayor of Davel.*
MR WILLS: *When you say Noah was the chairperson of the IFP, what area was he the chairperson of the IFP of?*
MR HLONGWANE: *In Ermelo and the surrounding areas. (Hearing at Ermelo, 14 September 1998)*

60. The nexus between the Caprivi trainees and the state and KwaZulu Government continued, despite the fact that many of them were dispersed into other structures. In Luthuli's amnesty hearing the following emerged:

MR STUART: *There was a time when you were sent into hiding by the Planning Committee, do you remember that?*
MR LUTHULI: *Yes, I do.*

175 Volume Two, Chapter Five, p. 464 ff; Volume Three, Chapter Three, p. 220ff.

MR STUART: *Were you called to a meeting of the Planning Committee?*
MR LUTHULI: *Yes, that is true.*
MR STUART: *Where was that meeting?*
MR LUTHULI: *The meeting was in Durban, in one of the hotels although I cannot remember the name of the hotel. M.Z. Khumalo, Louis Botha of the Special Branch, Van Niekerk, JP and Kevin were present. It was discussed that because the trail was not going well, or this charge was not good, I wouldn't go back to report at Webber Police station as per bail arrangements.*
I was to be taken into hiding. In the meantime they would be trying to destroy this charge, to get rid of the charge.
MR STUART: *What did they fear would happen if the charge against you persisted?*
MR LUTHULI: *It would emerge that the IFP possessed AK47's that would lead to the disclosure of the Caprivi training.*
MR STUART: *Whereabouts did you go into hiding?*
MR LUTHULI: *I was taken into hiding in the mountains at a place called Cathkin Peak, towards Estcourt, in the mountains of Lesotho. There was a base that was controlled by the Military Intelligence. At this base I found the following people, the Lesotho Liberation Army that was trained there, but I was going to go under cover as a person from Rhodesia, Ndebele. (Hearing at Durban, August 1997)*

61. Key members of the Caprivi group, such as Daluxolo Luthuli and Zweli Dlamini, did not testify at the so-called 'Malan' trial and told their story publicly for the first time at the Commission's Caprivi hearing. Their Counsel argued on their behalf:

Members of other Amnesty Committees that have sat, have on occasion refused amnesty where clearly those were cases where someone's been convicted of something, they try and dress it up in political clothes in order to try and get out of prison. These in respect of those applicants that I represent, that doesn't apply. And in respect of most of the incidents, or certainly many of the incidents that they've been involved, they have been the only sources of information in the hands of the State, broadly speaking about these incidents. It's not as 'though they faced imminent prosecution. They've come in a genuine effort to tell their whole story. (Hearing at Durban, August 1997)

Vigilantes

62. A key technique of counter-revolutionary war was the mobilisation of sections of the community who were regarded as loyal to the government and could be

expected to resist pro-ANC groups by force. In some cases such elements were armed, as with the provision of arms and training to Inkatha. In others, vigilante forces were created.[176]

63. IFP member Mr Conrad Bheki Magoso [AM4014/96] applied for amnesty for a number of offences related to a conflict between IFP supporters residing in an informal settlement in Richmond Farm near KwaMashu and ANC supporters residing in K-section, KwaMashu in the late 1980s and early 1990s. According to the applicant, members of a known criminal gang of dissident former UDF supporters, the '*AmaSinyora*', became an integral part of the IFP group. The conflict was sparked by arson attacks on the border between the two areas, culminating in the alleged 'necklacing'[177] of an elderly man by ANC supporters. The applicant was granted amnesty for a number of arson attacks and four killings [AC2001/054]. The Amnesty Committee had great difficulty in tracing some of the victims of these attacks due to the applicant's poor memory and the lack of documentary evidence.

Special Constables

64. Similar measures included the deployment of Special Constables. These included some of the 200 'Caprivi trainees' trained by the SADF in support of Inkatha. Several hundred Inkatha supporters were sent for Special Constable training at Koeberg during 1987. One hundred and thirty of these were Caprivi trainees.

65. At the end of 1987, the recruits were summoned back to Ulundi by Mr M Z Khumalo, at that time personal secretary to the Chief Minister. He informed them that, in view of the escalation of violence and the killing of Inkatha members in the Pietermaritzburg area, they would be sent on a six-week SAP Special Constables training course. They would then be deployed to the troubled areas in and around Pietermaritzburg.

66. Special Constables were first recruited in the Upper Vulindlela area near Pietermaritzburg in 1988. They were recruited on the recommendation of the local tribal authorities. The main criterion for recruitment was not education, standing in the community or reputation but simply membership of Inkatha.

176 Major-General FMA Steenkamp, 'Alternatiewe strukture as Faktor in die Rewolusionere Aanslag teen die RSA',(Unpublished, SAP HQ, Pretoria, Feb. 1987).

177 The 'necklace' method of attack was used mainly by UDF supporters in the late 1980s and involved burning a victim to death by placing car tyre filled with petrol around his/her neck. For the most part, victims were those persons regarded as collaborators and police informers.

After a brief training, they were attached to the Riot Unit of the SAP in Pietermaritzburg under the command of Major Deon Terblanche.

67. Mr Mduduzi Remember Ndlovu [AM1632/96; AC1998/0092] was a Special Constable in the KZP based at KwaMashu and a member of the IFP. Together with his late brother, Mr Thabani Ndlovu (chairperson of the Mpumuza branch of the IFP Youth Brigade), Ndlovu had killed Mr Sibusiso Gumede (a reserve constable of the KZP) on 16 April 1991 and removed his HMC sub-machine gun. The weapon was later found at the Ndlovu house after a fire. Ndlovu was sentenced to 20 years' imprisonment for the murder. Whilst the Amnesty Committee noted that there were inconsistencies in Ndlovu's testimony, it was satisfied that the applicant had made full disclosure on all material facts and did not act out of ill will or for personal gain. Ndlovu was granted amnesty.

Esikhawini unit

68. Offensive actions by the Caprivi Trainees continued under the cover of the KZP force in the early 1990s. The Esikhawini hit squad, based near Empangeni, was composed of individual trainees and was controlled by a local committee of IFP leaders and senior KZP officers. The hit squad carried out a large number of attacks on ANC and COSATU individuals, resulting in many deaths. It was allowed to act with impunity and the KZP commander, Brigadier C P Mzimela, ensured that its activities were covered up. The few KZP officers who attempted to investigate its activities were either murdered or intimidated from acting.

69. Key figures in the KwaZulu government at Ulundi, including a cabinet minister, Prince Gideon Zulu, and the Secretary of the KwaZulu Legislative Assembly, Mr M R Mzimela, provided logistical support and direction to the hit squad. This was also a finding made by the Supreme Court in the Mbambo[178] matter for purposes of sentence. The state of affairs in Esikhawini in the early 1990s was similar to that in other areas.

70. The *modus operandi* of the Esikhawini unit emerged in cross-examination of Mr Daluxolo Luthuli at the amnesty hearing of Gcina Mkhize and others:

178 In 1995 the Durban Supreme Court found Romeo Mbambo, Israel Hlongwane and Gcina Mkhize guilty of murdering KZP Sergeant Dlamini on 19 June 1993. See Volume Two, Chapter Seven, pp. 633–5.

MR WILLS: *As I understand this military structure, or military struggle, certain people received training like for example Mr Mkhize was trained in Caprivi and in Koeberg and at Mkuze camp and at various other camps, by various people, the SADF?*

MR LUTHULI: *That is correct.*

MR WILLS: *The SAP at Koeberg?*

MR LUTHULI: *Yes, that is correct.*

MR WILLS: *And by Inkatha people at Mkuze camp?*

MR LUTHULI: *That is correct.*

MR WILLS: *But the policy of the IFP was that these people must be transferred into various townships and they must gather loyal and staunch younger IFP persons and give them similar training?*

MR LUTHULI: *That is correct.*

MR WILLS: *So when both Mr Mbambo and Mr Mkhize give evidence later to the effect that they were involved in setting up of another hit squad and specifically trained other persons and specifically people like Mkhana Lipo, Matenywa, Ben Mlambo, Lucky Mbuyasi, that these activities were done in the full k*nowledge *and they were in fact part of the IFP policies at the time?*

MR LUTHULI: *That is correct.*

MR WILLS: *That wasn't against any policy or orders of the IFP?*

MR LUTHULI: *No.*

MR WILLS: And again, this was well known by the leadership and encouraged by the leadership?

MR LUTHULI: *That is correct.*

MR WILLS: *Now, unfortunately I am not in a position to know how high that leadership went, but to be specific, I know for example or I am told for example that this was encouraged by persons like BB Biyela and Mrs Mbuyasi in eSikhawini?*

MR LUTHULI: *That is correct.*

MR WILLS: *The way certain specific targets were identified, was also varied, but you mentioned something that Mr Mkhize alludes to in his affidavit, and I refer you to page, I refer the Committee to page 231 of the bundle.*

That is to the effect that the IFP leadership on the ground, would determine who the problematical UDF persons were? (Durban Hearing, August 1997)

Amatikhulu and Emandleni trainees

71. According to IFP senator Mr Philip Powell, the IFP started training IFP recruits in Patheni near Richmond at the end of 1992. The project was so successful that, after some months, another training camp was established at Elandskop.[179] Powell said that he helped train sixty volunteers at Patheni and a smaller group at Elandskop. According to media reports, by the time the self-protection unit (SPU) training project got underway at Mlaba Camp near Umfolozi a year later, about 1200 men had been 'informally' trained at both Patheni and Elandskop.[180] Training continued in other areas.

72. According to Mr Cyril Bongani Thusi, an IFP member in Richmond, IFP supporters grouped together to attack ANC supporters with homemade firearms in about 1991. ANC supporters left the area as a result and took up residence in Dambuza. Thusi testified before the Amnesty Committee that, in the same year, armed ANC supporters returned from Pietermaritzburg and retaliated by killing some IFP members. At this stage, some of the IFP youth joined the ANC because they felt that the IFP were inadequately armed with homemade firearms.

73. Thusi testified that he was informed that Nkosi Majozi had sent Chief Buthelezi messages that they were under attack. Majozi received a response that certain people were to be sent for training at Amatikhulu camp and that they should collect G3 rifles at the same time. He testified that six persons went for one week's training with Phillip Powell at Amatikhulu camp and were given five G3 rifles [AM8013/97; AC990217].

74. Mr Thulani Myeza, who was trained at Emandleni camp and applied for amnesty for a number of gross human rights violations in Eshowe, testified that the SPUs were trained in preparation for the 1994 elections. He gave evidence before the Amnesty Committee:

> ADV MOTATA: *I take it, correct me if I am mistaken, that you were trained in handling firearms, how to kill, would I be right to say you're saying so?*
> MR MYEZA: *Yes, we were told that we were trained for 1994 election, to kill.*
> ADV MOTATA: *Could you just tell us more that you were trained for the 1994 elections to do what, to show people how to vote or to kill people not to vote?*
> MR MYEZA: *To kill the ANC leadership.*
> ADV MOTATA: *Did you know which leaders were you supposed to kill from the ANC?*

179 N Claude, KwaZulu-Natal Briefing, Number 4, October 1996 (Helen Suzman Foundation).
180 Ryan Cresswell, Sunday Times, 14 November 1993.

MR MYEZA: *Yes, I know a few of them.*
ADV MOTATA: *Would you be kind enough to just give us the few you know?*
MR MYEZA: *The first one was Bongani Msomi in eSikhawin*i.
ADV MOTATA: *Proceed.*
R MYEZA: *The second one was Bheki Ntuli in Mtubatuba.*
ADV MOTATA: *Can you remember only the two?*
MR MYEZA: *Mr Nxumalo, here in Eshowe. Given Mthethwa from Eshowe, Schoolboy from Eshowe, Mr Msweli in Mandini. Those are the only people who were disturbing the election in KwaZulu Natal.*
ADV MOTATA: *Now lastly, you mentioned that when you attacked you were accompanied by the KwaZulu Police ...(indistinct)?*
MR MYEZA: *Yes.*
ADV MOTATA: *And prior to your attack you held a meeting, do you recall that?*
MR MYEZA: *Yes.*
CHAIRPERSON: *Were the KwaZulu Police present in that meeting or if not when did they join you or how did they know that you planned this attack?*
MR MYEZA: *The KwaZulu Police would not be present when the decision is taken, but they would be told to go and raid the ANC members after we had taken a decision. The KwaZulu Police would then be led be Nr Nyawuza where they were supposed to raid.*
ADV MOTATA: *Would we understand you correctly that the police, that is the KwaZulu Police, were your allies when you attacked the ANC members, would we understand you to say that?*
MR MYEZA: *Yes. (Durban hearing, 26 March 1998.)*

75. The trainees were receiving payments from the KwaZulu government in Ulundi until Mr Lombo allegedly absconded with this money.

MR MYEZA: *We were being paid as SPU members. We received it from a certain person in Ulundi who was in charge of finances there. I cannot recall his name.*
CHAIRPERSON: *Was that every month or every week, how often was that?*
MR MYEZA: *After every two months.*
CHAIRPERSON: *I thought I heard you say during your evidence that this money that you were getting from Ulundi stopped when a middleman disappeared or left. Can you clear that up first of all? Who was the middleman and what do you mean by he disappeared or he left, what does that mean?*
MR MYEZA: *I did not know the name of this middleman. However, when all KwaZulu-Natal SPU members were called to Ulundi to get their monies that was Friday we went to camp at Emandleni. The following Saturday, we went to the soccer field in E section in Ulundi, and we were told that this person had run away. We barricaded the Parliament in protest of our salaries and demanded to*

talk to Mr Powell himself. He came and told us that that person had run away. He left Ulundi. I did not know his name. (Durban hearing, 26 March 1998.)

76. Most of the trainees claimed that they had received instructions from the local political leadership of the IFP on a day-to-day basis.

CHAIRPERSON: *And as member of the SPU who did you take orders from?*
MR MYEZA: *We got some orders from Phillip Powell when we were still in training.*
CHAIRPERSON: *Would he come there to where you were and give instructions or were these instructions conveyed to you in some other way?*
MR MYEZA: *At Umfolozi where we received training, we had commanders who were working under him. We had commanders like 'Somatekisi' and others that I cannot recall their surnames.*
CHAIRPERSON: *But that was only during the time that you have for training but you were only for training for a short period?*
MR MYEZA: *Yes, ...[indistinct] six months.*
CHAIRPERSON: *After the training was over that did you get instructions from?*
MR MYEZA: *The person who organised training for us was Mr Nyawuza. (Durban hearing, 26 March 1998.)*

Self-protection units

77. In August 1993, IFP leader, Dr M G Buthelezi called on every Zulu to pay a R5 levy for the establishment of a 'private army' to 'guard against the obliteration of KwaZulu'[181] In fact, the project was sponsored by monies drawn from the KwaZulu Government. At a KwaZulu Legislative Assembly (KLA) meeting on 25 August 1993 a resolution was taken to establish a self-protection unit training project.[182]

78. In September 1993, the training of SPUs began at Mlaba Camp on the edge of the Umfolozi Game Reserve. Senior IFP member Philip Powell later acknowledged that, prior to the opening of Mlaba, training of IFP recruits had been going on for more than a year and about 1200 men had been 'informally' trained. Between 5000 and 8000 IFP supporters were trained at Mlaba camp. Certain Caprivi trainees were deployed to assist in the project. Trainees received instruction in offensive methods and the use of AK 47s. With the assistance of former Vlakplaas commander Eugene de Kock, Powell arranged for the delivery of a number of truckloads of sophisticated weaponry to be delivered to the region.

181 Report of the Civilian Component of the ITU, 27 January 1997.
182 Ibid.

79. On 15 March 1994, the KwaZulu Cabinet adopted a secret plan drawn up by Powell to circumvent legal restraints on the development of military force in KwaZulu. Powell's plan aimed to counter perceived threats that the ANC would make KwaZulu ungovernable. He claimed that, amongst other factors, there were internal problems within the KZP 'due to political allegiances of members to the ANC or the NP'[183]

80. The plan involved the setting up of a 'battalion/ regimental sized paramilitary unit' within the KZP. The proposed unit would be structured in the following manner:
    (a) Five regionally recruited companies of approximately 200 men each. The unit would be drawn from the following elements:
        - 1000 selected graduates of the KZG self-protection unit-training project appointed as Special Constables ...
        - 100 KZP members who received counter-insurgency training from the SADF (non-commissioned element). These members would provide the basic leadership element at a section, platoon and company level ...
        - A small group of professional advisors drawn from former SADF or SAP officers ...
    (b) The unit would be based at Mlaba camp with additional operational bases in the following areas:
        (i) North Coast base (hand-written - Esikhawini)
        (ii) South Coast base (Folweni)
        (iii) Durban base (Folweni)
        (iv) Midlands base (Madadeni)
        (v) Northern Natal (Empangeni)
    (c) Logistical Requirements:
        (i) The unit would require 1000 G3 rifles ... These would have to be drafted from KZP strength or purchased urgently ...
        (iii) Support weapons would have to be acquired for counter-insurgency operations. These include squad level weapons such as MAG type belt-fed machine guns and 60 mm mortars.
        (iv) Uniforms: ... supplemented by 1000 sets of second hand canvas SADF style webbing (ammo pouches and packs), 1000 water bottles ...
        (v) Specialised vehicles could be made available from the Dept of Works and Health and modified if necessary to a paramilitary role ...[184]

183 Secret Memorandum prepared by Powell and introduced by him to a KwaZulu Cabinet meeting on 15 March 1994 (according to a hand-written note. The memo is dated 15/4/94.) (RPD, AG), Supplied to the TRC by the ITU.
184 Ibid.

81. KZP Commissioner During wrote a letter to Buthelezi dated 18 March 1994 in which he pointed out:

that the deployment of these trainees who have not had, even remotely, sufficient training in law or exposure to police procedures, could lead to extremely serious repercussions for which I, as Commissioner can be held responsible ***both criminally and civilly****.*

82. He expressed his concern about the ruling that he had to waive the standard requirements for qualification as Special Constables and opposition to the proposal to use Caprivi trainees as leadership for the platoons of Special Constables:

Your Excellency is well aware of the controversy surrounding the employment of Caprivi Trainees as members of the KZP and the allegations of hit squad activities …

83. He was opposed to arming the Special Constables with G3s as 'the indiscriminate use of such a lethal arm can be expected from persons who have not been adequately trained …'. With regard to the group of 'professional advisers drawn from former SADF or SAP officers', he advised that he did not know their identities or backgrounds.[185]

84. Buthelezi overruled During and the implementation of the project commenced.[186]

85. The Transitional Executive Council (TEC) led a raid on Mlaba camp on 26 April 1994, forcing its closure and bringing a halt to the plan to place 1000 Mlaba trainees into the KZP.

THE AMNESTY ARENA

Full disclosure

86. Some applicants approached the Amnesty Committee in the erroneous belief that it would offer them a hearing on what they believed to be false charges against them and for which they had been wrongfully imprisoned.

185 Letter from During to Buthelezi dated 18 March 1994, entitled PROPOSED EMPLOYMENT OF 1000 MLABA TRAINEES AS SPECIAL CONSTABLES. (Ref 7/8/9, hand-written F.3/36).(RD, SM), Supplied to the TRC by the ITU.

186 Resolutions of a Special Cabinet meeting held at Ulundi on 18 March 1994 (80/94): Appointment of special constables), supplied to the TRC by the ITU.

87. Mr Baba Langelihle Khomo [AM 4036/97], an ordinary member of the IFP, was convicted and sentenced to 20 years' imprisonment for the murder of eight people and the attempted murder of five people at a traditional function at Ndlovu's kraal in KwaNdeni Reserve in Mpumalanga near Durban on 7 March 1992. The trial court found that the applicant had acted in 'common purpose' in killing Mr Kati Ndlovu and others. The applicant testified that, although he had witnessed the attack, he had not taken part in it. He had admitted his involvement in his application with a view to protesting his innocence before the Commission. His application for amnesty was refused on the grounds that he had not disclosed any involvement in a politically motivated offence.

Furtherance of political objectives

88. Most IFP applicants were granted amnesty after testifying that their motivation for committing offences was linked to the general conflict and in the reasonable belief that a particular act was in furtherance of a political objective.

89. The Amnesty Committee frequently had to face the difficult question of making a finding in attacks that could be regarded as 'random' or 'indiscriminate' and where the applicant/s did not know for certain whether the victims were UDF or ANC supporters. In some such cases, attacks were launched upon people perceived to be UDF and ANC supporters in an effort to drive the UDF or ANC out of an area.

90. Acting for Mr Gcina Mkhize [AM4599/96] and other Caprivi trainees and KZP members, Mr John Wills testified before the Committee:

It's a unique feature of the Natal violence, in my submission, that the conflict relates so directly to territory, and the whole of the conflict was about dominance of particular geographical areas, to the extent, as I say in my heads, that one could more or less rely on the fact of if one lived in a particular area than one would be a member of the political party that was dominant in that area. This aspect of the conflict I submit is important particularly when one looks at what might, had it not been for that characteristic, be considered indiscriminate attacks. (Pinetown hearing, 8 March 1999.)

91. Other applicants testified that the aim of such attacks was to create terror in ANC-dominated areas, thereby making political organisation difficult and dangerous and making people afraid to live in the areas concerned. Moreover, such attacks amounted to a show of strength for Inkatha (the IFP) and a demonstration that the UDF (and later the ANC) was unable to defend its people in a particular area.

92. Some of the applicants had mixed political and personal motives, such as revenge for earlier incidents in which they or their relatives had been attacked.

93. Mr Vusi Thokozani Manqele [AM4037/96; AC1999/0016] killed ANC chairperson Mr E Bhengu in a spontaneous attack in KwaMakhutha during July 1991. The attack took place after Manqele's home had been attacked and his relatives killed by the deceased. The Amnesty Committee accepted that, although there was an element of revenge in the attack, there was sufficient political motivation to justify the granting of amnesty.

94. IFP member Mr Vusi Linda Hlengwa [AM 4687/97] was convicted of the murders of Mr Mahluleli Makhanya and Mr Bheki Zwane and the attempted murder of Mr Simiso Msomi of the UDF after unknown persons in KwaMakhutha attacked his home during April 1990. Mr Zwane was allegedly with the applicant at the time of the attack and was shot and killed by Hlengwa a week later.

95. The Amnesty Committee found that Makhanya's killing and Msomi's injury were motivated by revenge and did not disclose a political objective. The applicant withdrew his request for amnesty for the murder of Zwane after contradicting his application by indicating that the latter was killed accidentally.

96. Mr W Harrington [AM0173/96] and Mr F Erasmus [AM0174/96], both constables in the SAP Riot Unit, and Mr N Madlala [AM3432/96], recruited from the ranks of the IFP and employed as a Special Constable, applied for amnesty for the killing of Mr Mbongeni Jama in Elandskop near Pietermaritzburg on 24 February 1991. The applicants had captured, assaulted and killed Jama after an ANC rally in Noshesi and had been convicted of the offence. Counsel for the applicants argued that they had been indoctrinated to see the ANC as the enemy and that they had found a pocket book on the deceased revealing that he had been involved in attacks on IFP members. The Amnesty Committee concluded that the evidence suggested that the applicants had beaten Jama so severely that they had decided to destroy the evidence of their illegal conduct as they would not have been able to justify this to their superiors. For this reason, the Amnesty committee found that the act did not disclose a political objective.

97. The Amnesty Committee, relying on the testimony of applicants and witnesses and on background information on the area in question, refused amnesty to some applicants where it appeared that political violence was not rife in the area. Mr Nimrod Mbewu Mthembu [AM6683/97] and Mr Mshengu Ngobese

[AM6344/97], card-carrying members of the IFP, applied for amnesty for the killing of Mr Siya Enack Cele and Ms Elizabeth Zondime Khumalo and the attempted killing of Mr Mdikivani Mkhize on 24 August 1991 in the Mapumulo area, an IFP stronghold.

98. The applicants were on their way home from a traditional celebration held to celebrate a man's gratitude to his daughter for good behaviour. On their way home, they passed Mr Cele and Mr Mkhize who apparently insulted them, calling them 'Ukova', a derogatory name for IFP members.

99. The applicants stabbed Mr Cele, but Mr Mkhize managed to escape. They then went to the home of Ms E Khumalo, who they believed to be opposed to the IFP because she had protested against a tax levied on dogs. They shot her with a homemade weapon and then stabbed her.

100. The Amnesty Committee noted that there was no turmoil in the area at the time. They found that the applicants had not acted with a political objective since their acts were not directed at clear political opponents nor were executed in furtherance of the aims and objectives of a political organisation. They also noted that alcohol might have played a significant role in the incidents and denied amnesty to the applicants [AC1998/0009].

101. A factor mentioned in many incidents was the use of traditional medicine or 'muti' while preparing to perpetrate human rights violations. For example, Mr Phumlani Derrick Mweli, told the Committee:

MR MWELI: *The traditional healer will come. We did not know that person. We've never seen him or her before. Sometimes we will get Mr Themba Tjale and the traditional healer would arrive there, every after six months they will go and revive them.*
MR SAMUEL: *Why were you given muti by these people? What was the purpose?*
MR MWELI: *The purpose was to give us that crave to kill and give us that braveness to kill others but be protected at the same time from being shot and killed.*
MR SAMUEL: *So were you told that if you have this muti on you the opposition's bullets won't strike you?*
MR MWELI: *Yes, sometimes that happened. I'm one example, it has happened to me. I was never shot. There were places I could not receive, or bullets would not hit me. (Pietermaritzburg hearing, 11 February 1999.)*

Personal gain

102. The Committee refused amnesty to any applicant who clearly appeared to be motivated by personal gain when committing a human rights violation. Mr Mdu John Msibi [AM0624/96] applied for amnesty for the killing of ANC members Mr Mandla Alfred Mgudulela and Mr Mphiheleli Joseph Malinga in Piet Retief on 9 June 1993, for which he had been convicted and sentenced.

103. Msibi testified: 'The IFP contracted me to shoot the two leaders of the ANC as they were a threat to the IFP'. He told the Amnesty Committee that Mr Ali Msibi, an IFP leader and a Constable Mkhwanazi of the Crime Intelligence unit of the SAP had instructed him to do the killings. However, because he had had admitted in his trial[187] that Mr Msibi had paid him R15 000, the Amnesty Committee found that he had acted for personal gain rather than with a political objective and he was refused amnesty.

Proportionality

104. Mr Phumlani Derrick Mweli [AM0599/96] was refused amnesty for the killing of Simphiwe Patrick Majosi in Imbali on 16 January 1989 (see above). Mweli claimed that he was instructed by Mr Jerome Mncwabe to do something that would 'scare' UDF people in Stage 1 and induce them to flee the area.[188] In the course of an indiscriminate attack, Majosi was killed. The Amnesty Committee found that the killing of a child could not be regarded as an attack directed at a political opponent. Ironically, the applicant at the time of this offence was himself only 14 years old [AC/99/0334].

THE RIGHT WING AND THE IFP

105. According to the statement of Patrick Dlongwane (known as Pat Hlongwane) in about February 1994, he, Mr Thomas Shabalala (IFP, Lindelani) and AWB members General Nick Fourie (who died in the Bophuthatswana coup), Mr Norman Starkey, Captain Schoeman, Brigadier van Vuuren, General Monty Markow and others met at Ocean Green in Point Road, Durban. Here it was agreed that the AWB would train IFP members and the Natal Liberation Army (NLA) was formed.

187 Piet Retief Circuit Court, case number CC18/95.

188 Hearing at Pietermaritzburg, 12 February 1999.

Attack on the Flagstaff police station

106. On 6 March 1994, an IFP official and AWB members attacked the Flagstaff police station with the intention of obtaining arms for IFP self-protection units.[189] In the course of the attack, they killed Constable Barnabas Jaggers and wounded Constable Wele Nyangana and Inspector Mzingizi Mkhondweni. They removed a police van, six police heavy calibre rifles, some rounds of ammunition, a metal trunk and about R140 in cash.

107. The following persons were charged and convicted of murder, attempted murder and robbery: Mr James Mkhazwa Zulu (IFP Regional Chairperson, lower south coast); Mr Harry Marvis Simon Jardine (AWB); Mr Andrew Howell (AWB); Mr Morton Christie (*Veldkornet* in the AWB and IFP member), and Mr Christo Brand (Lieutenant in the *Ystergarde*, AWB). Mr Robin Shoesmith (IFP) and Mr Roy Lane (AWB) turned state witness.

108. According to the amnesty application of Mr James Mkhaswa Zulu [AM5864/97], who died before his amnesty hearing, Mr Robin Shoesmith approached him with the idea of forming self-protection units before the 1994 election. Because they had no firearms with which to train the units, Shoesmith's plan was to attack the Flagstaff police station and steal firearms.

109. According to the evidence led at the trial, Shoesmith approached AWB member Morton Christie and asked whether the AWB would be prepared to assist the IFP. Christie and Jardine of the AWB agreed. Flagstaff police station was selected because Mr Sipho Ngcobo, an IFP member, had told them that there would only be one police officer on duty late on a Saturday night and that he would probably be drunk. They were told that the weapons were kept in a steel trunk in the charge office. Later Howell, Christo Brand [AM6422/97] and Lane of the AWB joined the plot.[190]

110. According to Morton Christie's amnesty application[191], Nick Fourie[192] and Patrick Pedlar were his superior officers in the AWB. Christie testified that the Security Branch in Port Shepstone encouraged the operation and monitored it while it was taking place. He also testified that Patrick Pedlar, the operational leader of the AWB, was an informer and that it was his role to ensure that the operation went ahead.

189 See also Chapter Six of this section.

190 See court records annexed to amnesty application of James Zulu.

191 Christie and others were also arrested for the bombing of the Seychelles Restaurant in Port Shepstone but were released. The restaurant was believed to be frequented by ANC members. Christie claims in his amnesty application that Roy and Rob Lane carried out the bombing (AM6610/97).

192 Fourie died in the Bophuthatswana Coup in 1994.

111. Christie testified that Shoesmith instigated the plan to raid the Flagstaff police station and that he, Harry Jardine, Corrie van der Westhuizen, Shoesmith and Patrick Pedlar discussed it at a meeting. Christo Brand was not at the meeting. About two weeks later, Pedlar told Henry Jardine and Morton Christie that they should assist the IFP with the operation and involve James Zulu of the IFP. In the meantime, Warrant Officer Ferdi Wentzel of the Security Branch had instructed Pedlar to ensure that the operation went ahead.

112. Christie testified that they were followed by a red Cressida on their way to the police station and had the impression that its occupants were trying to count the number of persons in the car. When they arrived, Howell went into the charge office but came out saying he believed that they had been 'set-up' as there were armed policemen on the premises. Inspector Mkhondweni, who was parked outside the police station, arrested the men. It was then that the shoot-out began.

113. Christie testified that, during the trial, the Port Shepstone Security Branch was unable to explain why, having had knowledge of the operation, it did not attempt to stop it and why it took nine months to arrest the known suspects. Pedlar was not charged and his role emerged for the first time at the amnesty hearing. Mr Barry Jardine [AM5864/97] of the AWB had this to say about Patrick Pedlar:

It later transpired, at the Criminal Case at the High Court in Bizana that Patrick Pedlar was a Security Police informant and that he revealed our plans to Inspector Wentzel. Inspector Wentzel informed the Flagstaff Police Station that APLA would attack the Police Station on the evening of the 5th of March 1994.

MR DE KLERK: *Can we just have some clarity here? Patrick Pedlar was your Commander?*
MR JARDINE: *That's correct.*
MR DE KLERK: *According to your information was he the man that said that you had to get the weapons?*
MR JARDINE: *That's correct.*
MR DE KLERK: *And later it became apparent that he was a Police informer because he conveyed to the police that you would fetch the weapons on a specific time?*
MR JARDINE: T*hat's correct, that APLA would attack the Police Station. As a result of this an ambush was set for us and that is why there were so many armed policemen at the Police Station. Here, I wish to refer to the judgment of Judge Beck, on page 1054, when he put forward his doubts as to why Inspector Wentzel allowed the attack to proceed, and did not try to prevent it. (Hearing at Durban, 24 April 1998.)*

114. The surviving victims objected to amnesty being granted on the grounds that the applicants did not disclose who killed the deceased and wounded the other victims. However, the Amnesty Committee found that Christie shot Mzinigizi Mkhondweni and was satisfied that the other applicants could not testify who shot the other victims as it was dark when the shoot-out occurred. The applicants were granted amnesty.

115. In another incident, Mr Boy Vusumuzi Gwamanda [AM1972/96] applied for amnesty for the conspiracy to murder former Mpumalanga premier, Mr Matthews Phosa whilst he was incarcerated in Barberton prison in 1990. The applicant testified that he was trained by AWB-linked warders at Barberton prison in the use of firearms and hand grenades. Mr Gwamanda was granted amnesty.

MOTIVES AND PERSPECTIVES

116. In summary, the Amnesty Committee heard that most of the acts for which members and supporters of the Inkatha Freedom Party applied for amnesty were motivated by a sense of loyalty to an organisation which had embarked on what it perceived to be an alternative strategy for bringing about an end to apartheid. While senior members of the IFP claimed that there had never been an Inkatha decision to employ violence in this aim, amnesty applicants claimed that their use of violent means to achieve these aims were both authorised and sanctioned by the political leadership of the party.

117. The Commission took cognisance of the views expressed by leaders that the original source of the conflict in the then Natal and Transvaal lay in the opposition to the IFP's adoption of this alternative strategy.

118. In its 1998 Report, the Commission found that the IFP was responsible for gross violations of human rights committed in the former Transvaal, Natal and KwaZulu against persons who were perceived to be leaders, members or supporters of the UDF, ANC or its alliance partners, and persons identified as posing a threat to the organisation or whose loyalty was doubted[193]. It was a further finding of the Commission that such violations formed part of a systematic pattern of abuse which entailed deliberate planning on the part of the organisation[194].

193 Volume Five, p. 233
194 Ibid, p. 234

119. The assertions by the Caprivi trainee amnesty applicants that they were acting as part of a well-resourced and orchestrated strategy coincided with the Commission's finding that in 1986 the SADF conspired with Inkatha to provide the latter with a covert, offensive paramilitary unit (hit squad) to be deployed illegally against persons and organisations perceived to be opposed to or enemies of both the South African government and Inkatha. The SADF provided training, financial and logistical management and behind-the-scenes supervision of the trainees who were trained by the special forces unit of the SADF in the Caprivi strip.[195]

120. The purpose and nature of the training (which has been documented in Volume Two, Chapter Five and Volume Three, Chapter Three) was succinctly summed up by one of the military trainers, Colonel Jan Anton Nieuwoudt [AM3813/96; AC/2001/264], in his amnesty application, as being 'to identify and eliminate ANC, SACP and PAC targets'. Nieuwoudt also explained to the Commission how the trainees were taught the art of '*nie terug spoorbaarheid*' or how to cover up their crimes. It was hardly surprising that the military planners of the Caprivi project requested 'indemnity from prosecution for offences carrying the death penalty'.[196] Indeed the Operation Marion documents are littered with acknowledgements and references to the unlawful nature of the actions involved. The Commission found that probabilities that the Caprivi project amounted to a conspiracy to murder were overwhelming.

121. With regard to the KwaZulu Police, the Commission found that from the period 1986 to 1994, the KZP acted in a biased manner and overwhelmingly in furtherance of the interests of Inkatha, and later the IFP. This was a view that was also expressed by several amnesty applicants. Although there were exceptions to the following general statement, in that some members of the KZP did carry out their duties in an unbiased and lawful manner, the KZP generally was characterised by incompetence, brutality and political bias in favour of the IFP, all of which contributed to the widespread commission of gross human rights abuses[197].

122. With regard to the Esikhawini hit squad led by Gcina Mkhize, who applied for Amnesty along with others, the Commission found that in 1990, certain senior members of the IFP conspired with senior members of the KZP to establish a hit squad in Esikhawini township, to be deployed illegally against people perceived to be opposed to the IFP[198]. Contrary to the claims of the IFP leadership that it

195 See Volume Three, Chapter Three, p. 221ff. and Volume Five, Chapter Six, p. 234.

196 UITERS GEHEIM ST-2/3/310/4/MARION/2/3.

197 Volume 3.

198 Volume 5, p. 235.

was never the policy of the organisation to engage in violence in furtherance of its political objectives, the Amnesty Committee accepted the evidence of amnesty applicants that they took instructions from certain senior members of the organisation, and that these activities resulted in the commission of gross human rights violations.

123. With regard to the self-protection unit members, the Commission found that during the period 1993–1994, the self-protection unit (SPU) project, although officially placed within the ambit of the Peace Accord and containing an element of self-protection, was also intended to furnish the Inkatha Freedom Party with the military capacity to, by force, prevent the central government and the Transitional Executive Council from holding elections that did not accommodate the IFP's desires for self-determination. Evidence from former members of self-protection units placed before the Amnesty Committee reinforced the finding of the Commission that such armed resistance would entail the risk of violence and injury to persons.

124. The Commission gave due attention to the response of the IFP to these and other findings of the Human Rights Violations Committee. However, the Commission is of the view that the evidence which has emerged through the amnesty process has done nothing to cause the Commission to change or moderate these findings in any way. On the contrary, on the completion of the work of the Amnesty Committee, the Commission is satisfied that the core findings made in its 1998 report are justified.

RECONCILIATION

125. During several amnesty hearings, the Amnesty Committee or the applicants' legal representatives facilitated meetings between applicants and the relatives of victims or the victims themselves. This occurred, for example, at the hearings of Mr Daluxolo Luthuli and others where the community of Esikhawini expressed forgiveness. A key precipitating factor for this reconciliation appeared to be the extent to which the applicant was regarded as having made full disclosure and his openness about his motives and lines of command.

126. For example, in Luthuli's amnesty hearing, his legal representative, Advocate A Stewart, said:

The position taken by Mr Luthuli has been one where he accepts moral responsibility for all the activities that the Caprivi trainees were involved in,

even where he didn't know what those activities were, or may not have given orders in relation to them. (Hearing at Pinetown, 8 March 1999.)

127. On the other hand, implicated persons who continued to deny their role in events made reconciliation impossible.

128. At the amnesty hearing of Mr 'Sosha' Mbhele, there were bitter words between the applicant and his former commander, Mr Bheki Mkhize:

MR MKHIZE: *Sosha, what I would like to tell the community is that you were a killer, you were even responsible for killing IFP. I don't know you to have been killing ANC members.*
MR LAX: *Do you want him to answer that? Are you putting that to him as a question, do you want him to respond to your comment? What is your response to that, Mr Mbhele? You see, you mustn't put too much to him, then it's too difficult for him to respond.*
MR MBHELE: *When I came here, I knew exactly what he is going to say, because when you are in such a situation as I am, you are regarded, or you are put to appear as a criminal. I know a lot of other people who are in prison and have been labelled criminals because of what the situation is now. When I was not in prison, when I was working for them, I was regarded as a comrade, but now that I am in prison and I have a sentence of life imprisonment, I am no longer useful to them. You came here and when you ... (indistinct) stood up, I knew what you were going to say, I knew what's your reason for coming in front was. When we are convicted, nobody admits that they know us, nobody admits that they know us, even in the organisation. I know all of this. When a person is in trouble, they're actually regarded as criminals. Even the people you are with now, if they get into trouble, you will deny any knowledge of them, but if you were to go to the IFP office now and inquire about me, they will tell you about me, I am a card carrying member of the IFP. You are a criminal. You have even acquired a shop, because you have forced people to donate money for ammunition allegedly. I have all the information about you. My family is in trouble because of what happened to me, because I am in prison, but you are free, because of you, whatever you have come for here is not true, because you want to appear to be God in front of the community's eyes. (Pietermaritzburg hearing, 18 December 1998.)*

CONCLUSION

129. Despite the relatively few applications from IFP members, the Amnesty Committee found that the evidence they contained was consistent with the trends and patterns revealed in the testimony of victims of human rights violations who appeared before the Commission and in the documentary material made available to the Commission by state officials.

Who I am.

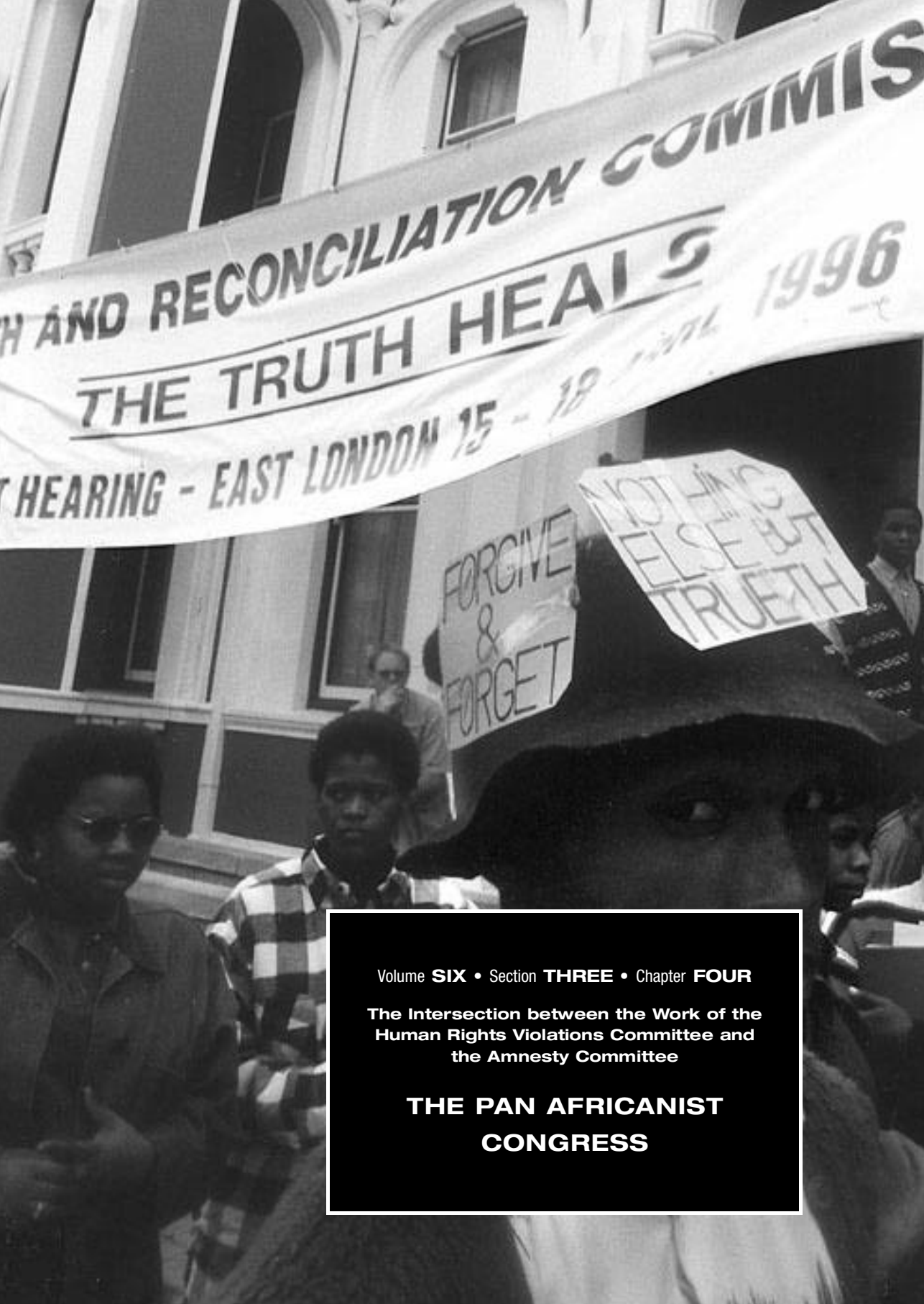
I am the IFP, I am the soldier who I am. I am well trained. I am the son of Goodwill (The King of the Zulus.) Who I am, I am an incredible, you can't find me anywhere, but I am there for protection at iZingolweni. They know me. At Ulundi they saw me. Everywhere they know me, who I am. I am the one who was trained, trained at eMandleni at uMfolozi. (This place where I say I was trained at is not true. It is true that I was trained but not at this mentioned place).

When I am back, I spoke the misunderstood language. They said it is isigagaga, but I simply said ga-ga-ga. The answer was the G3. Who I am, I am the one who is fighting for my land. I am the one who was jailed for the truth. I am the one who was jailed for my friends. I am the one who was jailed for the death of my loving mother. I am the one who was tried to be killed every moment of my life. I am the physician of human life, I am the scientist of human training, I am the biologist of human thoughts. I am the fighter fighting for my eternal life. Who I am. Now you know who I am, for I am here for you my friends. Yes, I am here for my life to surrender. In death, pain I surrender. If I die for my rights, who I am.

My soul will cry no more, for though hearts are free to be stopped, for my eyes are free to be closed, for my feet will walk no more, but if my present is for the struggle of letting my friends in the hands of Buthelezi, who I am. Mothers, fathers, sons, daughters, brothers and sisters, I remember the spirit of Gqozo, who said the blood will heal the broken soul. Who I am. Some call me uklova, for though that is true, I am the son of the free area.

I am the son of liberation. (That is all).

Poem written by Mr Goodman Musawakhe Ngcobo [AM5632/97; AC1999/0339], Nkulu IFP Youth leader, while on death row for the assassination of ten ANC supporters in 1991 (...p375)



Volume **SIX** • Section **THREE** • Chapter **FOUR**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE PAN AFRICANIST CONGRESS

The Pan Africanist Congress

SUMMARY AND ANALYSIS OF AMNESTY APPLICATIONS

■ OVERVIEW

1. The Amnesty Committee received amnesty applications from 134 supporters and members of the Pan Africanist Congress (PAC) and/or African People's Liberation Army (APLA). Six of the applicants claimed to be members of the Pan Africanist Student Organisation (PASO).

2. PAC/ APLA members applied for amnesty for a range of offences. These included violations arising from attacks on the security forces, attacks on white farmers and civilians and armed robberies and sabotage operations. Individuals generally applied for amnesty for several acts. These included the execution of the operation; the possession of arms, ammunition and/or explosives; casualties and injuries arising out of the operation, and violations committed while retreating from the operation (for example during a shoot-out with the police).

3. In all, 138 individual applicants applied for 204 violations. All the applicants were male. Most were aged between 17 and 35 years of age. The youngest applicant was 14 years old at the time of the violation.

4. The Amnesty Committee granted amnesty for 155 out of 204 acts (76 %) committed in the course of eighty separate incidents. It refused amnesty for forty-nine acts (24 %) committed in the course of thirty-three separate incidents.[199]

5. A total of 109 people were killed and 140 people survived attempted killings, many with severe injuries.

199 As early as 1996, the Amnesty Committee decided to deal with incidents rather than individual acts in order to make it possible to deal with groups of applicants who had been involved in the same incident but who may have committed a number of different acts. Thus, when dealing with applications, the Committee decided to focus on specific incidents, each comprising a number of different acts/offences.

6. The violations for which amnesty was sought occurred in all four of the former provinces.[200] However, the PAC operation was more concentrated in the Western Cape and in areas within striking distance of the Transkei, where its operational platform was based during the early 1990s.

7. The majority of the amnesty applications related to violations committed between February 1990 and April 1994 and were submitted by members of APLA. Amnesty applications for violations committed in the earlier period were for offences that were not strictly defined as gross violations of human rights. These included activities such as furthering the aims and membership of a banned organisation, the possession of arms and ammunition and harbouring guerrillas in order to further the armed struggle. For the most part, these applications were dealt with in chambers[201] and were granted by the Amnesty Committee.

8. This chapter will deal mainly with applications in the following categories:

   a Violations committed by the PAC within its own ranks;
   b Armed robberies;
   c Attacks on security forces;
   d Armed ambushes;
   e Attacks on civilians;
   f Attacks on farms;
   g Sabotage;
   h Procurement and possession of arms, explosives and munitions, and
   i Other matters.

9. It should be noted, however, that these are not discrete categories. In some instances, for example, APLA attacks on security forces were motivated by the intention to strip the victims of their firearms and could therefore also be described as armed robberies. Many attacks on farmers and farms were also intended as armed robberies.

200 Transvaal, Cape, Orange Free State and Natal.

201 See this volume, Section One, Chapter Three for more information about chamber matters.

Statistics: Amnesties granted and refused

Category	Granted	Refused
Violations in PAC camps	60%	40%
Armed robberies	59%	41%
Attacks on security forces	93%	7%
Attacks on civilians	100%	0%
Attacks on farmers	70%	30%
Sabotage	100%	0%
Arms possession	100%	0%

FACTORS ENCOURAGING OR IMPEDING APPLICATIONS

10. Many applicants were serving prison sentences at the time that they made their amnesty applications. However, not all had necessarily been convicted of the offences for which they sought amnesty. In other words, they were sometimes serving sentences for offences other than those for which they sought amnesty.

11. At a meeting with the Truth and Reconciliation Commission (the Commission) in January 1998, representatives of the APLA High Command expressed the organisation's reservations about the amnesty process. The meeting ended, however, with an agreement that APLA cadres currently in prison would be encouraged to apply for amnesty. The Amnesty Committee agreed that the PAC should appoint counsel to represent PAC/APLA applicants. It was also agreed that consultations between Amnesty Committee staff and applicants in prison would take place only in the presence of a PAC representative.

12. The quality of legal advice received by members of the liberation forces was a weakness of the process. Many were not aware of the fact that government had set up a fund (administered by the Department of Justice) through which ANC and PAC applicants had access to the same levels of legal assistance as applicants in the employ of the state. The Commission, on the other hand, was able to provide legal aid only through the Legal Aid Board and at a much lower rate. It is probable that a not insignificant number of such applications either lapsed or failed as a result of this.

ANALYSIS OF AMNESTY INFORMATION

Poqo

13. No applications for amnesty were received from members of Poqo for violations committed during the 1960s.

Violations committed by the PAC within its own ranks

PAC camps in exile

14. The Commission received evidence indicating that many gross violations of human rights occurred in the ranks of the PAC in exile, mainly in Tanzania. Despite this, only one application for amnesty was received. Amnesty was granted to Mr Mawethu Lubabalo Ntlabathi [AM5693/97] for assaults on Messrs Matsokoshe and Tebogo in a PAC camp in Tanzania in 1992 and 1993, with the approval of its military attaché, Mr Bafana Yose.

15. The applicant told the Amnesty Committee that the assaults were a means of disciplining the two APLA cadres for their involvement in stealing APLA property, thereby undermining army discipline and the building of an effective army to attack and overthrow the government of South Africa.

16. The Amnesty Committee accepted that military forces have to maintain strict discipline in order to operate successfully and that offences associated with that objective fell within the definition of acts, omissions or offences associated with a political objective [AC/2000/247].

PAC ranks at home

17. The Amnesty Committee received four applications for the killing of three individuals suspected of collaborating with the security police.

18. PAC/APLA member, Mr Mduduzi Cyril Ngema [AM3681/96], was granted amnesty for the killing of Mr Christopher Nhlanhla Myeza on 1 October 1992. Ngema was instructed by a man called Thompson to kill Myeza, a fellow PAC and APLA member. Myeza had been seen in the company of police officer and had allegedly also been overheard promising a police officer that he would report on a PAC meeting. He was therefore believed to be an informer. He was killed in a sugar cane plantation in Verulam outside Durban.

19. The Amnesty Committee accepted the evidence presented that the PAC, like other liberation movements, viewed individuals who worked as police informers as the enemy and thus as targets for elimination (killing). Mr Ngema was granted amnesty on the grounds that the act was committed with a political objective within a particular context and that he had made a full disclosure of all relevant facts [AC/1998/0116].

20. PAC/APLA member Shakespeare Buthelezi [AM1488/96], was granted amnesty for the robbery and attempted killing of Mr Basie Tladi at Twala Section, Katlehong, on 16 March 1993 [AC/1998/0051]. The incident occurred two weeks after an attack on the police in Katlehong in which a police officer, Mr Freddy Mashamaite, had been killed. Buthelezi was implicated in the attack.

21. When Buthelezi heard that the police and Basie Tladi were looking for him, he decided to kill Tladi, whom he believed to be a police informer. Buthelezi testified that his decision to kill Tladi had been based on the 'fifteen points of attention' that constituted the APLA Code of Conduct. He made two attempts to kill Tladi at his house, both of which failed. In the second attempt, he shot Tladi as the latter left his house. When Tladi returned with the police a short while later, there was a shootout. Buthelezi was injured, arrested and eventually convicted of a number of offences.

22. Here again, the Amnesty Committee accepted that the killing or attempted killing of an informer was an act associated with a political objective, taking into consideration the situation in the country at the time of the commission of the offence. The Committee also accepted that Buthelezi was a member of a publicly-known political organisation and that his actions were undertaken on behalf of that organisation. The Committee also accepted that Buthelezi had acted within the scope of his authority or that he had a reasonable belief that he was acting within the scope of his organisation's express or implied authority. Finally, the Committee accepted that Buthelezi had made full disclosure of events and had not acted out of malice or for personal gain.

Armed robberies committed by APLA

23. The Amnesty Committee received applications from thirty-nine APLA members for fifty-nine armed robberies committed between 1990 and 1994. Most of these were committed in 1993. Amnesty was granted for thirty-five (59 %) of these robberies and refused for the remaining twenty-four (41 %).

24. Amnesty applicants claimed that armed robberies were committed on the instructions of the APLA High Command as part of the work of APLA 'repossession units' in order to raise funds and/or obtain weapons and vehicles to enable APLA to carry out its military strategy. These operatives killed twenty-seven civilians and injured sixteen, some seriously.

25. In some of these attacks, large amounts of money were seized, including, in one instance, cash amounting to R500 000.[202] In some instances, personal goods were taken, including vehicles and firearms.

26. In reaching its decisions, the Amnesty Committee grappled to draw a distinction between acts that were genuinely 'political' and those that were purely 'criminal' in nature. Ultimately, it granted amnesty to those applicants who were able to show that the robbery had a political motive and a proven chain of command, and had not been undertaken on grounds of malice or personal gain.

27. On occasion, the Amnesty Committee heard evidence that APLA frequently conscripted criminals to the repossession units because they were 'fearless' and had the 'practical skills' necessary to carry out successful robberies. Such recruits would be given a basic grounding in the political objectives of APLA.

28. In general, the size of the repossession units varied from three to eight persons, though some robberies were carried out by individuals acting alone. Unit commanders would generally divide their men into groups of three. Each group would be allocated its own commander and each would be given a different function to perform. The 'assault group' would penetrate the target building and execute the action; the 'support group' would ensure the safe withdrawal of the first group and the 'cut-out or security group' would be positioned outside the target to prevent any interference with the operation.

29. Amongst the amnesty applications granted were the following:

Attack on Giovanni Francescato

30. Mr Giovanni Francescato, an elderly white male, was attacked at Fort Beaufort in the Eastern Cape on 6 September 1992 when three armed men burst into his

202 Armed robbery carried out by Patrick Thapelo Maseko [AM 5918/97] at the University of the Transkei (UNITRA),Umtata, on 18 February 1993.

home and assaulted him. Mr Francescato was forced to point out where he kept his firearms, his house was ransacked and he was then shot dead with a pistol.

31. PAC/APLA members Sipho Mabhuti Biko [AM 2916/96], Winile Veveza [AM 2918/96] and Mwamadoda Yengeni [AM 0334/96] applied for amnesty for the robbery. Because they had been acquitted by the court on the murder charge, they did not seek amnesty for the killing.

32. The applicants told the Committee that they were carrying out the orders of their local commander, Mr Tamsanqa Duma. The attack was in line with APLA's policy of attacking white homesteads to secure arms for the defence of PAC members. The arms seized were to be used in other APLA operations. Duma was not in direct communication with all the applicants but dealt only with Biko, who issued orders to Yengeni and Veveza.

33. Biko had identified the target before he applied to Duma for clearance, which he then obtained. He knew of the house because his mother, by then deceased, had previously worked as a domestic for Mr Francescato. He had also reconnoitred the house before the attack. Yengeni and Veveza knew of no plans to attack this particular house but knew generally that, in line with APLA policy, white homes were to be attacked to secure weapons. It was only when they were in front of the gate of Francescato's house that Biko instructed them to break into the house and look for weapons. Biko admitted that it was he who had shot Francescato dead.

34. As the group retreated from the scene, Biko searched his two accomplices to ensure that they had not removed anything else from the house against his instructions. He told the Committee:

    As commander of that operation … I was supposed to search my sub-ordinates to ensure that they did not take anything like money. If the order was to take money and firearms, we are supposed to do exactly per order. We are not supposed to take anything. Therefore it was necessary to do that, to make sure that they didn't take anything from the house. (Hearing at East London, 8 October 1998.)

35. After the attack, Biko handed the arms over to Duma. Duma confirmed to the Amnesty Committee that he received the arms that day and the money the following day. He also confirmed having given the order that Mr Francescato be robbed and killed to prevent him from identifying the applicants and testifying against them in

court. Asked why it was necessary to kill Mr Francescato after he had shown them where the firearms were, Duma replied that it was the policy of APLA to attack and kill whites, who were seen at that time as 'enemies of the African people'.

36. The Amnesty Committee took cognisance of the fact that Biko and Veveza had many previous convictions, mainly for housebreaking, theft of motor vehicles and robbery and, even though they were not seeking amnesty for any of these acts, they were both questioned at length about these. The Committee found their explanations 'most unsatisfactory' and described them as 'a mixture of unmitigated lies and self-exoneration'. However, Duma and Mr Bulelani Xuma, former Deputy Director of Operations and Director of Special Operations in APLA, confirmed the versions relevant to their application in this matter.

37. The Amnesty Committee granted amnesty to Mr Sipho Biko, Mr Winile Veveza and Mr Mwamadoda Yengeni [AC/1999/0251], based on its conclusion that the operation was undertaken for political reasons and that the applicants had made the necessary disclosure.

Attack on a vegetable shop in Randfontein

38. On 16 April 1994, a three-person APLA unit attacked a vegetable shop at Station Street, Randfontein near Johannesburg. The object of the operation was to obtain funds for APLA, and the unit stole an amount of R3 000. While they were robbing the shop, they shot and killed the owner, Mr Joao Manuel Jardim. Fleeing the scene afterwards, the attackers shot and injured a bystander, Mr David Oupa Motshaole, probably in an attempt to avoid identification.

39. Mr Jardim had been the victim of an earlier APLA armed robbery, at Elsburg Mine in Westonaria on 16 November 1990. In this earlier incident, three APLA operatives, led by Mr Thapelo Patrick Maseko [AM 5918/97], entered the store and removed a number of items, an unspecified sum of cash and a vehicle. When some of the people in the shop resisted, the unit opened fire, killing one person and injuring Mr Jardim. Mr Maseko was granted amnesty for this incident [AC/1998/0104].

40. The person who gave the order for the 1994 Randfontein attack and to whom the money was handed after the attack (described above) was the same Mr Maseko who had been involved in the earlier Westonaria attack.

41. Mr Maseko testified that he had given the instruction notwithstanding the fact that the first democratic elections were due to take place within a matter of days. He told the Amnesty Committee that the PAC had not yet suspended the armed struggle. On the contrary, he said, the President of the PAC had stated publicly that the PAC would not 'abandon the bullet until the ballot is secured'. He added that certain right-wing movements were still actively pursuing a policy of violence with the intention of disrupting the elections. He also confirmed that it was policy to raise funds for APLA by 'repossessing' money and other valuables from white people, and that no distinction was made between hard and soft targets in this respect.

42. PAC/APLA members Nkopane Diaho-Monaheng [AM3828/96] and Mangalisekile Bhani [AM5708/97] were granted amnesty for the 1994 robbery and killing in Randfontein on the basis that they had made full disclosure of the relevant facts and had acted within the ambit of PAC and APLA policy at that time [AC/1998/0119; AC/2000/065].

Attack on a PEP Store at Botshabelo

43. On 17 February 1992, a three-person APLA unit robbed a Pep Store in Botshabelo near Bloemfontein. Although one of the attackers was armed, no violence was used in the actual robbery. After the operation, the armed APLA member became involved in a shoot-out with the police in which two police officers and the APLA operative died.

44. The Amnesty Committee agreed that the shoot-out should not affect the application, which related only to the robbery, for which the applicants, Mr Moshiuwa Isaiah Khotle [AM5619/97] and Mr Lerato Abel Khotle [AM3443/96], had been gaoled.

45. A significant feature of this case is the fact that the trial court had accepted the political motivation for the incident presented by the accused. This was one of very few cases that came before the Amnesty Committee where applicants had raised a political argument as part of their defence in the course of an earlier criminal trial. This was regarded as significant by the Amnesty Committee, which noted that:

[T]here appears to be no doubt whatsoever that the act was committed during the course of the political struggle of the past, that the objective was to assist

the political organisation of which they were members, that there was no motive of private gain on their part. The money was to be used by the unit, it was to be held by the unit commander. [AC/1998/0046.]

46. Accordingly, Khotle and Khotle were granted amnesty [AC/1998/0046] for their role in the attack

Attack on the Sentra Hyperserve supermarket at Wesselsbron

47. Five people were killed and four were wounded in an armed attack on the Sentra Hyperserve supermarket in Wesselsbron in the Orange Free State on 3 July 1993. Cash and cheques to the approximate value of R9 000 were stolen. The deceased victims were Messrs Michael Andries Sparkhams, George Christiaan Frederick Kleynhans, Herbert Jacobus van Niekerk and Johannes Arnoldus Lourens, and Ms Maria Fatima de Castro. Three people were severely injured in the attack. They were Mr Joao Avelono de Castro, Ms Susana Catharina Viljoen and Mr Hendrik Viljoen.

48. Six members of the PAC, Mr Mangalisekele Bhani [AM5708/97], Mr Silimela Qukubona Ngesi [AM020/97], Mr Lerato Abel Khotle [AM5619/97], Mr Stanley Michael Tshoane [AM5901/97], Mr Moalusi Morrison [AM5953/97] and Mr George Thabang Mazete [AM6630/97] were granted amnesty [AC/2000/250] for the attack. All the applicants were either APLA members or members of a PAC task force.

49. Mr Bhani, who commanded the attack, told the Amnesty Committee that he had received instructions from the APLA Director of Operations, Mr Letlapha Mphahlele, to go to Welkom where he would be received and deployed by the Orange Free State regional commander Lerato Abel Khotle. Khotle took Bhani to Wesselsbron where he was instructed to 'identify a target' for a robbery for the purposes of raising funds for APLA.

50. The Wesselsbron Supermarket was selected because the owner was thought to be a member of the Afrikaner Weerstandsbeweging (AWB), and members of the AWB and members of the South African Police (SAP) were amongst those who normally did their shopping there. Khotle secured approval for the target from the Director of Operations. At the hearing, Mr Bhani was asked how the shoppers were identified as members of the AWB. He replied:

It's easy, because of their khaki uniform and their big hats like the cowboy hats

and they were armed. Some were armed with two firearms. So it was quite easy to identify them. (Hearing at Bloemfontein, 17 August 1988.)

51. Mr Bhani led the attack into the shop and ordered the customers present to raise their hands. He then told the other two operatives to shoot them. Mrs de Castro, one of the owners, was then ordered to open the tills. She opened the three tills and the money was taken. She was then shot dead. The operatives then opened fire on the other customers. None of the victims had resisted the attack. They all obeyed the instruction to raise their arms in surrender but were executed extrajudicially.

52. The survivors of the attack opposed the applications on the grounds that nei ther the robbery nor the shooting was associated with a political objective.

53. Mr Pedro Ignatius de Castro lost his wife, Ms Maria Fatima de Castro, in the attack. He told the Committee that he believed the attackers had come to rob him. He denied any AWB links and denied that he even supported any political party.

54. Despite various contradictions and inconsistencies in the evidence of the applicants, the Committee accepted that the incident occurred during the period referred to as the 'Year of the Great Storm' and that such conduct was indeed party policy at that time. The applicants were granted amnesty.

Robbery at UNITRA

55. Mr Patrick Thapelo Maseko [AM5918/97] and eight others carried out a robbery at the University of Transkei (UNITRA) in Umtata on 18 February 1993. At the time of the robbery, the university was busy with the registration of students. University staff members were counting money when the operatives entered the auditorium.

56. The assault group opened fire on the people in the hall, killing a security guard, Mr Mason Mlindeli Mankumba, and injuring two police officers, Mr Wilberforce Sandla Mkhizwayo and Mr Elliot Michael Pama.

57. Maseko, who was standing outside the hall to prevent any interference with the operation, told the Amnesty Committee that, although he did not see what

happened, the commanders of the other two groups told him that the police had started the shooting. He testified that APLA had a standing rule that, if a target drew a firearm, operatives were to open fire immediately and not wait to be killed.

58. An amount of R500 000 was seized in the attack. Significantly, this huge amount – by far the largest acquired in Mr Maseko's 'repossession' activities – was not delivered to Botswana. Instead, Mr Maseko alleged that he gave it to a Mr Mandla Lenin. However, he produced no evidence to support this assertion, nor were details given as to how the money was used.

59. Despite the fact that UNITRA was a historically-black institution, Mr Maseko explained that it was targeted as 'an enemy institution because it was oppressing the African people'. He was granted amnesty for the operation [AC/2000/106].

APLA attacks on security forces

60. The Amnesty Committee received a total of twenty-eight amnesty applications from twenty-three individual applicants for attacks on security force members. The attacks resulted in twenty-seven deaths, while thirteen victims survived attempts on their lives.

61. The first APLA attacks on security force members were three actions undertaken by the Alexandra township-based 'Scorpion Gang' between December 1986 and February 1987. PAC/APLA members, Mr Themba Jack Phikwane [AM6032/97] and Mr Mandla Michael Yende [AM5648/97], were granted amnesty for the three attacks: the first on 16 December 1986, in which three SADF members died; the second on 1 January 1987, in which at least six SADF members died, and the third a month later, in which at least five SADF members died. At the hearing, precise figures of the number of SADF deaths in the latter two incidents could not be given. The Amnesty Committee was told that six or seven died in the first attack and five or six in the second. The names of the dead victims were not given.

The 'Lichtenburg Battle'

62. In July 1988, Mr Louis Nkululeko Dlova [AM6596/97] injured a member of the SAP with a hand grenade in what became known as the 'Lichtenburg Battle' in the Western Transvaal.

63. Mr Dlova told the Committee that he and other APLA cadres had entered South Africa from Botswana under the command of the late Mr Sipho Mahlangu with a view to seeking, identifying and attacking 'the enemy'. On their way to Johannesburg in a minibus taxi, they were confronted by the police. Dlova and Mahlangu threw hand grenades at the police. Dlova managed to escape in the ensuing confusion, but his commander and two other comrades died. The Committee was of the view that Dlova had acted with a political objective, and he was granted amnesty [AC/1999/0187].

64. All other applications for attacks on members of the security forces pertain to operations carried out in the early 1990s. They took the form of ambushes of police vehicles in Brakpan [AC/2001/067], Heilbron [AC/1999/002], Crossroads [AC/1998/0103], Khayelitsha [AC/1998/0103], Pimville [AC/1998/0053] and Diepkloof [AC/1998/0050]; assaults on police stations in Batho [AC/1997/0064], Dimbaza [AC/1999/0333], Lady Grey [AC/2001/057] and Yeoville [AC/1998/0050]), and an attack on what was assumed to be a police contingent at the Khayelitsha railway station [AC/1998/0103], which turned out to be a group of private security guards. The Committee granted amnesty to all applicants in each case.

Ambush on a police vehicle at Diepkloof

65. On 28 May 1993, APLA member Phila Martin Dolo [AM3485/96] commanded an APLA unit that attacked a police vehicle in Diepkloof near Johannesburg. One police officer, Constable Jacob Hlomela Mabaso, was killed and Sergeant Edward Nelushi was injured.

66. At the time of his application, Dolo was serving a life sentence on several con victions including murder, attempted murder and possession of arms, ammunitions and explosives relating to the attack.

67. Dolo testified before the Committee that the attack was in retaliation for an act of aggression on the part of the security forces who had 'launched a national swoop on the offices of PAC' and arrested various members, including those in national leadership positions. In his affidavit he noted that: 'this act was seen as being provocative and a declaration of hostilities against the PAC … which action had to be responded to'.

68. Dolo testified that he had received an instruction from the Director of Special Operations, Mr Sipho Bulelani Xuma (code-named 'Polite'), to launch operations

against the SAP in his area. He testified that he had been an APLA regional commander with several units under his command and that he had been deployed in the Gauteng area (then Transvaal) in early 1993.

69. The ambush of a police vehicle was planned with Messrs Peter Muchindu, Godfrey Mathebula, Musa (who later turned out to be an informer) and a fifth person. The group used a home-made bomb laced with nails and other explosives.

70. The Committee found that Dolo's actions were all within the ambit of the policies of APLA and PAC and that they were associated with a political objective. He was accordingly granted amnesty [AC/1998/0050].

Yeoville police station attack

71. Mr Dolo [AM3485/96] was also granted amnesty for an attack he ordered on the Yeoville police station on 30 May 1993, two days after the Diepkloof attack. Dolo gave Muchindu and Mathebula explosives and instructed them to carry out the attack. They travelled to Yeoville with fellow unit member Musa, but were intercepted by the police before they could reach their target. SAP member Ian Alexander was injured in an exchange of fire. Muchindu and Mathebula were arrested, convicted for the possession of explosives and sentenced to ten years' imprisonment each. Dolo said he learnt later that Musa had tipped off the police about the intended attack.

Khayelitsha railway station attack

72. In the early hours of 5 December 1992, four APLA operatives, including Mr Andile Shiceka [AM5939/97] and Mr Walter Falibango Thanda [AM5784/97], attacked the Khayelitsha railway station, killing Mr Jan Mbambo and injuring Messrs Cosmos Bhekumuzi, Jackson Mjakiya, Sandisile Ntshica and Sihlanu Mtamzeli, all black employees of the Springbok Security company.

73. The APLA operatives had believed that police officers would be present at the station and that there would be no civilians on the scene at that hour. When the attack began, security company personnel ran into a small room to take cover. The operatives continued firing at them through the closed door.

74. Shiceka had received orders from an APLA commander codenamed 'Power' (aka Mzala or Mandla) 'to carry out operations to attack members of then racist

South African Police, the South African Defence Force and other white people'. He was told that the purpose was 'to take the war to white areas and to steal by force weapons from the police and members of the Defence Force'.

75. Despite the fact that this was a botched operation in that the victims turned out to be neither whites nor members of the police, Shiceka and Thanda were both granted amnesty [AC/1998/0103] for their roles in the attack. The Amnesty Committee accepted that the attack was politically motivated and consistent with the political objectives of the PAC and APLA.

The story of Andile Shiceka

76. Born in Guguletu in Cape Town in 1969, Andile Shiceka joined the PAC and went into exile in 1989. He underwent military training in Tanzania and Uganda and returned to South Africa as an APLA combatant in 1992. He was then deployed to Cape Town by APLA commander 'Power' and given instructions to launch attacks on members of the security forces and white people congregated in 'white' areas. The Claremont restaurant attack (see below) was one such attack.

77. In addition to the Khayelitsha railway station attack, Shiceka was granted amnesty for attacks on the Claremont Steaks Restaurant in Cape Town and the Crazy Beat Disco in Newcastle in Natal. For this latter action, he had been charged, convicted and sentenced to 25 years' imprisonment in May 1994. With respect to the Khayelitsha railway station shooting, Shiceka had been charged with one count of murder and five counts of attempted murder. However, the matter never came to trial.

Attacks on the Cape Flats

78. Towards the end of 1992, three APLA operatives opened fire on a police vehicle travelling on Zola Budd Road in Khayelitsha near Cape Town, injuring one of its occupants. Mr Gcinikhaya Christopher Makoma [AM0164/96] and Mr Walter Falibango Thanda [AM5784/97] were granted amnesty [AC/1998/0103] for the attack.

79. On 8 September 1992, Mr Walter Thanda and two other operatives opened fire on a police officer (Mr Patrick Tutu) and a Spoornet employee (Mr Peter Dyani) who were on foot in the Crossroads area of Cape Town. Both were killed.

Before the operatives could search their victims for firearms, the lights of an oncoming vehicle shone in their direction, causing them to retreat hastily. Thanda only learnt that the victims had died when he returned to the scene the following day. He told the Amnesty Committee that he had reported the attack to 'Power' the following day and 'Power' had said he would claim it as an APLA operation.

80. On 12 January 1993, Thanda, Shiceka and others opened fire on a police vehicle travelling along NY108 in Guguletu, killing one passenger, a Constable Mkwanazi, and injuring the driver, Sergeant Johannes Meyer. Thanda was arrested and charged, but the case was eventually dropped for lack of evidence.

The story of Walter Falibango Thanda

81. Born at Molteno in the Eastern Cape on 29 November 1960, Thanda became a member of the PAC Youth League and APLA in 1990. He told the hearing on the Crazy Beat Disco attack that he was motivated to join APLA because of the conditions under which African people were living.

Nobody dragged me to join APLA. I saw how our brothers were killed by white people together with the police and the soldiers, defending the apartheid system. So therefore nobody pushed me behind to go and join APLA, I personally joined APLA. (Hearing at Pietermaritzburg, 10 October 1998.)

82. Thanda came to Cape Town on the instruction of his commander, 'Mandla' (aka Power, Mzala or Jones). He was instructed to start an APLA base in Cape Town and launched a task force unit in 1991, the purpose of which was to provide military training to members and involve them in APLA operations thereafter.

83. Thanda applied for amnesty for the three above-mentioned attacks on members of the SAP and for the 1994 attack on the Crazy Beat Disco in Newcastle in Natal (see below). In the latter case, he was convicted and sentenced on 26 May 1994 to 25 years' imprisonment. He was granted amnesty for all incidents [AC/1998/0103 and AC/1998/0016].

84. Thanda is currently serving with the South African National Defence Force (SANDF).

The story of Gcinikhaya Makoma

85. Born in Cape Town on 20 January 1976, Gcinikhaya Christopher Makoma was sixteen years-old at the time of his involvement in the Khayelitsha police vehicle

ambush and the St James' Church attack in 1993 (see below). He was granted amnesty in both cases.

86. In December 1992, Mr Walter Thanda invited Makoma to a meeting with 'Africans who were introduced to him as PAC members'. Without giving details, Thanda informed the meeting that they were going to carry out an operation. He distributed two AK47 rifles and two R4 rifles to members of the unit and ordered them to inspect them to ensure that they were functioning properly. Thanda then instructed those present to follow him, which they did. Makoma told the Amnesty Committee that, 'because he (Thanda) was on the command structures of the PAC and a member of APLA, and I was his underling, it was not open to me to question his command.' (Hearing at Cape Town, July 1997.)

87. In the attack on a police vehicle on Zola Budd Road, Khayelitsha, Makoma was ordered to stand at one end of the road and to give a warning signal to the others when the police van approached.

88. Makoma testified to the Amnesty Committee that the instruction he received and carried out in respect of the St James' Church attack (see below) was to steal a motor vehicle for use in an undisclosed operation. On the way to St James' Church, Makoma was handed an R4 rifle and a hand grenade and ordered to accompany his commander, Mr Sichumiso Lester Nonxuba, into the church and to fire indiscriminately at the congregation. Makoma used his full R4 magazine of about thirty-one rounds of ammunition to shoot at the congregation. He testified that he had been trained not to question orders but to obey them at all times, and that the slogan 'one settler, one bullet' meant that 'any white person in South Africa was regarded as a settler and if we came across any settler during our operation, they had to be killed or injured'.

Attacks on civilians

89. The Amnesty Committee received a total of thirty-two amnesty applications for attacks on civilians. Twenty-four people were killed in these attacks and 122 seriously injured.

90. Most of these attacks took place between 1991 and 1994 and formed part of the PAC's 'Operation Great Storm'. In this campaign, the targets of APLA attacks were, on the one hand, white-owned farms in the Orange Free State, the Eastern Cape and areas bordering the Transkei and, on the other, public

places in urban areas identified as being frequented essentially by white civilians and/or white security force members.

91. Several PAC and APLA applicants were adamant that the attacks in which civilians were often killed were not motivated by racism. They testified that they targeted places believed to be frequented by whites because all whites were perceived to be complicit in the government's policy of apartheid.

92. All the amnesty applicants in these matters testified that they had acted on behalf of APLA. At a media conference during the amnesty hearings in Bloemfontein on 28 August 1997, Mr Letlapa Mphahlele, APLA Director of Operations, said that 'there was no regret and no apology offered' for the lives lost during 'Operation Great Storm' in 1993. He acknowledged his involvement in the planning and execution of the operation. He said that his 'proudest moment was seeing whites dying in the killing fields' and that the Commission's Amnesty Committee was a 'farce and a sham', which sought to 'perpetuate white supremacy'.

93. Amongst the operations directed at 'white' civilian targets were:

The King William's Town Golf Club attack

94. APLA operatives armed with hand grenades and automatic rifles attacked the King William's Town Golf Club on the night of 28 November 1992. At the time, the club was hosting an end-of-year dinner function. Four people – Mr Ian MacDonald and Ms Rhoda MacDonald, Ms Gillian Davies and Mr David Davies – were killed in the attack and seventeen others were injured.[203]

95. Four PAC/APLA members, Mr Thembelani Thandekile Xundu [AM3840/96], Mr Malusi Morrison [AM5953/97], Mr Thobela Mlambisa [AM7596/97] and Mr Lungisa Ntintili [AM6539/97], were all granted amnesty for their roles in the attack. Mr Xundu, who is now serving in the SANDF, testified before the Amnesty Committee that Mr Letlapa Mphahlele had sanctioned the operation. The weapons used in the attack were supplied by the Regional Commander based in Umtata, the late Mr Sichumiso Nonxuba. Morrison was instructed to deliver them to Xundu, which he did. The club was targeted because it was believed that security force personnel would attend a function on the night planned for the attack.

203 Volume Two, Chapter Seven, p. 688; Volume Three, Chapter Two, p. 146, and Volume Five, Chapter Four, p. 136.

96. At about 21h50 on the night of the attack, Xundu and Nonxuba entered the dining hall of the club and threw hand grenades and opened fire with R4 and R5 assault rifles. Two other operatives, who had been posted outside the building, threw petrol bombs and opened fire on the building. Mlambisa, the driver, was armed with a 9mm pistol.

97. The group split up the following day. A few days later, Xundu, Ntintili and another operative disposed of the stolen Jetta used in the attack along the Butterworth to Grahamstown road. The vehicle was pushed off the road and was found, burnt out, some time later.

98. The Amnesty Committee granted amnesty to the four operatives, accepting that the aim of attacks of this nature had been to impress on whites the need to abandon their support for the government of the day, and to make it clear that they would continue to be targets of such attacks unless there was political change in the country. Furthermore, the Committee was satisfied that the applicants had acted under the orders of Commander Mphahlele and that the act was committed in the course of the conflicts of the past.

Attack on the Steaks Restaurant in Claremont

99. An APLA unit opened fire on the Steaks Restaurant in Claremont, Cape Town, on 26 December 1992, injuring five people. Mr Malcolm Visser, the owner of the restaurant, was the only victim to be seriously wounded.

100. Amnesty applicant Mr Andile Shiceka [AM 5939/97] told the Committee that he and four others had stolen a Datsun bakkie and driven to the restaurant that night. After surveying the scene and deciding there would be few obstacles to an attack, he and an operative codenamed 'Scorpion' stood at the door of the restaurant and opened fire for about four to five seconds. They then ran back to the bakkie[204] and drove to the home of one of the operatives in Khayelitsha where they abandoned the vehicle. They heard the attack reported on the radio news the following morning. Shiceka testified that he then telephoned 'Power' to report the operation and said that 'Power' told him that he would claim it as an APLA attack under the code name 'Bambata'.

204 A light open truck.

101. Ms Amanda Warner, one of the victims and a waitress at the restaurant at the time of the attack, opposed the application in an affidavit. She stated that, since the attack, she had suffered severe emotional trauma to the extent that she was no longer able to work as a waitress or even enjoy a meal at a restaurant for fear of being attacked. She also stated that she was unable to live alone for fear of being attacked and that she feared that her attackers would hunt her down and kill her. For all these reasons, she had decided to take up residence in the United Kingdom.

102. At the conclusion of the evidence Advocate Warner, appearing for Amanda Warner, addressed the Amnesty Committee. He conceded that the evidence disclosed that the offences committed by the applicants were associated with a political objective and were committed in the course of the conflicts of the past. He conceded too that the applicants held no personal malice or grudge against the victims of the attack and that they were engaged in the liberation of the African people from white oppression.

103. Mr Andile Shiceka was granted amnesty for the attack [AM5939/97 and AC/1998/0103].

Attack on Yellowwoods Hotel, Fort Beaufort

104. APLA members Nkopani Diaho-Monaheng [AM3828/96], Lungisa Mziwonke Ntintili [AM6539/97] and Vuyisile Brian Madasi [AM6077/97] were granted amnesty [AC/2000/225] for an attack on the Yellowwoods Hotel at Fort Beaufort in the Eastern Cape on 20 March 1993, in which Mr John Jerling was shot and died instantly.[205]

105. Mr Madasi, who acted as commander of the operation, told the Amnesty Committee that he had received instructions from a member of the APLA High Command, the late Mr Sichumiso Nonxuba, to go to Fort Beaufort to carry out an attack at the Yellowwoods Hotel, which had been identified as a place frequented by members of the SADF, particularly on weekend evenings.

106. The following Friday, Madasi, one 'Nceba' (who was to drive the getaway vehicle for the attack and was not part of this amnesty application) and Diaho-Monaheng hijacked a red Langley vehicle from an unknown driver in Mdantsane.

205 Volume Two, Chapter Seven, p. 689.

They drove to Alice where they collected weapons. (Ntintili confirmed to the Committee that he had supplied the other applicants with the arms in terms of orders from APLA.) They then drove to Fort Beaufort but found the hotel closed. They returned to Mxhelo Village where they left the weapons and abandoned the hijacked vehicle near Alice.

107. A week later, on 20 March, they hijacked a Nissan Sentra vehicle belonging to Mr Kenneth Mashalaba. Promising not to damage the vehicle, the applicants released Mr Mashalaba and his passenger, Ms Virginia Khatshwa, between Alice and Fort Beaufort.

108. On their arrival at the hotel, Nceba parked the car and he and Madasi positioned themselves at the front door to prevent anybody from escaping. Diaho-Monaheng positioned himself at the window.

109. The applicants then opened fire on the patrons who were drinking and playing darts in the bar. The shooting lasted for about three minutes, after which the applicants retreated. The following day they left for Transkei where Madasi reported to ' Power' and Letlapa Mphahlele, members of the APLA High Command.

110. As it turned out, the hotel was not frequented by SADF members as the applicants had believed. The patrons were youthful civilians with no ties to the security forces. All except Mr Jerling escaped serious injury. At the hearing, the mother of the deceased, Ms Anna Jerling, testified that her son had no interest in politics and was still a student. He was eighteen and had friends across the racial spectrum. When he was killed, the family received condolences and messages of support from members of the local ANC Youth League.

111. Amnesty was granted as the Amnesty Committee was satisfied that the applicants were acting on the instructions of the PAC and APLA and that their actions were in line with the policies and activities of these organisations.

Attack on St James' Church, Kenilworth

112. Eleven people were killed and fifty-eight wounded when APLA operatives opened fire with automatic rifles and threw hand grenades at worshippers in St James' Church, Kenilworth in Cape Town, at approximately 019h30 on 25 July 1993.[206]

206 Volume Two, Chapter Seven, p. 686, and Volume Three, Chapter Five, p.505.

113. Those killed were Mr Guy Javens [CT00620/SOU], Ms Denise Gordon [CT01124/SOU], Ms Marita Ackerman [CT02922/SOU], Mr Richard O'Kill [CT03029/SOU], Ms Myrtle Smith [CT03029/SOU], Mr Gerhard Harker, Mr Wesley Harker, Mr Oleg Karamjin, Mr Andrey Kayl, Mr Valuev Pavel and Mr Valentin Varaska. The last four were Russian sailors.

114. PAC/APLA members Mr Gcinikhaya Makoma [AM0164/96], Mr Bassie Mzukisi Mkhumbuzi [AM6140/97] and Mr Tobela Mlambisi [AM7596/97] applied for amnesty for the attack [AC/1998/018]. Mr Letlapa Mphahlele, who initially applied for amnesty for the same incident, failed to appear at the hearing. On the second day of the hearing, the Amnesty Committee heard via the press that his failure to appear at the hearing was in protest against the Commission's lack of objectivity. Mr Mphahlele's application was accordingly set aside.

115. At the hearing on 9 July 1997, Mr Mkhumbuzi testified that his unit leader, the late Mr Sichumiso Nonxuba, had selected the target because 'whites were using churches to oppress blacks' and whites 'took our country using churches and bibles. We know and we have read from books that they are the ones who have taken the land from us'. The applicants testified before the Amnesty Committee that killing white people would 'put pressure on the white government to return the land to the African people'.

116. The Amnesty Committee heard testimony that Makoma and Mlambisi stole a vehicle on Nonxuba's orders on 25 July 1993. The applicants testified that they had no prior knowledge of the operation until they actually arrived at the church. Although the target was not disclosed, the unit prepared for the attack during the week before it took place. Mkhumbuzi was instructed to travel to the Transkei to procure weapons and ammunition from members of the APLA High Command. He was given two R4 rifles, 365 rounds of R4 ammunition, three M26 hand grenades and R200. He took these in a bag to a house in Khayelitsha and reported this to Nonxuba. The day before the attack he was ordered to prepare four petrol bombs for use in an operation that was to take place the following day. This he duly did.

117. At 18h00 the attackers convened at a taxi rank and drove to the church. Nonxuba still did not reveal any details about the target but simply told the others that Mkhumbuzi would be 'security', Mlambisa the driver, and that Nonxuba and Makoma would enter the target building. Makoma testified as follows:

When we entered the church, Nonxuba led the way and as we entered we were in a passage which led to the main doors. People were walking up and down the passage. We left off the passage for a few seconds and then Nonxuba said we will enter through the main doors. Nonxuba then told me to throw the hand-grenade and to shoot to kill. Nonxuba led the way and we then burst through the doors of the church. Nonxuba first threw his hand grenade (he was on my left hand side) and then I threw mine. As the hand grenades exploded, we took cover behind the doors, re-entered and, while the people inside were screaming, we started to shoot. We shot indiscriminately and I finished my full R4 magazine, some thirty-one rounds of ammunition. We had also heard a shot outside and a car screeching. We went back into the passage to re-load for our later protection. Inside the church one of the churchgoers had also fired at us... (Cape Town hearing, 9 July 1997.

118. When they came out of the building, Mkhumbuzi was supposed to throw the petrol bombs into the church. He did not do so because

I heard a grenade and gunshots and then saw a red car stopping in front of us, apparently to block us. I got out of the car and threw a petrol bomb at the car and Mlambisa got out and shot at the car causing the car to speed away. Then Nonxuba and Makoma came out of the church, jumped into the car and we immediately sped away. (Cape Town hearing, 9 July 1997.)

119. After the attack, Mlambisi drove the operatives to a house in Ottery where he left Nonxuba and Makoma. He and Mkhumbusi then drove to a nearby scrap-yard, left the car there and returned to the house on foot. Later that night, they saw a CNN television report about what had happened in the church.

120. Makoma was arrested on 5 August 1993. He was charged and convicted on eleven charges of murder and fifty-eight charges of attempted murder and sentenced to 237 years' imprisonment. The trial court found that a palm print on the interior surface of the left rear window of the stolen car linked Makoma to the crime. Bloodstains on the print were of the same blood group as Makoma's. DNA tests showed a very high degree of probability that the blood found in the Datsun was his.

121. Mlambisi returned to the Transkei when he heard of Makoma's arrest. He himself was arrested at Tempe, Bloemfontein, on 25 January 1996. Mkhumbuzi, who had also returned to the Transkei, was arrested in February 1996 while already in custody in connection with a charge of armed robbery.

122. Mr Dawie Ackerman, whose wife was killed in the attack, opposed their amnesty applications. There was also opposition from Mr Lorenzo Smith and Mr Dimitri Makogon, who had lost an arm and both legs in the attack. Both Messrs Ackerman and Smith argued that the applicants had not fully disclosed the nature of the facts of their participation in the attack and, further, that the offences were disproportionate to the political objectives of the PAC.

123. They also contended that, because APLA's Director of Information denied at the time that the attack was an APLA operation, it could not have accorded with the political objectives of the PAC. Furthermore, they pointed out that Mr Barney Desai of the PAC had accused the so-called 'third force' of mischievously connecting the attack with the PAC's military wing in order to derail negotiations which were then underway and in which the PAC was a participant.

124. The Amnesty Committee considered these arguments but concluded that many political parties or liberation movements could have decided to deny involvement in this incident because they might have considered it strategically and politically wise and expedient to do so, and that accordingly the statements distancing the organisation from the attack needed to be viewed within the political context that prevailed at the time.

    In our view what is of cardinal importance is the fact that both the PAC and APLA have acknowledged in their submissions to the TRC in 1996 and 1997 respectively that the St James attack was one of the authorised operations carried out by APLA. [AC/1998/0018.]

125. The victims also disputed the legitimacy of APLA's claim that it had directed the attack against a white congregation in a white suburb of Cape Town. According to Mr Ackerman, the congregation was about '35 to 40 per cent people of colour and the others so-called whites' on the night of the attack. However, counsel for the applicants argued that the operatives had assumed that all the churchgoers would be white because St James was in a white group area, but that they had obviously been wrong in their assumption. Mr Arendse, for the applicants, went on to say:

    We will also submit that the acts were performed in the execution of an APLA High Command order; that having regard to the political context at the time, that the offences were directly proportionate to the political objectives sought to be achieved by APLA and lastly, Mr Chairman, that the offences were not committed

for personal gain and were not done out of personal malice, ill-will or spite against any of the deceased or the victims concerned. (Cape Town hearing, 9 July 1997.)

126. Survivors of the attack gave vivid accounts of the sequence of events in the church that evening. They also described the effects of the attack on them as individuals, on their families and on their subsequent ability to function effectively in their work environments and communities. The Amnesty Committee heard of the extreme psychological and emotional consequences of the attack on individuals and on the congregation. Yet all the victims spoke of their ability, deriving from their strong Christian convictions, to forgive the attackers and to move on with their lives. Mr Dawie Ackerman told the Committee:

I went on record after the event to say that I hold no personal grudge: that I do not hate them and I stand by that. I also held out reconciliation to them, and I believe with all my heart because I've experienced reconciliation with God, through Jesus Christ, that it is available to everybody, including to them. And I held that out to them at the time and I still do so now. … It was a release to me to go there and to be where she was killed. And as the time unfolded, and the Truth Commission started up and I heard the testimonies of my fellow Black South Africans, who had been subjected to the treatment that they had. And parents and mothers, brothers asked, telling where is my son, where is my father, and we know now that some of them were buried in a farm somewhere in the Free State, some were thrown in rivers in the Eastern Cape – because I know the value of going back to the place where it happened, I appeal to the agents of the government, whoever they might be, to come forward and to identify what they had done, where they did it, at least give them also the opportunity to grieve where it happened. (Cape Town hearing, 9 July 1997.)

127. Mr Ackerman requested that the Committee allow him to address the applicants directly at the hearing:

May I ask the applicants to turn around and to face me? This is the first opportunity we've had to look each other in the eye and talk. I want to ask Mr Makoma who actually entered the church – my wife was sitting right at the door when we came in, where you came in, she was wearing a long, blue coat; can you remember if you shot her?
MR MAKOMA: *I do remember that I fired some shots, but I couldn't identify, I don't know whom did I shoot or not, but my gun pointed at the people.*

MR ACKERMAN: *It is important for me to know if it is possible, as much as it is important for your people who suffered, to know who killed. I don't know why it is so important for me, but it just is. If you don't remember, I will accept that. I have heard you through your attorney say and into the microphone, apologise and I have also heard your leadership extend an invitation to my church leadership which is still required, I think, to be considered, that they want to come to our church to offer condolences and they said that they would bring you along, whether or not you receive amnesty in a show of reconciliation. I would like to hear from each one of you, as you look me in the face, that you are sorry for what you have done, that you regret it and that you want to be personally reconciled. You can speak in your own language directly to me; you don't have to worry about the microphone.*

MR MAKOMA: *We are sorry for what we have done. It was the situation in South Africa. Although people died during that struggle, we didn't do that out of our own will. It is the situation that we were living under. We are asking from you, please do forgive us. All that we did, we can see the results today.*

MR MLAMBISA: *I am also asking for an apology. As we were working under orders, we didn't know that this will come to such a place. We wanted to be where we are today. We were working under the orders. As the TRC is alive today, we hope that this will come to an end. I hope that you do forgive me, because I ask for forgiveness. Thank you.*

MR MKHUMBUZI: *I also want to say I do apologise to those people who were in the church at that time, while there was that shooting. We also thought that we would meet with the church members, those who were there. Even if we can also go to the church to show that we want reconciliation with them under the circumstances that we were, I also say please forgive me to everybody who is White and Black, who are in this new South Africa. Thank you.*

MR ACKERMAN: *I want you to know that I forgive you unconditionally. I do that because I am a Christian and I can forgive you for the hurt that you have caused me, but I cannot forgive you the sin that you have done. Only God can forgive you for that … (Cape Town hearing, 9 July 1997.)*

128. The Amnesty Committee accepted that the applicants were APLA members. It found no evidence to suggest that Nonxuba did not command the operation; nor that the applicants had themselves selected St James' Church as a target. It accepted that the applicants had carried out the operation on orders from their commanders. The Committee was satisfied that the applicants had complied with all the requirements of section 20(1) of the Promotion of National

Unity and Reconciliation Act, Act 34 of 1995, (the Act), and amnesty was accordingly granted [AC/1998/0024].

Attack on Riverside Lodge, Ladybrand

129. On 16 September 1993, a unit of four APLA operatives threw hand grenades and Molotov cocktails at the Riverside Lodge, outside Ladybrand in the Orange Free State, near South Africa's border with Lesotho. Nobody was injured in the attack.

130. APLA member Nkopane Diaho-Monaheng [AM3828/96] applied for amnesty for the attack. He testified before the Amnesty Committee that, as a regional commander, he was under orders from the Deputy Director of Operations of APLA to 'drive white people from the land because it did not belong to them'.

131. In line with this policy, Diaho-Monaheng identified two farms in Fouriesburg and the Riverside Lodge outside Ladybrand for attack. The Lodge was also chosen as a target because it was believed that it was frequented by members of the security forces on border duty. The applicant also had information that the AWB was having a meeting there. In the event, the meeting APLA believed was going to take place had either finished or did not take place at all.

132. Satisfied that full disclosure had been made and that the applicant had acted within the dictates of PAC and APLA policy at the time, the Amnesty Committee granted Mr Nkopane Diaho-Monaheng amnesty [AC/2001/0102] for the attack.

Heidelberg Tavern attack

133. Three women were killed and six people injured when two APLA operatives opened fire on patrons in the Heidelberg Tavern in Observatory in Cape Town on 31 December 1993. Another person was killed and one injured when the attackers fired on two people outside a neighbouring restaurant as they were making their escape.[207]

134. The three people killed in the tavern were Ms Rolande Palm [CT00415], Ms Lindy-Anne Fourie [CT02703] and Ms Bernadette Langford [CT00415]. Mr Jose 'Joe' Cerqueira was also shot dead and Mr Benjamin Broude was shot and injured when they ran out of a neighbouring restaurant into the street.

207 Volume Three, Chapter Five, p. 507.

135. APLA members Luyanda Gqomfa [AM0949/96], Zola Mabala [AM5931/97] and Vuyisile Madasi [AM6077/97] applied for amnesty for the attack. They had been found guilty in December 1993 on four counts of murder and five counts of attempted murder and sentenced to terms of imprisonment ranging from 24 to 27 years.

136. The applicants argued that they had acted on instructions from the APLA High Command in executing the killings at the Heidelberg Tavern. Gqomfa testified before the Committee that he had received an order to launch the attack from Mr Sichumiso Nonxuba and Mr Letlapa Mphahlele on the grounds that the tavern was frequented by members of the security forces.

137. At the amnesty hearing, Mr Bulelani Sipho Xuma also claimed to have been amongst those who gave the order. He gave evidence before the Committee as follows:

On behalf of the High Command of APLA, in my capacity as the member or members of High Command of APLA, the Deputy Director of Operation and Head of Special Operations, I have nothing to hide, affirm unashamedly with pride that Brian Vuyisile Madasi who happened to be Unit Commander, Humphrey Luyanda Gqomfa and Zola Mabala, in an order group attended by myself and the late comrade Sumiso Nonxuba, were given clear and loud orders to conduct attacks in Cape Town. Suffice to say that the Heidelberg Tavern was attacked as a result of orders given by me in my capacity as APLA's Head of Special Operations. According to intelligence reports prior to the attack, we learnt that the Heidelberg Tavern was a regular relax-in for South African police members. (Cape Town hearing, 28 October 1997.)

138. Gqomfa testified that Nonxuba brought Madasi and Mabala to his house on 13 November 1993. He said that he was the only person to be told what the targets were and that he notified the other members of the unit only on the morning of the attack.

139. The Amnesty Committee described the attack on the Tavern as particularly brutal.

It appears from the evidence and the other information available to us that the tavern was a place largely used by students and other young people, and that those who made use of its facilities were not only members of the white community, that is the people frequently referred to as 'settlers' by APLA members. Of the three young ladies killed, only one was White; the other was Coloured

and the third was an Indian. It is quite clear that they intended to kill as many people as possible. The evidence was that nails had been glued onto one of the grenades to increase the lethal effect of the explosion. After their arrival at the tavern, shots were fired into the tavern using automatic weapons, and a rifle grenade was fired which did not explode. [AC/1998/026.]

140. In an interview with members of the Amnesty Committee, APLA's Director of Operations Mr Letlapa Mphahlele said he accepted responsibility for the attack on the tavern. The fact that APLA took overall responsibility for operations was confirmed in its submission to the Commission:

It should, therefore, not surprise anyone that targets like the St James Church, King Williams Town Golf Club, Heidelberg Tavern etc. were selected. The leadership of the APLA takes full responsibility for all these operations. The APLA forces who carried out these operations followed the directives from their commanders and those directives were from the highest echelons of the military leadership. We do not therefore regret that such operations took place and there is therefore nothing to apologise for.

141. Gqomfa said he did not carry out the operation for personal gain. The aim of the attack was to take back from whites land that had been taken from the African people through violent means. This would be achieved because the government would sit up and take notice of African people's demands in the light of ongoing attacks on white people. He said he was aware that the PAC was involved in the negotiations process at the time; but was also aware that the PAC had resolved at its December 1993 Congress to intensify the armed struggle through APLA. He said that he did not see any contradiction in the PAC (as a political party) negotiating while its armed wing, APLA, was engaged in furthering the armed struggle. He testified under cross-examination:

As APLA soldiers, we are members of PAC, which is the mother body. The political direction which was taken by the country, did not affect me. As soldiers we had to fight the war. Our political leadership did not say that we must stop fighting it; we could not stop fighting then. As soldiers, if an order had not come that we must stop fighting, we could not have stopped. PAC had not reached that decision at that time, that we must stop fighting. We were following orders accordingly. (Hearing at Cape Town, 27 October 1997.)

142. Gqomfa conceded at the hearing that, during their political and military training, APLA soldiers were never briefed on the codes of guerrilla warfare or international

humanitarian law insofar as they related to the killing of civilians. Indeed, former APLA member Brigadier Fischla told the Committee that:

The fact of the matter is that we did not consider any international humanitarian law. At no stage did we in our camps educate our forces about international humanitarian law. The first time I understood what international humanitarian law is, is when I integrated into the South African National Defence Force and that is when I got the meaning of what international humanitarian law is. And what I discovered also when I integrated into the SANDF is that equally the former SADF did not even know what international humanitarian law was. (Cape Town hearing, 27 October 1997.)

143. Gqomfa testified that it made no difference if a given order involved killing soldiers, police or civilians. He said that APLA drew no distinction between so-called 'soft' and 'hard' targets. Asked if, as a commander, he had any discretion to break off an attack once it was realised that the targets could not advance a political objective, Gqomfa testified that he was expected to comply with any order. He was not expected to change orders or to defy them.

144. Relatives of the deceased and survivors of the attack expressed their opposition to the applications for amnesty for reasons similar to those expressed by the victims of the St James' Church attack. Many chose to address the applicants directly at the hearing.

145. Mr Quentin Cornelius was severely injured in the attack, as a result of which he lost his right kidney and up to 60 per cent of his intestines. Today he is a paraplegic and in constant need of both physiotherapy and psychotherapy. He asked the applicants:

The question is – and I am looking at each one, every single one of you now, directly across this table – I want to know from each one of you and your leaders, to explain to us why this was done, if there was any logical reason for what you have done, to launch a senseless terrorist attack on a pub with young, cheerful, innocent students at a time in South Africa's history when we were already on the road to democracy after you had all accepted and taken part in the accepting of an interim constitution on the 3rd of December? Is there any reason, sensible reason, why you had to still continue with something like that? Could you not think for yourself? (Cape Town hearing, 27 October 1997.)

146. Gqomfa replied that he thought that Cornelius had been indoctrinated in a way that led him to refer to them as 'terrorists'. They were not terrorists but freedom fighters. Gqomfa added:

[I]t is the person who is in a position of oppression that feels the oppression. He refers to this as having been senseless: it is because he did not feel the pain that we were under. If he was in my shoes, he would not speak the way he is speaking now. … We had to continue the war until the political leadership, our political leadership, PAC, gave a command that we must stop fighting. Our political leadership had not given the command that we must stop fighting. I think that should be clear, this is why we acted the way we did. We were not subordinated to the ANC or the National Party; we were subordinated to the PAC. This is how I propose to answer the question. (Cape Town hearing, 27 October 1997.)

147. The mother of one of the deceased victims, Mrs Langford, wanted to know if the applicants could remember how they felt about attacking apparently unarmed young people who appeared to be enjoying themselves:

I'm going to ask you another question Mr Madasi. I need to know, I really need to know how you felt when you saw what you had done to human life. I really, really need to know that because, can you remember their faces maybe? Can you remember how shocked they looked? Can you remember when they fell? Can you remember anything about that, when that happened; because I ask you this for the simple reason because, when you got away, you showed much more feeling for the vehicle – that the vehicle shouldn't be damaged – yet you'd just come away from showing no feeling towards life. I need to know how can one go from one kind of a feeling to another in the same instance, the same happening. I need to know how you can cope with that: how did you feel and how do you feel now? (Cape Town hearing, 28 October 1997.)

148. Madasi said that, while he knew that nobody had the right to take another's life, the conditions under which people were living at the time were such that many members of the oppressed had shed their blood. Oppressed people felt the pain of losing a loved one equally.

149. Mrs Clarissa January, the mother of Mr Michael January, who survived the attack, asked why the applicants appeared to show no remorse whatsoever – which would have given the victims some sort of comfort.

You have only spoken of the orders and the killings that you have done. I understand a great deal of your suffering – we have also suffered; but I think it's about time that you must face us and ask us directly for forgiveness. That's all I want to say to you or ask you – if there is an answer. (Cape Town hearing, 28 October 1997.)

150. Mr Madasi replied:

I greet you Madam. I'm glad for this opportunity to meet you and the people that lost so much from this matter. The fact of what you're saying – that we're not showing remorse or empathy – we are human beings, we are also sons to our fathers given birth to by our mothers. I know that a person survives in this world or makes it because of the support of other people. You perhaps look at me and think that I'm not showing remorse. However, our families know us well – I know that people who ...[indistinct] closely with us in connection with this matter. They would tell you how much remorse we are experiencing. If we did not, we would not be here even at this moment. This would show that we do not care about you, you can feel however you feel. To show and to demonstrate that, as the people we are, we feel remorse, we are here to ask for forgiveness. I know that forgiveness is not a small matter, no matter how small the offence. However, if somebody's asking for forgiveness, forgiveness is forgiveness – you must know that if the person is asking you for forgiveness they mean it. If we did not want to show remorse, we would not be here. I don't know whether we've answered – I've answered the question. (Hearing at Cape Town, 28 October 1997.)

151. Mr Roland Lewis Palm lost his twenty-two year old daughter, Ms Rolande Lucielle Palm, in the attack. He told the applicants that the irony of his daughter's death was that she was not a white person:

I say to the PAC and APLA and to the applicants, you killed the wrong person. Rolande was also joined in the struggle against the injustice for the apartheid system particularly in education. You simply ended her life as if she was a worthless piece of rubbish. You say you did so to liberate Azania. I say you did so for your own selfish and criminal purposes. You prevented Rolande from helping rebuild our broken nation which, if you had simply waited another few months, in fact came to pass when we had free elections.

Your commander Brigadier Nene stated that it was difficult to control the forces on the ground due to lack of proper communication and proper political training. These are simply empty excuses that in fact expose APLA for what it was: an

unguided missile, out of the control of the PAC, at loggerheads with each other and unable to accept the political decisions of their political masters.

If proper planning and surveillance had been done, APLA would have discovered the following: (1) the tavern catered for a multiracial clientele; (2) the predominant patrons were young students from the UCT; (3) the Tavern did not cater exclusively for military personnel, nor could be described by any intelligent person as a military target where arms could be obtained; (4) its resident musician was Josh Sithole, a black man who was loved and respected throughout the country by multiracial audiences countrywide and who was entertaining the patrons at the time of the attack; (5) a better 'military target' which fulfilled their criteria was the Woodstock Police station a short distance away.

APLA, as well as the applicants, cannot be truthful when they state that by murdering patrons at the Heidelberg Tavern was a ***bona fide*** *act associated with a political objective. (Cape Town hearing, 31 October 1997.)*

152. Mr Francisco Cerqueira, brother of the deceased restaurateur, Mr José Cerqueira, appeared before the Committee to register his opposition to the amnesty applications on the grounds that he believed the applicants had falsely implicated his brother when they testified that he had opened fire on the getaway vehicle outside his restaurant.

153. The Amnesty Committee viewed the two incidents as part and parcel of the same attack. There was some doubt as to whether Mr Cequeira had fired shots at the attackers as no traces of powder were subsequently found on his hand. The Committee accepted, however, that the applicants were under the impression that they were being attacked when they shot in his direction.

154. The Committee also heard argument from and evidence led by counsel for Commissioner Dumisa Ntsebeza, head of the Truth and Reconciliation Commission's Investigation Unit. Mr Ntsebeza was implicated in the attack when a Mr Bernard Sibaya claimed that the Commissioner's car had been used by APLA members. Sibaya later confessed that he had been blackmailed by the police into naming Ntsebeza.[208]

155. The Amnesty Committee concluded that the three applicants in this matter had complied with the requirements of the Act and demonstrated that they were

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quite clearly acting on behalf of APLA, which was engaged in political struggle against the state at that time. The Committee found that the applicants had not acted for personal gain or out of personal malice, ill will or spite directed against the deceased and the victims. They had no knowledge of the victims and had merely been sent by their organisation to act on its behalf.

156. Mr Luyanda Gqomfa, Mr Zola Mabala and Mr Vuyisile Madasi were granted amnesty for the Heidelberg Tavern attack [AC/1998/026].

The Crazy Beat Disco attack

157. Ms Gerbrecht van Wyk was shot dead and at least two other people were injured when APLA operatives fired shots through an iron grid at the entrance to the Crazy Beat Disco club in Newcastle, Natal, on 14 February 1994.

158. APLA members Walter Falibango Thanda [AM5784/97] and Andile Shiceka [AM5939/97], and PAC member Bongani Golden Malevu [AM0293/97] applied for amnesty for the attack. All three had been convicted on 26 May 1994 on charges arising from their roles in the attack. Thanda and Shiceka had been sentenced to 25 years and Malevu to ten years; both were serving prison terms at the time of their amnesty hearing.

159. In their evidence to the Amnesty Committee, the applicants testified that they had been sent by their commanders in the Transkei to Newcastle to 'identify areas where whites gather'. They said they targeted the disco because it was frequented by white patrons. They had initially targeted a restaurant in the area. However, when they arrived at the restaurant on the night of the attack, they saw a number of black people in the vicinity and decided to attack the discotheque instead.

160. Thanda was the commander of the small unit that planned and carried out the attack. He testified that he reported to his commander 'Power' from time to time in order to keep him up to date with the developments. Asked why he did not question the order, he responded, 'it was not for one to do so; if one had any question to ask, it would only be after the execution of instructions'.

161. In May or June 1993, Mr Malevu received information from a member of the High Command in Transkei that APLA would be taking its struggle to Natal. He was given arms to transport to the Newcastle area. He also helped transport

the other applicants to a point where a vehicle was forcibly taken from its owner for use in the attack. Like his comrades, Malevu testified that white people were targeted because they were regarded as political oppressors. If they attacked white people, the government would take them seriously; white people were the ones who could persuade the government to change.

162. The Amnesty Committee challenged the applicants on the issue of whether race was a factor in the selection of the target:

ADV PRIOR: *I must put to you the question … that the reason for not attacking the restaurant and attacking the disco instead seemed to be a decision which smacked at racism. You weren't prepared to injure anyone other than white people. Could you comment on that? Was that part of your motivation in attacking the discotheque?*
MR SHICEKA: *Mr Chairman, APLA is not a racist organisation. I think you are aware that whites were oppressing us; that was the race that was oppressing us. We didn't attack white people because we hated white people; we don't hate white people. Even the documents of the PAC clearly state that those who are accepting a democratic goal in Africa should be recognised as Africans. We didn't attack the Crazy Disco because we are racist. Right from the foundation of the organisation we are not a racist organisation. However, the situation in which we had to live created a conflict between a white person and a black person: it's not that we are racist. (Pietermaritzburg hearing, 9–11 February 1998.)*

163. In his defence, Mr Shiceka argued that, although he regretted the attack, he did not regard the operation as a success, as only one person was killed. He said that whites were the only oppressors and that this is why they were targeted. For this reason, he denied that his action smacked of racism.

164. In argument, counsel for the applicants offered three reasons why the Committee should not find that the attack had been a purely racist act:

MR ARENDSE: *Firstly, the applicants, on the uncontested evidence were foot soldiers carrying out orders; that is not disputed. They were not part of the APLA hierarchy or High Command which, it is well established, made the policy decisions and decided on matters of strategy. For the same reason that Brian Mitchell or Coetzee or any other ex-South African Defence Force soldier wasn't part of the inner ...[indistinct] of Botha's cabinet making decisions to pursue cross-border raids, etc.*

Secondly, the struggle for liberation in this country inevitably had to have a racial dimension and the reason for that is quite simple and very glaring; and we don't need evidence for that because the applicants lived through it. Black people in this country lived through it who were born here. They were governed by whites; they were controlled by whites;, they were suppressed by whites, and the overwhelming majority of the white electorate voted in the same government repeatedly by, in fact, increased majorities as we moved towards the April 1994 election.

So that was an inevitable part of the history of this country. Now it's very important that our Parliament, a democratic elected Parliament, recognised this by making the cut-off date the 10th of May 1997. It recognised, the law makers recognised, that we were engaged in a racial struggle up to that point. And the 14th of February falls within that cut-off date.

Then just thirdly, again on a parity of – because this is what this Committee must do, this is what the Commission as a whole must do is to be even-handed and to treat people in the same fashion. The apartheid government targeted overwhelmingly black people. Coetzee was told to get rid of Griffiths Mxenge and he did so very effectively. Griffiths Mxenge was a well-known human rights activist but he was a black civilian. Brian Mitchell committed the Trust Feeds murder where he killed innocent black young men, woman and children; he slaughtered them. Those were civilians and both of them got amnesty. (Hearing at Pietermaritzburg, 9–11 February 1998.)

165. The applicants expressed their remorse at the hearing and their desire to meet the family of the victim and ask for their forgiveness. They said that they wished to explain to the family that the act was carried out on instructions and that, as soldiers, they had no option but to obey them. The victim's mother declined to attend the proceedings, preferring instead to leave the decision in the hands of the Amnesty Committee.

166. The Amnesty Committee deliberated about whether or not this was an APLA operation. It noted that two of the applicants did not live in Natal and that they had not known one another at all until they met for the purpose of carrying out the operation. This gave credence to their story that they were brought together by their military commander 'Power', who was known to all of them. The victims of the attack were also not known to them and they derived no personal benefit from the attack. In considering why strangers should come together and trust each other in order to plan such an operation, the Committee reached the inescapable

conclusion that the operation must have been ordered and co-ordinated by APLA. The Amnesty Committee also noted that, at a meeting in Umtata before the incident (the meeting at which Malevu was given the weapons used), the PAC had passed a resolution not to suspend the armed struggle. Despite this, it accepted that APLA was autonomous in military matters.

167. Mr Walter Falibango Thanda, Mr Bongani Golden Malevu and Mr Andile Shiceka [AM5939/97] were granted amnesty for the attack [AC/1998/0016].

The killing of Amy Biehl

168. In April 1994, PASO members Mongezi Christopher Manqina [AM0669/96], Vusumzi Samuel Ntamo [AM4734/97] and Mzikhona Easy Nofemela [AM5282/97] were convicted of killing American Fulbright scholar Amy Elizabeth Biehl in Guguletu, Cape Town, on 25 August 1993. They were each sentenced to 18 years' imprisonment. Subsequently, in June 1995, Mr Ntobeko Ambrose Peni [AM5188/97] was also convicted of the offence and sentenced to 18 years' imprisonment.[209]

169. The four applied for amnesty. The Amnesty Committee heard that, on the afternoon of her death, Amy Biehl was giving three colleagues a lift in her car with a view to dropping some of them off in Guguletu, when her vehicle came under attack by people running towards it and throwing stones. The stones smashed the windscreen and windows of the car. One of the stones hit Ms Biehl on her head, causing her to bleed profusely. She could not continue driving and climbed out of her car and ran towards a garage across the road. Her attackers did not relent, but pursued her, still throwing stones. Manqina tripped her, causing her to fall. By now she was surrounded by between seven and ten people who stoned and stabbed her. She died as a result of her injuries.

170. The Amnesty Committee heard that the four applicants were amongst those involved in the attack. Peni admitted to having thrown stones at Ms Biehl from about three to four metres away. Manqina stabbed her with a knife and threw stones at her. Nofemela threw stones at her and stabbed her three or four times. Ntamo threw many stones at her head from a distance of only a metre away. They stopped attacking her only when the police arrived at the scene.

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171. The attack on the car driven by Amy Biehl was one of many incidents in the area that afternoon. Bands of *toyi-toying*[210] youths had been throwing stones at delivery vehicles and cars driven by white people. A delivery vehicle had been pushed over and set alight. Only the arrival of the police prevented further damage.

172. The applicants explained their behaviour in the following way. They testified that earlier that day they had attended a meeting at the Langa High School, where a PASO unit had been re-launched. Peni had been elected chairperson at the meeting. Manqina was vice-chairperson of the PASO unit at the Gugulethu Comprehensive School and Nofemela was a PASO organiser at the Joe Slovo High School. The meeting was addressed by Mr Simpiwe Mfengu, the Regional Secretary of PASO; Mr Wanda Madubula, the Regional Chairperson of PASO, and many other speakers. The applicants told the Committee that speakers dealt with various issues: the strike by teachers in the Western Cape who were demanding recognition for the South African Democratic Teachers Union (SADTU); the struggles of APLA for the return of the land to the African people, and the fact that APLA had declared 1993 as the 'Year of the Great Storm'. Reference was also made to the launching of 'Operation Barcelona', aimed at stopping all deliveries into the townships.

173. The speakers urged PASO members to take an active part in the struggle of APLA by assisting APLA operators on the ground to make the country ungovernable. The speeches were militant and punctuated by frequent chanting of the slogan 'one settler, one bullet'.

174. The applicants testified that they were so inspired by the speakers that they left the meeting in a militant mood. They marched through the township toyi-toying and chanting slogans, determined to put into effect what they had been urged to do. This, they testified, is how they became involved in the killing of Amy Biehl.

175. Referring to this incident in its testimony to the Amnesty Committee, the PAC stated:

On the Amy Biehl issue, we wish to state that PASO was not a part of APLA. They are a component part of the PAC not involved in armed struggle. This act occurred in the context of a strike for recognition by South African Democratic Teachers Union (SADTU) in the Western Cape. To support the strike, 'Operation Barcelona' was launched to stop deliveries from towns into the townships.

210 The toyi-toyi is a revolutionary dance.

Although the PAC was not involved, PASO acted in solidarity with their teachers and with COSAS. They wrongly targeted and killed Amy Biehl. We expressed our regret and condolences to Amy Biehl's family in a letter to the United States Ambassador. We restate this position yet again through the TRC. But misguided as the deed was, we support the amnesty applications of all those convicted and sentenced for the offence.

176. The applicants testified that, although they did not act on the orders or instructions of APLA or the PAC that day, they believed they owed loyalty to the same cause. Nofemela and Peni had attended lectures by APLA operators on political matters and had received elementary lessons on the handling of arms and ammunition. As members of PASO, they were active supporters of the PAC and subscribed to its political philosophy and policies. By stoning company delivery vehicles and making it difficult for them to make deliveries in the townships, they were taking part in a political disturbance and contributing towards making their area ungovernable. Thus their activities were aimed at supporting the liberation struggle against the state.

177. The Amnesty Committee carefully considered why it was that Ms Amy Biehl, a private civilian, was killed during this disturbance. It concluded that part of the answer could be found in the fact that her attackers were so aroused and incited that they lost control of themselves and became caught up in a frenzy of violence. While giving his evidence, one of the applicants said that they all subscribed to the slogan 'one settler, one bullet'. This meant that they believed that every white person was an enemy of the black people, and saw Amy Biehl as a representative of the white community. They believed that by killing civilian whites, APLA was sending a serious political message to the government of the day. By intensifying their activities, they believed that they would eventually increase political pressure on the government to such an extent that it would be compelled to hand over political power to the majority of the people of South Africa.

178. Viewing the conduct of the applicants in this light, the Amnesty Committee accepted that the crime committed by Amy Biehl's killers was related to a political objective. The Committee accepted that the applicants had made full disclosure of all the relevant facts as required by section 20(1) of the Act. Amnesty was therefore granted to the four applicants.

179. The Amy Biehl incident provided the Commission with an extraordinary example of reconciliation. Members of the Biehl family who attended the hearing did not oppose the application.

180. The applicants expressed regret for their actions. In his application for amnesty, Peni said:

I feel sorry and very downhearted especially today, realising the contribution Amy Biehl played in the struggle ... I took part in killing someone that we could have used to achieve our own aims. Amy was one of the people who could have, in an international sense, worked for our country so that the world knows what's going on in South Africa, so that the government of the day would get support. I ask Amy's parents, Amy's friends and relatives, I ask them to forgive me. (Hearing at Cape Town, 8 July 1997.)

181. At the conclusion of the evidence, Mr Peter Biehl addressed the Amnesty Committee. A part of his statement follows:

We have the highest respect for your Truth and Reconciliation Commission and process. We recognise that, if this process had not been a pre-negotiated condition, your democratic free elections could not possibly have occurred. Therefore, and believing as Amy did in the absolute importance of those democratic elections occurring, we unabashedly support the process which we recognise to be unprecedented in contemporary human history.

At the same time we say to you, it's your process, not ours. We cannot, therefore, oppose amnesty if it is granted on the merits. In the truest sense it is for the community of South Africa to forgive its own and this has its basis in traditions of ubuntu and other principles of human dignity. Amnesty is not clearly for Linda and Peter Biehl to grant.

You face a challenging and extraordinarily difficult decision. How do you value a committed life? What value do you place on Amy and her legacy in South Africa? How do you exercise responsibility to the community in granting forgiveness, in the granting of amnesty? How are we preparing prisoners, such as these young men before us, to re-enter the community as a benefit to the community, acknowledging that the vast majority of South Africa's prisoners are under 30 years of age – acknowledging as we do that there's massive unemployment in the marginalised community; acknowledging that the recidivism rate is roughly 95 per cent? So how do we, as friends, link arms and do something? There are clear needs for prisoner rehabilitation in our country as well as here. There are clear needs for literacy training and education, and there are clear needs for the development of targeted job skill training. We, as the Amy Biehl Foundation, are willing to do our part as catalysts for social progress. All anyone need do is ask.

Are you, the community of South Africa, prepared to do your part? (Cape Town hearing, 9 July 1997.)

Armed ambushes

182. Other attacks on civilians took the form of armed ambushes on vehicles. These attacks, ascribed to APLA, became the subject of bitter dispute between the Transkei and South African governments, with South Africa accusing Transkei of harbouring APLA members and providing them with weapons and training. The Commission received no statements or amnesty applications in connection with such training or provision of weaponry.

Attack on a Translux bus, Beaufort West

183. APLA member Mr Thembinkosi Henge [AM6137/97] applied for amnesty for an armed attack on a Translux bus at or near the Gamka River Bridge in Beaufort West on 27 August 1993. Eight people were injured in the attack.

184. Mr Henge testified that he received orders from his commander, the late Mr Sichumiso Nonxuba, to attack a Translux bus that passed through Beaufort West on its way to Johannesburg. Two buses apparently travelled that route, and the applicant had to decide which of them to attack. He eventually chose the midnight bus as it entailed a lower probability of detection and offered a better opportunity for retreat.

185. The applicant was ordered to collect firearms and ammunition from the Ngangelizwe location in Umtata. He collected two R4 rifles and five loaded magazines and returned to Beaufort West. After approximately two weeks, he was informed that a certain 'Mandla' (an alias) would be sent from Umtata to assist in the operation. When Mandla arrived, Henge showed him the layout of the area and briefed him about the plan for the attack.

186. The next day, 27 August 1993, Mandla and Henge fired a magazine at the bus. In total, approximately fifty shots were fired. Although they had intended shooting the driver so that the bus would crash off the bridge and into the river below, they missed him altogether, even though they fired at the front of the bus. Eight people were injured in the attack and all the occupants of the bus were traumatised and shocked by the incident.

187. Under cross-examination, the applicant conceded that he had previously been a supporter of the ANC, having become politicised at the age of ten. He said he had decided to join the PAC because he preferred its policies and was not

happy with the progress of national negotiations. He expressed his regret at what had happened.

188. In reaching its decision, the Amnesty Committee noted that the attack took place when most political parties were engaged in negotiations, but that the PAC had not yet abandoned the armed struggle. The applicant was a member of APLA and had received an order to attack the bus. The arms and ammunition used in the attack were supplied by APLA and the orders came from Mr Nonxuba, who was at that time a member of APLA's High Command.

189. The applicant felt obliged to carry out the order, which he believed would speed up the negotiation process and make whites understand that the PAC was serious about its position. His actions were, therefore, found to be associated with a political objective as defined by the Act, and the application was granted [AC/2000/167].

Ambush of a vehicle near Zastron

190. Mr Luyanda Humphrey Gqomfa [AM0949/96] applied for amnesty for the ambush of a vehicle travelling from Zastron to Sterkspruit in the Orange Free State on 18 March 1992.

191. The victims lived in Zastron and travelled daily to Sterkspruit, where they were running a furniture business. Mr Fanie Smith was shot dead in the attack while he lay injured next to the car. Mr Deon Martins was seriously injured in the left hand and his finger was subsequently amputated. Mr Ben Maliehe and Mr Andrew Lategan Franzsen escaped the ambush unhurt and were able to flee from the scene.

192. Though APLA commander Mr Letlapa Mphahlele was listed as a co-applicant, it became clear during the hearing that he had no intention of participating in the proceedings. His counsel Mr Lungelo Mbandazayo made a number of attempts to secure his co-operation and attendance, but to no avail. As a result, his application lapsed.

193. Mr Gqomfa testified that, as a member of APLA, he had received military training in exile and then returned to the country, where he carried out various operations on behalf of the organisation. He received orders in respect of all these operations

from the High Command of APLA, most often from Mr Mphahlele, who was APLA's Director of Operations at the time.

194. At the time of the incident, Gqomfa was being harboured at a house in Sterkspruit, secured for him by Mphahlele. Whilst he was there, Mphahlele and another APLA member, Ben Wakumzi (an alias), took him to a meeting with a group of APLA operatives.

195. Mphahlele ordered them to attack white travellers along the Mayaputhi road near the Sterkspruit bridge. In order to acquire a vehicle, Gqomfa and two other operatives went to Ndofela Village where they robbed Mr Nkopane Johannes Lesia of his Isuzu 2200 Diesel Bakkie.

196. Lesia reported the incident to the police and later received a report that his vehicle had been found. He told the police that, on the afternoon of 18 March 1992, he was on his way from Palmietfontein (where he lived) to Ditapoleng village. As he drove past Ndofela village, he saw three black men standing next to a small bridge. They were all armed and fired shots to force him stop. They told him that they were freedom fighters and needed his car 'for the struggle' and gave him R20 so he could travel to work.

197. After robbing Lesia of his vehicle, Gqomfa and his comrades proceeded to the Mayaputhi road near Sterkspruit bridge. Here they found that Mphahlele was in charge of the operation. When Smith and the other victims approached, Mphahlele opened fire. The others followed suit. The vehicle stopped immediately and Martins, Maliehe and Franzsen alighted and fled the scene. Smith was injured and fell to the ground next to the vehicle, unable to flee. Mphahlele ordered Gqomfa to shoot Smith, which he did.

198. At the hearing, Gqomfa expressed his regrets at the shooting but said that he had had no choice as he was carrying out orders.

199. The Amnesty Committee found that Gqomfa was a member of the PAC and APLA and that he had acted in terms of these organisations' policies and objectives. The Committee accepted that APLA was still engaged in the armed struggle at the time and that it regarded all whites as supporters of the government. The Committee found that Gqomfa had acted under the orders of Mphahlele, that the offences and acts applied for were acts associated with a political objective and that the applicant had made full disclosure of all relevant facts. He was granted amnesty [AM0949/96].

Eikenhof attack

200. Mr Phila Martin Dolo [AM3485/97] applied for amnesty for the killing of Ms Zandra Mitchley, her son Shaun and Claire Silberbauer, as well as the attempted killing of Mr Norman Mitchley and Craig Lamprecht. The victims were shot while driving in their vehicle in the Eikenhof area of Johannesburg on 19 March 1993. Three ANC members were arrested and later convicted of the attack, for which two were sentenced to death and the third was given a long term of imprisonment.

201. However, in 1997, Mr Dolo asserted in his amnesty application that the attack had been an APLA operation, conducted by four APLA operatives known only by their codenames. Mr Dolo had given the orders for the attack, originally aimed at a school bus carrying what he termed 'settler school children'. The four attackers were unable to carry out the attack and instead opened fire on the Mitchley's vehicle. The sentenced ANC members were released from prison in November 1999. Mr Dolo was granted amnesty [AC/2000/147].

Attacks on farms

202. The Committee received a total of twenty-seven applications from PAC and APLA members for attacks on farms, all committed between 1990 and 1993. A total of twelve people were killed and thirteen injured in these attacks. The Amnesty Committee granted all but four of the applications.

Attack on Mr RJ Fourie on the farm 'Stormberg'

203. PAC/APLA members Hendrik Leeuw, Daniel Magoda, Meshack May and Sebolai Petrus Nkgwedi applied for amnesty for the robbery and killing of Mr Roelof Johannes Fourie on the farm 'Stormberg' in the district of Verkeerdevlei, Orange Free State, on 12 February 1992.[211]

204. The Committee heard testimony that, during 1991, the PAC and APLA launched their 'Operation Great Storm', in terms of which APLA operatives were instructed to attack and to instil fear in farmers. The applicants testified that the purpose was to drive the white farming community from their farms in order 'to get the land back'. During November 1991, APLA Commander Jan Shoba (now

211 Volume Three, Chapter Four, p. 380.

deceased) instructed the applicants to carry out attacks on farmers in the vicinity of Botshabelo, Tweespruit and Verkeerdevlei. He supplied them with a .38 special revolver for this purpose.

205. The farm of Mr RJJ Fourie was identified as a target by Mr Leeuw and Mr Nkgwedi: Mr Nkgwedi had grown up on the farm. The four applicants went onto the farm property and observed Mr Fourie and his companion leaving, apparently on their way to town. They also noticed that Mr Fourie had left the gate open. The applicants closed the gate so that, on his return, Mr Fourie would be obliged to stop and open it. They then positioned themselves in the bushes adjacent to the gate and waited for the couple to return. When Mr Fourie stopped to open the gate as anticipated, one of the applicants shot him in the back of his head. His companion, Mrs May, remained in the car, which the attackers then drove to the farmhouse.

206. The applicants searched the house and stole two firearms, money, watches, a camera and numerous personal belongings. After tying up Mrs May and disconnecting the telephone and radio, they drove off in the deceased's car.

207. The Amnesty Committee received a submission from Mrs Margot Penstone, who stated that the deceased was not involved in party politics and was a progressive farmer who had assisted his farm workers to improve their stock, housed them in brick houses with running hot and cold water, built a school for their children on the farm and provided them with a soccer field. She added that she believed the murder to have been a purely criminal act. In this, she was supported by Mrs May, who stated in an affidavit that the applicants had repeatedly asked her where the money was kept and said that they were only interested in valuable articles. Mrs May and Mrs Penstone did not give evidence before the Committee, so the applicants' counsel did not have the opportunity to cross-examine them on these claims.

208. The applicants testified that they were instructed to take the property and hand it over to their commander, Mr Jan Shoba, who would sell it in order to obtain money for their struggle. They had also intended to hand the vehicle to him. However, they testified that they were arrested two days after the robbery and before they had had the opportunity to hand the property over. The applicants were all convicted and sentenced to terms of between nine and fifteen years' imprisonment.

209. In making its decision, the Amnesty Committee first considered Mr Nkgwedi's involvement in the attack and whether, having grown up on the farm, he might have been motivated by ill-will or personal malice. In reaching a decision on this issue, the Committee concluded that an act that was, or may have been, motivated by a personal grievance could, nonetheless, qualify for amnesty where there was also a strong political motive. Therefore, although there was some evidence of a personal motive in Nkgwedi's case, the fact that the applicant would have killed any white person in furtherance of official APLA policy meant that the political motive for the attack outweighed the personal.

210. The Amnesty Committee further accepted that, in both their submissions and oral evidence to the Commission, the PAC and APLA had stated that 'Operation Great Storm' involved the killing of farmers and the stealing of weapons. It also noted that, while the PAC had stated that it was opposed to armed robbery, it had also referred to 'repossession' and to the existence of 'repossession units'. The Committee felt that it was by no means clear about the distinction between 'robbery' and 'repossession', save that in the case of repossession the proceeds would be handed over to the Commander to be used to further APLA's goals.

    No distinction was drawn between what might have been property for military use and property taken for personal gain. The Committee is therefore faced with the dilemma that the act does not authorise us to grant amnesty in respect of a portion of a sentence. Having found that the murder of Mr Fourie and the robbery of the firearms were offences associated with a political objective, the Committee is obliged to grant amnesty in respect thereof. No provision is made in the Act for dealing with offences which have elements of criminality as well as political motivation in it. [AC/1999/297.]

211. Amnesty was granted to Messrs Hendrik Leeuw, Daniel Magoda, Meshack May and Sebolai Petrus Nkgwedi [AC/1999/0297].

The killing of Mr John Bernard Smith

212. Mr Jacob T Mabitsa [AM5178/97], Mr Petrus T Mohapi [AM1167/97], Mr Thabo Paulus Mtjikelo [AM1249/96], Mr Simon T Olifant [AM5177/97], Mr John Wa-Nthoba [AM2997/96] and Mr John Xhiba [AM1215/96] applied for amnesty for the killing of Mr John Bernard Smith on 25 July 1993 on his farm at Wesselsdal in the district of Vanstadensrus in the Eastern Cape.

213. The applicants also stole a motor vehicle, three firearms, various pieces of equipment and clothing, two bottles of liquor and a sum of cash. Mohapi, Oliphant and Mtjikelo were convicted of murder and robbery and sentenced to an effective 25 years' imprisonment. The other applicants were convicted only on the charge of robbery with aggravating circumstances and were each sentenced to 12 years' imprisonment.

214. The applicants testified that they left Botshabelo for Wesselsdal on the 23 July 1993 with the intention of carrying out the attack. They called this off because of the presence of visitors on the farm. On 25 July, Mjikelo, Mohapi, Oliphant and Xhiba went back to the farm and approached Mrs Smith with a request for petrol, saying that their car had run out of fuel. Mrs Smith called her husband who said he would help them to syphon some petrol from his car. Mr Smith gave Xhiba his storeroom key and asked him to fetch a container and a pipe.

215. The other three applicants accompanied Smith to the garage and, while he was syphoning petrol from the car, Mohapi stabbed him in the back. Mr Smith fell to the ground and Oliphant stabbed him in the chest and other parts of his body, ultimately inflicting approximately nine wounds. The attackers then searched the house, seizing three guns and a small amount of cash. They tied Mrs Smith up and locked her in a wardrobe. They then took possession of the Smiths' Mercedes Benz for use in future operations.

216. Oliphant confirmed the evidence and testified that it was the objective of the PAC to wage the struggle for the return of land to the African people, which was why he was involved in that operation. When it was pointed out to Oliphant that the attack took place while negotiations were underway at Codesa (Convention for a Democratic South Africa) in which the PAC was a participant, Oliphant stated that the PAC had not suspended the armed struggle and that, while the negotiations continued, operations were conducted in order to put pressure on the government to give in to the demands of the liberation movements.

217. The applicants called Mr Lerato Abel Kotle, the regional commander of APLA in Bloemfontein, to give evidence about 'Operation Great Storm'. Khotle explained that 'Operation Storm' was intended as a means of intensifying the armed struggle and was decided upon by APLA's military commission, which included the political leadership of the PAC and the military leadership of APLA. He described the attacks on farmers as one of the phases of the campaign. The PAC believed that the farming community had participated in the dispossession of the African people and that farmers were beneficiaries of the land taken away from the Africans.

218. The Amnesty Committee accepted the contention that the applicants had committed the offences believing they were advancing the struggle being waged by their political organisation with the aim of returning the land to the African people. The offences committed were, therefore, acts associated with a political objective. The possession of the pistol and knives used for carrying out the operation was also associated with a political objective. Amnesty was granted to the applicants [AC/1998/0020].

Various attacks in Ficksburg

219. Mr Phila Martin Dolo [AM3485/96], Mr Lerato Abel Khotle [AM5619/97] and Mr Luvuyo Kenneth Kulman [AM1638/96] applied for amnesty for several attacks on homes in Ficksburg in the Orange Free State on 10 December 1992. The acts were committed with other persons, known only by their code-names: 'Roger', 'Scorpion', 'Jabu', 'Nduna' and 'Kenny'.

220. The Committee heard that Phila Dolo was in charge of the APLA base in Lesotho, that Lerato Khotle was in charge of the APLA base at Sterkspruit, and that the two liaised closely to plan attacks in the area between.

221. Dolo testified that certain houses in Ficksburg on the Lesotho border were regarded as belonging to members of the security forces. These he described as 'in the first line of defence' and 'acting as the garrisons of the then apartheid state'. They therefore qualified as suitable targets for attack. Khotle told the Committee that he attempted to confirm this information:

I … reconnoitred the place and I also interacted with the people who were working there, domestic workers, and I engaged with them in discussions to get information from them as to whether those places were occupied by the members

of the regime. That is how I ended up making a decision that we have to attack this place, because they were occupied by the security personnel. Those were the reasons why I needed his [Dolo's] help and he agreed and he came to my side to give us help. (Hearing at Bloemfontein, August 1998.)

222. The operatives travelled on foot from Lesotho, Dolo carrying a bag of rifle grenades, M26 grenades and Molotovs. At Ficksburg they divided into two units. The first, commanded by Dolo, attacked a house at No. 143 Veld Street, Ficksburg. The second, commanded by Khotle, targeted an old age home but was foiled in the attack. They then conducted random attacks on various homes in Ficksburg.

223. The house of Mrs Cornelia Gertruda Pienaar (then Roos) was severely damaged in the Veld Street attack. Mrs Pienaar was at home with her two daughters, aged five and twelve years, when the attack occurred. She testified that her house was not owned by the police but belonged to her and her husband who had died only a week earlier. Before his death, he had performed light duties in the police mortuary. He had at one time been a member of the South African Police and had become unfit for ordinary police duties as a result of an accident.

224. The attack began after she and the children had gone to bed. The attackers threw a grenade into the children's bedroom and started shooting at the house. Mrs Pienaar and her children managed to escape through the back door and crept through the fence into the neighbour's yard.

225. Dolo told the Committee that the attack had been motivated by a recent statement by the Minister of Defence that there would be no more farm attacks in the area. The applicants had carried out the operation 'to show the enemy what we can do. We can continue with the armed struggle; nothing will stop us.' He said it was 'unfortunate' that they had ended up attacking a house that was not occupied by the police. All whites, however, were regarded as supporters of the government, with whom APLA was still locked in armed struggle because the oppression of blacks had not yet stopped.

Our interest was not on Mr Pienaar or Mrs Pienaar or Van der Merwe, all the White people were oppressing the Black people. If it happened that at the end a house that was attacked did not belong to a policeman or a soldier, still that house falls under our programme because, when we participated in our struggle, we

never heard who was smiling with us or who loved us [and] we all treated white people as participants in oppression. (Bloemfontein hearing, August 1998.)

226. When asked why they had targeted an old age home, Khotle said it was unacceptable for Africans to be killed in the way they were. The purpose of targeting an old age home was to:

make whites feel the pain the same as Africans who felt the pain ... Why I'm saying age was not an issue is that, firstly, the oppressors themselves, when they see me, they saw me as a boy. My father was regarded as a boy; my grandfather was regarded as a boy; my sister was regarded as a girl; my mother was a girl – so they did not differentiate between the various age groups or they didn't see a difference between me and my father or my grandfather. We were all boys so therefore we did not have a problem to respond to that oppression knowing that there was no young persons and old persons, all of them were oppressors. (Bloemfontein hearing, August 1998.)

227. The Committee accepted that the applicants had acted on behalf of APLA and in accordance with what was then the policy of the PAC. It was satisfied that they had made a full disclosure of their respective roles and participation in the attacks. Accordingly, Mr Lerato Abel Khotle, Mr Luvuyo Kulman and Mr Phila Martin Dolo were granted amnesty for the attacks in Ficksburg.

228. They were also granted amnesty for a shoot-out on the Ficksburg bypass in which two people were injured. This incident had occurred as Dolo and his unit were withdrawing from the town. They fired shots at a police vehicle in the vicinity of the Ficksburg bypass, injuring Sergeant Otto Coetzee (who was in the police vehicle) and Ms Mathapelo Lethena who was travelling in a passing taxi.

229. Mr Dolo also gave evidence of his involvement in a further attack in which he and two others threw a hand grenade and opened fire on a farmstead in the Danside area on 19 December 1992. One person, Mrs Leone Pretorius, died in the attack. Once again, the farm was attacked because it was believed that white farmers belonged to the commando structures. APLA cadres wanted to drive them out of the area in order to create a wider operational platform for themselves. Dolo was granted amnesty for this incident [AC/1999/0182].

Sabotage

230. The Committee received just three applications for amnesty for acts and attempted acts of sabotage. Two of these matters were dealt with in chambers. All were granted. No casualties or injuries resulted from these actions.

231. Mr Wandile Merriman Dyanti [AM2486/96] and Mr Shylock Wele Matomela [AM2467/96] applied for amnesty for being in possession of explosive material and for intentionally causing an explosion at the Easigas Plant in Port Elizabeth. Amnesty was granted in chambers [AC/1998/0038 and 0039].

232. PAC/APLA member Silimela Ngesi [AM6020/97] applied for amnesty for an attack on the East London petrol depot on 19 August 1993, and for the attempted killing of a Sergeant Oosthuizen and other members of the SAP in a subsequent shoot-out on the same day.

233. Ngesi told the Amnesty Committee that the acts were committed in execution of the orders of his commander, Mr Bulelani Xuma, who also provided the arms for the operation. He testified that the mission was unsuccessful because the petrol tank did not explode as was intended, and subsequently resulted in the shoot-out with the police.

234. The Amnesty Committee accepted that the applicant was a trained APLA soldier and that his actions were in execution of APLA orders and were therefore associated with a political objective as required by the Act. Mr Ngesi was granted amnesty.

Limpet mine explosion in Durban

235. APLA member Ndoda Mgengo [AM6386/97] and PASO members Xolani Cuba [AM3845/96] and Mfundo Peter Seyisi [AM6386/97] applied for amnesty for a limpet mine explosion on a bus in Durban on 30 November 1993. Mr Vuyani Namba, also an APLA member, died in the explosion and eleven other people were injured.

236. Mgengo testified that he had introduced Mr Namba to the other two applicants after he had received instructions from APLA commander Sichumiso Simphiwe Nonxuba, who was based in Umtata. The instructions were to assist Namba in a mission which entailed the bombing by limpet mine of either the Umbilo or Brighton Beach police stations in Durban.

237. Namba, Cuba and Seyisi were on the bus on their way to Umbilo police station when the limpet mine exploded prematurely, killing Namba and injuring Cuba and Seyisi and other passengers.

238. The Amnesty Committee accepted that all the applicants had acted in pursuit of a political objective, which was in accordance with the policies and strategies of the PAC, APLA and PASO. It had not been the applicants' intention to cause injury to the people on the bus as the limpet mine appeared to have exploded accidentally. The applicants did not act out of ill will, spite or malice or for personal gain. None of the victims who were present at the hearing opposed the applications. The Committee granted amnesty to all three applicants.

Procurement and possession of arms and ammunition

239. The Committee received a total of nine applications for amnesty from PAC and APLA members exclusively for dealing in arms and ammunition. Most were granted in chambers.

240. PAC member Abel Sgubhu Dube [AM6040/97] applied for amnesty for being in unlawful possession of arms and ammunition near the Saambou Bridge on the Limpopo Border on 21 April 1982. He testified that he had obtained the weapons from a Mr Andrew Moeti, the deputy Commander of APLA, then based in Gaborone, Botswana. He was arrested soon after entering the country and was found in possession of an AK-47 and a 9mm Luger pistol. He also applied for amnesty for furthering the aims and objectives of a banned organisation and for harbouring APLA operatives during the armed struggle.

241. Mr Dube satisfied the Committee that the offence was associated with a political objective and he was accordingly granted amnesty [AC/2000/169].

242. Mr Musa Patrick Hadebe [AM6667/97] applied for amnesty for the illegal possession of a machine gun, ammunition and a hand grenade and for one count of murder and one count of attempted murder, offences for which he had been convicted and was serving an effective sentence of 13 years.

243. On 11 November 1997, the Amnesty Committee requested further particulars about the murder cases from both the applicant and the PAC, but received no response. Accordingly, Mr Hadebe was refused amnesty for murder and

attempted murder on the grounds that the essential particulars concerning these acts were not supplied in the application or upon request. He was, however, granted amnesty for the illegal possession of arms, ammunition and an explosive [AC/1999/0059].

Other matters

244. A range of other amnesty requests were placed before the Amnesty Committee by PAC and APLA members.

245. Six PAC members applied for amnesty for furthering the aims of a banned organisation between 1980 and 1990; for the recruitment of youths for military training, and for harbouring trained APLA cadres infiltrated into the country between 1980 and 1993. Satisfied that the offences committed were acts associated with a political objective and complied with the requirements of the Act, the Amnesty Committee granted amnesty to all the applicants.

246. Mr Patrick Mabuya Baleka [AM5929/97] applied for amnesty for the offence of high treason committed in or around September 1984. The particular offence constituted the subject matter of a high-profile political trial held at Delmas in which the applicant was acquitted. The Committee ruled that there could be no doubt that the charge of high treason related to the political conflicts of the past. Mr Patrick Baleka was accordingly granted amnesty [AC/2001/021].

PAC/ANC conflict

247. The Amnesty Committee received applications from four PAC members relating to offences committed in the course of localised conflict between members of the PAC and the ANC.

248. PAC member Sonnyboy Johannes Sibiya [AM3381/96] applied for amnesty for the killing of Mr Vusumuzi Ephraim Dhludhlu at eMzinoni, Bethel in the Transvaal on 17 October 1992. He was convicted and sentenced to 15 years' imprisonment.

249. Sibiya testified that he joined the PAC task force in 1991. He described his duties as the protection of PAC members and their homes. Soon after this, he was sent to the then Transkei for basic training under the auspices of APLA. After a short stay at Folweni near Durban, he was deployed to eMzinoni.

250. Sibiya described a situation of ongoing political conflict between PAC and ANC members in the area. He related a number of incidents in which people were killed, homes burnt and people forced to leave the township. He said that he took steps to try to report the problems caused by this conflict to APLA's Director of Operations, but was unable to contact him. He managed to get in touch with 'Mandla', APLA's regional commander for the Highveld area. He met with him in Embalenhle and, after explaining the situation to him, received orders to identify the ANC ringleaders and attack them in order to prevent further attacks on PAC people.

251. By the night of 15 October 1992, Sibiya had gathered sufficient information and went out in search of the ANC ringleaders. However, it was not until 17 October 1992 that he located Dhludhlu and another person in a shop. Both, he claimed, had been identified as ANC culprits. He testified that he called Dhludhlu over to him and, after trying to negotiate and reason with him, shot him dead.

252. Some years before, Dhludhlu had been a suspect in an attack on Sibiya's uncle's home, which resulted in the death of three members of his family. Sibiya, however, denied any suggestion that he had been motivated by feelings of revenge against Dhludhlu. Further to this, a member of the National Executive Committee (NEC) of the PAC, Mr Jabulani Khumalo, testified that there had been conflict between the PAC and ANC in the area from 1990 until 1992/93. He said that this conflict affected a number of areas, including eMzinoni. He was aware that APLA cadres were deployed in those areas where attempts at negotiation had failed to prevent further conflict. He said he had knowledge of these matters because he had been a PAC leader in the East Rand at the time.

253. The Committee accepted that Sibiya had acted on behalf of and in support of the PAC in the context of the conflict with the ANC and his conduct was held to be an act associated with a political objective. Satisfied that he had made full disclosure of all material facts and did not appear to have acted for personal gain, personal malice, ill-will or spite, The Committee granted Mr Sonnyboy Johannes Sibiya amnesty [AC/1998/0052].

APPLICATIONS REFUSED

254. As noted earlier, the Committee refused amnesty for forty-nine (24 %) of the 204 separate incidents placed before it. Out of forty-nine incidents of armed robbery, amnesty was refused to applicants in twenty-four cases (49 %). Out of twenty-eight incidents of attacks on the security forces, amnesty was refused in just two cases (7 %). Out of twenty-seven farm attacks, amnesty was refused in eight cases (30 %).

255. The reasons for the refusal of amnesty are as follows:

Absence of political motivation

256. Mr Stephen Vusumuzi Dolo [AM0320/96] applied for amnesty for malicious injury to property when he wrecked his cell at the Burgersdorp prison on 12 August 1992 in an apparent effort to force the authorities to allow him to join other awaiting-trial prisoners. He testified that he was suspicious of the motives of the prison authorities and believed they were keeping him separately in order to intimidate him.

257. The Amnesty Committee was not satisfied that the applicant's actions were aimed at furthering the political struggle and objectives of APLA and the PAC; they were more probably inspired by a personal motive of improving the conditions of his incarceration whilst awaiting trial. Accordingly, Mr Dolo was refused amnesty [AM0320/96].

Failure to prove political motive

258. Mr ZW Mgandela [AM7889/97] was refused amnesty [AC2000/072] for robbery, abduction and the unlawful possession of a firearm and ammunition. All these offences were committed on 27 November 1993 at the premises of a shop known as 'Pick Fit and Take' in Port Elizabeth. Mgandela claimed that he joined the PAC in 1978 and became a member of APLA after receiving training in the Transkei in 1992. Mgandela was unable to convince the Committee that he was an APLA cadre and that the robbery was an APLA operation. The applicant had scant knowledge of the then leadership of APLA and the PAC, and did not know who the APLA Director of Operations was.

259. Mr Paballo Ernest Pumulo [AM6634/97] was refused amnesty [AC/2000/132] for the killing of 70-year-old Mr Jacobus Petrus Ward and 39-year-old Mrs Emmarentia

Cornelia Ward on 21 December 1992, and for the attempted killing of 69-year-old Mrs Anna Wilhelmina Ward on the farm Emmaus in the district of Theunissen.

260. Pumulo professed to be a South African citizen, but could not produce any identity documents and later confessed that he was not in possession of any. He also testified to joining the PAC in Virginia in 1990. There was no PAC branch in Virginia and the only PAC members he was able to recall meeting were a certain 'Sebande', who recruited him, Rasta Moloto to whom he was introduced by 'Sebande' and Lebohang Mey and whom he met on one occasion before the incident. He had never attended a PAC meeting, could not give the motto of the PAC and could only vaguely refer to its aims and objectives.

261. Mr Page Hlalele Hlelesi [AM5020/97] was refused amnesty [AC/1998/0100] for the killing of Mrs Maria Janse van Nieuwenhuizen, an 83-year-old pensioner in Brakpan, on 6 May 1994.

262. At the time of his application, Mr Hlalele was serving a 40-year sentence for murder, attempted robbery with aggravating circumstances and the possession of arms. He told the Committee that he was a PAC supporter and that he had been recruited to the organisation by a Mr Moses Mogage in 1993.

263. Hlalele said that, in January 1994, Mogage had instructed him and three others to go to Brakpan to 'seek guns' since the movement needed arms and ammunition. The 'order' was only carried out in May 1994.

264. The Amnesty Committee found that, although the application complied with the formal requirements of the Act, it was not satisfied that the offences listed were associated with a political objective for the following reasons:

    a Hlelesi's affiliation to the PAC was not supported by his own or any other evidence. Throughout his evidence, he referred to himself as a 'new recruit' who had never received any training and who was going to establish 'a lot of things' about the PAC later.
    b The offences were committed after the elections in April 1994. The applicant had not even cast his vote in the elections. He denied having known that the PAC had already suspended the armed struggle in January 1994, the year of the elections.
    c The reason advanced by Hlelesi for committing these offences was 'to achieve freedom'. However, a new political dispensation was taking shape by 4 May 1994, when the offences were committed. His reason was therefore rejected by the Committee as false.

d A considerable period of time had elapsed between the alleged instructions and his carrying them out.

265. The Committee concluded that the acts for which Hlelesi was applying for amnesty were common criminal acts committed for personal gain rather than political reasons.

266. Mr Phakamile Cishe [AM1272/96] and Mr Kwanele Msizi [AM199/96] were both refused amnesty for killing two policemen and an informer in an armed attack in Zwide township, Port Elizabeth, on 18 November 1990. Both applicants were convicted of these and other offences on 20 September 1991. They received the death sentence, later commuted to life imprisonment, for the three killings.

267. The Amnesty Committee found that the discrepancies and contradictions in the applicants' completed application forms impacted directly on their credibility. This, in turn, impacted substantially on the questions of political objective and full disclosure, which are requirements for amnesty in terms of the Act [AC/1998/0115].

Lack of full disclosure

Attack on Sophia and Gabriel Rossouw

268. Although APLA policy authorised robbery as a means of raising money, amnesty was denied to Mr Sithembiso Vanana [AM6540/97] for a robbery in which money was used for the personal benefit of the applicants and not the organisation.

269. Mr Vanana applied for amnesty for the killing of Mrs Jane Sophia Rossouw, aged 72 years, the attempted killing of Mr Casper Gabriel Rossouw, aged 81 years, robbery, housebreaking with the intent to steal, and theft of a motor vehicle. These offences were committed on the farm 'Sarahsdale' in the district of Dordrecht on 1 August 1993.

270. According to the applicant, the operation was planned in order to 'raise funds' to enable him to travel to the Transkei where he would receive basic APLA military training. He spoke to a Mr Nelson Gebe, an APLA cadre, about joining APLA. Gebe informed him that he would have to undergo military training in Transkei and that he (Gebe) knew a person in Butterworth who would be able to make the necessary arrangements.

271. Vanana, Gebe and one other person participated in the attack on the Rossouws. They were unsuccessful in finding either money or arms in the house and instead stole the Rossouws' motor vehicle and drove to the Transkei, where they stayed for at least six weeks. The applicant testified that he was unsuccessful in reaching the contact Gebe had told him would arrange for his training. Nor did they make any attempt to get in touch with any other members of the PAC or APLA in Transkei.

272. They sold the Rossouw's vehicle for R5 000 and used the money for their own benefit. They also robbed a bottle store and hijacked a motor vehicle. Soon after this, they were chased by the police, who shot at them. The applicant was hit and injured. He was arrested and detained in hospital where he received treatment.

273. The applicant escaped from hospital and went to Cape Town. Here, he and some others killed a Mr van Niekerk on a smallholding. The applicant was eventually arrested in the Cape Town area while robbing a shop.

274. The Amnesty Committee noted that there was:

no corroboration that the applicant was ever a member of the PAC. He states that he lost his membership card when being chased by the police in Transkei and there is no evidence before us, other than his assertion, that he is or was a member of the PAC. We are also of the view that the applicant's evidence that Gebe was an APLA cadre is both untruthful and improbable. Gebe has a criminal record which reflects that he has, from June 1973 to March 1988, had twenty-nine previous convictions and that he has on four occasions been declared an habitual criminal … It is also apparent from applicant's own version, untrustworthy as it is, that the proceeds from the sale of the Rossouws' vehicle was used for the perpetrators own benefits and not for the benefit of any political organisation.

We are of the conclusion that the crimes committed by the applicant were committed for personal gain. [AC/2000/072.]

Failure to declare specific acts

275. The APLA High Command [AM7832/97] submitted an application for amnesty without specifying individual names in order to accept collective responsibility for 'any act, omission, offence or delict committed by members of the PAC as a result of which people died, others were injured and property was damaged'.

276. The Amnesty Committee found that an act, omission or offence had to be the subject matter of an application. Where no such act, omission or offence had been disclosed, the applicants did not comply with the requirements of the Act, as this would be tantamount to granting a general amnesty. The application was similar to the one submitted by members of the ANC,[212] based on the declaration of responsibility.

277. Moreover, section 18 of the Act states that 'any person' who applies for amnesty will qualify. The APLA application was not signed by any person acting on behalf of the body cited as the applicant: in other words, no person was named as applicant. The application from the APLA High Command was accordingly refused [AC/2000/0101].

278. Similarly, amnesty was denied to a former APLA member who had become an *askari*. In his application, Mr Sello David Thejane [AM7942/97] failed to supply the names of the many activists he claimed to have assaulted and tortured [AC/2001/038].

COMMAND STRUCTURES

Political and military leadership

1960s: PAC National Working Committee/Task Force/Poqo

279. The PAC explained in its submission that the response of the government to the anti-pass campaign (the Sharpeville massacre) led to the 'formation of rudimentary units comprising mainly task force members. Armed operations were carried out at Bashee, Paarl, Ntlonze and Queenstown between 1960 and 1962'. Poqo was formed in September 1961, following the formation of underground cells and the decision to embark on armed struggle and target police stations, post offices, power installations, fuel depots and various government buildings. In addition, white suburbs were selected as targets. Branches, theoretically consisting of no more than fifteen members, were set up. In larger branches, smaller cells were set up – with their own small committees and 'task force' leaders. The task force was made up of foot soldiers to be in a state of readiness at all times. Foot soldiers also served as the organisation's police who stood guard during meetings.

212 See Chapter Two of this section.

280. While the PAC Disciplinary Code encouraged members to air their views 'and to agree or disagree with all or any member of the movement, including the leader …', there were incidents where action was taken against those who disagreed openly with the leadership. No political education programme was provided for members. Such a programme would have helped members define who the enemy was, rather than inciting the membership to kill whites and their informers in a more general way. Where the enemy was not clearly defined, gross abuses of human rights were inevitable. Some of the violations committed by PAC or Poqo members took place during this period.

1962: Revolutionary Council

281. Mr Potlako Leballo (founding PAC national secretary and acting president in exile) set up the Revolutionary Council in Lesotho, which was to plan and execute the next phase of the PAC struggle to overthrow white domination and establish 'an Africanist socialist democracy' via Poqo cells.

282. In the late 1960s, the PAC established a base in exile, headquartered first in Lusaka, Zambia and later in Dar-es-Salaam in Tanzania. It established missions in eighteen countries and began a programme of military instruction for PAC members: first in the Congo alongside the FNLA[213] and later in Ghana and Algeria.

1968: Formation of APLA/PAC High Command and Military Commission

283. APLA was founded in exile in 1968 and the PAC planned for the infiltration of trained guerrillas into South Africa. After 1975, members of the APLA High Command were despatched to the frontline states to prepare an underground trail.

Late 1980s

284. From 1989, APLA cadres were infiltrated into the country and established as self-reliant, easily-manageable and controllable task force units of no more than three guerrillas. They consisted of a political commissar, whose brief was to make sure that all operations enhanced the PAC's political positions and ideology; a cadre in charge of securing logistics whenever needed, and a commander who was in charge of the military aspects of operations.

213 National Front for the Liberation of Angola

285. The political commissars were the first to be infiltrated to occupy certain positions inside the country, followed by the logistic personnel and then the commanders, who were 'the actual fighters'.

286. APLA based reconnaissance units all over the frontline states. Inside the country, however, the political commissars, whose task was generally to pave the way for the entry of the fighters, also had to do the major reconnaissance work. As part of APLA's all-round training, cadres were equipped to perform any tasks at any given time and situation. It was the commissars who had to answer to the Military Commission in the event of mishaps arising in the course of operations.

287. According to the testimony of Mr Vuma Ntikinca, an APLA operative in the Transkei at the time, this *modus operandi* made the APLA units:

> *more slippery, more mobile and more efficient in an encounter with a big army. These units were independent of each other. They selected their own targets and they did not face any dangers of their operations and movements being known by the enemy as a result of the capture of one cadre or the whole unit, or as a result of enemy infiltration at headquarters. These tiny units also had the advantage of depriving the enemy of the opportunity of using heavy weaponry. It was easier for us acquiring small and light weapons that suited the size of the units, which could not be easily detected. In the latter part of the operations, though, APLA forces had expanded into much bigger units which were now using rocket launchers such as RPG7s and other weaponry. (Interview with the Commission.)*

288. The units were deployed in a manner that ensured that they had no contact with one another. They reported directly to APLA's headquarters in Tanzania after an operation had been carried out. If serious political repercussions arose from any one military operation, it was the political commissars who answered to the Military Commission, explaining any deviation from PAC ideology, strategy and programme.

289. Local commanders in small units were given a fair degree of autonomy in selecting targets, undertaking reconnaissance, procuring arms and establishing tactics for APLA operations. Once a target had been selected, however, a local commander would have to seek authorisation from a regional commander or some superior official. According to the evidence presented in amnesty hearings, this was generally done.

290. The operational planning of an attack was the task of the commander of the unit assigned to it. As will be clear from the operations described earlier in this chapter, a feature common to most was the fact that the foot soldiers were briefed on the details only moments before they were launched. They were deliberately kept in the dark and prevented by APLA's operational code from asking questions about the proposed attack. Nor were they at liberty to question the instructions they received. The Amnesty Committee repeatedly heard applicants say that it was not their place to question the instructions or the legitimacy of operations.

291. Applicant Andile Shiceka told the Committee that APLA soldiers on the ground had no capacity either to determine or influence policy. They were merely expected to obey orders. They did not participate in making or changing policy in respect of target selection, but simply followed instructions. Many applicants told the Committee that they would never have questioned the orders given to them. They had been trained never to question an order or instruction. A disciplined member of the army would simply carry out the order. Defying an order would be tantamount to 'mutiny' within the army ranks.

Early 1990s: APLA repossession units

292. Mr Patrick Thapelo Maseko [AM5918/97] told the Committee that, after receiving PAC training outside the country between 1983 and 1989, he re-entered the country as a member of APLA and was deployed to a repossession unit code-named 'Beauty Salon':

I was deployed inside the country with specific instructions to advance the struggle for the liberation of African people in all fronts. We were told that the PAC and APLA have no funds and therefore the cadres should be self-reliant. We were told that the targets will be chosen by us. This unit therefore was called 'Repossession Unit'. This was the first unit to be sent in the country for this purpose, though we were to conduct other operations. (Statement to the Commission.)

293. Maseko was involved in commanding at least twenty-eight operations. Initially, he reported to a man called Msiki in Botswana via a courier code-named 'General'. Later he reported to Mr Letlapa Mphahlele who had returned to South Africa as part of the APLA High Command after the unbanning of organisations in February 1990. He was expected to hand over to Msiki whatever had been

repossessed by the unit, with the exception of arms and ammunition, which he retained for further use by operatives. If the money obtained was less than R3 000, the unit used it to conduct further operations. According to the evidence before the Amnesty Committee, the 'Beauty Salon' unit was responsible for the theft of over R40 550. In 1991, over R532 000 was stolen.

Transkei operational bases

294. From operational bases secured in the Transkei, APLA conducted a series of attacks on civilian targets in the early 1990s. Operations in the Western Cape had particularly strong links to APLA structures in the Transkei. Weaponry was also sourced from the Transkei security forces. For example, the Amnesty Committee heard that the hand grenades used in the St James' and Heidelberg attacks originated from a batch of grenades supplied to the Transkei Defence Force. Transkei also provided refuge for APLA operatives after operations. In most attacks, APLA personnel from the Transkei were deployed in conjunction with locally-trained operatives, while local PAC structures provided logistical support to such operatives.

MOTIVES AND PERSPECTIVES

PAC/APLA perspectives

295. The PAC believed that its members were fighting a just war of liberation from white domination. Its definition of the enemy included all those identified as 'settlers' rather than 'Africans'. This meant that the distinction between civilian and non-civilian targets was not considered significant.

296. Most of the human rights violations attributed to APLA took place between 1990 and 1994 while negotiations and eventually the run up to elections were in progress.

297. The primary objective of the PAC and its armed wing APLA in the early 1990s was the overthrow of the apartheid regime. To that end, the PAC recruited young men into self-defence or, as the PAC termed them, 'task force' units.

298. APLA's first task was to wage an armed struggle against the security forces. While APLA's strategy in the 1980s had been to target security structures, 'a new strategy arose in the 1990s where civilians within the white community

were attacked'. White persons (male and female) came to be described as 'the underbelly of apartheid'. By attacking white civilians, APLA hoped to bring pressure to bear on the apartheid government and thereby expedite the liberation of the African masses.

299. Due to the logistical difficulties faced by APLA headquarters in Dar-es-Salaam, target selection was left to local commanders. However, evidence presented to the Commission revealed that, while internally-trained cadres were in a position to carry out better reconnaissance and thus avert detection and arrest, they faced the disadvantage of not having received the political education available to cadres in the exile camps. Consequently, strategic errors were made by these locally-trained operatives, for which the APLA leadership accepted full responsibility. However, the Commission was given no details of these errors.

300. The Amnesty Committee heard evidence that the PAC's armed struggle was essentially a guerrilla war directed against 'the then racist minority regime which was undemocratic and oppressive'. In order to conduct the armed struggle, APLA cadres were instructed to 'seek and attack the bastions and minions' of the regime with the ultimate objective of toppling it and returning the land to the majority of the African people. This was the general directive issued to commanders and units on the ground.

301. Applicant Phila Martin Dolo [AM 3485/96] told the Committee that the 'bastions and minions of the ... erstwhile regime' were, from the APLA perspective, members of the SADF, members of the SAP, reservists, and farmers, as they belonged to commando structures and occupied farms and white homes described as 'garrisons of apartheid'.

302. The aim of attacking white farmers, Dolo testified, was to drive them away in order 'to widen our territorial operational base which was aimed at eventually consolidating the liberated and repossessed land'.

My general instruction was to seek, identify and attack the enemy who was seen in the context of the above-stated bastions and minions of the regime, and also to train other cadres and command them in whatever operation that is being embarked upon. (East London hearing, 26 April 1999.)

303. Mr Andile Shiceka [AM5939/97] explained that the shift from targeting members of the security forces to targeting whites in general was not a major policy change. A precedent had been created by Poqo's targeting of whites:

[T]he attack on white civilians is not a new thing, when you look back at the history of PAC – the formation of Poqo on the 11th of September 1961. If you remember the attacks at Mbashe, Paarl and Komane, those comrades of those days were members of the PAC which was converted into APLA. They were attacking white civilians during those days; even history confirms that. Therefore I find it difficult for me when one of the panel members says we're shifting as to our targets. Instead of attacking security forces, we were attacking white civilians which I refer to as 'soft targets' … That's the reason why I say I am confused when they say we have shifted in constituting targets because this started long ago. (Pietermaritzburg hearing, 11 February 1998.)

304. Mr Luvuyo Kulman [AM1638/96], who applied for amnesty for various attacks in Ficksburg, quoted Robert Sobukwe to underscore the point:

I want to make it clear that we did not attack whites because they were white; we attacked them because they were oppressors. Sobukwe, the founding President of the PAC, put it this way: 'In every struggle, whether national or class, the masses do not fight an abstraction. They do not hate oppression or capitalism. They concretise these and hate the oppressor, be he, the governor-general or a colonial power, the landlord or the factory owner, or in South Africa, the whites. But they hate these groups because they associate them with their oppression. Remove the association and you remove the hatred.' In South Africa then, once white domination has been overthrown and the white is no longer ' white boss' but is an individual member of society, there will be no reason to hate him and he will not be hated even by the masses. We are not anti-white therefore. We do not hate the European because he is white. We hate him because he is an oppressor. And it is plain dishonesty to say 'I hate the sjambok and not the one who wields it'. (Application to Commission and hearing at East London, 26 April 1999.)

Suspension of the armed struggle

305. After the lifting of the banning orders on the liberation movements on 2 February 1990, the PAC adopted a different strategic position to that of the ANC. While the ANC engaged almost immediately in 'talks about talks' with government representatives, the PAC told the Commission that it adopted a principled approach to negotiations and believed that 'one must negotiate from a position of strength'.

306. Its continuation of armed struggle – reaffirmed by the PAC's national conference as late as December 1993 – was, however, an issue of contention within the organisation. Amnesty applicant Bongani Malevu [AM0293/96], who attended the conference, testified before the Amnesty Committee that the resolution on the armed struggle did not receive unanimous agreement. There was a split between those who felt that the struggle should continue and those who were opposed to armed attacks continuing during the run-up to the elections in April 1994.

307. In his January 1994 New Year's message, and with the election only months away, APLA commander Sabelo Phama declared 1994 as the year of the 'great offensive on all fronts' and said that 'the bullet and the ballot' were to be used effectively in 1994. Mr Phama stated that political power without military and economic power would be meaningless and that APLA should double its efforts both politically and on the military front.

308. When shortly thereafter (on 16 January 1994), the PAC leadership announced a suspension of its armed struggle and a wish to participate in the negotiations for the new dispensation and in the pending general election, rebellion broke out inside the organisation. The PAC's central Transkei secretary, Mr Mfanelo Skwatsha, called the leadership's decision a 'surrender'.

Perspectives of the survivors

309. For the most part, the survivors of the attacks opposed the applications for amnesty on the grounds that the acts themselves were not 'political' in character, but were motivated rather by personal interests and, in some cases, by racial hatred. Some victims appeared before the Amnesty Committee to make their case. Others declined to give testimony and stated that they were happy to leave matters in the hands of the Committee. Several victims and members of victims' families declined to attend the hearings or to be involved in the amnesty process in any way. In a few instances, particularly those that involved high-profile attacks on civilians, survivors and victims chose to use the opportunity offered by hearings to challenge applicants directly and to ask them to account for what appeared to be errors of judgement, particularly in the selection of targets.

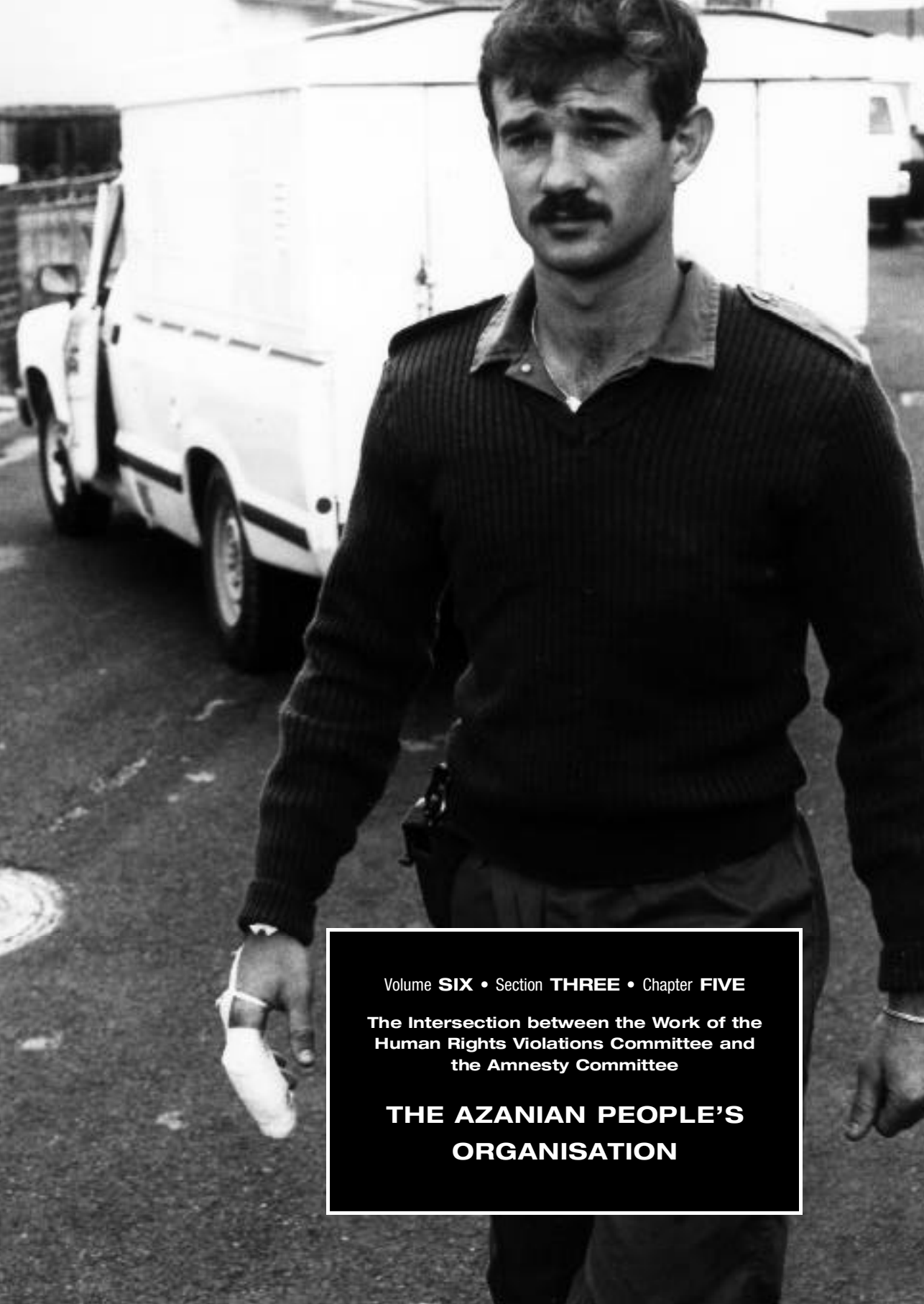
310. On the whole, applicants refused to apologise for attacks and lives lost, particularly where the victims had been members of the police or of white political

organisations, white civilians or white farmers. Yet many expressed remorse for the consequences of their actions, and the desire to be reconciled with the surviving victims of attacks or the families of deceased victims.

CONCLUSION

311. The Commission gave due attention to the response of the PAC to the findings of the Human Rights Violations Committee. However, the Commission is of the view that the evidence that has emerged through the amnesty process has done nothing to cause the Commission to change or moderate these findings in any way. On the contrary, on completion of the work of the Amnesty Committee, the Commission is able to confirm these findings, particularly those with regard to the activities of the PAC and APLA during the 1990s.[214] (...p442)

214 See Section 5, 'Findings and Recommendations' in this volume.



Volume **SIX** • Section **THREE** • Chapter **FIVE**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE AZANIAN PEOPLE'S ORGANISATION

Azanian People's Organisation

1. The Amnesty Committee received one application from the Azanian People's Organisation (AZAPO).

2. Azapo member Mr Thembinkosi Vivian Mabika [AM7761/97] applied for amnesty for robbery with aggravating circumstances, attempted murder and the unlawful possession of a 9mm Makarov pistol and ammunition; offences for which he was convicted in July 1993 and sentenced to an effective term of eighteen years' imprisonment.

3. The incident which gave rise to the charges took place during the morning of 18 January 1992 at the Acme Dry Cleaners in Kimberley. The applicant and six other persons entered the premises with the intention of committing a robbery. Ms Sonja Spicer, an employee of Acme Dry Cleaners, was shot in the chest and seriously injured during the course of the robbery.

4. The applicant testified that only two of the seven persons involved understood that the intention was to obtain money to purchase firearms for AZAPO. The others participated in the robbery for personal gain.

5. The Committee ruled that it was clear from the evidence that the applicant did not participate in the robbery under instructions or orders from any person in AZAPO. Nor was the robbery committed with the knowledge of any office-holder in AZAPO. The majority of the applicant's co-perpetrators were not members of the AZAPO but had involved themselves purely for personal gain. In the opinion of the Amnesty Committee (Committee), it was deceitful to refer to the robbery as an AZAPO operation.

6. According to the applicant's version, the lion's share of the proceeds of the robbery would have gone to common criminals and would not have been used for the benefit of AZAPO. The Committee found that the reason given by the

applicant for involving his co-perpetrators – namely that he wanted strength in numbers – was unimpressive. The fact that the applicant and one of his co-perpetrators were members of AZAPO was not enough to persuade the Committee that their motive in participating in the robbery was political.

7. Given the probability that all the perpetrators participated for their own personal gain and that the crimes committed by the applicant were not acts associated with a political objective, Mr Mabika was denied amnesty [AC2000/070]. (..p444)

Volume **SIX** • Section **THREE** • Chapter **SIX**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

RIGHT-WING GROUPS

Right-Wing Groups

■ INTRODUCTION

8. For the purposes of this chapter, the definition of the 'white right wing' refers to all white groups and individuals who organised themselves to campaign for self-determination and who mobilised against the democratic changes sweeping South Africa in the early 1990s. Most of these groups and individuals emerged from conservative Afrikaner circles in the country.

9. During the early 1990s, the movement away from apartheid by the National Party government was regarded by some as a treasonous capitulation to black political demands, which would result in the country being handed over to 'communists'. In response to this perceived threat, the 'white right wing' began organising itself with a view to creating structures that would ensure the safety of its members and the protection of their property. Neighbourhood watches and surveillance groups (verkenningsgroepe) were formed in various areas. As the political situation progressively deteriorated from the right-wing perspective, radical talk and an inclination towards violence increased exponentially in its ranks. Right-wing groups showed phenomenal growth and came to accommodate a wide range of right-wing views and sentiments. Elements from the military joined in, bringing with them their own professional skills, such as the manufacture of explosives.

10. It was against the background of this volatile situation in right-wing circles that matters came to a head when the National Party government lifted the ban on the liberation movements in February 1990. For the right wing, this must have seemed like the beginning of the end. The next step would be the enfranchisement of the black majority leading to black majority rule in South Africa. This would inevitably lead to the total destruction of their values and way of life.

11. During the period under review, the ranks of conservative Afrikanerdom were characterised by a great diversity of political, cultural and paramilitary formations. Many of these groupings emerged as a result of their disaffection with the ruling National Party, which had, since the 1940s, been seen as the sole custodian of Afrikaner identity. What they shared was a desire to conserve traditional Afrikaner

values by reaching back to the original principles of Afrikaner politics, rather than endorsing the adaptations of policy advanced by the Afrikaner government of the day. Even in their disaffection, however, they continued to be fragmented.

PART ONE: PROFILE OF RIGHT-WING GROUPS

12. At the start of the 1990s, the so-called 'right wing' embodied a large number of groups, some operating underground to avoid detection and infiltration by the security forces. Many of the groups were characterised by splintering and leadership struggles. However, once the negotiating parties had agreed on a formula and date for democratic elections, right-wing forces began uniting to mobilise for their struggle for self-determination.

13. The following is a summary of the main features of the organisations making up the 'right wing' as it evolved from the time of the first right-wing breakaway from the National Party in 1969. Those described represent only a few of the numerous right-wing organisations that were operating at the time of the first democratic election in April 1994. Many amnesty applicants claimed membership of one or more of these organisations simultaneously, with the Afrikaner Volksfront (AVF) providing an umbrella for the smaller groups.

HERSTIGTE NASIONALE PARTY

14. The Herstigte Nasionale Party (HNP),[215] which broke away from the ruling National Party (NP) in 1969, was the first right-wing group to do so. Its reasons, as with all the breakaway parliamentary groups that followed, centred on dissatisfaction with NP reforms at the time. The HNP clung to its belief in the grand apartheid of the Verwoerd years, believing that a white government should dominate the entire territory of South Africa, with clear partition between the races.

BLANKE BEVRYDINGSBEWEGING

15. The Blanke Bevrydingsbeweging (BBB)[216] was founded in 1987 and advocated an extreme version of fascist apartheid based on 'refined Nazism'. Its aim was to 'repatriate' all blacks, Jews and Indians and nationalise the assets of 'non-whites'. The BBB had links with the British National Front (BNF) and similar

215 Re-established National Party.
216 White Liberation Movement.

groups in Australia, New Zealand and America. It is also believed to have had links with the Ku Klux Klan. The BBB was banned under the state of emergency in 1988 and unbanned with other political organisations on 2 February 1990.

AFRIKANER VRYHEIDSTIGTING

16. The Afrikaner Vryheidstigting (Avstig)[217] was established by theologian Carel Boshoff in 1988 for the purpose of campaigning for a white homeland. Avstig was instrumental in establishing the town of Orania in 1991.[218] It was granted observer status at the multi-party negotiations.

AFRIKANER WEERSTANDSBEWEGING

17. The Afrikaner Weerstandsbeweging (AWB)[219] was founded in Heidelberg during 1973 on a more radical and militant manifesto of conservative aims. AWB leader Eugene Terre'Blanche traced the origins of the movement to dissatisfaction with the policy of 'appeasement' of then Prime Minister BJ Vorster. He and six others met to start a cultural/political movement with the aim of protecting the interests of Afrikaners, uniting the *Boerevolk* (Boer people) and establishing a *volkstaat* (nation-state). It was felt that Afrikaners did not share the same destiny as other whites in the country. A *volkstaat* would have a form similar to that of the old Boer republics.

18. The AWB was not willing to further its cause at the ballot box or negotiating table. Mr Terre'Blanche stated on numerous occasions that the borders of such a volkstaat would be drawn in blood.

19. The AWB has been the most prominent of all ultra-right movements. Its prominence owed much to the media profile of Terre'Blanche, although this was seriously eroded following the ill-fated intervention of AWB troopers in Bophuthatwana in March 1994.[220] Up to forty of its members were arrested in election week in April 1994 and charged with a spate of pre-election bombings. Many applied to the Committee for amnesty.

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217 Afrikaner Freedom Foundation.

218 Orania was envisaged as the growth point of a volkstaat that would stretch over a large part of the arid north western Cape Province. Orania has a population of about 350, including Mrs Betsie Verwoerd, widow of the late former premier Hendrik Verwoerd.

219 Afrikaner Resistance Movement.

220 Volume Two, Chapter Seven, p. 614, para 141.

WENKOMMANDO

20. The Wenkommando (WK)[221] was established by the AWB in 1990 to take over from the various paramilitary groups operating under the banner of the AWB. Attached to the WK was the elite *Ystergarde* (Iron Guards), the *Rooivalke* (Red Falcons), the *Witkruisarende* (Black Eagles), the *Penkoppe* (Youth), *Stormvalke* (Storm Falcons), the underwater unit and various 'ethnic' units such as the exclusively Portuguese commandos in Johannesburg. In 1993, an air wing was also introduced and parachute training initiated.

21. The *Ystergarde* unit, with its membership of up to 200 men, was regarded as a more polished fighting unit, as several of its members were former members of the South African Defence Force (SADF) and South African Police (SAP) Special Forces.

22. The *Rooivalke* were the female counterpart of the *Ystergarde* and operated under the command of Mrs Ansie Cruywagen, wife of a *Wenkommando* chief of staff, Mr Alec Cruywagen. The Witkruisarende appeared to be a medical team consisting of female members of the Wenkommando with paramedical training. The *Penkoppe* were regarded as the Wenkommando Youth League and consisted almost exclusively of the children of active AWB members.

23. The *Stormvalke* unit was founded in late 1979 and can be regarded as the first paramilitary wing of the AWB. It never became more than a motorcycle gang wearing AWB insignia. Dormant in the mid-eighties, it was revived again in 1992 under the leadership of a Roodepoort motorcyclist.

24. Three men clad in diving gear made their first appearance at a May 1992 rally as the underwater unit of the *Wenkommando*. They surfaced again in 1993 at a joint rally of the AWB and AVF on 29 May.

25. In 1993, AWB spokesmen numbered Wenkommando membership at between 34 000 and 36 000. In September 1992, an official police assessment put WK membership at 15 000. Analysts have claimed that both figures were inflated. However, it is true that the WK expanded rapidly during the course of 1993. Political violence and concurrent polarisation played into the hands of the AWB, with an estimated 2 000 members joining up in the two weeks following

221 Winning commando.

the killing of Chris Hani. Towards the end of 1993, membership may have totalled 25 000.

26. Although it had a relatively large membership compared to other private armies, a distinction must be made between active members of the Wenkommando and those who had signed up at some stage but did not become active in the movement. Indications, such as attendance figures at rallies in 1992, suggest an active membership of no more than 5 000 countrywide.

KONSERWATIEWE PARTY

27. The Conservative Party (CP) was founded in March 1982 under the leadership of Dr Andries Treurnicht who, until earlier that month, had been Transvaal leader of the National Party and a minister in President PW Botha's cabinet.

28. After serious differences of opinion between Treurnicht and the cabinet on issues such as mixed sport in schools and intimations that Indian and coloured representatives might soon become part of the decision-making process, Treurnicht and fellow cabinet minister Ferdi Hartzenberg resigned their posts.

29. On 9 March they were expelled from the NP and, together with fifteen other right-wing MPs, founded the CP on 20 March 1982.

30. The CP grew rapidly and soon became the white right's most important representative body. With 31 per cent of the vote in the September 1989 all-white general election, the CP became the official opposition in parliament. However, the party was dealt a devastating blow by the 1992 referendum and the reforms instituted by President FW de Klerk on 2 February 1990. Moreover, its members became frustrated with the lack of a clear policy direction in the party. In August, disaffection led to the establishment of the *Afrikaner Volksunie* (AVU)[222] by a breakaway group of five MPs who propagated a smaller homeland for the Afrikaner. The AVU was never able to gather much grassroots support, but the CP subsequently took over its homeland policy.

222 Afrikaner People's Union.

TOEKOMSGESPREK

31. The Toekomsgesprek (TG)[223] was established in the mid-eighties as a counter to the NP's Broederbond[224], using similar structures, procedures for recruitment, initiation rites and so on. Membership of the TG was by invitation only and only after proper screening by all other members. In October 1990, the TG argued in a policy document that the CP would have to settle for a smaller state, taking cognisance of the fact that blacks had become a permanent fixture in 'white' South Africa. Although supposedly a political and cultural movement, evidence in amnesty applications points to its paramilitary activities.

32. Amnesty applicant Mr Daniel Benjamin Snyders [AM0074/96] testified that he had been involved with Toekomsgesprek since the mid-1980s, helping to set up neighbourhood watch groups from the CP, HNP and AWB. In late 1990, the AWB declared a 'white-by-night' rule for blacks in many rural towns, giving their members 'permission' to use violence to forcibly remove blacks who transgressed the 'curfew'. Eugene Terre'Blanche claimed that Adriaan Vlok gave them the go-ahead for this 'crime prevention exercise'.

33. Toekomsgesprek's defence system grew rapidly, as did the other activities with which it was tasked at the *Volksberaad*.[225] These included burning down NP offices, taking charge of the commando system, making bombs with explosives obtained from the mines and joining forces with the SADF and the SAP. The country was divided into regions and commanders were appointed.

BOEREWEERSTANDSBEWEGING

34. The Boereweerstandsbeweging (BWB)[226] was established in 1991 as one of the most radical and potentially most violent groupings. Led by Mr Andrew Ford, a farmer from the Rustenburg area, the BWB was strongly influenced by the ideas of Mr Robert van Tonder's Boerestaat Party[227] Its organisation was based on a cell structure, and the separate cells were not supposed to have knowledge of one another. These cells were associated with numerous bombings, notably the bombing of an Indian business area at Bronkhorstspruit in October 1993 in

223 Discussion of the Future.
224 A secret society composed of Afrikaners holding key jobs in all walks of life.
225 National or people's consultation.
226 Boer Resistance Movement.
227 Boer State Party.

which a police officer was killed when he went to investigate a suspicious-looking parcel (see below). Those implicated in the bombing allegedly belonged to the Cullinan cell of the BWB.

35. Ford also laid claim to the establishment of the Boere Republikeinse Leër (BRL).[228] The BRL was launched in 1991 when a document was circulated in far right-wing circles, calling on right-wingers to join. The BRL claimed responsibility, through anonymous callers, for various acts of sabotage that later turned out to be the work of other organisations or individuals. Doubts have been expressed as to whether the BRL actually existed or whether it was just one of several so-called 'telephone ghosts' of the right.

36. BWB deputy leader, Mr Piet Rudolph, went on to form the more militant Orde Boerevolk (OB), which declared war on the government through the medium of a videotape posted to an Afrikaans newspaper. At the time, Rudolph was on the run from the law following the theft of weapons from the SADF to launch the so-called 'Third War of Freedom'. By 1993, OB members had been organised in underground cells and were preparing for war. They were responsible for a number of violent acts and violations in the early 1990s.

37. At this time, the AWB created local self-protection committees modelled on the neighbourhood watch system in many right-wing towns, including *Blanke Veiligheid* (White Safety) in Welkom; *Brandwag* (Sentinel) in Brits; *Aksie Selfbeskerming* (Action Self-Protection) in Klerksdorp and *Die Flaminke* (Flamingos) in Virginia. Some engaged in vigilante actions such as the enforcement of the 'white-by-night' curfew instituted by the AWB across the country in 1990. On several occasions, these organisations entered into conflict with black residents in the towns and adjacent townships, particularly during consumer boycotts. During such incidents, white vigilantes encountered little or no intervention from law enforcement agencies.

VEKOM AND THE AFRIKANER VOLKSFRONT

38. In the wake of the 1993 killing of Chris Hani, a group of retired SADF generals founded the Volkseenheidskomittee (Vekom)[229], a well co-ordinated movement which established regional committees in the Transvaal and Orange Free State.

228 Boer Republican Army.

229 Nations/People's Unity Committee.

Vekom aimed to create a paramilitary structure to facilitate access to armaments and other resources during the run-up to the 1994 election. Together with up to sixty-five other organisations, the formation of a 'right wing front' was discussed and the Afrikaner Volksfront (AVF) was conceived, drawing in a broad spectrum of right wing groups. These included the CP, the HNP, Afrikaner Volksunie, the Afrikaner Vryheidstigting (Avstig), the Wêreld Apartheid Beweging (WAB)[230], the Boere Vryheidsbeweging[231], the Pretoria Boerekommando Group, Vekom, the Mine Workers' Union, the Church of the Creator, the Oranjewerkers-Vereniging and some business and other church groupings. The AWB was also persuaded to participate. Later the BWB and the BRL also supported the front. The front's rallying call was for a *volkstaat*.

39. While the AWB fell in with the AVF, the latter's formation in May 1993 came as a blow to Eugene Terre'Blanche, who now found himself sidelined. Terre'Blanche had liked to see himself as the strongest force in extra-parliamentary right-wing politics and the AWB as the original and true carrier of the *volkstaat* ideal. Tensions erupted in March 1994 when three AWB members were killed during the Bophuthatswana debacle. Shortly thereafter, AVF leader General Constand Viljoen cited AWB lack of discipline as one of the main reasons for the failure of a right wing, and resigned from the AVF directorate. For their part, the AWB and Terre'Blanche accused Viljoen of being a traitor.

THE FREEDOM ALLIANCE

40. The Freedom Alliance (FA), which grew out of the Concerned South Africans Group (COSAG) in 1993, was a political pressure group comprising the AVF, the Inkatha Freedom Party (IFP), the Ciskei and Bophuthatswana homeland governments and the CP. All its members had at one stage or another pulled out of the multi-party negotiations, giving as their central reason their perception that the NP and ANC were pushing a pre-determined agenda past the other parties.

41. For its part, the FA pushed a strong regional agenda. Some of its members subscribed to confederalism and others to federalism, following the principles of the right to self-determination, the protection and promotion of free enterprise and the limitations of powers of central government. The AVF's General Viljoen spoke on behalf of the alliance at a meeting in Pietersburg during July

230 World Apartheid Movement, aka the World Preservatist Movement.
231 Boer Freedom Movement.

1993, saying that the potential for conflict was so high that a bloodbath was unavoidable if the demands of the alliance were not recognised.

42. However, General Viljoen ultimately supported participation in the democratic elections in 1994.

PART TWO: SUMMARY AND ANALYSIS OF AMNESTY APPLICATIONS

■ OVERVIEW

43. A large number of victim statements implicating right-wing perpetrators were received by the Commission, nearly all relating to violations committed from the late 1980s until the election in April 1994. The number of statements received showed a distinct increase in violations as the election approached, peaking in late 1993 when the political climate for extremism was at its height. Most violations occurred in the former Orange Free State and Transvaal and many were as racist as they were political in character.

44. A total of 107 applications for amnesty were received from members of right-wing organisations. This figure does not include those applicants who were found not to be bona fide members of such organisations, or those who participated in right-wing activities while they were members of the security forces.

45. The overwhelming majority (71 %) of applicants claimed membership of the Afrikaner Weerstandsbeweging (AWB). Ten per cent of applicants claimed membership of the Conservative Party (CP). The remaining 19 per cent of the applicants claimed to belong to a variety of organisations, including the non-specific 'right wing'.

46. Most applications for amnesty from right-wing applicants were heard and settled in the early stages of the Amnesty Committee's work. Of these, 68 per cent were granted amnesty. Roughly half the applications were dealt with in chambers[232] and half in hearings convened by the Amnesty Committee. Sixty per cent of the hearable applications and 67 per cent of the chamber matters were granted amnesty.

232 See this volume, Section One, Chapter Three for more information about chamber matters.

47. The Amnesty Committee heard that, prior to February 1990, violations committed by members of right-wing organisations took the form of isolated attacks with a strong racist character. From February 1990, right-wing violence took on a more organised and orchestrated form. Isolated racist attacks on individuals were replaced by mass demonstrations and orchestrated bombing and sabotage campaigns. Perhaps the two most dramatic of these mass actions were the June 1993 occupation by members of the AWB and other right-wing groups of the World Trade Centre at Kempton Park[233] and the invasion by members of the AWB of Bophuthatswana in support of the homeland administration in 1994[234] In the first incident, Eugene Terre'Blanche led a crowd of up to 3000 right-wingers around a police cordon and smashed an armoured vehicle through the plate glass doors of the Centre, where constitutional negotiations were underway. The right-wingers occupied the chamber for more than two hours singing *Die Stem*[235] Their representatives handed over demands for a *volkstaat*. In the Bophuthatswana incident on 11 March 1994, Eugene Terre'Blanche mobilised a force of 600 AWB members following an appeal by President Mangope to the Volksfront for assistance in suppressing civil action calling for political reforms in the homeland. They entered Mafikeng in Bophuthatswana and proceeded to attack local residents. Over forty-five people were killed, including three AWB members.

48. It should be noted that one of the main reasons for extending the cut-off date for amnesty applications was to accommodate potential applicants who had been involved in these two incidents. Yet amnesty applications were received in respect of neither. The original cut-off date was 30 November 1993.

CATEGORIES OF VIOLATIONS

49. This chapter deals with the violations committed by the right wing prior to the unbanning of political organisations in February 1990 and the violations that followed the unbannings until the first democratic election in April 1994 in the following broad categories: attacks on individuals; possession of arms, explosives and ammunition; sabotage of the transitional process, and sabotage of the electoral process.

233 Volume Two, Chapter Seven, p. 663; Volume Three, Chapter Six, p. 736.

234 Volume Two, Chapter Seven, p. 614, para 141.

235 The former national anthem.

50. The first category deals with right-wing attacks on individuals, on those perceived to have betrayed the nationalist ideal and on black persons insofar as race determined the notion of the 'enemy'. Few human rights violations were committed by right-wing groups during the 1960s and 1970s.

51. The second category deals with applications for amnesty for the possession (including the theft or manufacture) of arms, explosives and ammunition.

52. The third category deals with violations committed between February 1990 and December 1993, which were intended in one way or another to derail the process of negotiations by instilling a climate of terror and fear in the country. Included in this category are indiscriminate attacks on individuals, targeted assassinations, interference with political activities and sabotage attacks on symbolic targets, including schools, businesses, newspapers, court buildings and so on.

53. The fourth category deals with violations committed between 1 January and 27 April 1994 with the specific intention of throwing the preparations for the first democratic elections in April into disarray. These violations include those arising from a comprehensive pre-election bombing campaign of strategic attacks as well as ongoing attacks on individuals.

54. It should be noted that the violations reported to the Commission represented less than half of the actual number of violations for which members of right wing organisations were responsible in the months leading to the April 1994 elections.

LINKS WITH OTHER ORGANISATIONS

Links with the security forces

55. The evidence shows that the right wing enjoyed a doubled-edged relationship with the security forces.

56. On the one hand, both the security forces and right-wing groupings shared a 'common enemy' in the ANC/SACP alliance. Although members of the former SADF and SAP were, from 1984, prohibited by law from being members of the AWB and other right-wing organisations, many members of the police force were sympathetic to the right wing. Police and right-wingers often moved in the same circles, especially in small towns where white communities were small.

Moreover, many members of right-wing organisations had at some time undergone military training in the SADF and continued to receive support in the form of training, information and weapons. The AWB claimed on several occasions that their strength within the army and police ranged from between 40 and 60 per cent.

57. The Commission heard evidence that Military Intelligence structures were involved in the formation of Vekom and later the AVF. There are, of course, other possible explanations for this. It might have been a strategy to defuse militant ultra-right and rogue security force members and bring them into the fold of the negotiations process. Alternatively, the aim could have been to mobilise the right wing in order to create the impression that a military-style coup was on the agenda, thus either strengthening the NP's bargaining position in the negotiations or as a prelude to a military-style coup.

58. The Committee received amnesty applications from security force members who supported the right wing and actively assisted them with training, information and weapons. Boereweerstandsbeweging (BWB) 'general', Mr Horst Klenz [AM 0316/96] testified how the Security Branch in towns like Cullinan provided weapons directly to the groups' deputy leader (one Von Beenz), for use by the BWB's approximately 100 active members.

59. On the other hand, right-wing organisations were themselves infiltrated by the Security Branch. According to intelligence documents before the Commission, the SAP ran a Stratcom project ('Operation Cosmopolitan') in the early 1990s. This aimed, inter alia, to utilise strategic intelligence to persuade the right wing to take part in negotiations and a peaceful settlement and to influence members of the SAP to accept and support the negotiations process.

60. Mr Roelof Venter, a security policeman who applied for amnesty for a vast array of violations, mostly in connection with the liberation movements, also admitted to acting against right-wingers between the early 1980s and 1994. Venter said he 'questioned' a number of right-wingers:

They talked easily without the necessity to use physical force, but we were in no doubt to use the same interrogation techniques against them as those used against the black activists, if necessary. (Pretoria hearing, February 1997.)

61. An unidentified security policeman applied for amnesty for several premeditated violations against right-wingers and right-wing organisations. In the late 1980s,

he was instructed to infiltrate the right wing and sow divisions. He testified that he was involved in *crimen injuria*, defamation, invasion of privacy and other violations against AWB leader Eugene Terre'blanche during 1988/89. This involved smear campaigns and 24-hour tapping of his telephones, leading to the exposure of his alleged affair with a Sunday newspaper journalist.

62. The same Security Branch policeman applied for amnesty for theft and a break-in at the AWB offices in Pretoria in 1989, when a number of documents were taken. He believes the information gained as a result helped the police (and government) to keep the right wing 'under control'.

63. He also admitted to arson, damage to property, intimidation and conspiracy during the early 1990s, and carrying out actions in the name of the Wit Wolwe ('White Wolves') in Pretoria and Verwoerdburg. These actions targeted white activists such as members of the End Conscription Campaign (ECC) and the National Union of South African Students (Nusas) affiliates and involved the creation and distribution of Stratcom-style pamphlets in the name of the Wit Wolwe.

Links with the CCB

64. One of the earliest known right-wing violations seems to have been orchestrated by the Civil Co-operation Bureau (CCB). Applicant Leonard Michael Veenendal [AM3675/96], who was involved with a number of right-wing groups, testified that he was a paid CCB member while at the same time carrying out actions with various right-wingers. Veenendal, together with another CCB member, a German right-winger and other right-wingers – most related to the BWB – were involved in the killing of an UNTAG guard in Namibia in 1989. Veenendal escaped from custody, killing the police officer guarding them. He was refused amnesty [AC1998/002].

Links with the Inkatha Freedom Party

65. Applications and intelligence documents provide evidence that some IFP members and right-wingers collaborated on a wide front, particularly in efforts to procure weapons.

66. With the formation of the Concerned South Africans Group (COSAG) in 1993, the IFP formalised its ties with the Afrikaner Volksfront, an umbrella body comprising a variety of conservative and right-wing groups.

67. Evidence before the Committee confirmed that, even before the formation of COSAG, AWB groups were working closely with the IFP, particularly on the KwaZulu/Natal north coast and to some extent on the West Rand. This association involved mainly the procurement of arms and ammunition, although there were also reports of AWB groups providing training assistance. Joint operations were planned in at least two instances on the KwaZulu/Natal south coast (See the Flagstaff police station attack below).

68. Former IFP member Walter Felgate testified at a section 29 hearing[236] that most right-wing offers for joint operations to procure weapons were declined by the IFP.

69. Amnesty was granted to Mr Gerrit Phillipus Anderson [AM8077/97], an AWB member whose cell in Natal co-operated with the IFP to procure and hide weapons between May 1993 and June 1994 [AC/1998/0005]. Anderson was an adviser on special AWB operations in Natal. He testified before the Amnesty Committee that the AWB procured weapons for the IFP as it was believed that the IFP could help the AWB realise its ideal of a *volkstaat*. He testified that the AWB leadership approved these actions. Anderson stated in his application that the homemade guns were hidden by an IFP member and later handed over to the Security Branch by a third party.

70. IFP supporter Mr Allan Nolte [AM2501/96] applied for amnesty for planning to poison the water supply of Umlazi in Durban with cyanide during 1993/4. The plan was never executed. Nolte testified that he was 'on loan to the AWB' for the planned operation and named other right-wingers who were party to the proposed poisoning operation. Nolte was later convicted of illegal possession of arms and explosives, an offence for which he was refused amnesty because it was committed after the cut-off date [AC/1999/0073][237] He testified that the aim of joint IFP/AWB operations was to isolate KwaZulu-Natal from the rest of the country in order to 'take control of it'.

The Flagstaff police station attack

71. Four AWB members and three IFP members launched an attack on the Flagstaff police station in the Eastern Cape on 6 March 1994, with the intention of stealing

236 In terms of Section 29 of the Act, witnesses and alleged perpetrators could be subpoenaed in order to 'establish the fate or whereabouts of victims' and the identity of those responsible for human rights violations.

237 The initial cut-off date for amnesty applications was 14 December 1996. This was, however, extended to 10 May 1997.

arms for use by IFP self-protection units (SPUs).[238] AWB members Harry Simon Jardine [AM6178/97] and Andrew Howell [AM5961/97], AWB/IFP member Morton Christie [AM6610/97] and IFP members Christo Brand [AM6422/97] and James Mkhazwa Zulu [AM5864/97] applied for amnesty for the incident. Before the start of the hearing, Mr Zulu was killed in a violent altercation and his application could not be proceeded with.

72. The applicants testified before the Committee that AWB Commander Patrick Pedlar and Mr Robin Shoesmith, an IFP SPU member, requested that they attack the Flagstaff station on a Sunday when it was thought that there would be only one SAP officer on duty. However, unbeknown to the applicants, the police were tipped off about the attack, allegedly by Pedlar himself. Reinforcements were sent to the police station and what had been foreseen as an easy robbery turned into a shoot-out. The police officer on duty, Mr Barnabas Jaggers, died in the attack and officers Wele Edmund Nyanguna and Mzingizi Abednego Mkhondweni were injured. The applicants managed to get away with a vehicle, arms and ammunition and a trunk containing R140 in cash.

73. Mr Jardine testified that, at the time, the AWB was preparing for war because the ANC was going to take over the country. In this volatile political climate, the AWB co-operated with the IFP because they shared 'a common enemy' in the ANC/SACP alliance. Working with the IFP would strengthen the might of the AWB in the south coastal areas of KwaZulu/Natal (Durban hearing, April 1998).

74. Mr Howell testified before the Committee that the IFP and the AWB shared the same belief in the self-determination of their people. Working together to combat the ANC's rise to power would strengthen the AWB's aim of achieving a *Boerestaat* (Durban hearing, April 1998).

75. Mr Christie testified that he had been instructed by AWB General Nick Fourie[239] to assist the IFP in any way possible.

MR CHRISTIE: ... I see in the news and what-not, the IFP or Zulus, as such, had marched with other right-wingers in other parts of the country. So, our objective was, obviously, to assist the IFP. You know, they not having the benefit of military training as what we've had and, of course, the ANC having benefit of military training from overseas, the IFP are left with no military training. I was instructed

238 See Chapter Three in this section.

239 Nick Fourie was killed about a week after this event when AWB forces invaded Bophuthatswana.

on that regard that we should assist the IFP in any way possible. (Durban hearing, 24 April 1998.)

76. Although he authorised the attack, Fourie was not involved in planning it. He did, however, warn Christie to proceed with caution and to be wary of local AWB Commander Patrick Pedlar, who was thought to be an informer for the Security Branch.

77. All five applicants were convicted of the robbery, the killing of Mr Barnabas Jaggers and the attempted killing of Mr Wele Edmund Nyanguna and Mr Mzingizi Abednego Mkhondweni. Their sentencing in the matter was delayed pending the outcome of their amnesty applications. The surviving victims, Mr Nyanguna and Mr Mkhondweni, opposed their applications on the grounds that the applicants did not disclose who actually wounded them and killed Mr Jaggers.

78. The Amnesty Committee found that the operation was associated with a political objective committed in the course of the conflicts of the past and that the relevant facts relating to the particular offenses had been disclosed, bearing in mind the circumstances prevailing that night. Amnesty was granted the four applicants [AC/1998/0015].

The Seychelles Restaurant attack

79. In February 1994, the same IFP and AWB members conspired to carry out an attack on the Seychelles Restaurant at Port Shepstone. Mr Morton Christie, Mr Harry Jardine and Mr Andrew Howell applied for amnesty for the arson attack that destroyed the restaurant. They testified before the Amnesty Committee that the restaurant was a known meeting place for ANC supporters.

80. At the hearing on the Flagstaff police station attack, the applicants revealed that they had conspired to bomb the Port Shepstone offices of the NP and the ANC on the same day as the Seychelles Restaurant attack, but had abandoned these plans because of the commotion caused in the town by the bombing of the restaurant. No casualties or injuries were reported after the bombing.

81. Amnesty was granted to the applicants for the attack on the restaurant, for the conspiracy to attack the NP and ANC offices and for preparing and being in possession of explosives, on the basis that the relevant facts had been disclosed

and that the offences were associated with a political objective committed in the course of the conflicts of the past [AC/1999/0183, 0184, 0185].

Links with international right-wing organisations

82. Support from international right-wing organisations mainly took the form of moral support and the supply of propaganda materials.

83. Mr Robert Mahler [AM6397/97], an American citizen, stated in an amnesty application that he had been recruited by the SAP to act as a firearms instructor. Mahler had illegally imported a large cache of weapons to South Africa, using fraudulent names and passports. He claimed allegiance to the CP and said he had contact with other groups like the AVF and AWB. He also said he was the USA fund-raising representative of the AWB. He was refused amnesty on the grounds that he could show no political objective for his offences.

84. After the assassination of Mr Chris Hani, reports appeared in international and local media linking Mr Janusz Walus and Mr Clive Derby-Lewis to international groups. This supported suspicions that there was a wider international conspiracy behind the killing. However, the Commission was unable to find that Walus and Derby-Lewis took orders from international groups (see below).[240]

PRE-1980 ATTACKS ON INDIVIDUALS

85. In the pre-1990 period, the right wing was associated mainly with isolated incidents of racial violence and politically motivated attacks on individuals.

The tarring and feathering of Floors van Jaarsveld

86. The earliest incident for which an amnesty application was received was the tarring and feathering of Professor Floors van Jaarsveld on 28 March 1979. The attack followed his delivery of a 'liberal' speech at the UNISA Senate Hall in Potchefstroom. AWB leader Eugene Terre'Blanche [AM7994/97], applied for amnesty for the incident.

87. When addressing the gathering, Professor van Jaarsveld, a leading historian attached to the University of Pretoria, had proposed a different approach to the

240 See also Section 1, 'Report of the Amnesty Committee', in this volume.

celebration of the Day of the Covenant, a day held sacrosanct by the majority of Afrikaners as it commemorated the battle of Blood River, where a small group of Voortrekkers staved off the attack of a large number of Zulu warriors.

88. Terre'Blanche and his followers, all members of the AWB, decided that Professor van Jaarsveld had abused his influential position in an attempt to further leftist political objectives, and saw this as an attack on the ultimate freedom of the Afrikaner *volk*. They regarded the new direction given by Van Jaarsveld to Afrikaner history as contrary to the then South African Constitution, which recognised God as the highest authority. It was for this reason that the AWB took a decision to 'tar and feather'[241] Professor van Jaarsveld in the lecture hall. They poured tar over him in front of his audience and thereafter strewed feathers all over his clothes and body. In the process, expensive carpets in the university hall were damaged. Mr Terre'Blanche was convicted of *crimen injuria* and malicious damage to property.

89. In his written application, Mr Terre'Blanche fully disclosed the names of his co-perpetrators. He testified at the hearing that it had been the intention of the AWB to send a message to Professor van Jaarsveld that he had broken the vow the Afrikaners had taken at Blood River. The lecture, in his opinion, was part of a clever political move, a typical onslaught on 'my God and my people who thereafter could not ask God for victory'.

I could think of no other measure to enable us, as a group of young people, to state our case. And in those days the powerful regime of the National Party destroyed us and we had no access to the press and the media, who to a great extent did not support us. The power and the force of the communism and the liberalists and the way it could be seen in the press as a cancer. We did not want to injure, cause injury to Professor van Jaarsveld; we did not want to cause damage to the property of the University; we never wanted to injure anybody from the audience. (Klerksdorp hearing, 10 May 1999.)

90. Terre'Blanche testified that, after the tarring and feathering, history books written by the professor were withdrawn from schools and that the AWB had therefore partially succeeded in its political objective since Professor van Jaarsveld could no longer influence the minds of the youth, the voters of the future.

241 'Tarring and feathering' was by no means an uncommon way of dealing with political enemies and deviants in Afrikaner political extremist circles.

91. The application was not formally opposed by the members of the family of the late Professor van Jaarsveld, who preferred to leave the matter in the hands of the Amnesty Committee. However, one of Professor van Jaarsveld's sons, Mr Albert van Jaarsveld, said that some individual members of the family opposed the application on the grounds that the act was not perpetrated to meet a political objective, but rather to gain publicity for the newly-formed AWB.

92. Mr van Jaarsveld read out a statement at the hearing, explaining the effect that the incident had had on the Van Jaarsveld family. Overnight, Professor van Jaarsveld had been 'transformed into a man who was looked upon with suspicion by his peers'. As a man deeply rooted in the Afrikaner culture, who had lived and worked within the inner circles of Afrikanerdom, he was humiliated and belittled at a public conference in front of an audience of his academic peers. The tarring and feathering incident effectively expelled him 'from that same community which he so dearly served'.

As regards my father's viewpoint on the Day of the Covenant, Mr Terre'Blanche is still spreading lies. It is clear that Professor van Jaarsveld took issue with legislation which effectively was forced upon South Africans other than Afrikaners, who felt themselves bound by the Covenant to celebrate the Day of the Covenant as a Sabbath, which legislation was enacted by the National Party in 1952.

At that stage, it was necessary to investigate this legislation seen in the light of the political changes which began to creep into the country. It is clear that he [Mr Terre'Blanche] does not want to or cannot understand the information in that paper. (Klerksdorp hearing, 10 May 1999.)

93. Mr van Jaarsveld confirmed that one of the consequences of the incident was that Afrikaans publishers like Perskor turned their backs on Professor van Jaarsveld and removed 'his popular and well-known history textbooks from the market'. He was ignored by the South African Broadcasting Corporation (SABC) to which he had regularly contributed to radio programmes. He was investigated by the security police and threatened with anonymous telephone calls and hate mail. Shortly after Terre'blanche and others had been found guilty, an attempt was made on the professsor's life and he was shot at with a crossbow. Other members of the family were threatened and a stone-throwing incident took place at the family home.

94. In response to Mr van Jaarsveld's statement, Terre'Blanche told the Committee: *Mr Chairman, all these things did not happen because the professor was tarred and feathered; these things happened because of the incorrect version of the Covenant and the fact that history was twisted, which can be the worst that can happen to a nation if you abuse your power to rewrite history so that you all of a sudden can become acceptable to other nations. If we sit here at the Truth and Reconciliation Commission, it is scaring to think that the Van Jaarsveld's family admit in front of this body seeking reconciliation and truth, that his father treated the truth in this way to the extent that his books were no longer published as textbooks because what he said was not acceptable to students and pupils. (Klerksdorp hearing, 10 May 1999.)*

95. After having considered the documentation placed before it and the testimony of the applicant, the Committee was satisfied that the acts committed by Terre'Blanche and other members of the AWB occurred in the course of the political struggle of the past and in furtherance of the political objectives of that organisation. The Committee was also satisfied that Terre'Blanche had made full disclosure of all the material facts as required by the Act.

96. It was suggested by the evidence leader, in argument, that the incident was the result of a religious dispute and thus fell outside the ambit of the Act. The Committee considered this argument but took the view that it had to accept the applicant's argument that his political conviction was driven by his education and belief in God. It was not possible to divorce the religious stance of the AWB from its politics. Amnesty was accordingly granted to Terre'Blanche in respect of the incident [AC/1999/221].

PRE-1990 ATTACKS ON INDIVIDUALS

97. Towards the end of the 1980s, targeted and indiscriminate attacks on individuals were becoming more and more frequent. With very few exceptions, the targets of these attacks were black persons. Individuals like Wit Wolwe member Barend Strydom, who killed eight people and injured sixteen when he opened fire on people in a busy Pretoria street in 1988, believed that black people were valid targets in their quest for political self-determination. Strydom submitted an application for amnesty for this incident, then later withdrew it.

The Killing of Potoka Franzar Makgalamela

98. On 29 August 1989, a black taxi driver, Mr Potoka Franzar Makgalamela, was fatally stabbed and shot by two right-wingers. Mr Cornelius Johannes Lottering [AM1004/96] applied for amnesty for three offences, namely murder, robbery and escaping from lawful custody. He admitted to killing Mr Makgalamela on 29 August and committing a robbery at the Poolside Liquor Store on 19 September 1989. These offences took place after he had resigned from the AWB and joined an organisation known as the Orde van die Dood ('Order of Death').

99. The evidence portrays the Orde van die Dood as having been an extremist right-wing political organisation, whose aim was the assassination of senior members of government and, at a later stage, members of the ANC. Its ultimate objective was the establishment of a volkstaat. Later the emphasis shifted to targeting members of the left wing who had, according to the applicant, 'become too strong at that point for the right wing'.

100. The Committee heard that individuals in the AWB had joined the shadowy organisation (also known as the 'Aquillos') after it was formed in 1988/9 because of security problems in the AWB. For example, when Lottering received his instructions from Mr Dawie de Beer, administrative head of the Aquillos, he was under the impression that they came from the AWB and the CP. Mr Andries Stephanus Kriel, a witness called by the applicant, confirmed the relationship between the two organisations:

    MR KRIEL: *Yes, that is completely acceptable because at that stage there were various factions within the AWB and we, as Commanders of a right wing organisation which housed activists, supported them. I would like to say that the Aquillos were selected by or according to the criteria of persons who would carry out instructions almost immediately – if I might say that they were people who could be manipulated, that you could give them instructions and no matter what the instructions were, they would have carried them out immediately. And those sort of people were taken up in the Aquillo – among others, Mr Lottering. (Pretoria hearing, March 1998.)*

101. According to Kriel, it was desirable that people who carried out instructions should not be directly traced to the AWB.

    MR KRIEL: *... in other words, if such a person were to be caught as a result of a murder or a robbery then it would not have left tracks which would lead to the AWB. (Pretoria hearing, March 1998.)*

102. Lottering testified before the Amnesty Committee that he had killed Mr Makgalamela because he had received an instruction from the leader of the Orde van die Dood to kill a person to prove that he would be an effective member of the order. The applicant testified that he also wished to satisfy himself that he was capable of carrying out his duties as an assassin.

103. Lottering testified that he received no instruction as to whom he should kill for the purposes of being initiated into the order. He testified that he had selected Makgalamela as his victim because he was a black man, explaining that, according to his religious beliefs, black people were his natural enemies. He had selected Makgalamela because he had seen him ferrying white girls in his taxi. This he found to be objectionable.

    MR LOTTERING: *The decision making about who and what it would be was left up to me personally; and I didn't want to simply just do anything, that is why I chose a Black taxi driver who transported white persons in his taxi. I basically chose him in order to protest against integration so that it would serve a dual purpose – that I would not simply find someone on the street and kill him. (Pretoria hearing, March 1998.)*

104. All that the applicant knew of Makgalamela was that he was a taxi driver. He did not and still does not know the deceased's political affiliation or views or whether or not he was politically active. Lottering was also not given any instructions or guidance by his leaders as to when and how his initiation victim should be killed, nor was he informed of any report-back procedure.

105. The Amnesty Committee found that the fact that the applicant murdered the deceased following an order given to him by the leadership of the political organisation of which he was a member did not, in the circumstances of this matter, justify his being granted amnesty for the killing. Makgalamela was killed to satisfy the internal initiation requirements of the Orde van die Dood. The Committee ruled that there were no grounds for concluding that the murder of the deceased was committed bona fide in furtherance of a political struggle waged by the Orde van die Dood against the state or another political organisation or liberation movement; nor that the killing was directed against the state or a political organisation or liberation movement or any member of the security forces or member of any political organisation or liberation movement. This was particularly so because the deceased must be regarded as having been an innocent private individual whose political affiliation and views were unknown.

106. The Committee found that, although the applicant had killed the deceased in the execution of an order, this was not sufficient to warrant the granting of amnesty. His motive in killing the deceased was to appease his superiors in the order and to displace any doubts they (or indeed the applicant) might have had about his ability to act as an assassin. The killing of the deceased was not only unreasonable, but was totally out of line with and disproportionate to the achievement of the stated political objective of the organisation – that is, the elimination of senior members of government or other political movements. It amounted to nothing more than a tragic loss of life, with no tangible or foreseeable benefit for the applicant's political organisation.

107. The Committee found that the killing did not achieve any desired political objective, and amnesty was accordingly refused [AC/1998/0025].

108. As regards the application for amnesty for the robbery, the applicant testified at the amnesty hearing that it was the policy of the Orde van die Dood to commit robberies to raise funds for the subsistence of members of the organisation and that he had committed the robbery in furtherance of such policy.

109. In his evidence, Mr Andries Kriel confirmed the existence of such a policy.

MR KRIEL: *... I would also like to add, Chairperson, that at that time when people struggled with the collection of finances and funds, they were constantly told that if they did not have money to continue that they should not come to us and ask for money, they should commit robbery. (Pretoria hearing, March 1998.)*

110. After careful consideration, the Committee decided to give the applicant the benefit of the doubt and to find that the robbery was not committed for personal gain. This meant accepting the applicant's explanation of why the evidence he gave before the Committee differed from that placed before the trial court. Amnesty for the robbery was therefore granted [AC/1998/0025].

111. According to Lottering and Kriel, another general order given to members was that they should attempt to escape from prison in order to continue to fight for the cause of the organisation.
MR KRIEL: *Regarding escapes, we told the people prior to the fact that – and we also this to them when we visited them in prison – we told them that if they could escape and if we could help them escape we should do it immediately so that we could continue with the struggle. That was also a general order which was issued. (Pretoria hearing, March 1998.)*

112. Lottering's escape from legal custody did not involve any gross violation of human rights and the applicant continued to serve the Orde van die Dood in the period following his escape until his recapture. The Committee granted amnesty to Lottering in respect of his escape from custody [AC/1998/0025].

POSSESSION OF ARMS, EXPLOSIVES AND AMMUNITION

113. The Committee received thirty-one amnesty applications for the possession of arms, explosives and ammunition. The offences included possession and storage of arms caches, theft of weapons, manufacture of weapons and explosives and distribution for the purposes of furthering the activities of right-wing organisations and the IFP. Twenty-nine of these applications were granted.

114. AWB leader Eugene Terre'Blanche [AM7994/97] was granted amnesty for the illegal possession of arms and ammunition in Ventersburg in about 1982 [AC/1999/221]. Terre'Blanche testified that the weapons, which included a number of AK47s and two pistols, were obtained by his organisation from a Mr Kees Mouse, whom Terre'Blanche later established to have been an SAP agent. The intention was to store the weapons and keep them until such time as members of the AWB needed them to protect themselves. The AWB feared that the then government would hand power to a black government and that the same fate would befall South Africa as had befallen other African countries, where chaos had followed political change.

115. It was eventually decided to bury the weapons on a farm belonging to Mr Terre'Blanche's brother until they were be needed. The weapons were later seized by the police and Terre'Blanche was arrested and convicted.

116. In another incident, AWB member Willie Hurter [AM 3613/96] was granted amnesty for being in possession of four shock grenades, a homemade shotgun and ammunition and an unlicensed Lama pistol at Bloemfontein on the 15 September 1992 [AC/1998/0024].

Robbery at Welkom military base

117. AWB members Roelof Johannes Fouche [AM 3507/96], Guillaume Cornelius Loots [AM 3508/96], Petrus Johannes Pelser [AM 3512/96], Roelof Johannes Jordaan [AM 3861/96], Cornelius Johannes Strydom [AM 3862/96] and Coenraad Josephes Pelser [AM 4719/97] applied for amnesty for the theft of

weapons and equipment from the Group 34 Commando Base at Welkom during the night of 2nd/3rd January 1993.

118. Under the leadership of Mr Jordaan (who holds the rank of General in the AWB), the applicants broke into the military base and made off with a large amount of weaponry, including rifles, handguns, ammunition, flares and smoke grenades as well as other equipment. No one was injured during the incident. The police recovered the stolen weapons and equipment a few days later on a farm in the Hobhouse district.

119. The applicants testified that they had committed the offence as an organised group of AWB members pursuant to a decision that was made by the AWB at regional level. The motivation behind the theft was to arm farmers on the eastern border of the then Orange Free State in order to enable them to protect themselves from attacks by members of the Azanian People's Liberation Army (APLA) who were operating from Lesotho. They testified that this was necessary as the government of the day was unable to maintain law and order in that region. None of the applicants derived any personal gain from the theft of the weapons and equipment.

120. The Committee was satisfied that the applications related to an act associated with a political objective committed in the course of the conflicts of the past and that the applicants had made a full disclosure. All were granted amnesty [AC/1998/0075].

POST-1990 VIOLATIONS

Sabotage of the transitional process

121. The Committee received thirty-five applications from members of right-wing organisations in respect of a range of violations committed with the aim of sabotaging the process of negotiations in the country. The violations, for the most part, consisted of attacks on individuals and included targeted assassinations. Most (71 %) were refused amnesty.

122. The Committee received forty-one applications in respect of attacks on symbolically important targets such as schools, business premises and court buildings. Most of these (95 %) were granted.

123. The lifting of the banning orders on the liberation movements in February 1990 triggered a spate of attacks by right-wingers on black persons around the country. At the end of November 1990, the AWB adopted the so-called 'white-by-night' policy, in terms of which black people were denied the right to remain in the then 'white areas' after 21h00. AWB members set up roadblocks and tried to enforce a 'white-by-night' curfew in the small towns in which they were most organised.

124. Photographers and journalists were thrown out of AWB meetings, some severely injured in beatings and attacks.

125. Schools were targeted for sabotage attacks. Following announcements that the Group Areas Act was to be repealed and schools would be opened to all race groups, a number of schools were destroyed in a series of bomb blasts.

Targeted killings

126. In 1990, two AWB members from Potgietersrus killed a civic member, Mr Max Serame, because of his alleged role in a boycott action in the town. Mr Jan Harm Christiaan Roos [AM0801/96] and Mr A J Vermaak [AM0818/96] claimed they were in a position to make their own decisions, even though direct commanders did not ask them to kill Serame. Amnesty was refused on the grounds that the attack had no political objective.

127. Earlier that year, J W Rautenbach [AM0412/96] murdered Mr Iponse Beyi Dlamini in Lamontville. He was refused amnesty on the grounds that the attack had no political objective.

The killing of Chris Hani

128. SACP and ANC leader Mr Chris Hani was one of the most popular and influential political figures in South Africa. He was gunned down in the driveway of his home in Dawnpark, Boksburg in the former Transvaal on 10 April 1993, the Saturday of the Easter weekend. Polish immigrant Mr Janusz Walus [AM0271/96] was found to have fired the shots that killed Mr Hani and Conservative Party member of the President's Council, Mr Clive Derby-Lewis [AM0271/96], was found to have planned and conspired with Walus to execute the assassination. Both were sentenced to life imprisonment and applied for amnesty.

129. Walus and Derby-Lewis were both thought to have strong ties with members of two international right-wing organisations, namely the World Preservatist Movement (WPB) and the World Apartheid Movement (WAM). Despite suspicion of a larger conspiracy behind Hani's death, the Commission found no evidence that the two convicted killers took orders from either of these international groups, nor from members of the security forces or higher up in the right-wing echelons.

130. Both applicants and numerous other witnesses testified at a hearing that lasted for several weeks. In addition, a substantial volume of documents and exhibits as well as full written arguments were placed before the Amnesty Committee.

131. The application was strenuously opposed by the Hani family and the SACP.

The testimony of Clive Derby-Lewis

132. The Committee found that Mr Clive Derby-Lewis was a seasoned politician steeped in conservative politics who had been popular in Afrikaner right-wing circles at the time of the incident. He was an English-speaking South African with a distinguished military background. He had been one of the founder members of the Conservative Party (CP) which had been launched in February 1982, had represented the party in Parliament during the period May 1987 to September 1989 and had served on the President's Council from September 1989 until the assassination.

133. Right-wing organisations were convinced that the political reforms of the early 1990s would result in the destruction of the Afrikaner's culture, values and way of life. It was in this context that Derby-Lewis and Walus plotted the assassination of Mr Hani. Their hope was that the followers of Mr Hani, many of them young people, would react to his assassination by causing widespread mayhem. This would create an opportunity for the security forces and the right wing to step in to restore order and take over the government of the country.

134. They never obtained the express authority of the CP for the assassination, nor were they acting upon the instructions or orders of the CP. Derby-Lewis had engaged in a discussion with Dr Treurnicht who indicated that it would be justified to kill the anti-Christ in a situation of war. Derby-Lewis contended that his senior position in the CP gave him the necessary authority to take the decision to assassinate Mr Hani on behalf of the CP.

135. In the course of their discussions about the assassination, Derby-Lewis handed Walus a list of names and addresses. The evidence led was that Mrs Derby-Lewis had prepared it for the purpose of exposing the luxurious lifestyles of those on the list for newspaper articles she intended writing. Her intention was to embarrass those concerned because their lifestyles conflicted with the cause for which they stood.

136. Derby-Lewis instructed Walus to number the names on the list in sequence of their enmity towards the CP. In other words, he contended that the list was not numbered for the purpose of eliminations; Mr Hani, the third on the list, was the only person identified for elimination.

137. It was agreed that Walus would shoot Mr Hani and that he would reconnoitre the Hani home and determine the logistics for the execution of the plan. Derby-Lewis would obtain an unlicensed firearm with a silencer to be used in the assassination.

138. During March 1993, Derby-Lewis obtained an unlicensed firearm from an old acquaintance, Mr Faan Venter, and arranged for a silencer to be fitted to the firearm through a friend in Cape Town, Mr Keith Darrel.

139. On 6 April 1993, Walus had breakfast with Derby-Lewis and his wife. After breakfast, Mrs Derby-Lewis left the house. Derby-Lewis handed the murder weapon, a Z88 pistol with a silencer and subsonic ammunition, to Walus.

140. On 7 April 1993, Walus called again at Derby-Lewis' house to enquire about the ammunition Derby-Lewis had said he would obtain for the pistol. Derby-Lewis had not yet managed to obtain the ammunition but instructed Walus to proceed with the assassination, repeating that he would leave the detailed execution of the plan to Walus.

141. Derby-Lewis testified that he was shocked when he heard about the assassination on 10 April 1993. He had not planned to assassinate Mr Hani over the Easter weekend and had indeed decided to postpone the assassination in order to give the matter further careful thought. Besides, he had not yet given Walus the ammunition. He concluded, therefore, that someone other than Walus had been responsible for the assassination. However, he saw from the media reports the next day that it was indeed Walus who had killed Mr Hani. Derby-Lewis was arrested at home on 17 April 1993.

142. At first, Derby-Lewis refused to co-operate with the police. It was only after he was detained in terms of section 29 of the Internal Security Act that, under prolonged interrogation and pressure, he made certain statements. He gave false information, notably about the list of names, in order to protect innocent people including his wife. He was also untruthful when he told the police that he had last seen Walus in December 1992.

143. He also gave false information in the affidavit he made (dated 29 October 1993) in support of the application to reopen his case in the criminal trial. He testified that he did so because he believed that the political struggle was still continuing at that stage and that he had to explore every avenue to secure his release.

The Testimony of Janusz Walus

144. The Committee found that Mr Janusz Walus was a member of both the CP and the AWB at the time of the incident. He was born in Poland and emigrated to South Africa in 1982 to escape the Communist regime in Poland. He chose South Africa because he believed that the Afrikaner would never succumb to Communism.

145. The Committee heard that Walus had a keen interest in South African politics and met Derby-Lewis and his wife in 1985. He participated in many CP activities with Derby-Lewis and formally joined the CP that year. In the same year, Walus met AWB leader Eugene Terre'Blanche and subsequently joined the AWB. He attended various AWB meetings during 1985 and 1986 and learnt of their resistance to NP policies and their fear that the NP would hand the country over to 'Communists'.

146. Walus was granted South African citizenship in 1988 and was able to vote in the 1989 elections. Although the NP gave voters the assurance that the ANC or SACP would not be unbanned before the election, it unbanned them in February 1990. It then became clear to him that negotiations would involve the NP and ANC to the exclusion of opposition parties.

147. After the 1992 referendum, the NP government reneged on its undertaking to consult the electorate before any constitutional amendments were effected. It then became clear to the CP that democratic channels were blocked. Walus feared that Mr Hani would take over the country as he was a popular leader in the SACP and saw himself being subjected to the Communist regime from which he

had escaped in Poland. This made him apprehensive to the extent that 'he vowed to do something to try and stop the handing over of his country to a Communist ruler'. It was at this stage that Walus began holding numerous detailed discussions with Derby-Lewis about solutions to the deteriorating political situation. Walus regarded Derby-Lewis as one of the policy makers of the CP and relied on him to provide direction. In one of these discussions (February 1993) Derby-Lewis handed him the list of names and they decided that Mr Hani should be shot.

148. On 10 April 1993, after reconnoitring the Hani home, Walus saw Mr Hani get into a vehicle. He ascertained that Mr Hani had no bodyguards with him. He followed the vehicle to the local shopping centre. Mr Hani went inside and later returned with a newspaper. Walus decided that this was an ideal opportunity to execute the order and drove to the Hani home where he awaited Mr Hani's return. After Mr Hani had pulled into the driveway, Walus approached and fired two shots at him. After Mr Hani had fallen down, Walus shot him twice behind the ear at close range. Walus left the scene in his vehicle. He was stopped by the police soon after the incident and was found in possession of the Z88 pistol, whereupon he was arrested.

149. During his detention, Walus was at first not prepared to give any statements to the police. After prolonged interrogation and after being given alcohol by the police, he began co-operating. He was also misled into believing that some members of the interrogation team were members of right-wing political organisations who had infiltrated the security police. Walus disputed the contents of certain statements the police alleged he had made while in detention and which form part of the record. He denied having said some of the things ascribed to him in these statements and indicated that the police had amended the statements to suit their own purposes.

The Testimony of Gaye Derby-Lewis

150. Mrs Gaye Derby-Lewis' testimony before the Committee concerning her role prior to the assassination coincided largely with that of her husband. She had not been involved in the plot to kill Mr Hani and was totally unaware of the plans. The list of names found in the possession of Walus was prepared at her instance by a journalist friend, Mr Arthur Kemp. She intended to use it to write a series of newspaper articles exposing the luxurious lifestyles of those identified on the list. This would have embarrassed them because it would expose their 'gravy train' lifestyles, which were at odds with the cause they represented.

151. Mrs Derby-Lewis had also left the list in the Cape Town office of Dr Hartzenberg for his use in his speeches in Parliament. He never made use of it and the list was returned to her. She testified that she was unaware of the fact that her husband had given the list to Walus.

152. She confirmed having had breakfast with her husband and Walus at her home on 6 April 1993, but testified that she had left while her husband and Walus were still having a discussion.

153. She heard the news about Mr Hani's assassination while she and her husband were visiting Mr Faan Venter on 10 April 1993. She was arrested on 21 April 1993 and placed under section 29 detention. She was subsequently charged and acquitted. She gave false testimony at the trial on the question as to whether her husband had told her on 12 April 1993 that he had given the list to Walus.

154. A substantial part of her testimony before the Amnesty Committee was devoted to her detention and treatment at the hands of the police.

155. While in police detention, Mrs Derby-Lewis wrote and signed a number of statements. She personally typed one of the hand-written statements to help the police sergeant who was charged with doing the typing. Despite this, she argued that she had been unduly influenced to make these statements and that they had not been freely and voluntarily made for the following reasons:

    a She was not warned in terms of the Judges' Rules. However, under cross-examination on behalf of the police officers, she conceded that it was possible that she had been warned.

b She was denied access to a legal representative and was at times falsely told that her attorney was on his way.
c She was threatened with section 29 detention.
d She was badly treated by Captain Deetlefs who was insulting towards her and threatened her with long-term imprisonment. She had a personal fear of Deetlefs and complained that he was intoxicated.
e Sleep deprivation contributed towards her writing false statements.
f Mr de Waal made her change her statement and write various untruths. He would come to her after she had written a statement and inform her that Colonel Van Niekerk was not happy with what she had written. She would then amend her statement accordingly.

156. Under cross-examination on behalf of the police officers, Derby-Lewis conceded that those parts of the video recording of her questioning which were put to her showed that her conversation with Deetlefs was quite civilised. They also showed her fully participating in the discussion. She then indicated that Deetlefs had threatened her during those parts of the conversation that were not on the tape. She praised the police and said she would like to join the police force, but said this was meant as a joke.

157. She also confirmed that Deetlefs' attitude did not, at any stage, lead to her telling an untruth and agreed that he did not compel her to tell any untruths. She said that she 'stuck to her guns' and spoke the truth.

158. When referred to a portion of the video recording where she says she had slept for twelve hours, she conceded that sleep deprivation did not play a role when she signed some of her statements on 24 April 1993.

159. Under cross-examination, she conceded that De Waal was reasonably civil towards her. On most occasions when he questioned her, there was a female police officer present. He helped her to obtain some personal items and to attend to other personal matters. On one occasion, she told De Waal that she did not wish to do a 'pointing out', which he accepted.

160. Mrs Derby-Lewis saw her personal doctor in April 1993, some days after Deetlefs had concluded his interrogation. Although only the District Surgeon was present, she failed to tell her doctor about her maltreatment or that she had been compelled to make false statements. When she was asked under cross-

examination to explain the meaning of, 'I am sure it is going to be used in court', words she uses on the video, she declined to do so. She testified that she really did not know what these words meant because she had used them while she was being held under section 29 detention.

The Decision of the Amnesty Committee

161. In arriving at a decision, the Committee had to isolate several issues for consideration.

    a Were the applicants acting bona fide on behalf of or in support of the CP in furtherance of a political struggle by the CP against the ANC/SACP alliance, as required by section 20 (2)(a) of the Act?
    b Were the applicants acting bona fide as employees or members of the CP in the course and scope of their duties and within the scope of their express or implied authority in furtherance of a political struggle with the ANC/SACP alliance, as required by section 20(2)(d) of the Act?
    c Did the applicants have reasonable grounds for believing that they were acting in the course and scope of their duties and within the scope of their express or implied authority as required by section 20(2)(f) of the Act?
    d Did the applicants make a full disclosure of all relevant facts as required by section 20(1)(c) of the Act with specific reference to:
    e the purpose for which the list of names was compiled;
    f the purpose for which names were prioritised on the list;
    g the purpose for which the Z88 pistol was obtained and fitted with a silencer;
    h whether Walus was acting upon orders from Derby-Lewis in assassinating Mr Hani;
    i the role played by Mrs Derby-Lewis in the killing and whether she had advance knowledge of the assassination?

162. The Amnesty Committee devoted time to two further issues: the weight to be attached to statements that Derby-Lewis and Walus made while in detention and the question of a wider conspiracy to kill Mr Hani. Although the Committee was not persuaded that the applicants' versions detracted from the weight of these statements, it made an assessment of the applicants' evidence without having regard to these statements. Furthermore, although there were compelling arguments in favour of the conclusion that there was a wider conspiracy to kill Mr Hani, the Committee found that the evidence did not conclusively establish this fact.

163. The Committee found that it was common cause that the applicants were not acting on the express authority or orders of the CP, which party they purported to represent in assassinating Mr Hani. The CP had never adopted, propagated or espoused a policy of violence or the assassination of political opponents.

164. Various newspaper reports immediately after the assassination evidence the CP leadership's disapproval of the incident and their rejection of murder as a political tool. The arrest of Mrs Derby-Lewis came as a shock to them. They had denied earlier that Walus was a listed CP member. In fact, during a television interview on 20 April 1993, the acting leader of the CP, Dr Ferdi Hartzenberg, unequivocally distanced the CP from violence and reiterated the commitment of the CP to non-violent, democratic means of pursuing its aims. He expressly denied that the statements made by CP leaders amounted to tacit approval of violence, or that the CP had ever planned violence on an offensive basis. Rather, the CP was looking at means to defend its followers from the violence that was taking place.

165. In testifying before the Committee, Dr Hartzenberg also denied that the objective which the applicants pursued, namely to cause chaos and revolution in the country, formed part of CP policy. He testified further that it was not CP policy to eliminate opposition political leaders. The CP had never been aware of the planning of the assassination and only became aware of it after the event. It never approved, ratified or condoned the assassination. In an apparent concession of this fact, the applicants submitted in their written argument that it was not a legal requirement that the CP should have been aware of or expressly approved the assassination. It was merely required that the CP should have benefited from the assassination.

166. The applicants also relied on the dictionary definition of the Afrikaans term 'ten behoewe van' which is the equivalent of the term 'on behalf of' used in section 20(2)(a). According to the definition, the term means '*tot voordeel van*' (to the benefit of). The applicants failed to specify what benefit allegedly accrued to the CP following to the assassination. On the contrary, the evidence before the Committee did not show that any benefit had accrued to the CP.

167. Those who objected to the applications submitted in their written argument that the words 'on behalf of' in the context of section 20(2)(a) were used in the narrow sense as referring to someone who is mandated or authorised to act by an

organisation. Any other interpretation, and particularly the wider meaning suggested by the applicants, would lead to absurd results. They illustrated such absurdity by referring to the example of bank robbers claiming to be acting on behalf of a liberation movement because their actions were crippling the economy and thus benefiting the struggle of the liberation movement.

168. Taking into account the submissions of the objectors, the Committee noted that subsection 20(2)(a) of the Act did not cover perpetrators who acted contrary to the stated policies of the organisation which they purported to represent. The Committee was therefore not satisfied that the applicants had acted on behalf of or in support of the CP in assassinating Mr Hani.

169. The Committee accepted that the applicants clearly and subjectively believed that they were acting against a political opponent. The objective facts supported this belief, in particular the fact that Mr Hani was regarded as such by the CP and the right wing. However, this factor, while relevant, was insufficient on its own to render the application successful.

170. The Committee found that it was clear that the applicants had not been acting within the course and scope of their duties or on express authority from the CP. The clear evidence of Dr Hartzenberg negated any claim that the public utterances of the CP leadership constituted implied authority for the assassination. The Committee found that it would have been futile for the applicants to rely on such a claim, given the fact that they were both active CP members, acquainted with the party structures and constitution as well as the policy of non-violence. Mr Derby-Lewis, in particular, was part of the CP leadership and national decision-making structure and could not reasonably rely on the utterances of his colleagues to support his claim that they had implied authority from the CP for the assassination. His discussions with Dr Treurnicht about killing the 'anti-Christ' could hardly amount to authority or an instruction to commit the assassination. To his knowledge, Dr Treurnicht had no power in terms of the CP constitution to bind the CP without the necessary mandate, especially in so radical an undertaking as the assassination of a high-profile political opponent.

171. The Committee found the inference that the public speeches and statements relied upon by the applicants amounted to a call for armed struggle or violence to be unfounded. These were no more than predictions or warnings that the CP might adopt a course of violence in the future.

172. Nor did the random explosions and acts of violence referred to by the applicants support their argument. None of these acts were committed by or on behalf of the CP. Indeed, Mr Koos Botha was repudiated by the CP during October 1992 for causing an explosion at the Hillview School. The basis of this repudiation was that the speeches of Dr Treurnicht could not be interpreted as a call for violence.

173. The Committee was satisfied that the applicants were not acting within the scope of any implied authority from the CP in assassinating Mr Hani. The applications accordingly failed to comply with the requirements of section 20(2)(d).

174. The Committee was not satisfied that the applicants had any reasonable grounds for believing that they were acting within the course and scope of their duties. The applications accordingly failed to comply with the requirement of section 20(2)(f).

175. In determining whether the applicants had made full disclosure, the Committee gave consideration to the purpose of the list of names. The applicants testified that Mrs Derby-Lewis had prepared the list of names for innocuous reasons and that Derby-Lewis had decided to use it for a totally different purpose. The Committee found that the reason Mrs Derby-Lewis gave for requiring the addresses of the persons on the list was unconvincing. Her explanation that she needed addresses in order to arrange interviews makes little sense in view of her concession that there was no likelihood of Mr Hani giving her an interview in his home.

176. The Committee found that the names constituted a hit list compiled for the purpose of planning assassinations. The evidence of the applicants that the list was to assist them to communicate confidentially was wholly unconvincing and the Committee found their version to be untrue in this regard.

177. On the question of the murder weapon, Mr Derby-Lewis told the Committee that he had acquired the Z88 pistol in order to protect his family. The silencer was fitted so that he could practice at home without disturbing his neighbours. The silencer would also give him a strategic advantage during an attack upon his home. Derby-Lewis thus contended that the original reason for obtaining the firearm was unrelated to the subsequent assassination of Mr Hani. It was purely fortuitous that he was in possession of an unlicensed firearm fitted with a silencer at a time when Walus was looking for an appropriate murder weapon to execute the assassination.

178. The Committee had no hesitation in rejecting Derby-Lewis' evidence in this regard. His explanation for fitting a silencer to the unlicensed firearm was inherently improbable and his explanation of the reason for obtaining the firearm was clearly false. It was particularly significant that he obtained a weapon that was perfectly suited for the purposes of the assassination fairly soon before the incident and at about the time when the applicants agreed that Mr Hani should be shot. The Z88 pistol was clearly obtained for the express purpose of assassinating Mr Hani.

179. The Committee gave its attention to whether Walus had acted on the instruction of Derby-Lewis in executing the attack. Walus initially stated in his application that he had acted alone in planning and executing the assassination. Subsequently, his application was amended to indicate that he had acted on the instructions of Derby-Lewis, but that they had jointly planned the assassination.

180. The Committee found that it was clear from the record that Walus was not acting as a mere functionary. He had a clear understanding of the political situation and was active in right-wing politics. He was clearly activated by his personal desire to stop the 'Communists' from taking over the country. He participated fully in political discussions and in hatching the plot to assassinate Mr Hani. He was under no duress or coercion and executed the plan as he deemed fit. Indeed, Derby-Lewis indicated that he was taken by surprise by the timing of the assassination.

181. In any event, Walus' own testimony is contradictory on the issue of orders. It is also contradicted by the testimony of Derby-Lewis, whose evidence was that the applicants were acting as co-conspirators who had jointly taken the decision to assassinate Mr Hani.

182. As an active CP member, Walus would have been aware that the CP has constitutionally established decision-making structures and that Derby-Lewis had no power to order him to commit murder, particularly in the light of the CP's policy of non-violence. There was no suggestion that he was ever previously ordered by the CP to commit any unlawful acts, let alone murder. Moreover, he failed to raise the alleged order to assassinate Mr Hani with any person in authority or with any governing structure in the CP.

183. In the circumstances, the Committee was satisfied that Walus was a co-conspirator and that he was not merely acting on orders from Derby-Lewis.

Accordingly, the Committee rejected the argument raised on behalf of Walus in this respect. The Committee judged that this was an afterthought and was resorted to in an attempt to enhance Walus' chances of receiving amnesty by curing deficiencies in the original application, and to bring the application within the ambit of the provisions of the Act, particularly section 20(3)(e).

184. In summary, the Committee found that the applicants had failed to make a full disclosure in respect of any of the relevant and material issues and was not satisfied that they had complied with the requirements of the Act, in particular the provisions of section 20(2)(a) thereof. Amnesty was refused [AC/1999/0172].

Legal challenge

185. A full bench of the High Court sat to review an application from the applicants challenging the decision of the Amnesty Committee. The Court considered all the evidence that had been presented before the Committee, as well as the arguments by all the parties, and analysed the various provisions of section 20 of the Act in detail.

186. In summary, the Court's main findings were that the Amnesty Committee had correctly rejected the applicants' contention that they had acted on behalf of the CP, subjectively believing that their conduct would advance the cause of their party. Further, the Court endorsed the finding of the Committee that the applicants had not acted in the course and scope of their duties as members of the CP, as is required by section 20(2)(d) of the Act, as assassination was never one of Derby-Lewis' duties as a senior member of the CP. It followed that Derby-Lewis could not have shared a non-existent duty with Walus; nor could he have delegated part of it to Walus. It followed that assassination never formed part of Walus' duties either.

187. The Court found that Walus was in a different position as a rank and file member and was entitled to assume that Derby-Lewis had authority to speak on behalf of the CP. In his original application, Walus stated that, 'he had acted alone in the planning and commission of the deed'. Under cross-examination, he said that this was not true. Walus later amended his amnesty application to incorporate Derby-Lewis as his accomplice, which he then insisted was the truth. Walus' version was that he believed that his assignment was an order from Derby-Lewis, given as a result of his senior position in the CP. This claim, the Court found, lacked objective credibility.

188. The Court found that the Amnesty Committee was correct in rejecting the applicants' evidence in respect of obtaining of the pistol and the silencer and the purpose of the list of names as improbable, contradictory and lacking in candour.

189. The Full Bench dismissed the application with costs.

Attacks on individuals

The Putco bus attack – Duffs Road, Durban

190. Members of the Orde Boerevolk Mr David Petrus Botha [AM 0057/96], Mr Adriaan Smuts [AM 0056/96] and Mr Eugene Marais [AM 0054/96] applied for amnesty for an attack on a bus full of black commuters in Duffs Road, Durban on 9 October 1990, in which seven people were killed. The three applicants were all convicted on seven counts of murder and twenty-seven counts of attempted murder and were sentenced to death on 13 September 1991. This sentence was subsequently commuted to thirty years' imprisonment.

191. Botha told the Committee that the attack was in retaliation for an incident which had taken place earlier in the day, in which PAC and APLA supporters wearing PAC T-shirts had randomly attacked white people on Durban's beachfront, killing one elderly person and injuring several others.

    MR BOTHA: *I was under the impression that the campaign of terror by the PAC against Whites had now commenced, and since we had already declared war against the National Party, and as a result of this attack, I as cell leader felt that we should launch a counter-attack to prove to the government of the day, and to show to it that the road it was following was full of danger and that incidents of this kind would increase in frequency.*

    Our purpose was also to show to the PAC and its communist allies that attacks of this kind would not be tolerated, and that we would take counter-measures in a very forceful way.

    And I also felt that the counter-attack should take place in Durban where the attack from the PAC had taken place in the morning and I felt that the attack by the PAC and the counter-attack should be seen in context, and I think we succeeded in this, because in the ***Sunday Tribune*** *of the 14th of October 1990 – in which interviews had been conducted with passengers in a bus from where the attack*

was launched – it said that they believed that the attack had been launched by Boers as a result of the PAC attack that morning on White people at the beach front. (Durban review hearing, December 2000.)

192. Botha and the two other members of his cell, Smuts and Marais, travelled down from Richards Bay to Durban, arriving after 20h00 on the night of the 9 October. Upon arrival, they drove around the bus terminus area and, observing that the streets were very quiet, decided to attack a minibus taxi that passed them. The minibus was full of passengers. They followed the vehicle as it travelled from the centre of Durban to KwaMashu but, when it turned off into a densely populated area, the applicants decided to abort the planned attack.

193. They returned to the highway and stopped at a garage for something to drink. They then observed a Putco bus full of people driving in the direction of KwaMashu. Botha decided that they would attack the bus and accordingly gave the instruction. He was driving the car as they set out to follow the bus in the direction of the Duffs Road off-ramp.

    MR BOTHA: *We overtook the bus and I told my colleagues to fire in the direction of the bus. We used automatic attack rifles to fire at the bus as we passed the bus – as we overtook it. Immediately after the attack we returned to Richards Bay. (Durban review hearing, December 2000.)*

194. On the following day, Botha contacted the SABC and, on behalf of the Orde Boerevolk, claimed responsibility for the attack on the bus. He testified before the Amnesty Committee:

    I don't know whether the person I spoke to took me seriously, but he was fooling around and asked me to furnish my name and address. I then put down the phone and then contacted the news office of the ***Natal Mercury****. I spoke to somebody in the news office there. I told them that I was a member of the Orde Boerevolk and that we accepted responsibility for the previous night's attack, and I also furnished the reasons why we launched the attack. There was no report in any of the papers the next day regarding this incident and I realised that there was a state of emergency at the time in Natal and I suspected that either the security police of the government or both had probably suppressed news of this kind.*

    I once again contacted the ***Natal Mercury*** *offices, spoke to the same reporter and told him that I was aware of the fact that news of this kind would normally*

be suppressed by the government and I threatened that, unless the news was published and unless they mentioned that the attack had been launched by the ***Orde Boerevolk*** *and mentioned our reasons for doing so, unless this was published, I would launch a similar attack. (Durban review hearing, December 2000.)*

195. The Committee accepted that the Orde Boerevolk was a recognised political organisation involved in a political struggle with the previous government and other political organisations. It also found that their acts were associated with a political objective.

196. In reaching a decision, the Committee distinguished between the roles played by Botha on the one hand and Smuts and Marais on the other, on the grounds that Smuts and Marais were Botha's subordinates and were under orders to carry out the attack as members of the *Orde*. Botha had not received any order or instructions to carry out the attack; nor did his actions carry the approval of any of his superiors or of the organisation.

197. Botha was refused and Smuts and Marais were granted amnesty for the incident. Botha was, however, granted amnesty for the unlawful possession of firearms and ammunition [AC/1997/0053].

198. David Petrus Botha submitted an application for the review of the Committee's refusal to grant him amnesty. The presiding judge, Mr Justice Smit, found that the Amnesty Committee had:
    a failed to consider properly whether Botha's conduct had not in fact complied with the requirements of the Act as to whether the 'act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or supporter';
    b lost sight of the fact that the provisions of section 20(3)(e) were merely criteria to be applied to determine whether an act was committed with a political objective and not requirements necessary for the granting or refusal of amnesty.

199. The Court set aside the refusal of amnesty and referred the matter back to the Committee to hear further evidence.

200. The applicant appeared before the Committee again in December 2000 and adduced the evidence of the leader of the Orde Boerevolk, Mr Pieter Rudolph. Rudolph said that he would not have authorised the attack if he had been asked to do so and that, in any event, he would have had no way of communicating with his supporters as he had been in detention at the time.

201. The Committee subsequently refused amnesty to Botha on the same basis as before, namely that he had had no authority from his political organisation to launch an attack on innocent and unarmed civilians.

The killing of George Mkomane

202. AWB member, Mr Hendrik Johannes Slippers [AM 1002/96] applied for amnesty for the abduction and killing of Mr George Mkomane in Belfast in the Eastern Transvaal on 13 February 1991. For these offences, Mr Slippers was sentenced to two years and twelve years.

203. Mr Slippers testified before the Amnesty Committee that, at an AWB meeting held in November 1990, his Commander AWB Commandant Volshenk had instructed members to implement a policy of 'white-by-night'. This amounted to the re-implementation of the curfew laws of the apartheid era, which prohibited blacks from being in so-called 'white areas' without a permit after 21h00. Blacks present in white townships after 21h00 should be told to leave and, if they refused, should be removed by force if necessary. The Committee received affidavits from Brigadier Kloppers and John Wayne Rautenbach confirming the policy and the instructions to carry it out.

204. Mr Slippers testified that the instruction he received:

> *… fitted in with my political objectives, namely the protection of whites, the interests of whites and I believed that the action would serve to intimidate people of other colours or other races in the country and also put a stop to blacks taking over in this country. I believed that these kind of actions would put a stop to the political changes in the country, it would either stop it or slow them down. (Nelspruit hearing, 7 May 1997.)*

205. He testified that, on the night in question, he and four other AWB members in Belfast were driving around trying to enforce the 'white-by-night' policy in the town. Although they had been drinking before they went on patrol, he testified

that he had not been drunk and knew at all times what he was doing and that the intake of alcohol did not influence his judgment.

206. They saw the deceased, George Nkomane, walking in the street, confronted him and loaded him onto the bakkie against his will. Their intention was to drive out of town and to 'off-load' him on the way to the black township. On the way, the deceased protested, saying that he intended to return to the 'white' township of Belfast. The applicant and one of the other members then assaulted Nkomane then deposited him outside the township. At this stage, Mr Nkomane began running back towards the white area.

207. The group pursued him, caught him and the applicant assaulted him by fisting him until he fell down. The applicant's co-accused then kicked him and jumped on him. The applicant testified that they had had no intention of assaulting Mr Nkomane but that things went wrong, an argument ensued and, as a result of the deceased's protest against the abduction, the brutal assault followed. He realised afterwards that he should have foreseen that the assault could have resulted in the death of Mr Nkomane.

208. The Court that tried the case had found that there was no direct intent to kill, but that the applicant was guilty on the basis of dolus eventualis. The Court found further that the offence was politically coloured. However, the applicant testified, he pleaded guilty at his trial and handed in a statement in which he did not reveal the full facts about the AWB's involvement as it seemed politically inappropriate to do so at the time.

209. Slippers expressed his remorse to the Committee:

If I was ever to have planned to kill anybody, I would rather have shot the person or stabbed the person and gone and hid that person's body in a safe place. My actions were in accordance with the instruction issued by the AWB and the entire incident took a different course to that planned.

After this incident, I and my ex-wife suffered various attacks in retaliation to this action which were launched by the Black community against us. After court sittings, mini buses would turn up at our house and the house; our vehicle and our caravan would be stoned and damaged, and the grass on my property and other things were also set alight.

On the 26th of March 1991, a month and thirteen days after the incident, I lost my wife in a car accident. The collision was caused by a black man who drove

into the passenger side of my vehicle. At that stage, I also experienced the misery and the loss which was experienced by the families of the deceased in the loss of a loved one. In spite of the fact that I am serving a ten-year prison term for my action, I regarded the loss of my wife as a far greater punishment and also saw it as part of my punishment for my action against the deceased. I suddenly realised what it was to be a single parent with two children. I now realise the senselessness of my action and the unnecessity of the attack. I am also very remorseful about the death of the deceased and the grief which it caused his family and his community. I now realise how important harmonious racial relationships are in our country and I will do everything in my power to ensure harmony amongst the races. (Nelspruit hearing, 7 May 1997.)

210. Mr Slippers was granted amnesty for the abduction of Mr George Mkomane but was refused amnesty for the killing. In the view of the Amnesty Committee, the killing of the deceased constituted an act grossly out of proportion with the stated objective of the AWB, which was to keep blacks out of the town after 21h00. The killing of the deceased was not, therefore, seen as an act associated with a political objective.

211. Moreover, the Committee found that the contention that the deceased was killed because he provoked an argument, that he strongly protested against being driven out of town and that he actually tried to run back into town when he was so close to a black township is so highly improbable that it can safely be rejected as false.

212. In reaching its decision, the Committee said:

How could the deceased dare argue and protest against three belligerent trouble seekers? How could he dare do so in the destitution of a cemetery when he had not done so in the relative safety of a town, albeit a not-so-friendly one? How could he dare provoke an argument when he had already been assaulted before being off-loaded at the cemetery? Why should the deceased be so obstinate in the face of such hostility and elect to run back into town when he could have run into a nearby black township? How could he hope to outrun a bakkie back to exactly the same situation which had invoked the wrath of his attackers? In any event, even if what the applicant has said were true, it would not change the fact that their conduct was grossly out of proportion to the objective sought to be achieved.

It is noteworthy that the applicant did not attempt to say that the killing was in accordance with the policy of the AWB. On his own version, the killing was not part of the plan and, if his version is correct, then the deceased became obstinate and pertinaciously attempted to go back into town, it means they killed him simply because he would not listen. At that level, there would be nothing political about the murder.

Furthermore the applicant's motivation that the ultimate objective of the AWB was to intimidate black people and discourage them in their quest for political take over becomes senseless when one considers that, had the applicant had his way, the killing as well as the reasons therefor would have remained unknown. While a surviving victim of abduction would be able to warn other black people to stay out of the town, a dead one would obviously not be able to do so. This is a further indication that no political objective was being pursued at the time of the actual killing [AC/1997/0069]

213. A dissenting decision on the matter was handed down by Amnesty Committee member Chris de Jager. In the light of the Committee finding that the abduction was an act associated with a political objective committed within the course of the conflicts of the past, Advocate de Jager found that:

[T]he question then arises whether the murder which flowed from the abduction, would also fall within the same ambit. It was argued on behalf of the applicant that the two offences were interrelated and cannot be totally separated from each other. The assault was carried out in order to make the abduction from the white area effective and to prevent the deceased from carrying out his intention to negate the white-by-night policy of the AWB. The applicant averred that it was carried out to intimidate blacks into slowing down the process of change or stopping it completely. He also stated that his action (to remove blacks from the white townships) was to prove that the whites were taking a stand against change and also to show the government that they were not satisfied with what was taking place in the country at the time. When the person was picked up, it never occurred to him that the person could be seriously or fatally injured, but the whole operation went wrong when the deceased told them that he would return to the white area and an argument followed resulting in assaults and the deceased running back towards the town. It was submitted on behalf of the applicant that the assault could not be separated from the abduction, and that the assault itself and its consequences were therefore associated with the original political objective.

The Committee previously had occasion to hear how an abduction with no intent to kill, ultimately got out of hand and lead to the intentional killing of the victim. The Committee then found that the ultimate killing, although carried out because of a fear for arrest, was interlinked and should not be separated from the political motivated abduction.

In the present application, things … got out of hand after the victim refused to leave the white township and started to run back towards it. Contrary to the previous applications, they didn't intend to kill him, but they should have foreseen that that could be the result of the assault that followed. Seeing, however, that the one offence flowed out of the other and the one being interlinked with the other, the one cannot be seen as totally separated from the politically motivated abduction.

I am of the opinion that amnesty should be granted as applied for. [AC/1997/0069.]

Killing of an unknown black person

214. AWB supporter Mr Vernon Vosloo [AM1003/96] was refused amnesty for stabbing an unknown black victim to death in Johannesburg on 10 May 1992. The deceased was identified neither at the hearing nor during the course of Mr Vosloo's murder trial – which resulted in his conviction and sentencing to fifteen years' imprisonment.

215. Mr Vosloo told the Committee that he had grown up in the south of Johannesburg where the majority of people were 'conservative'. He had regarded black people in general as 'the opposition party'. Mr Vosloo said he was not a registered member of any political organisation, although he had strong sympathies with the AWB.

216. He said that:

As long as Black people did not come into conflict with me, and as long as their ways and goals were not enforced on me, I did not have any problems with that, but I did not want any interference with myself from them. …[F]rom time to time, we were in conflict… There was enmity in the sense that I didn't want them to be in control of my life. (Johannesburg hearing, 7 April 1997.)

217. At around 22h00 on the night of 10 May 1992, Vosloo was standing next to the road in a residential area and in front of a shopping complex in South Hills,

Johannesburg, having a few drinks with friends. They saw a black person walking on the other side of the road and Vosloo took a knife from the boot of his car and followed the man for about thirty or forty metres before grabbing him from behind and stabbing him in the chest and all over the body. He said he did not know the victim at all and that the victim had done nothing to provoke the attack.

MR VOSLOO: *He didn't do to anything to me; he walked past. He walked past and I saw him as the person who could possibly govern me some day. (Johannesburg hearing, 7 April 1997.)*

218. Vosloo testified that he attacked and killed the man because he was afraid that, in the then political climate, he would not have a say in anything at the end of the day. The Afrikaner felt threatened and could not allow blacks to take over the country without resisting in some way.

219. He testified further that, although he had believed at the time that he had done the right thing, he was sorry today about what he had done: 'I took the life of an innocent person and it is something which no rational person will do.' He said that if he had been sober on that occasion, he wouldn't have done this as, 'any rational person would certainly have found other ways of resisting'. The liquor had given him 'the false courage to act in accordance with that which I felt so strongly' (Johannesburg hearing, 7 April 1997).

220. Vosloo testified that he had been aware of the negotiations taking place at Kempton Park at the time and was afraid of a black take-over from the National Party-led government. He was aware that the AWB had threatened to take up arms to protect itself against the rule of others. However, he had not considered enrolling with a commando:

MR VOSLOO: *I am a solitary person; I see things very individualistically. I understand things in my own view and I act in those terms. If things continued in that direction and if I was forced to join such a action group, I might have, but I would still have preferred to act on my own and do things in my own way. (Johannesburg hearing, 7 April 1997.)*

221. Killing an unknown black person was, in his view, a contribution to the Afrikaner resistance movement. He never attended meetings of the AWB or any other similar organisation but kept up-to-date with their policies and activities by watching television and associating with people who were more directly

involved. He testified that during 1992 he had become uncertain about the political situation in the country and feared that he would not have a voice in the changing South Africa. He had a growing feeling that something should be done about the situation, which he saw as advancing rapidly towards black majority rule.

222. The Committee found that the act committed by Vosloo amounted to no more than a purely criminal deed and he was denied amnesty [AC/1997/0026].

The Rodora roadblock killings

223. Four people, including two children aged nine and thirteen, were killed by an AWB gang which set up a roadblock at the 'Rodora crossing' outside Ventersdorp on 12 December 1993. Nine members of the AWB applied for amnesty for the incident: Phillipus Cornelius Kloppers [AM4627/97], Deon Martin [AM4621/97], Andre Francois Visser [AM4571/97], Marius Etienne Visser [AM7003/97], Petrus Matthews [AM4624/97], Carel Hendrik Meiring [AM7002/97], Gerhardus Johannes Diedrichs [AM6662/97], Frederick Jacobus Badenhorst [AM7004/97] and Marthinus Lodewikes van der Schyff [AM5435/97].

224. After mounting a roadblock, the applicants searched several cars for weapons they wanted to confiscate for their 'war'. The occupants of two cars were assaulted and later shot. An ear of one of the victims was cut off to show their commander, AWB General Japie Oelofse, allegedly at his request. Oelofse did not appear in person and did not formally oppose the applications but, through his Counsel, disassociated himself from all the killings, attempted killings and the severed ear.

225. The applicants (with the exception of Diederichs who was convicted of culpable homicide) were convicted of the four murders and six attempted murders and sentenced in the Supreme Court. Some of the applicants were also convicted on charges of assault and/or theft, arising from the theft of a leather jacket, radio cassettes and equipment taken from the victims' cars. With the exception Van der Schyff, who did not apply for amnesty for theft, all the applicants applied for amnesty in respect of all the offences of which they were convicted.

226. Two AWB members, Mr Myburgh and Brigadier Kriel, testified on behalf of the applicants. Neither had first-hand knowledge of the incident or the orders allegedly given by Oelofse.

227. All but one of the applicants testified that they were engaged in an official AWB operation on the orders of the General Staff of the AWB and General Japie Oelofse, as conveyed to them by Kloppers at the roadhouse where they had gathered prior to the incident.[242] They testified that Kloppers had told them that they were to go out and 'work' that night, as the countrywide revolution was to start that particular evening.

228. Kloppers told them that Oelofse wanted them to identify targets, exercise hard options and that he wanted to see 'lyke' (dead bodies). They proceeded to various places where alcohol was consumed and eventually went to Martin's place. Only on the way and in response to a suggestion to go to the township, did Kloppers communicate to them that Oelofse had ordered the setting up of a roadblock.

229. According to the applicants, the victims were ordered out of their cars and told to sit on an embankment on the side of the road. They were then questioned by Martin as to their political affiliations and asked particularly whether they were members of the ANC, which the AWB regarded as its enemy. The applicants testified that they did not notice that there were children in the group.

230. The applicants testified that, while members of the group were being questioned by Martin, Kloppers would 'lightly tap' them on the head in order to encourage them to co-operate. Some members of the group allegedly admitted that they were supporters of the ANC and, according to Martin's testimony, after a small group of the applicants had assembled (including Martins, Matthews, Kloppers, Marius Visser and Badenhorst), they decided to shoot the victims.

231. Three of the applicants, namely Andre Visser, Diederichs and Meiring, did not participate in the decision to shoot or the shooting itself. Van der Schyff testified that he participated in the shooting but did not form part of the group taking the decision. Martin fired the command shot and most of the others followed suit. Andre Visser, Matthews, Diederichs and Meiring then jumped into a car and fled the scene of the shooting.

232. Kloppers called out that they should all assemble at the City Hall and ordered Martin to cut off the ear of one of the victims so it could be taken to General

242 Save for Van der Schyff, whose evidence differed in some material respects from that of the others.

Oelofse. Various items were taken. The empty shells were removed from the scene, the vehicles of the victims were set alight and the rest of the applicants left the scene thereafter.

233. Van der Schyff testified that no mention had been made of the planned shooting at any time prior to the setting up of the road block and that his first knowledge of the shooting came after the first shots had been fired at the scene. He further testified that no mention had been made of the revolution or of the fact that Oelofse wanted to see dead bodies. Their purpose was to search for weapons. He was not part of the group that had decided on the shooting. He did, however, fire shots in the direction of the group because he had received a message that Kloppers had ordered the shooting of the victims.

234. The applicants conceded that they had consumed alcoholic liquor in varying quantities prior to and on the way to the spot where the roadblock was set up. They also testified that, on their way to the scene of the incident, they harassed two black people and assaulted an unknown black man, during which incident some of the applicants engaged in some frivolous fun amongst themselves.

235. The applications were opposed by surviving victims and relatives of the deceased.

236. The Committee found that, in broad outline, the evidence given by the victims confirmed the applicants' version as to the course of the events at the scene of the shootings. There were, however, some material differences in respect of questioning of the victims. According to the surviving victims, Martins and Kloppers had questioned the victims in a far more aggressive manner than they had led the Committee to believe and none of the victims had admitted that they were members or supporters of the ANC.

237. In considering the evidence, the Committee accepted that the setting up of the roadblock was in line with general AWB policy and that the prime objective of the exercise had been to obtain weapons in this manner. The Committee did not, however, accept that it was AWB policy to kill people at roadblocks. The applicants had all the necessary equipment to carry out the designated operation, which was carried out with some precision until the shooting took place.

238. The Committee found that Martin had taken the initiative in 'questioning' the victims, in calling together the group when the decision was taken to shoot and in firing the commanding shot. He knew that the group was exceeding the

bounds of its mandate and that it was he and Kloppers who had made the decision to shoot. There had been no reason to shoot the victims. The victims had had no firearms or other weapons; they did not admit to being members of the ANC; nor did they offer any substantial resistance to the treatment that was meted out to them. Martin's application for amnesty was accordingly refused [AC/1999/0045].

239. The Committee also refused the applications of those other members of the group who were in a position to question the reasons for the decision to shoot [AC/1999/0045].

240. Andre Visser, Van der Schyff, Dietrichs and Meiring – who were not in the group and who did not receive direct orders – could not be said to have known or to have been in a position to establish the reasons for the decision. They nevertheless associated themselves with the eents by accompanying others in circumstances where it might become necessary to shoot. With the exception of Van der Schyff, these applications also failed [AC/1999/0045].

241. The Committee was of the opinion that Van der Schyff, the fifth applicant, made full disclosure of the relevant facts. He had acted on the instruction of Kloppers, conveyed to him by a member of the group. Although his evidence was found to be unsatisfactory in all respects, it was not such as to bar him from being granted amnesty. He was accordingly granted amnesty for assault, possession of firearms and ammunition and for the four murders and six attempted murders committed at the Rodora Crossing near Ventersdorp on 12 December 1993 [AC/1999/0045].

Interference in political activities

Ventersdorp incident

242. On 9 August 1991, an open confrontation between members of the AWB and State President FW de Klerk occurred at Ventersdorp in the Transvaal when the NP planned a political meeting in a town the CP regarded as a CP constituency. According to the AWB, advertisements for the meeting limited attendance to NP supporters only. The AWB insisted that its supporters be permitted to attend as they wished to discuss certain burning issues with the President. The AWB mobilised some 2 000 of its supporters who gathered in the town. A confrontation with the police ensued and three AWB members were killed and fifty-eight people

injured. Almost the entire AWB leadership was arrested on charges of public violence. AWB leaders, Mr Eugene Terrre'Blanche [AM7994/97] and Mr Petrus Johannes 'Piet Skiet' Rudolph [AM6329/97] applied for amnesty for the incident.

243. Both applicants testified that they had been key figures although they had had no personal involvement in the various incidents that which took place during the violent confrontation with the police. Both averred that the State President and members of the security forces charged with the keeping of law and order at the time of the incident were the proximate causes of the ensuing violence, and they applied to the Committee to subpoena Mr de Klerk as a witness.

    RUDOLPH: *What I told, or wanted to tell Mr de Klerk that evening was exactly what I have just told you, and that is that we did not go there to fight for or against apartheid and to demonstrate against apartheid, but simply for our freedom. Mr de Klerk chose to destroy us. He employed his forces there and thought well to set the police on us in an unbridled manner. (Klerksdorp hearing, 10 May 1999.)*

244. The application was refused on the grounds that the Amnesty Committee did not regard Mr de Klerk as a necessary or essential witness to enable the Committee to arrive at a decision.

245. The Committee also did not deem it necessary to make a finding as to the proximate cause of the public violence. All the Committee needed to consider was whether the applicants complied with the formal requirements of the Act, whether the acts were committed with a political objective as required by the Act and whether the applicants had made a full disclosure of all relevant facts with regard to their participation.

246. Mr Rudolph testified that he, together with Mr Terre'Blanche, had been at the forefront of the procession of armed AWB members as they marched to the meeting in Ventersdorp. He testified he was arrested before the major part of the confrontation with the police took place. During this fracas, a number of people were killed and injured. Rudolph himself sustained minor injuries.

247. Rudolph testified that he was fully aware of the high political tension that prevailed and that he had forseen that conflict would arise from the actions that they regarded as the exercise of their democratic right. The demonstrators were intent on conveying their political sentiments to the leaders of the government of the time.

248. Mr Terre'Blanche likewise testified that he appreciated and knew of the high political tension and foresaw the possibility of conflict. He and his followers regarded the government at the time as a weak one – as a government without principle to whom they could not trust the governance of the country. He and his organisation were in favour of a *volkstaat* for the Afrikaner and were prepared to fight for it, even outside the law.

249. The Committee considered the evidence of the two applicants and all the relevant documentation and was satisfied that the acts were committed with a political objective in the course of the political struggle of the time and that the applicants had made a full and proper disclosure of their role in the incident. Amnesty was accordingly granted to Mr Rudolph and Mr Terre'Blanche for the offence of public violence in Ventersdorp on 9 August 1991 [AC/1999/0221].

Bombing of strategic targets

250. After a period of relative calm on the right-wing front between 1991 and 1993, acts of sabotage and bombings resumed in late 1993, this time with the explicit aim of derailing the election process.

251. The AWB, BWB and AVF all engaged in bombing campaigns in the pre-election period. The AWB targeted cities while the AVF focused on rural areas. From amnesty applications, it appears that AWB members had a 'conventional war' in mind with a view to overthrowing the former NP government and converting South Africa to a *Boere Republiek*. The express aim was to create secession in certain regions and finally to take over the government with 'military violence'. This would happen in three phases:
    a A propaganda campaign inside and outside the country to prepare the ground for a revolution – to create unrest and dissatisfaction with the government and gain support for the revolution.
    b A subversion of the authority of the government, the creation of weapons and food caches and reconnaissance of the terrain.
    c Action by guerrilla fighters; simultaneously sabotage, terror, uprising, strikes, assassinations would be committed to propel the government into as much social and political chaos as possible.

252. Bombing sprees were simply campaigns of terror. The Committee heard that the primary objective of these campaigns was the establishment of a *volkstaat*. The strategy adopted was to bomb state property as well as residential areas,

offices and facilities used by ANC supporters in order to force the then government to acknowledge the struggle for a volkstaat and to impress upon the ANC the seriousness of the right wing's intentions in obtaining a *volkstaat*, thereby strengthening the hands of the Volksfront leaders at the Codesa negotiations.

253. Many of these acts did not lead to loss of life, although some deaths and injuries were recorded.

254. Following the announcement that the Group Areas Act was to be repealed, as well as an earlier announcement on the removal of racial barriers in schools, a number of schools were destroyed in a series of bomb blasts. For example, a formerly white school in Pretoria where ANC exiles' children were to be accommodated was the target of two bomb attacks. Various radical right wing groups simultaneously claimed responsibility.

Attacks in the Lowveld

255. CP members, Mr Jan Petrus Kruger [AM2734/96], Mr Daniel Benjamin Snyders [AM0073/96] and Marthinus Christoffel Ras [AM2735/96] applied for amnesty for a series of sabotage attacks in Lowveld during 1991 and 1992, including:

256. An explosion at the Sabie Magistrate's Court on 20 December 1991 in which Kruger and Ras argued that they had acted on the instructions of a member of Toekomsgesprek leadership, Mr Douw Steyn, conveyed to them by Snyders. The explosives used were manufactured by Snyders. The buildings were damaged but no deaths or injuries resulted from the explosion. The applicants were facing a charge of sabotage pursuant to this incident at the time of their amnesty hearing.

257. An explosion at the Lowveld High School in Nelspruit on 1 January 1992 in which Kruger and Ras again argued that they had acted on the instructions of Douw Steyn as conveyed by Snyders. The building was damaged. The applicants were facing a charge of sabotage for the incident at the time of their amnesty hearing.

258. An explosion at the Nelspruit Agricultural Colleged during the period 14 to 15 March 1992, causing damage to the property. The attack was launched on the instructions of Douw Steyn. Snyders manufactured the explosives and gave them to another member of Toekomsgesprek who executed the actual attack. Snyders was facing criminal charges as well as a civil claim for the incident.

259. An explosion at the Lowveld High School on 16 March 1992, after a gardener at the school discovered and handled an explosive device found in the grounds of the premises. The gardener, Mr Chashasa Andries Sithole, was killed in the explosion and another person, Mrs Sophie Mashaba, was injured. Snyders had planted explosive devices at the school during the period 14 to 15 March 1992, with the intention that they detonate simultaneously with explosives placed at Nelspruit Agricultural College. All reasonable steps were taken to avoid any loss of life or injuries in the operation. The explosives were primed to detonate at 03h00 when no one would be present on the school premises. Unbeknownst to Snyders and due to some defect in the detonator, the devices did not explode simultaneously. Snyders and his colleagues were shocked at the death and injury that resulted. He expressed remorse at the consequences of the explosion. Snyders said he had acted on the instructions of Douw Steyn in placing the explosives at the school. He was facing various criminal charges including murder and attempted murder as well as a civil claim for the incident.

260. Subsequent to the arrest of applicants, the police discovered various arms caches on farms in the vicinity of Nelspruit and Sabie. One of the farms belonged to Kruger. Various charges were brought against the applicants as a result. The arms and explosives in question had been stockpiled on the instructions of the leadership of Toekomsgesprek in accordance with its policy of preparing for armed resistance against the political reforms introduced by the NP government at the time.

261. None of the implicated parties, including Douw Steyn, appeared at the hearing. Only one of the interested parties submitted an affidavit which, to some extent, provided the political context for the incidents and supported the subjective political beliefs of the applicants.

262. The Amnesty Committee was satisfied that the applicants made a full disclosure of all facts relevant to the applications. The Committee accepted that the applicants had acted on the orders of one of their superiors within Toekomsgesprek and that the attacks fell within the policy of that organisation at the time. Although membership and the activities of Toekomsgesprek were secret, the Committee was satisfied that, even if not widely known, it was a publicly known political organisation, independent of the CP, whose policies did not include the kind of offensive, violent actions undertaken by the applicants.

263. Insofar as the death of Mr Sithole and the injuries of Mrs Mashaba were concerned, the Committee took into account that all reasonable steps had been

taken to avoid this kind of consequence. In the context of what was patently a political act, the unfortunate death and injury were aberrations which could not reasonably have been avoided. The Committee accepted that the attack was aimed solely at state property, which was seen as representing the applicants' political foes.

264. Amnesty was granted to Daniel Snyders, Jan Kruger and Marthinus Ras in respect of the respective offences set out in the charge sheet [AC/2000/121].

Attacks on schools

265. Amnesty was granted to BWB members Mr Cornelius Gabriel Volschenk [AM2759/96], Mr Rowland Keith Robinson [AM 2758/96] and CP member Mr Gerhard Pieter Daniel Roux [AM 0094/96] for the bombing of the Melkrivier School near Nylstroom in the Transvaal and the Perdekop School near Volksrust in Natal, and for the possession of unlicensed firearms and ammunition and the manufacture and supply of explosives [AC/1996/0009; AC/1996/0013; AC/1996/0014]. BWB member Mr Carel Willem Andries van der Merwe [AM3718/96] was also granted amnesty for offences committed in the district of Nystroom on or around 2 January 1992 and for the bombing of Melkrivier School [AC/1998/0001].

266. Conservative Party members Mr Jacobus Johannes Christoffel Botha [AM1703/96] and Mr Carl Mathinus Kriel [AM6699/97] and AWB members Mr Petrus Jacobus Judeel [AM5240/97] and Mr Andries Stefanus Kriel [AM2893/96] were granted amnesty for various acts of 'terrorism' relating to the bombing of the Hillview School, Cosatu House and the Verwoerdburg and Krugersdorp Post Offices during 1991/92, and for the theft of explosives at the Rustenburg Platinum Mine in the Transvaal during 1991 [AC/1996/0012; AC/1998/0017].

267. AWB Commander Mr Pieter Stephanus Albertus Nel [AM2733/96] was granted amnesty for the theft of explosives and being in unlawful possession of explosives, including a homemade bomb, on 28 December 1991. Together with two AWB colleagues, he stole explosives and detonators from a coalmine and used these to manufacture a homemade bomb [AC/1998/0094].

268. On 16 January 1992, the applicant and a colleague place the bomb on the premises of the Calvary Church School at Nelspruit. The bomb was defused before it exploded and caused no damage.

269. The applicant was charged with and convicted of the offences in the Regional Court in Middelburg. On 4 April 1995 he was sentenced to twelve months imprisonment, conditionally suspended for five years for the theft of the explosive material and to five years' imprisonment, also conditionally suspended for five years, for the possession of explosive material and the homemade bomb.

270. The applicant testified that his motive for committing the offences was to enable him to make direct attacks against racially mixed schools and churches with the view to derailing the government's democratisation process.

271. The Amnesty Committee was satisfied that the offences were committed by the applicant in the course of the conflicts of the past and with a political objective, and that the applicant had made full disclosure. Amnesty was granted in chambers.

Explosion in Bronkhorstspruit

272. Two BWB members from Cullinan, Mr Leo Hendrik Froneman [AM0395/96] and Mr Pieter Johannes Harmse [AM3275/96], also a commander in the BRL, were jointly convicted for an exposion at an Indian business complex in Bronkhorstspruit on 17 September 1993. One police officer, Mr Abraham Labuschagne, died in the explosion and six people were injured. Froneman was convicted of culpable homicide for which he was sentenced to seven years' imprisonment. Harmse was convicted of murder, attempted murder, the unlawful possession of explosives and malicious damage to property and was sentenced to an effective eighteen years.

273. The bomb was homemade and one of a series made by the BWB cell. The BWB planned a coup d'état and a part of their plan entailed interrupting the country's power supply. During the amnesty hearing, the applicants handed in a video of a BWB meeting held in 1993, in which it was said that the party would declare war against the government which, 'wanted to hand the country over to the ANC/SACP alliance'. At other meetings, members were instructed to collect explosives and create chaos in their own areas.

274. Harmse told the Committee that, in September 1993, he received a telephone call from the BRL informing him that the war had started. He had been warned at meetings to expect such a message. He instructed Froneman to choose a target that would involve Muslims, which is why the Indian Shopping Centre at

Bronkhorstspruit was selected. They set about preparing the bomb and at 03h00 the following morning they set off to plant it.

275. The trial judge and the regional magistrate who convicted the two applicants regarded the incident as political. Under cross-examination, Froneman explained that he had selected the target because he believed that the majority of Indians were Muslims and ANC supporters. By attacking this target, they would show the government and others that the BWB was intent on taking their country back by force if necessary. In doing what he did, he was carrying out orders given to him through Harmse.

276. The Amnesty Committee was satisfied that the applicants did what they did in the belief that they were acting on instructions given to them by the BWB, a publicly known organisation, and that the act was done in furtherance of the policies of that organisation. They were granted amnesty [AC/1998/0039].

Pre-election bombing campaigns

September 1993–February 1994

277. AWB member Mr Nicolaas Willem de Jongh [AM3375/96] was granted amnesty for two bomb attacks in the Eastern Cape during August 1993.

278. De Jongh, who held the rank of Commandant in the AWB, assisted two other members of that organisation to bomb two premises. The first bombing took place during the night of 13 August 1993 at the premises of Mr Wiseman Zitembile Sana in Queenstown; the second occurred on the night of 14 August 1993 at the premises of Mr Johnson Dumile Sateni in Hofmeyr in the Eastern Cape. The bombings caused damage to both properties but did not result in any bodily injury. The Committee found that both bombings were executed in support of the AWB with a political objective associated with the conflicts of the past. Amnesty was granted [AC/1998/0029].

279. An AWB colonel, MrJan Cornelius Labuschagne [AM3671/96], claimed responsibility for a series of explosions he carried out with other members: Mr Daniel Wilhelm van der Watt [AM3674/96], Mr Andries Stefanus Kriel [AM2893/96] and Mr Johannes Jacobus Botes [AM3672/96] between September 1993 and February 1994. They placed more than twenty explosive devices on railway tracks, power stations and in black townships to disrupt the

infrastructure and gain publicity for the right wing's anti-election cause. A number of people were injured.

280. In October 1993, Andries Stefanus Kriel, a brigadier in the AWB and deputy leader of the Volksfront in the Northern Free State, instructed AWB Colonel Jan Cornelius Labuschagne to form a cell of operatives in order to participate in a terror campaign to be conducted by the Volksfront.

281. Labuschagne formed a cell consisting of himself, Johannes Jacobus Roos Botes and Daniel Wilhelm van der Watt, both members of the AWB and the Volksfront. They underwent a short period of training in the manufacture, handling and use of explosives in the Bothaville area.

282. The bombing campaign commenced on 9 November 1993 and lasted until 7 February 1994. During that period they placed twenty-one bombs at different targets, including Welkom, Wesselbron, Potchefstroom, Orkney, Viljoenskroon, Hoopstad, Bothaville, Stilfontein, Kroonstad, Leeudoringstad and Vierfontein. Nineteen of these exploded. The other two (at Welkom and at Leeudoringstad) did not detonate. All the bombs were homemade. Eleven of the targets were railway lines, three were power installations, four were black residential areas, two were business premises and one was a farm school.

283. Nobody was killed in the bombings. However, a number of people were injured, including Mrs M Bayo, Mr Seipata Mokadatlo (both at Wesselsbron), Mr Stephen Semelo, Mr Andries Semelo, Mrs Ramorakane and Ms Margaret Malinga (all at Viljoenskroon). The bombings caused damage to both private and state property.

284. Labuschagne told the Committee it was not their intention to kill or injure people, although they realised that people might be killed or injured by their actions. He said they took steps to minimise the prospect of this by setting the bombs to explode late at night.

285. All the applicants were facing charges relating to their training, all the bombings as well at the illegal possession of firearms and explosives. Their trial had been postponed pending the outcome of their applications.

286. Labuschagne accepted equal responsibility with the other applicants for all the incidents on the basis that he was their leader and had given them the instruc-

tions to carry out the bombing campaign. All the applicants ceased being members of the AWB during the course of the bombing campaign, but continued with the campaign as members of the Volksfront.

287. The Committee was satisfied that the applicants acted at all relevant times in furtherance of the policies of the Volksfront and that the offences committed by them were acts associated with a political objective committed during the course of the conflicts of the past. There was nothing to suggest that the applicants committed the offences for personal gain or out personal malice, ill-will or spite directed against their victims. Satisfied that the applicants had made full disclosure of all relevant facts and that their applications complied with the requirements of the Act, they were all granted amnesty in respect of the incidents for which they each made application [AC/1999/0001].

21 April 1994

288. On 21 April 1994, the office of the Independent Electoral Commission (IEC) in Hoopstad was bombed, causing considerable damage. Freedom Front (FF) and BKA member Mr Eduard Pieter Roux [AM 5661/97] was granted amnesty for the attack. Roux was also convicted of sabotaging power installations. There was no loss of life [AC/1998/0097].

23 April 1994

289. The Devon Radar complex, an Airforce base in the Secunda area in the Transvaal, was attacked and robbed on the night of the 23 April 1994. A police guard, Sergeant Steven Frederich Terblanche, was shot dead and robbed of his firearm. BWB member Mr Okkert Anthonie de Meillon [AM4570/97] and AWB members Mr Edmund William Holder [AM5610/97] and Mr Willem Johannes van Zyl [AM5611/97] applied for amnesty for the attack.

290. Okkert de Meillon was convicted of murder and robbery with aggravating circumstances and sentenced to an effective fifteen years' imprisonment. On 5 November 1996, Edmund Holder and Willem van Zyl were jointly tried in a separate trial and convicted on similar charges. Van Zyl was also convicted of the unlawful possession of a firearm and ammunition. They were sentenced to effective imprisonment of ten and eight years respectively.

291. All the applicants, as well as Constable Andre Renier Swart who was in the company of the deceased victim at the time, testified at the hearing.

292. The Amnesty Committee heard from the applicants that right-wing organisations took various steps to prepare for an attack on whites on the 27th April 1994, the day of the election. Members of right-wing organisations were ordered to obtain appropriate firearms to ward off the attack. Because the 'enemy' would be armed with automatic weapons, they believed that the anticipated attack could only be effectively warded off if the right wing was armed with automatic weapons.

293. On the day of the incident, the applicants armed themselves and drove to an army building in Pretoria city centre. The building was guarded by armed guards. This plan was foiled as they were totally outnumbered by the guards. According to Holder and Van Zyl, De Meillon had suggested they attack the guards for the purpose of making propaganda. This they refused to do. They testified that by then it had become clear to them that De Meillon was a fanatic.

294. Driving home in the direction of Secunda, De Meillon remembered an Airforce base at Devon where he had done a part of his military service in 1992. They decided to go there. Holder and Van Zyl testified that they intended to reconnoitre the base in preparation for an arms robbery.

295. Led by De Meillon, the applicants entered the guardhouse at the Devon base without first ascertaining who was inside. It became apparent that the guardhouse was occupied by members of the police. De Meillon ordered the police to hand over their weapons. However, although both police officers were armed with their service pistols, there were no automatic weapons in the guardhouse.

296. In the course of disarming the deceased victim, a scuffle ensued between him and De Meillon. Shots were fired and De Meillon was wounded and Sergeant Terblanche killed. De Meillon took the deceased victim's service pistol and ran to the vehicle followed by Holder. They drove to Secunda where De Meillon obtained medical assistance and was later arrested in hospital. Van Zyl kept possession of the deceased's pistol for a few days, whereafter he took it apart and threw it into a dam. Holder and Van Zyl were also subsequently arrested.

297. The Committee found that the attack on the deceased fell outside the orders or authority given to the applicants to obtain automatic weapons for the purposes

of their respective political organisations. De Meillon had taken the initiative in the mission and ordered the others to assist.

298. De Meillon testified that, to his mind, the mission was unsuccessful. Had he known that the base was occupied by the SAP, he would not have embarked upon the operation at Devon. The Committee found that Holder and Van Zyl's testimony as to the purpose of their visit to the base was true. It would have been reckless to decide to attack the base for automatic weapons without reconnoitring the target first. They would have had no idea whether they would find the weapons they were looking for or what kind of resistance they would meet. They obviously went to the base to see what the situation was there, as testified to by Holder and Van Zyl.

299. The Committee found that the attack on the guardhouse was clearly a result of impulsive, overhasty and haphazard actions on the part of De Meillon.

300. The Committee noted that another important factor was the fact that the pistol of the deceased was subsequently disposed of without being used for any of the purposes of the political organisations in question. This was further indication of the fact that attacking and robbing the deceased of his pistol fell outside any mandate or order given. The applicants testified that the order had been to obtain automatic weapons.

301. The Committee found that the killing of the deceased in all of the circumstances of the case was disproportionate to any conceivable objective pursued by the applicants. The Committee was not satisfied that the incident constituted an act associated with a political objective in terms of the requirements of the Act and the applications were refused [AC/1999/0014].

24 and 25 April 1994

302. A number of people were killed on 24 and 25 April 1994 when eleven members of an AWB cell went on a bombing spree. The targets were mainly taxi ranks serving black commuters. The eleven were part of a group of twenty-six found guilty on ninety-six counts of pre-election bombings, murder and damage to property. Altogether twenty people died and forty-six were injured.

303. Nine applicants claimed responsibility for a number of different actions during this period.

304. Mr Etienne Jacobus le Roux [AM6467/97] and Mr Johan Wilhelm du Plessis [AM6480/907] were granted amnesty for violations arising from an explosion in Bree Street, Johannesburg on 24 April 1994. The explosion killed seven people: Mr Jostine Makho Buthelezi, Mr Makomene Alfred Matsepane, Mr Goodman Dumisani Ludidi, Ms Gloria Thoko Fani, Ms Susan Ann Keane, Mr Peter Lester Malcolm Ryland and an unidentified man. At least thirteen other people were injured in the attack. The applicants were also granted amnesty for malicious injury to property and the unlawful possession of explosive devices and material [AC/1999/0342].

305. Le Roux and Du Plessis were granted amnesty for violations arising from an explosion at Jan Smuts Airport, Johannesburg on election day, 27 April 1994, in which at least ten people were injured. They were also granted amnesty for malicious injury to property and the unlawful possession of explosive devices and material [AC/1999/0342].

306. Mr Etienne le Roux, Mr Jan Bastiaan de Wet [AM6466/97], Mr Johannes Abraham Vlok [AM7888/97] and MrJohan du Plessis were granted amnesty for violations arising from a bomb explosion on the corner of Odendaal and Victoria Streets in Germiston, Transvaal on 25 April 1994. Ten people were killed by the bomb: Mr Phillip Nelaphi Nkosi, Mr Mbulawa Jonathan Skosana, Mr Lucas Shemane Bokaba, Ms Gloria Khoza, Mr Fickson Mlala, Mr Mbereyeni Marcus Siminza, Mr Paul Etere Ontory, Mr Thulani Buthelezi and Ms Thoko Rose Sithole. At least seven other people were injured in the explosion. The applicants were also granted amnesty for malicious injury to property and the unlawful possession of explosive devices and material [AC/1999/0342].

307. Mr Johan du Plessis, Mr Abraham Christoffel ‘Abie’ Fourie [AM6478/97], Mr Johannes Andries ‘JJ’ Venter [AM6577/97], Mr Jacobus Petrus Nel [AM6469/97], Mr Petrus Paulus Steyn [AM6479/97] and Mr Gerhardus Daniel ‘Gert’ Fourie [AM6468/97] were granted amnesty for violations resulting from:

308. An explosion on 25 April 1994 on the corner of Blood Street and 7th Avenue in Pretoria. The explosion killed three people: Ms Joyce Baloyi, Mr Samuel Masemola and unidentified man. At least four other people were injured;

309. An explosion at Westonaria on 25 April 1994. The explosion killed five people: Mr James Ncube, Mr Alfred Dayele, Mr Peter Mogoshe, Mr Phillip Plaatjies and Mr Alex Maziba

310. An explosion on 25 April 1994 at a taxi rank on the corner of Third and Park Streets in Randfontein, Transvaal. The explosion injured at least six people;

311. The unlawful possession of explosive devices and materials at the Springfontein Farm in Rustenburg between 22 and 27 April 1994.

312. Mr Jan de Wet, Mr Johannes Vlok and Mr Johan du Plessis were granted amnesty for the unlawful possession of explosive devices and materials at the Koesterfontein Farm in Krugersdorp between 22 and 27 April 1994.

313. Mr Etienne le Roux, Mr Jan de Wet and Mr Johan du Plessis were granted amnesty for the theft of a motor vehicle at Randfontein on 25 April 1994.

27 April 1994

314. On election day, the 27th April 1994, two AWB members travelling in a vehicle on the R28 road between Westonaria and Randfontein on the West Rand, opened fire at a minibus taxi killing the taxi's driver, Mr Viyani Papiyana, and injuring a passenger, Mr Godfrey Papiyana.

315. AWB members, Mr James Wheeler [AM 2084/96] and Mr Cornelius Rudolph Pyper [AM5179/97] were serving fifteen-year jail sentences for the attack when they were granted amnesty. The Amnesty Committee accepted that the applicants believed themselves to be under orders from the AWB and were under the impression that other members would be committing acts of violence in order to cause chaos and disrupt the elections.

316. The applicants testified before the Amnesty Committee that they had consumed alcohol and discussed politics and ways to disrupt the election. They decided on a course of action, allegedly based on the orders of a fellow AWB member, Mr de Bruyn, whom they believed to have some authority in the organisation.

317. Both applicants testified that their sole motivation in committing the crime was political and that their immediate aim was to cause chaos which would lead to the disruption of the elections. They believed that many other supporters of the AWB would be participating in the uprising and that the cumulative effect their of actions would have a significant impact on the political events of the day. They both denied that the consumption of alcohol was the driving force of their actions.

318. The surviving victim and those members of the victims' family who opposed the application said they believed the applicants had committed the offences in their personal capacities out of ill-will, malice or spite while under the influence of intoxicating liquor. There was also insufficient evidence to find that the applicants were members or supporters of the AWB; that they acted on behalf of or under orders from the AWB or within their duties as members of that organisation. It was suggested that this was a spontaneous and poorly planned attack on a taxi that was not in the vicinity of a polling station.

319. The Committee was satisfied that the applicants could at least have been seen as supporters of the AWB and believed themselves to be members.

320. The Committee accepted the uncontradicted evidence that the AWB propagated the use of violence to resist the ANC winning the election and that it called upon its members to prepare themselves for a state of war. The applicants had believed that the revolution had begun before consuming liquor on the day in question. Drunkenness could not therefore have been the root cause of their actions, though the consumption of liquor could have provided them with false courage and was the reason for the sloppy planning and preparation of the attack. Both the applicants stated that they knew what they were doing. The fact that the first applicant drove the vehicle without mishap and that the second applicant accurately aimed the shot he fired indicates that they were not so drunk as to eliminate their belief that they were acting in support of the AWB. The fact that the AWB never admitted its involvement in the applicants' crimes did not obviate the applicants' subjective belief that they were acting in support of AWB when they committed the act.

321. The Amnesty Committee accepted that the applicants were under the impression that other members of the AWB would, that day, commit acts of violence in order to cause chaos and so disrupt the elections. They gained this impression after having heard the report of the bombings on the East Rand and after their discussion with Du Bruyn. They only learnt after the event that, save for the bombings on the East Rand, they had acted in isolation. They testified that they decided to shoot a black man as they were of the opinion that the vast majority of black people were supporters of the ANC. Their intention was to commit an act of terror which, together with other such acts committed by other members of the AWB, would instil fear and result in chaos and anarchy and so disrupt the elections.

322. In this context, despite the tragic consequences and futility of their actions, the Committee concluded that the violation was not disproportionate to the political objective they were pursuing. The attack was found to be associated with a political objective committed in the course of the conflict of the past and amnesty was granted to the applicants [AC/1998/0032].

PART TWO: MOTIVES AND PERSPECTIVES

323. Threatened by the prospect of a non-racial, democratic South Africa, many sectors of the conservative Afrikaner community mobilised to challenge the impending changes and to protect a way of life and a sense of identity perceived to be under threat. One of the central objectives that emerged as a focus of the mobilisation of the right-wing groups was the creation of a *volkstaat*. In some senses the initiatiave represented a hearkening back to the idea of the *Boere* republics, confiscated by the British and finally lost in the turn of the century Ango-Boer War. If the African liberation struggle in South Africa was a 'just war', so too was the struggle of Afrikaners to restore the Boer republics.

324. The Afrikaner Volksfront (AVF) and the Conservative Party took the lead in the struggle to achieve a *volkstaat*, defined as any land that could be set aside for Afrikaners to pursue their quest for self-determination. Some right-wing organisations, (such as the AWB, the Orde Boerevolk and the Boerestaat Party) were more interested in restoring the actual boundaries of the former Boer republics. While different groups differed on how to acquire this nation-state, all feared being 'swamped' in the new South Africa and, for a time, were prepared to unite against the 'common enemy'. Most applications from members of the AWB refer to the common enemy as being the then NP government which appeared to be blocking their objective of self-determination.

325. Evidence before the Commission indicates that the strongest mobilisation for a nation-state, and the most aggressive acts in promoting this goal, occurred in the former Western Transvaal and on the West Rand. Fewer violations occurred in the territories now known as the Western and Northern Cape. AWB applicants told the Amnesty Committee that their aim was turn the Transvaal, the Orange Free State and Northern Natal into a Christian and Afrikaner Boer states.

326. The concept of 'freedom' related to the question of whether Afrikaner communities could be in control of their own destiny and to general constitutional protection. During the process of negotiations, therefore, the idea of 'freedom'

became a recurring theme in the militant rhetoric of the right-wing leaders and a central motivating factor in the planning and execution of operations that resulted in gross violations of human rights.

327. At the time of the formation of the Afrikaner Volksfront (AVF), some Afrikaner groups felt that 'an elite' deal was being fashioned at the Kempton Park negotiations between the ANC and the NP in conjunction with big business. The deal threatened to marginalise Afrikaner demands for the preservation of Afrikaner culture and the recognition of their Christian-national aspirations.

328. At this time, when there seemed to be little hope in obtaining a volkstaat, there was talk of a 'liberation war' using violence as a means to achieve an end. However, no loss of life was intended. AWB leader, Eugene Terre'Blanche testified before the Commission that no orders for killing were given. In his submission to the Commission, General Constand Viljoen said that the AVF had no option but to organise resistance to secure the future of Afrikaners:

I submit that it was quite reasonable that the ethnic Afrikaners felt threatened to the point that they felt the proverbial back against the wall. … And we prepared for conflict – not anarchy, not a total war but a well-planned campaign of resistance and mass action' against the NP government and also against the ANC. (Viljoen: submission)

329. General Viljoen unequivocally linked Afrikaner resistance with the transitional process in the country.

It was further aimed as an anti-revolutionary power to counter the anarchy, intimidation and intolerance of the revolutionary powerw, because in our opinion the government of the day had neither the will or the guts to do so. … Our action programme was necessary as the NP in the multi-party conference watered down the Afrikanervolk's right to self-determination, and our own bilateral process of negotiations with the ANC on Afrikaner self-determination did not achieve the desired results until shortly before the election. The degree of revolutionary climate called for an action stronger than the political debate; but it had to take place in support of the talks. (Viljoen, AVF: submission)

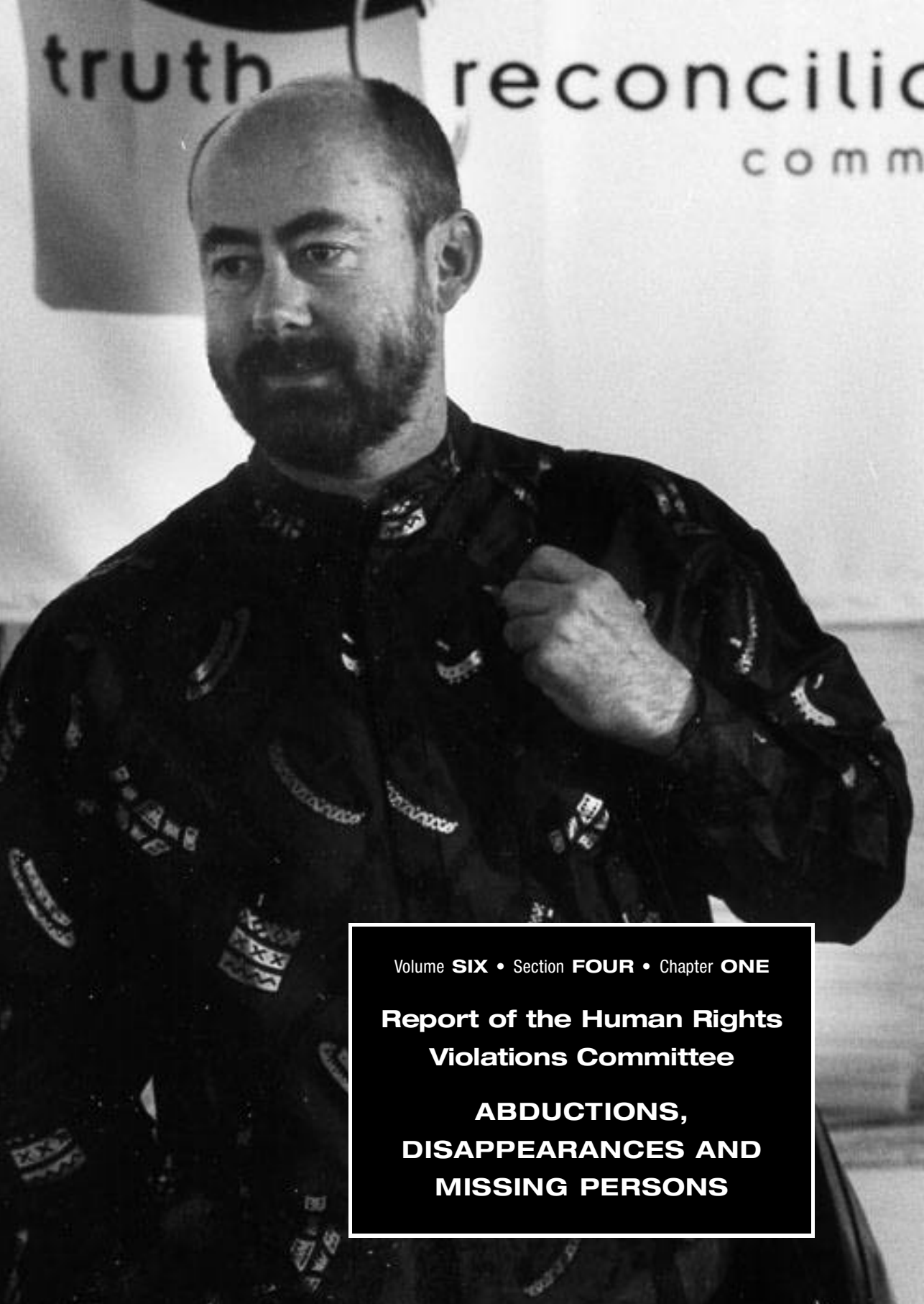
330. In summary, the Amnesty Committee heard that most of the acts for which members of right-wing organisations applied for amnesty were motivated by the following principles:

a the creation of a Christian *Boerestaat* on Boer territory for the Afrikaner Boerevolk;
b the promotion of an Afrikaner Boere consciousness of their white lineage and the importance of race purity and the maintenance of Afrikaner Boer culture;
c the struggle against the enemies of liberalism, humanism, Communism and Marxism;
d the protection of Afrikaans;
e the maintenance of a Christian National Education;
f the return of the volk to the Covenant and the God of the Covenant;
g self-realisation within a Boerestaat;
h self-determination for a republic previously internally acknowledged as an independent state;
i the protection of the land against imperialism;

331. The CP maintained a strictly anti-Communist stance and upheld the need they identified to fight the threat of the African liberation movements, which they believed to be influenced by the SACP. According the CP member, Mr Clive Derby-Lewis, who applied for amnesty for the killing of SACP leader, Mr Chris Hani (see above):

*The fact that the ANC/SACP wanted to control **all** of South Africa, was, we believe, the underlying problem of South Africa's continual conflict. Most people want to be ruled by their own. This is an immutable international fact. Thus conservative Whites were faced not only with an alien government if the ANC/SACP came to power, but a communist alien government.*

332. Applications for amnesty from conservative Afrikaners and right-wingers frequently made reference to a romantic image of the Boer nation, derived from the history of seventeenth century freeburgers, Trekkers and ultimately the Anglo-Boer War. A common theme in this history was the desire of conservative Afrikaner groupings to be in control of their own destiny and the wish to achieve self-determination through the creation of a volkstaat or *Boerestaat*. (...p512)



Volume **SIX** • Section **FOUR** • Chapter **ONE**

Report of the Human Rights Violations Committee

ABDUCTIONS, DISAPPEARANCES AND MISSING PERSONS

Abductions, Disappearances and Missing Persons

INTRODUCTION

1. On 14 October 1986, activist Moss Morudu [JB00520/02PS] went missing from his home in Mamelodi in Pretoria. Shortly thereafter, his family received a telephone call from an unknown person who said that Mr Morudu was where 'he had always wanted to go'. They deduced from the call that Moss had gone into exile, as he had previously discussed leaving South Africa because of ongoing Security Branch harassment. However, Moss Morudu did not return home with other returning exiles after 1990.

2. A few years later, the Morudu family received a visit from members of the Attorney-General's office, who indicated that they believed that Moss might have been the victim of a Northern Transvaal Security Branch hit squad. In 1996, the family became aware of rumours that the Truth and Reconciliation Commission (the Commission) was in possession of an amnesty application relating to Moss Morudu. Moss's mother, Mrs Morudu, began attending every public hearing of the Commission in the Gauteng area in the hope that she would learn of the fate of her son.

3. This is usually the first phase of a disappearance. The family is ignorant about what has happened and is unclear about what the future will bring. Thus begins the long journey of not knowing whether a loved one is imprisoned or dead.

4. Moss's family was informed about the amnesty application. Finally, in October 1999, the amnesty hearing of three Northern Transvaal Security Branch operatives began in Pretoria. The Morudu family heard that the head of the Northern Transvaal's Investigative Unit, Captain Hendrik Prinsloo, had instructed two black Security Branch operatives to abduct Moss Morudu. The two had gone to the home of the Mamelodi activist and, purporting to be MK operatives, had persuaded him to accompany them. They then handed him over to their white colleagues at a pre-arranged spot.

5. According to their version, Moss Morudu was not formally detained, but was taken to a temporary interrogation camp near Hammanskraal where he was held and interrogated for approximately one week. The applicants testified that they did not know when he was removed, or where to. They became aware much later that he was no longer there and assumed that he had been killed, as had other abductees. Neither their commander, Captain Prinsloo, nor other implicated white colleagues applied for amnesty, and all denied the version put forward by the black applicants.

6. Thus, although the amnesty hearing provided the family with new information, the Amnesty Committee was, in the end, unable to establish the exact fate of Moss Morudu. And so the quest of the Morudu family continues.

7. Many other families share the experience of the Morudu family. For them too, continued uncertainty about the fate of loved ones has had devastating consequences. These families remain trapped in the past, unable to move on. Unlike a death, which, however painful, leads eventually to some kind of acceptance, families of the disappeared remain constantly caught between near certainty that the missing person has not survived and hope that he or she will return. In several cases the missing person was the breadwinner, making the burden on the family both financial and emotional.

8. A tiny percentage of families have approached the courts to have the missing person declared dead. This has allowed them to claim unpaid wages or, in some instances, the proceeds of policies held in the missing person's name. In most instances, little or no money is coming in. Expenses increase as families search to find out what happened.

9. The uncertainty of the search and the faint hope that the disappeared will return makes it incredibly difficult for those left behind to cope. The family's life has changed on several fronts, including the political, social and economic. In addition, many face the psychological consequences of dealing with a disappearance without access to psycho-social support or counselling services.

10. During the conflict period, many families bore the pain of the disappearance alone, tormented by uncertainty, fearful of what would happen to them. They feared the consequences of drawing attention to the missing person or to the family. For example, where missing persons had links to anti-government organisations or were students during periods of unrest, families were too afraid to report the

disappearance to the police in case they compromised the missing person's safety. In any case, as a number of statements confirm, those who did report disappearances were often met with hostility. Threats, jeers (such as 'Go ask Mandela where your son is') and sometimes assaults were often the only responses they received from the authorities. Similarly, in areas such as Natal and certain parts of the Transvaal, enquiries could place the entire family in jeopardy from a rival political movement. In such cases, the only option was to search alone: discreetly asking friends, scouring hospitals and mortuaries, desperately trying to find some trace of the missing person.

DEFINITION OF A DISAPPEARANCE

11. In order to deal with this category of violation, the Commission had to define it. While its founding Act, the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) used the term 'abduction', this was intended to cover enforced disappearances at the hands of the state, persons who had gone missing in exile or combat, and other missing persons.

12. The Commission had recourse to a number of working definitions developed by human rights groups working in the field. One such was the definition used by Amnesty International, which defined 'disappeared persons' as those 'who have been taken into custody by agents of the State, yet whose whereabouts and fate are concealed, and whose custody is denied'[1]. Amnesty International places the term 'disappeared person' between inverted commas in order to indicate that the persons in question have not really disappeared, but that there are those who know their whereabouts and deliberately remain silent.

13. The UN Working Group on Enforced or Involuntary Disappearances has, in its recent work, begun to define 'a disappearance' as 'a person arrested, detained, abducted or otherwise deprived of his/her liberty by officials of different branches or levels of government, or by organised groups or private individuals acting on their behalf, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fact or whereabouts of the person concerned or a refusal to acknowledge the deprivation of his/her liberty, thereby placing such persons outside the protection of the law'.[2]

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1 Bronkhorst, Daan, *Truth and Reconciliation: Obstacles and Opportunities for Human Rights*. Amsterdam:Amnesty International – Dutch Section, 1995.

2 Draft International Convention on the Protection of all Persons from Forced Disappearance.

14. The Commission finally defined the category ‘Abductions’ as ‘including those persons who were forcibly detained or arrested and last seen in the custody of the security forces or agents of the state, as well as those forcibly and unlawfully abducted by other known or unknown armed groups or parties’.

HOW DISAPPEARANCES RELATE TO OTHER HUMAN RIGHTS VIOLATIONS

15. Disappearances are inextricably bound up with other human rights violations. Often a disappearance is an unacknowledged form of imprisonment for political reasons. In many instances, a disappearance took place during the first days of custody and, more often than not, resulted in a political killing.

16. In some instances, the body was found. In the vast majority of cases that came to the Commission, however, this was not the case. This has condemned many families to a permanent state of limbo: never knowing, never being able to put it to rest.

17. It is acknowledged that the optimum time to solve a disappearance is in the first few days after it takes place. It is thus important to take action during this early period.

CHARACTERISTICS OF DISAPPEARANCES

18. Generally a disappearance is not referred to as such if the fate or whereabouts of the disappeared are known, if a body is found, or if it becomes known that the victim is dead. The Commission has, for the most part, followed this policy in its classification of cases.

19. Generally, two types of disappearances may be distinguished. The first is a ‘temporary disappearance’ – an unacknowledged, long-term incommunicado type of imprisonment. The second type of disappearance – and the one that the Commission dealt with in most instances – is where the disappeared person has been killed or has died in unknown circumstances without being traced.

20. In most disappearance cases, the perpetrators remain unknown. The disappearance is carried out secretly and usually illegally. The perpetrators do all they can to avoid being found out, identified or held responsible. The rationale for their conduct is that, as long as the disappeared or the body is not found,

there can be no violation and therefore no perpetrator. This is characteristic of the disappearances carried out by state agents in the South African situation.

21. Another important characteristic of disappearances is that, once a state has chosen to embark on this road to criminality, policy decisions in this respect tend to be taken centrally – although the process of execution is usually decentralised. Disappearances are usually planned by small secret groups within the armed forces, where orders for implementation are delegated through various channels that are often difficult to trace. Depending on the nature of the particular situation, disappearances are usually carried out by military groups, paramilitary groups, the police or death squads operating within either police or military structures. Governments usually permit these groups a great deal of latitude to carry out these deeds, and usually disavow all knowledge of the disappearances.

22. Secrecy is another important facet of disappearances. In the South African situation, a number of units within the police and military became secretly involved in disappearances and killings. These units enjoyed a large degree of autonomy and had access to the funds necessary to take people into custody, make them disappear and kill them. The existence of these units and the secrecy with which they operated made it possible for the former state to deny any involvement in such activities. In addition, once their activities became known, the political authorities of the former state continued to insist that they had no knowledge of the actions of these structures, and that the latter had been acting without authorisation.

23. However, the high rank of the state personnel involved, their easy access to funds and resources, and evidence emerging from amnesty applications by former security force personnel negate this argument. One cannot but draw the conclusion that the former state was centrally involved, not only in sanctioning this tactic, but also in planning and providing funds and resources.

24. When governments are addressed on this issue – either by the international community or by human rights groups – they often reply that the person has fled the country and gone into exile. In a number of cases in South Africa, the former state sought to blame the liberation movements for a disappearance. When laying complaints or seeking answers from the police, families were frequently advised that the disappeared had probably gone into exile. The state encouraged families to believe this and, in some instances, staged elaborate hoaxes to hide the fact that it was responsible for the disappearance. The cases of Mr Stanza Bopape, Ms Portia Ndwande and Mr Moss Morudu are just a few examples.

25. Where the state did acknowledge the disappearance, it often lied about the circumstances in which it took place, alleging that the disappeared had 'committed suicide', had 'been turned' and become an 'informer' or had been shot while 'attempting to escape' the authorities. This became a common response of the former state as it became increasingly more adept and sophisticated at concealing the real facts of a disappearance.

26. A common feature of disappearances in South Africa was for the state to declare its opponents 'the enemy', thus ensuring that their disappearance or killing generated little interest. In this respect, the silence of those who were the beneficiaries of the former state must be noted. Had they questioned more, been less acquiescent and less willing to accept the propaganda of the former government, the former state might not have been able to get away with such criminal conduct. Had the judiciary been more vigilant when these matters came before them – more willing to engage with the issues and less willing to believe the versions of the security forces and the police – state forces would have been less likely to resort to such excesses. There is no doubt that, beyond the political figures within government, the judiciary and civil society had a large role to play in allowing disappearances and killings to continue.

WHY DISAPPEARANCES HAPPEN

27. The main *raison d'être* for disappearances is that states want to get rid of those who trouble them – without having to use the law as an instrument. Disappearances are one of the most effective ways of removing people the state considers a threat. Mr Mathew Goniwe was a case in point. Regarded as an opponent of the state, he was abducted and killed, as were his fellow activists Fort Calata, Sparrow Mkhonto and Sicelo Mhlawuli. Many others endured a similar fate.

28. Disappearances are usually a very effective way of avoiding international opprobrium. There is no doubt that a large number of troubling inquests – such as the inquest into the death of Mr Neil Aggett – led to government setting up new mechanisms to deal with opponents. The policy on disappearances saved the former state the cost and publicity of trials and inquests, and the acknowledgement of both imprisonment and torture. The state was spared from having to account for its actions in any way.

29. Disappearances also have the effect of causing confusion and sowing discord. Governments can claim that those responsible are groups beyond its control or persons wishing to discredit the state.

30. Disappearances can be used to intimidate political opponents. Families are often told that, if they don't stop asking questions, bothering the authorities or raising a storm in the press, they too will disappear. They are also told that, if they don't keep quiet, they will endanger the life of a loved one. This was confirmed by the testimony of many of the victims who came to the Commission.

31. Disappearances are also an effective way of avoiding international pressure. Although the international community frequently takes issue with governments about the fate of political prisoners and those who are indefinitely detained and tortured, they very rarely address the issue of the disappeared.

DISAPPEARED VERSUS MISSING

32. The Commission dealt with a number of cases where people had gone missing. In some instances, they went missing after a political rally or during a period of political unrest or state of emergency.

33. In a large number of cases reported to the Commission, the disappearance was not linked to a political cause: there was no intent, and the state or armed forces were not responsible for the disappearance.

34. Another category the Commission dealt with were cases referring to persons 'missing in action'. These usually involved soldiers or members of armed forces or groups who went missing, and where it is not clear whether they died in battle or were taken prisoner by the enemy. In these instances, the relatives are also left in a state of great uncertainty. However, in such cases parents or relatives can often rely on the support and assistance of the authorities in whose name the soldier served.

35. It is also usually easier to obtain information about the circumstances in which a soldier went missing. The Geneva Protocols under Article 3 deal with the legal procedures related to those regarded as 'missing in action'.

36. In South Africa, there have been instances where families have been denied relief because the state has refused to confirm that their loved ones were on lawful missions for the country.

ANALYSIS OF DISAPPEARANCE CASES REPORTED TO THE COMMISSION

37. The Commission received more than 1500 victim statements concerning persons who went missing or disappeared after being forcibly abducted.[3] The fate of some 477 people named in these statements remains uncertain. The overwhelming majority of missing persons disappeared between 1985 and 1994 – mainly in the Transvaal and Natal, where there was escalating political conflict during this period. This matches the general pattern of violations recorded by the Commission.[4] In other respects as well, the profile of disappeared persons is no different to that of victims of other violations. Over 90 per cent of missing persons reported to the Commission were male. In those statements where age was specified, 40 per cent were between the ages of 14 and 24, and 31 per cent between the ages of 25 and 36. In those statements where political affiliation was identified, over 70 per cent were members or supporters of liberation movements, while less than 10 per cent were security force members or belonged to or supported pro-government movements such as the IFP. Just over 16 per cent of missing persons are believed to have had no political affiliation.

38. From the statements it received in respect of abductions, the Commission identified the following categories:
    a abductions and enforced disappearances;
    b disappearances in exile;
    c disappearances during periods of unrest;
    d disappearances regarded as out of the Commission's mandate, and
    e cases of indeterminate cause.

MECHANISMS USED BY THE COMMISSION TO ESTABLISH THE FATE AND WHEREABOUTS OF THE DISAPPEARED

39. The Commission was fortunate in that the legislation under which it operated created a number of enabling mechanisms that allowed it to deal with abductions and disappearances proactively. These included its powers to hold special investigative hearings in terms of section 29; the amnesty process; investigations, and the exhumation process.

3 It is unfortunately not possible to give an accurate number of such cases. In a number of instances where disappearances were solved through investigations or amnesty applications, the data was re-coded to reflect the outcome of the investigation. For example, if a missing person was found to have been killed, the coding was frequently changed from disappearance to killing.

4 See Volume Three, pp. 1–11.

40. The Commission's powers in terms of section 29 allowed it to subpoena those it believed had information about an incident or violation to appear before a special panel of Commissioners and to answer questions. Section 29 powers were successfully used to solicit amnesty applications in a number of cases, and often allowed the Commission to establish the facts surrounding a disappearance.

41. The amnesty process also played an important role in dealing with disappearances. Large numbers of amnesty applications relating to disappearance cases helped the Commission to learn a great deal about what had happened to many of the disappeared.

42. Amnesty applicants also provided the Commission with a great deal of information about gravesites. This allowed the Commission's Investigation Unit to carry out a number of exhumations. These helped clarify the facts surrounding some disappearances, thereby establishing the ultimate fate of the disappeared. A number of cases in KwaZulu-Natal helped the Commission to establish that the disappeared had been killed. The cases of Ms Portia Ndwandwe and Ms Ntombi Khubeka are two examples. A number of other exhumations provided similar relief to families of victims.

ENFORCED DISAPPEARANCES

43. Enforced disappearances include persons last seen in the custody of the security forces, as well as those forcibly and unlawfully abducted by other known or unknown parties.

44. Sixty-four people who were last known to have been in the custody of the security forces remain missing. While the majority of these disappearances occurred during the 1980s, twenty-two disappeared between 1960 and 1979 and nine went missing in the 1990s.

45. A number of these disappearances appear to have been Security Branch abduction operations, targeting specific individuals believed to have been members of the African National Congress (ANC) or Pan Africanist Congress (PAC) both inside and outside South Africa. The case of Moss Morudu (described above) is an example of such an abduction.

46. A similar abduction operation involved members of the Orange Free State Security Branch. MK operatives Joyce Koekanyetswe 'Betty' Boom

[KZN/JRW/051/BL], Nomasonto Mashiya and Tax Sejaname – all based in Lesotho – disappeared in December 1986. Unknown persons delivered the infant of Ms Mashiya to the home of her parents in the Orange Free State at about that time. In early 1987, another MK operative, Mbulelo Ngono [EC0330/96PLZ], was forcibly abducted from Maseru. Three members of the Orange Free State Security Branch, based at Ladybrand, applied for amnesty for the abduction of the 'Ladybrand Four', but claimed that they had all had been recruited as sources and had disappeared after being returned to Lesotho.[5] This version was strongly contested by the families, who pointed out that none of the four has been seen since their abduction.

47 Another pattern that emerged was the disappearance of persons formally arrested or detained by the Security Branch or other arms of the South African Police (SAP). One example of this is the disappearance of four Zimbabwean citizens: Mr December Ncube [JB00303/01GTSOW], Mr Mncedisi Helper Nkiwane [JB02648/01GTSOW], Mr Mac Makathini Ncube [JB04064/01GTSOW] and Mr Gideon Ncube [JB02408/01GTSOW]. The Commission came to the conclusion that they were probably apprehended and detained in Johannesburg in the late 1970s. The four are believed to have been part of a group of eighteen Zimbabwean citizens – members or supporters of ZAPU[6] who were working in South Africa at the time.

48. Another such disappearance is that of Ms Nombulelo Thelma Nkosi [JB00175/01ERKAT]. Ms Nkosi, who was detained several times between 1976 and 1984, was taken into custody after police surrounded her home in Sebokeng on the West Rand at 03h00 one morning. She has not been seen since.

49. While the above were all known activists and specifically targeted by the Security Branch, a number of people went missing after being arrested during township unrest. These include Mr Ndlanganyana Mvunyisa [EC1794/97ETK], Mr Maqhilane Solomase Nodosha [EC2064/97ETK] and Mr Mhletywa Silangwe [EC2152/97ETK], who were arrested during the 1960 Pondoland revolt and were never seen again. The Commission received a number of statements from victims who were arrested and severely tortured during the Pondoland revolt.[7]

5 See AC2001/238.

6 Zimbabwe African People's Union.

7 See Volume Three, pp. 38–39,42.

50. Similarly, Mr Ramatua Nicholas 'Boikie' Thlapi [JB01185/03NW, JB0118/03NW, JB01187/03NW, JB01452/03NW] disappeared following his arrest in 1986. 'Boikie' Tlhapi and his friends left Ikageng near Potchefstroom on 20 March 1986 to attend a funeral wake in Klerksdorp for those killed by police during unrest. The group was arrested at a roadblock and taken to Stilfontein, where they were allegedly subjected to beating and electric shock torture. One of those arrested later told Mr Thlapi (Snr) that he had last seen 'Boikie' lying on the floor of a cell, bleeding from the mouth and nose. Police later conceded that 'Boikie' Thlapi had been arrested, but claimed that he had been released. Despite extensive investigations by, amongst others, the Independent Board of Inquiry and Lawyers for Human Rights, as well as an inquest hearing, the fate of 'Boikie' Thlapi remains unknown. None of the police officers involved in his arrest and detention applied for amnesty. The facts of this particular case warrant a new investigation and possibly future prosecutions.

51. A number of amnesty applications from security force members confirm the above patterns. For example, security force members sought amnesty for no fewer than eighty specified abductions, four of which were among the sixty-four persons listed as still missing following arrest or abduction by the security forces.[8] Of the eighty abductions specified by amnesty applicants, some forty were MK operatives, of whom twenty-one were killed. The fate of eight remains unknown (including Moss Morodu and the 'Ladybrand Four'), while possibly six or seven were recruited by the Security Branch. All those recruited worked as *askaris* for the Security Branch and were based inside South Africa. Not one was returned to the ANC following their abduction and recruitment, as was claimed in the case of the 'Ladybrand Four'.

52. Another pattern that emerged from the amnesty applications was the killing of detainees whom the Security Branch did not wish to release, but had insufficient evidence to bring before the courts; or the disposal of bodies of detainees who had died as a consequence of torture.[9] In several of these cases, the Security Branch had signed release papers to suggest that they were not responsible for the disappearance,[10] or, as in the case of Maisha Stanza Bopape,[11] had claimed that the detainee had escaped.

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8 Betty Boom, Mbulelo Ngono, Moss Morodu and Nokuthula Aurelia Simelane [JB00280/01MPWES]. The remaining 76 abductions for which security force operatives applied for amnesty represent solved disappearance cases as well as cases for which no HRV statements were received.

9 See for example, the killing of Sizwe Kondile [AC/1999/037], MK Scorpion [AC2000/151], Johannes Mabotha [AC/2000/084] & Unknown detainee. For disposal of bodies see Stanza Bopape, Sweet Sambo [AC/2001/141] and Unknown IFP member.

10 See, for example, Sizwe Kondile, Stanza Bopape and Johannes Mabotha.

11 AC/2000/059.

DISAPPEARANCES THROUGH THE INSTANCE OF OTHER PARTIES

53. Forty-nine persons remain missing following their abduction by members of rival political organisations or unknown persons. The overwhelming majority of these disappearances (75 %) took place in areas of KwaZulu /Natal during the second half of the 1980s and the early 1990s; and to a lesser degree in the PWV[12] area (22 %) during the early 1990s. Most of these disappearances related to the ongoing conflict between the UDF/ANC and IFP in these regions – a conflict the Commission has proved was fuelled by the former apartheid government. Fourteen per cent of missing persons in this category were female and, where political affiliation was specified, 19 per cent belonged to or were supporters of the IFP. This is higher than the proportion of female or IFP supporters in the overall disappearance category.

54. The following are some examples of these abductions.

55. Mr Eric Khumalo [KZN/ZJ/042/DN] lived in an area of Shongweni, Pietermaritzburg, that was deemed to be a UDF area. In February 1987, he went to collect his matriculation results from school. In order to get there, he had to pass through an Inkatha stronghold. He was abducted by a named IFP member and not seen again. The KZP, in whose jurisdiction Shongweni fell, provided no assistance in searching for him. Although the family eventually reported the case and the SAP in Pietermaritzburg conducted a search, the investigation yielded no results. His family appealed for the Commission to find 'even just a bone' of Eric Khumalo.

56. UDF supporters abducted Mr Petros Nqobile Mazibuko [KZN/NN/106/PM] in Church Street, Pietermaritzburg, on 28 April 1990. He was suspected of defecting to Inkatha. His girlfriend witnessed Mazibuko getting into the car of some UDF supporters. Later the same men returned his clothing to his girlfriend and told her that they had 'killed a dog'.

57. Mr Nzimande [KZN/NN/253/PM] told the Commission that IFP members who were waging a war on him attacked his home at Landskop, Pietermaritzburg. His two wives and a daughter were killed and his four-day-old baby was abducted.

58. A small number of disappearances in this category involved abductions by persons involved in street justice or people's courts initiatives. Included in these

12 Pretoria–Witwatersrand–Vereeniging

are the disappearances of three youths, Lolo Sono [JB00188/01GTSOW], Sibusiso Shabalala [JB00189/01GTSOW] and Kuki Zwane [JB05784/01GTSOW] in Soweto in November and December 1988. The three were last known to be in the custody of the Mandela United Football Club and/or Ms Winnie Madikizela-Mandela.

DISAPPEARED IN EXILE

59. Thousands of people went into exile between 1960 and the early 1990s. The vast majority of these joined the ANC, while a far smaller number joined the PAC or other small liberation groups such as the Black Consciousness Movement (BCM). A number of exiles died in varying circumstances; others started new lives in host countries and chose not to return in the post-1990 period. Inevitably not all those who fled South Africa have been accounted for. Fifty-five of those still missing disappeared after having gone into exile.[13]

60. For reasons of security, people going into exile seldom informed their families of their plans. Consequently, most families had little information beyond the date that the person had left or gone missing. Some were fortunate enough to receive messages or letters; but in many instances families relied on rumours that family members had left South Africa, and few had any idea of their whereabouts.

61. For many families, the only inkling that something was amiss was when the person did not return with the other exiles in the early 1990s.

62. One of those in the exile category reported missing is Luyanda Eric Mose [EC0953/96/ELN]. On 31 October 1983, Luyanda, a seventeen-year-old member of the Congress of South African Students (COSAS), disappeared after leaving his Mdantsane home to buy bread and the local newspaper. After his disappearance, the police continued to look for Luyanda, raiding the family home on more than one occasion, and once surrounding the house in the early hours of the morning. Finally, in 1989, the family received a letter from a friend in Lusaka, informing them that he had seen Luyanda in Angola during 1986. In 1990, Luyanda phoned home, confirming that he was an MK operative and that the organisation was sending him to London to study. This was the last the family heard of him.

13 Where a possibility exists that the missing person has died in combat or in ambushes while infiltrating or operating inside South Africa, s/he has been classified as a disappearance in exile. A large proportion of combatants killed inside South Africa were buried as unknown persons at the time. Unless a positive identification was made at the time or subsequent investigations have established the identity conclusively, missing MK operatives remain the responsibility of the organisation.

63. In a small number of exile cases, there is information to suggest that the missing person is deceased. Where families have accepted this information, such cases are no longer classified as disappearances. However, where this information is disputed, often because families have received incomplete or conflicting information, they remain classified as disappearances.

64. In 1977, Xola Martin Jebe [EC0019/96] and his brother left South Africa for Lesotho, where they attended school. Two years later Xola was recruited by MK and left Lesotho in the company of Mr Chris Hani. The family did not hear from him again. When he did not return home from exile, the family began to make enquiries, but received contradictory information from the ANC. His mother, Mrs Madoda, told the Commission that she had spoken to Mr Hani personally, and had been told by him that her son was alive but was still deployed on 'important business.' Later she was advised that he had been killed in combat. When she contacted ANC Headquarters, she was given different dates for the alleged incident. At the time, there were disclosures in the press about torture and executions in ANC camps. This led the family to suspect that Xola Jebe might have died as a result of abuse and that the contradictory versions they were hearing might be the consequence of a cover-up by the ANC. The Commission established that Xola Jebe had, in fact, been killed in combat.[14] Mrs Jebe, however, remained sceptical. This case illustrates how conflicting information can lead to uncertainty and even paranoia.

65. These cases suggest that the circumstances in which people went into exile, and the lengthy period during which there was no contact or information about the missing person, places families in a particularly vulnerable situation. Any rumour or conflicting piece of information may have a destabilising effect and often leads to disbelief and suspicion. The use of *noms de guerre* further exacerbates problems of this kind: families rarely know the 'combat name' of the missing person, and few operatives and commanders in exile know the birth name.

66. While several of these cases require further investigation, all that is required in some cases is reassurance, further information and, where possible, contact with commanders or those immediately responsible for the death of the deceased. For example, Mr Monoleli Kama [EC2257/97PLZ] was killed in the

14 The Commission subsequently established that Xola Jebe had indeed left Lesotho with Chris Hani in 1979. After a brief stay in Mozambique he went for military training in Angola and was part of the Madenoga detachment. He later went for further training in the German Democratic Republic before being deployed to Zimbabwe. In November 1983, Xola Jebe (aka Anthony Xaba or Ramyais) and three others infiltrated South Africa from Zimbabwe. The unit was killed in a clash at Spilsby Farm, in the Alldays district, Northern Transvaal. An SADF soldier was also killed in the incident.

December 1982 SADF raid on ANC houses and facilities in Maseru. The family was informed by telegram, but was unable to attend the mass funeral because the Security Branch prevented them from leaving South Africa. At a later stage, they asked a family friend to go to the gravesite. However, the friend was unable to locate a gravestone for Mr Kama among those killed in the Maseru Raid. This created doubt in the minds of family members as to whether he really had been killed in this incident. The information received by the Commission confirms that Mr Kama was indeed killed in the raid. The family needed confirmation of this fact and information about the exact location of Mr Kama's grave.

67. These disappearances place a specific responsibility on liberation movements to assist in establishing the fate of the missing. The Commission notes and acknowledges that, of all the liberation movements, the ANC – despite operating in conditions of hostility and ongoing threats of infiltration – nonetheless maintained records of its membership. It is clear from a number of human rights violations (HRV) statements that, during the years of conflict, the ANC informed many families of the deaths of loved ones in exile or in combat. In some cases, attempts were made to enable them to attend funerals.

68. In the period after 1990, ANC personnel engaged in a co-ordinated effort to inform families of fatalities that had occurred during the exile period. A desk was established at ANC Headquarters to deal with queries about missing persons.

69. The ANC also submitted to the Commission lists of persons who had died in exile. Although it did not detail the circumstances of each case, the list is divided into categories according to mode of death, such as 'died at enemy hands', 'died in accidents', or 'died of natural causes'.

70. While these efforts are to be commended, it is also clear that families were sometimes given incorrect and/or conflicting information. Furthermore, the resources of the missing person's desk at ANC Headquarters were very limited, especially in respect of its research and investigative capacity. In numerous instances, personnel failed to respond to the Commission's requests for information. Current plans to archive documentation at Luthuli House[15] will facilitate in the identification and retrieval of records and may assist in clarifying the fate of missing persons.

15 Formerly called Shell House.

71. Whatever the difficulties in following up ANC exile disappearances, the situation was immeasurably worse in respect of PAC cadres and supporters. The PAC submitted very little information to the Commission and generally treated it with suspicion and disregard. Moreover, unlike the ANC, the PAC had conducted no internal enquiries into abuses in its camps or suspicious deaths arising from internal conflict. For the most part, the Commission had to rely on the knowledge of particular PAC members who were willing to assist. Tracing missing persons who had joined the PAC presented a far more intractable problem.

MISSING DURING PERIODS OF UNREST OR VIOLENCE

72. Aside from missing persons known to have been abducted or arrested and those known to have gone into exile, an additional 117 people who are still missing disappeared during periods of heightened unrest. Unlike the abduction and exile categories, little is known about the circumstances of these disappearances, save that the area in which the disappeared person lived or worked was in the throes of political upheaval at the time. In some instances, people may have been killed and not identified; in others, it is possible that they fled the area or were abducted. It is also possible that some of these disappearances may simply have coincided with a period of unrest and were not directly associated with the political context. In other words, further investigation or research is required in order to ascertain the nature of certain disappearances.

73. Here again, most disappearances took place in the latter half of the 1980s (27 %) and the early 1990s (61 %), and the primary sites of disappearance were Natal (46 %) and the Transvaal (44 %), both areas of intense political upheaval. Where political affiliation is specified, 26 per cent of those missing are believed to have had no political affiliation or to have been politically neutral. This is a significantly higher percentage than the overall percentage of missing persons with no political affiliation (16 %), testifying to the extent to which entire communities were engulfed in the political conflict.

74. Mr Maqhilane Nodosha [EC2064/97ETK], Mr Nyangilizwe Bele [EC2066/97ETK], Mr Sijumbo Mlandwelwa [EC0880/96ETK] and Mr Madodana Ndzoyiyana [EC/1659/97ETK] all went missing from Bizana and Flagstaff during the Pondoland revolt in 1960. Mr Phineas Shirinda [JB06393/02NPPTB], Mr James Mogadi Penya [JB00196/01GTSOW] and Mr Mandla Khoza [KZN/SANG/013/DN] went missing from Soweto and Alexandra on 16 and 17 June 1976, while several other persons were reported missing in the ensuing months of the Soweto

uprising. Mr Matshediso Mofekeng [JB05732/03VT] went missing in Sebokeng on 3 September 1984, the date marking the start of a period of extensive political violence in the Vaal Triangle.

75. Twelve-year-old Nkazimulo Mabele [KZN/KM/559/DN] went missing one night during a period of ongoing political violence in KwaMakutha, Natal. His mother testified to the Commission that the family was woken one night by youths who were guarding the area, and was forced to flee for fear of an impending attack by IFP supporters. In the panic-stricken flight, nobody realised that Nkazimulo had been left behind. It was only when they gathered several hours later and returned home that they discovered that he was not with them. Mrs Mabele did not know whether he had been taken by the youths guarding the area or by the attacking party, or whether he had simply run away. Another son, Zakile, later left the violence-torn area and was killed in uncertain circumstances. Mrs Mabele appealed to the Commission:

    I can't live like this. It's much better – I can live with the other. When you've seen your child dying and you bury him that is something that you can comprehend, but the other I cannot live with that.

OUT-OF-MANDATE CASES

76. Out-of-mandate cases are cases that fall outside of the Commission's mandate period – 21 March 1961 to 10 May 1994 – or where there is no political motive or intent for the disappearance. In general, the Commission placed cases in this category only when it was possible to make a clear determination. Numerous cases in which no political context was directly evident from the HRV statement were placed in the category 'cases of indeterminate cause'. This is largely because ruling a case out-of-mandate effectively precluded the Commission from investigating and thus from the possibility of granting reparation. There are forty-three missing persons in this category.

CASES OF INDETERMINATE CAUSE

77. There are 149 missing persons who do not fit neatly into any of the above categories. In several cases, classification was not possible because the statement from the family gave insufficient details about the disappearance. In other instances, more than one reason may have been given for the disappearance. For example, a family may believe that their missing son left to go into exile, but has received

conflicting information about whether or not he reached his destination. Some of these disappearances may well have taken place during periods of generalised political upheaval. However, they have not been included in the above category because the statement did not contain sufficient information indicating that there was political unrest in the area from which the disappeared person came. In a number of instances, the statement provided no immediate political context.

78. The case of Mr December Ncube provides an example of this. Mr Ncube went missing after being arrested at the home of his wife's employer in February 1980. Nothing in the statement directly suggests a political context, nor does the statement identify him as having had any political affiliation. As a consequence, this case statement was originally ruled out-of-mandate during the findings process. However, during a review of the disappearance files, a press-cutting was found in a separate file dealing with another disappearance. This listed Mr Ncube as one of eighteen ZAPU members who went missing inside South Africa between 1977 and 1980 (see above).

79. Mr Roy Lovely Gondwe [JB01223/01MPNEL], 26 years old and of unknown political affiliation, was visited by two black men at his place of work in White River, Transvaal, on 5 August 1985. The two men returned later and spoke to Mr Gondwe again. Before leaving his place of work, Mr Gondwe gave a fellow employer an envelope with the request that it be passed on to his family. Later, the white regional manager arrived to lock up, a task normally undertaken by Mr Gondwe. The envelope delivered to Mr Gondwe's family contained his personal effects, some money and a note implying that he would not see them again. While nothing immediately suggests a political motive, it cannot be conclusively ruled out. The statement suggests , for example, that the two men so obviously connected with Mr Gondwe's disappearance may have been Security Branch operatives.

80. On 25 September 1985, Mr Ernest Justice Ramokoko [JB00327/01GTSOW] made breakfast for his mother (an unusual occurrence) before leaving the house. He was never seen or heard of again. Earlier that month, Mr Ramokoko had been charged with other students for a politically-related offence, and was out on bail. It is thus highly possible that Mr Ramokoko went into exile and that the breakfast he prepared for his mother was a form of farewell. However, it is also possible that Mr Ramokoko decided to jump bail and that something untoward happened to him at a later stage.

81. The Commission wishes to note that further investigations into a number of such cases may lead to their eventual resolution.

THE COMMISSION'S APPROACH TO DISAPPEARANCE CASES

82. It must be said from the outset that investigating disappearances requires a very focused, multi-faceted approach, a dedicated investigation unit with expertise in investigating human rights violations, good research capacity and specialised forensic skills.

83. The Commission did not have the resources to establish a unit solely dedicated to investigating disappearances. The Commission's Investigation Unit was overwhelmed by the large number of violations and incidents it had to investigate. 'Disappearances' were simply one of the categories that needed investigation. In addition, neither the Investigation Unit nor the Commission recognised the limitations of a number of its policies and procedures with respect to this category of violation until fairly late in the process.

84. In retrospect, the Commission should have recognised that it had limited capacity to deal properly with this category of violation and prioritised its intended outcomes. Instead it tried to investigate all the cases it received.

85. The Commission was greatly assisted by information emerging from amnesty applications. Indeed, many amnesty applicants also assisted in trying to establish the fate and whereabouts of the dead and their graves. However, some amnesty applicants failed to confess to the killing of those whose abduction they admitted. This placed a burden on the Commission to rebut the testimony of amnesty applicants, which it was ill equipped to deal with.

86. The consequence of this is that a number of amnesty applicants were granted amnesty for an abduction they admitted to, while the families of the disappeared still have no finality about whether the disappeared is dead. These cases must be taken further by the prosecuting authorities in the future.

PROBLEMS OF CORROBORATION

87. The Commission received more than 22 000 HRV statements. Most statements contained information relating to multiple victims, requiring the Commission to verify more than 40 000 individual cases. Most statements also referred to more than one violation, thus significantly increasing the number of violations to be corroborated. Although it was impossible for the Commission to investigate each individual case, it was obliged to make victim findings, the effect of which was to make victims and their families eligible for reparation. As a result, the Commission adopted a policy of low-level corroboration when determining whether or not a person was a victim of a gross violation of human rights. In essence, this meant that instead of a full investigation, a series of corroborative 'pointers' would be established – for example the retrieval of a confirmatory press report, or an entry in an SAP occurrence book or a hospital file.

88. In retrospect, this approach was not useful when dealing with disappearances. In such cases, corroborators generally resorted to fairly routine procedures: a letter requesting information would be sent to the relevant SAP office or, in cases of a person missing in exile, to the ANC Missing Persons' Desk at Shell House. In many instances, these requests received no response and the matter could not be taken much further.

89. Where a disappearance was potentially associated with political unrest, the corroborator would note this. In a few cases it was possible to identify actual incidents and, more importantly, deaths. More often, a general pattern would be observed. For example, when Katlehong was the scene of conflict between the ANC and IFP, a number of people were killed. It is thus probable that the missing person was a victim of this conflict, although there was insufficient information to confirm this as fact.

90. In most disappearance cases, family members were not able to give the Commission a great deal of detail or information, making corroboration extremely difficult. This added to problems in tracing a missing person or establishing the facts surrounding a disappearance .

91. In some instances, poor statement-taking also impacted on the corroboration process: basic information such as the personal details of the victim and the circumstances of the disappearance were not always recorded correctly. The Commission was sometimes able to take a second statement or to obtain a

photograph. Where this proved impossible, it was difficult and often impossible to make any progress. These incidents also require further investigation.

VICTIM FINDINGS

92. Disappearance cases presented the Commission with a real challenge. Even where most factors pointed to the probability of the disappeared being dead, it was not possible for the Commission to make a finding to this effect in the absence of conclusive proof. Were such a finding to be made, the file would have to be closed, ending the hope of any further investigation into the matter.

93. Although the inability of the Commission to make a finding obviously impacts on the family's immediate ability to access reparation, this should not prevent them from applying to the President's fund for reparation once the disappearance is resolved.

94. The Commission has always taken the view that unsolved disappearance cases should be further investigated by the National Prosecuting Authority. This unfinished business remains the responsibility of the state. The Commission's fuller report and the special database dealing with disappearances will be handed to the Ministry of Justice and the National Director of Prosecutions, with clear recommendations for further investigation in order to bring finality to these matters.

RECOMMENDATIONS

95. The Commission tried as best it could to carry out its mandate to 'compile of list of the disappeared and those abducted and establish their fate and where-abouts'. It did manage to act as catalyst by bringing disappearance cases to the fore. It also resolved a large number of cases, enabling a number of families to gain a measure of closure. However, despite every attempt by the Commission to complete its work, a number of cases remain unresolved.

96. The resolution of these disappearance cases is perhaps the most significant piece of unfinished business for the Commission. The Commission is therefore of the view that these cases should not simply be abandoned, but that further mechanisms should be put in place to finalise them.

97. After the closure of the Commission, the responsibility for this work passes to the state. This is in line with international humanitarian and human rights law, which obliges governments and other parties to a conflict to determine the fate of the disappeared.[16]

98. The United Nations has condemned disappearances as a grave violation of human rights and has stated that their systematic practice is 'a crime against humanity'. In 1998, the Working Group on Involuntary or Enforced Disappearances issued a General Comment to Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance.[17] The Declaration imposes a primary duty to establish the fate and whereabouts of disappeared persons, itself an important remedy for victims. Article 19 complements this duty. It provides as follows:

The victims of acts of enforced disappearances and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of a victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

RECOMMENDATIONS FOR TAKING THESE MATTERS FURTHER

99. The Commission recommends that the state implement the Commission's recommendations regarding disappearances. The recommendations are as follows:

Recommendation 1: Establishing a special task team

100. A task team should be established within the office of the National Director of Public Prosecutions and be given a specific mandate and time frame. The mandate should include conducting further investigation into individual cases, confirming the disappearance and, where appropriate, making a finding conferring victim

16 For relevant articles in the Geneva Conventions see GCIV, Art 26; in Additional Protocol I see Articles 32, 33 and 74. Although the category of missing persons is not specifically addressed in Additional Protocol II dealing with non-international armed conflicts, there nonetheless remains an obligation to search and account for such persons in terms of customary international law. While the Geneva Conventions address the issue of persons missing as a result of hostilities, certain aspects of international human rights law address the issue of enforced disappearances and abductions. See, for example, the UN Declaration on the Protection of All Persons from Enforced Disappearance and Article 7 of the International Criminal Court Statute. A Draft Convention on the Protection of All Persons from Forced Disappearance obliges states to define enforced disappearances as common-law crimes and prohibits the granting of amnesty to perpetrators who have not been brought to trial and convicted (Articles 5 & 17). Aside from formal international instruments, considerable jurisprudence has developed, especially in Latin America, where the use of enforced disappearances was used on a vast scale.

17 Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1998/43, 12 January 1998 at 16.

status on the disappeared. This will enable the families of the disappeared to access reparation. In addition to finalising findings, the task team should compile appropriate recommendations to bring closure to these issues at the end of its mandate period.

101. The task team should work closely with organs of civil society currently involved in related areas of research and investigation. If based in the Office of the National Director, the task team would have the authority to access the files of various state authorities – including the police, the military and the Departments of Correctional Services and Home Affairs.

102. Such a task team would require extensive powers – including the power of subpoena and search and seizure. In addition, the task team would require the full co-operation of relevant state institutions in order to gain access to state archives, including those of the military and the police. It would also need to be able to access the archives of the ANC and retrieve information from the PAC.

Scope

103. While a large number of families made statements to the Commission about their loved ones, the list of persons identified as having disappeared as a result of the conflicts of the past is clearly incomplete. There are undoubtedly scores of families in similar circumstances who have not made statements to the Commission for a range of reasons. In the last three years, victims' groups have collected a large number of statements from families whose loved ones have not returned and whom they regard as having disappeared. A decision will need to be made about whether consideration should be given to such cases. This decision needs to made in parallel with decisions about victims of other violations who did not come to the Commission.

104. A further consideration concerns the number of persons who disappeared or were displaced during the ongoing violence in KwaZulu-Natal after the end of the Commission's mandate period. The Commission urges the state to consider these cases in order to bring closure for the families.

Investigation

105. The Commission experienced problems with corroboration and its investigations were considerably hampered by the paucity of information contained in the

statements made by families to the Human Rights Violation Committee. The Commission considers, therefore, that the starting point for any task team would be to visit families and gather more information about disappearances. Where possible, photographs of the missing person should be affixed to the statement.

106. The following guidelines are offered for further investigation into disappearances in each of the categories identified earlier:

a **Category A (Enforced disappearances):** An investigation of category A cases should be guided by the principle that it is the obligation of perpetrating parties to account for the disappearance. It is not sufficient for such parties to claim that the missing person was released or recruited, even where release records are produced.

In several amnesty-related cases, a number of applicants sought amnesty for the abduction and killing of unidentified victims. However, a large number of operatives involved in these abductions did not apply. The task team must make every effort to locate those operatives who have not applied and who have been identified for further investigation, followed by prosecution where necessary. The task team should also make every effort to identify those victims who were not identified by amnesty applicants. The fact that amnesty has been granted does not mean perpetrators should not be required to co-operate with the task team by pinpointing localities where persons were killed and possible grave sites where the disappeared may have been secretly buried.

b **Category B (Missing in exile):** Category B cases should be guided by the principle that the relevant liberation movement needs to account for its missing members. As already noted, the ANC has already made some effort in this direction. There are, however, numerous inaccuracies and inconsistencies in the various lists produced by the ANC. These lists[18] must be collated and verified. Other sources of information include information submitted to the Special Pensions Board.

c **Category C (Missing during periods of unrest):** As a first step, the task team should expand on the Commission's list of incidents during periods of unrest, particularly during the various states of emergency. The list should detail key localities and time periods. Compiling such a list requires the utilisation of a range of sources – documentation produced by monitoring organisations, surviving police documentation, newspaper reports, mortuary records and so forth. People taking extended statements from families need

18 Such lists include deaths in exile (submitted to the Commission), combat deaths inside South Africa,returning exiles, names submitted to the Motsuenyane Commission and integration into post-transition security force lists.

to pay particular attention to establishing as accurate a time and locality frame as possible, as well as detailed pre-mortem information related to particular incidents.

d **Category E (Cases of indeterminate cause):** Here investigation and research need to be directed towards moving persons in this category into one of above three categories or into Category D (non-political/ out of mandate) More detailed statements from family and associates should facilitate this process.

Findings

107. Once the task team has completed its work and compiled its report, it will need to make findings so that the families of victims can access reparation.

108. Findings need to be made for all cases solved by the task team. Findings should be made with respect to solved cases in line with the approach taken by the Commission. Once criteria are established, the task team will need to make findings for all unsolved cases.

Further action

109. Where the task team is satisfied that a person has disappeared or has died, and a finding to that effect has been made, it will need to facilitate the presumption of death. Death certificates will need to be issued and the families must be referred to the President's Fund for reparations.

Recommendation 2: Reburials, exhumations and memorials

110. The task team's mandate should include the possibility of identifying gravesites and facilitating exhumations in conjunction with civil society groupings working within this arena.

111. Memorials should take into account the concerns and wishes of families of the victims.

The role of mortuaries and undertakers

112. When investigating disappearances and conducting exhumations, it became apparent to the Commission that insufficient attention and care had been paid

by those responsible for the handling and burial of unidentified persons and paupers. This is doubtless the consequence of a racist system in which the loss of black life was regarded as being of little importance.

113. The Commission recommends that current legislation, policies and procedures in respect of the handling of unidentified persons and paupers be subjected to scrutiny by the Law Commission. In addition, where municipalities award tenders to funeral companies, it is important to ensure that these companies are subject to proper monitoring.

Records relating to unidentified persons and paupers

114. Current practices regarding the retention and disposal of records (including post-mortem and inquest records) relating to unidentified remains should be reviewed.

CONCLUSION

115. The Commission notes that accounting for the disappeared remains an important reparation mechanism for victims and their families. In this regard the Commission urges the state to take into account the following observations and recommendations:[19]
    a It is essential to protect all persons from becoming unaccounted for, without distinction as to the deliberate or incidental character of the events leading to the situation.
    b It is essential that families know the fate, including the whereabouts and, if dead, the cause of death, of family members who are unaccounted for.
    c The principal responsibility in preventing persons from becoming unaccounted for and in ascertaining the fate of all those who are not accounted (as soon as they are reported missing) lies with government authorities. Armed groups also have a responsibility in this regard.
    d Inter-governmental organisations acting in conformity with their respective mandates should be available to support government authorities and armed groups in fulfilling their responsibilities and, if they cannot or will not meet their responsibilities, should take appropriate action.
    e Non-governmental organisations, acting in accordance with their mandates, should make every effort to prevent persons from becoming unaccounted

19 Courtesy of International Conference of Governmental and Non-governmental experts. Geneva (ICRC): The Missing Conference, February 2003.

for and to clarify the fate of those who have become unaccounted for.

f It is essential that all those involved respect each individual's inherent human dignity in all circumstances.

g Every effort should be made to respect the cultural, social and religious or spiritual context specific to each situation.

Prevention

116. Respect for international humanitarian and human rights law is fundamental to preventing persons from becoming unaccounted for. There must be full implementation by state parties and dissemination of these obligations.

Clarification of the fate of persons unaccounted for

117. It is crucial that families receive information on the individual fate of unaccounted-for family members. Families and communities also need acknowledgement of the events leading to persons becoming unaccounted for, and for perpetrators to be held accountable.

Information management and the processing of files on persons unaccounted for

118. Co-ordination of activities and the sharing information will heighten the effectiveness of the actions taken to ascertain the fate of persons unaccounted for.

Management of human remains and information on the dead

119. The principle responsibility for the proper handling of the dead without adverse distinction, and the provision of information to families with a view to preventing anxiety and uncertainty, lies with government authorities and armed groups. Measures that can be taken include:

a ensuring that all feasible measures be taken to identify the human remains of those who died and to record their identity;

b avoiding obstruction of, interference with or impediments to the identification of human remains;

c issuing death certificates;

d ensuring that all involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains;

e ensuring that forensic specialists, whenever possible, carry out the exhumation and identification of human remains;
f ensuring adequate training for all those collecting information on the dead and handling human remains;
g respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts, and
h beginning a process of exhumation and identification only once a frame work has been agreed on. That framework should include:
   - the establishment of protocols for exhumation, ante-mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community;
   - appropriate means of associating the communities and families in the exhumation, autopsy and identification procedures, and
   - procedures for handing over the human remains to the family.

Support for the families

120. The material, financial, psychological and legal needs faced by families awaiting clarification of their family members' fate should be addressed by the authorities concerned – when necessary with the support of inter-governmental and non-governmental organisations. Measures that can be taken include:
   a providing targeted assistance with the aim, as soon as circumstances allow, of promoting the families' self-sufficiency;
   b addressing the legal situation of persons unaccounted for and the consequences for family members, including property administration, guardianship and parental authority;
   c ensuring that children receive special support and protection, and particularly taking measures to reunite unaccompanied children with their families;
   d giving special attention to the needs of single heads of families in the light of the specific circumstances women frequently face in such situations;
   e ensuring that families of persons unaccounted for benefit from support programmes in order to adapt to their altered situations and come to terms with events. Psychological support and, whenever necessary and feasible, psychiatric treatment should be provided to those in need. As far as possible, programmes should be built on local health and healing systems, and
   f encouraging family networks and associations, in order to provide a forum for mutual support.

Families and mourning

121. Respect for the dead and for local funeral rites support peace and social order. The process whereby families are informed that a family member has died and human remains and/or personal effects are returned needs to be well prepared. In addition:
    a the death and the mourning practices of individuals and communities need to be respected in all circumstances, and
    b the planning and organisation of commemorations should be left to the families and communities concerned.

Poem by Ariel Dorfman[20]

And every year September 19th
(soon it will be four years, can so many years have gone by?)
I will have to ask her again
If there is any news
If they have heard anything
And she will say no, thank you very much,
I appreciate your concern,
But her eyes will keep saying
Wordlessly
What they said the first time
(soon it will be three years –
how is it possible?)
no, thank you very much,
I appreciate your concern,
But I am not a widow
So stay away from me,
Don't ask me for anything,
I won't marry you,
I am not a widow,
I am not a widow,
Yet

20 Printed in Index on Censorship, Vol. 8, No 3. 1979.

APPENDIX

LIST OF DISAPPEARED AND MISSING PERSONS

The following list is a list of the persons currently listed as disappeared or missing. It is possible that not all missing persons are recorded here, although every attempt has been made to capture all names. Similarly, it is possible that there are spelling errors, and in a few cases that a persons name may be recorded twice with slightly different spellings. The Commission apologises for any inaccuracies in respect of this list.

ABDULWAHAB, Zakier [JB01351/02PS]
ABRAHAMS, John aka Gaika [JB05149/03WR]
ADAMS, Abe Tony [JB05980/01GTSOW]
AMATHENJA, Billy Veli [JB00973/01GTSOW]
APHANE, Stefaans Losi [JB022090/01MPMOU]
BADIMO, Frans Madimetja [JB02729/01GTTEM]
BASI, Mkanyiselwa [KZN/MR/327/RI]
BEFILE, Khawulezile Michael [EC2390/97UIT]
BELE, Nyangilizwe [EC2066/97ETK]
BHENGU, Senzosenkosi [KZN/TP/012/DN]
BHOSHOMANE, Atamo Abel [JB00979/01GTSOW]
BIBI, Michael [EC2149/97ELN]
BLAAUW, Xolile Petros [EC2801/97UIT]
BLOU, Ndlamafa [EC1292/96KAR/ [EC1297/96KAR]
BOKABA, Obed Makibe [JB00364/03NW]
BOOM, Joyce Koekanyetswe aka Betty Boom or Betty Malati [KZN/JRW/051/BL]
BOPAPE, Mackenzie [JB00567/02NPPTB]
BUTHELEZI, Bongani aka Bobo [JB05745/01GTSOW]
BUTHELEZI, Isaac Bongani [JB03357/01ERKAT]
BUTHELEZI, Stephen [ECO398/96ELN]
BUTHELEZI, Victor [KZN/SS/217/VH]
CEKISO, Ellias Mnyamezeli Beatrice [CTO1562/FLA]
CELE, Jeanette Ncuncu [KZN/NNN/383/PS]
CELE, Mondli Vusamazulu [KZN/ZJ/402/DN]
CELE, Nicholas Ndoda [KZN/NNN/379/PM]
CELE, Nkosiyezwe Elliot [KZN/ZJ/054/DN]
CELE, Shadrack Bonginkosi [KZN/TCN/034/PS]
CELE, Victor Columbia [KZN/MZ/014/DN]
CELE, Vorster Bhutiza [KZN/NMS/024/DN]
CHAKA, Joseph Lebelo [KZN/JRW/092/LT]
CHIYA, Thokozani [KZN/NM/040/DN]
DAHILE, Henry Barnabas Loshe [JB05077/01ERKAT]
DAKI, Lennox Xolisa Nkonkobe 'Loyiso Mvelo' [EC2092/97ELN]
DAMANE, Dunisani Christopher [JB05709/01ERKAT]
DAVID, Simphiwe Truman Hobongwana [EC1176/96UIT]
DHLAMINI, Aaron Makhosi [KZN/PJM/015/KRS]
DINTOA, Elias [JB04268/01ERTEM]
DLADLA, Gesi Lucas [JB03758/01MPPIT]
DLADLA, Mthembu Raymond [JB03374/01ERKAT]
DLADLA, Musa [KZN/NNN/045/DN]

DLAMINI , John [JB/06240/01MPNEL & JB06216/01MPNEL]
DLAMINI, Boy-Boy Henry [KZN/PMB/203/PM]
DLAMINI, Gingi [KZN/HG/909/DN & KZN/GM/103/DN]
DLAMINI, Henry [KZN/SN/070/MP]
DLAMINI, Lindiwe [KZN/MM/005/DN]
DLAMINI, Mbuso [KZN/NN/173/DN]
DLAMINI, Unspecified [KZN/FN/239/DN]
DLAMINI-NKOSI, Charlotte Siphiwe [JB02486/01GTTEM]
DLOVA, Sqhamo Woodworth [JB03037/01ERKWA]
DLUDLU, Esau [JB03897/01MPWES]
DYANTJIE, Sanwabile [CTO8607/FLA]
FAKU, Matthews Lindile [EC/0571/96PLZ]
FAKU, Phumelele Michael 'Sugar' [CTO3067/ECA & CT00726/ECA]
GAMBU, Herbert Sithembiso [KZN/NN/369/DN]
GCWEZA, Meze Petros [KZN/TCN/006/PS]
GONDWE, Roy Lovely [JB01223/01MPNEL]
GQIRANA, Mongameli aka Mobbs [JB01056/02PS]
GUMEDE, Melusi Cyril [KZN/GM/028/DN]
GUMEDE, Not specified [KZN/NNN/126/PS]
GUMEDE, Sipho [KZN/NN/303/DN]
GWALA, Patrick Siphiwe [KZN/PM/074/MP]
GWALA, Sipho [KZN/MZ/009/DN & KZN/MR/175/DN]
HADEBE, Phillip [KZN/NAM/072/DN]
HLONGWA, Mtumaseli [KZN/MM/013/DN]
HLONGWANE, Boy Sipho [JB05796/01ERKAT]
HLOPHE, Thuthukani John [KZN/GM/032/DN]
JACOBS, Johannes [JB00666/01GTSOW]
JACOBSON, Andries van Vuuren [KZN/PAM/022/FS]
JALI, Delani [KZN/MZ/009/DN & KZN/MR/175/DN]
JEBE, Xola Martin aka Anthony Xaba [EC0019/96]
JINIKWE, Hilton Vusumzi 'Matayi' [EC0091/96TSI]
KAKAZA, Andile [JB05935/01GTSOW]
KAMA, Mnoneleli Samson [EC2257/97PLZ]
KARAPI, Andries [KZN/GM/010/BL]
KAULELA, Mzamo Louis [EC2486/97UIT]
KEIKELANE, Mpe Jonas [JB05948/01GTSOW]
KEKANA, Reginald [JB01283/02PS]
KGIBA, Samuel Lethola [JB01197/03NW]
KHAMBULE, Nhlanhleni Pius [KZN/HG/909/DN & KZN/GM/103/DN]
KHANYILE, Lucky [KZN/SN/169/DN]
KHESWA, Sbusiso Blessing [KZN/MR/179/DN & KZN/KM/514/DN]
KHEWU, Themba [JB04482/01ERKAT]
KHIBA, Mathabiso Grieta [JB01516/03NW]
KHOASHE, Tieho [CT00794/KAR]
KHONOU, Simon [JB06315/02PS]
KHOWA, Zwelifile [KZN/AB/031/PS]
KHOZA, Bhuthiza Vincent [KZN/TG/016/DN]
KHOZA, Mandla Arthur [KZN/SANG/013/DN]
KHOZA, Rain [JB01779/01GTTEM]
KHUBEKA , Zoza Jerry [KZN/MR/480/LS]
KHUBONI, Cornelius Bhekambhele [KZN/MR/462/IX]
KHUMALO, Ehab Sipho [KZN/GZ/012/PM]
KHUMALO, Gugu Erick [KZN/ZJ/042/DN]
KHUMALO, Jack [JB05344/02NPPTB]
KHUMALO, Joseph Bheki [KZN/SANG/006/DN]

KHUMALO, Thelma Nothando [KZN/DM/016/PS]
KHUZWAYO, Nhlanhla Victor [KZN/NNN/630/DN]
KHUZWAYO, Senzo Eugene [KZN/FN/211/DN]
KHUZWAYO, Zwi [KZN/MR/104/DN]
KLAAS, Michael Zolane [EC2096/97PLZ]
KOAHELA, Steven Lehlohonono [JB04067/01GTSOW]
KOZA, Mandla Aaron [KZN/MP/188/DN]
KUNENE, Bhekamakhosi Paulos [KZN/ZJ/019/DN]
KWAPHUNA/SKONKWANA, Thamsanqa July [EC0341/96KWT]
LANGA, Aaron [KZN/SELF/089/DN]
LEDWABA, Stanley Moalusi [JB00413/01GTSOW
LEDWABA, Thomas [JB01257/02PS]
LEKALAKALA, Lesiba Piet [JB05147/01ERKAT]
LENONG, Simon [JB00276/01GTSOW]
LENTSELA, Richard 'Bushy' [JB01404/03NW & 01403/03NW]
LENZI, Nzenze [JB04951/99OVE & EC2018/97UTA]
LEPOTHE, Patrick Thibedi [JB01004/02PS]
LERUTLA, Mathews Prompane [JB00787/02PS; JB02696/02PS]
LETSHABA, Petros Mokonyane [JB/05482/01ERKAT & JB03479/01ERKAT]
LUKHULENI, Tokie Willie [JB00998/02PS]
LUTYA, Thamsanqa [CT00606/FLA]
MAAKE, Moses Kalwane [JB05117/02NPPTB]
MABELE, Nkazimulo [KZN/KM/559/DN]
MABENA, Justice [JB01982/01GTSOW]
MADEBE, Thumani Joseph [CT00142/KIM]
MADISHA, Elias [JB02899/02NPPTB]
MADLEBE, Xoliswa [CTO1028/SOU]
MADONDO, Antony Ndabingehele [KZN/NNN/181/PM]
MADONSELA, Joseph Memo [JB00958/01MPNEL]
MADUNA, Khathazile Wilson [EC2833/97UIT]
MAEGE, Sipho [KZN/SMB/122/FS]
MAFUMANA, Tolika [CT00226/FLA]
MAGUBANE, Sarah [KZN/NNN/015/DN]
MAGWACA, Popi Michael Vukile [EC0667/96PLZ]
MAHAYE, Phumlani [KZN/NNN/098/EM]
MAHLANGU , Daniel [JB02819/01MPWES]
MAHLANGU, Jim Msebengi [JB02188/01MPMOU]
MAJOLA, Bhekinkosi [KZN/NM/208/EM]
MAJORO, Benedict [JB05368/03VT]
MAKALENG, Johannes Sebotlana [JB05684/01ERKAT]
MAKETHA, Mashoalane Josiah [JB01630/03VT]
MAKHALIMA, Patrick Thembani Adam [EC2461/97NWC]
MAKHOBA, Pius Zithulele [KZN/NM/226/PM]
MAKHUBO, Isaac Mbuthi [JB00152/01 ERKAT]
MAKHUBU, Solomon [JB05712/01ERKAT]
MAKUYA, Nyatshisevhesingo [JB001129/02NPVEN]
MAKWELA, Samson Ezekiel aka William Jones [JB01620/02NPPTB & JB05488/02NPPTB]
MALATJI, Solomon Ntekuma aka Milo aka Mashego Mothusi,
MALEFAHLO, Simon [JB02921/01MPMOU]
MALINGA, Abraham Mdungeni [JB06483/01GTSOW]
MALOPE, Edward aka Joseph Mashiani [JB02900/01MPMOU]
MALULEKA, Charles [JB02425/01MPMOU]
MAMA, George Vumile [CT00622/OUT]
MANDELA, Aaron aka Zakariah Molotsi [EC1172/96PLZ & EC1387/96PLZ]

MANTENGU, Bheki [KZN/ZJ/432/MA]
MANYONTA, Nompumelelo Freda [EC0769/96PLZ]
MAPHOTO, Hendrick Malasela [JB05227/01GTSOW]
MAPONYA, Andrew [JB03947/02PS]
MAPUMULO, Reginald Sabelo aka Mayisela [JB01309/01GTSOW]
MARCH, David [JB01863/01GTTEM]
MASANGO, Oupa Petrus [JB02774/01MPMOU]
MASHABA, Fanyana Petrus [JB01497/01MPNEL]
MASHABELA, Jan Mantsho [JB04827/01MPNEL]
MASHEGO, Philemon Paul [JB03136/01ERKWA]
MASHELE, David Redimate [JB03339/02NPLTM & JB03340/02NPLT]
MASHILO, David [JB01946/02NPPTB & JB06494/02PS]
MASHIYA, Sonti Anna [KZN/FS/350/DN]
MASILELA, Joseph [JB02539/01MPMOU & JB02874/01MPNEL]
MASINGA, Ndondo Joseph [JB05759/03VT]
MASOLANE, Maphem [KZN/BN/004/FS]
MASUKU , Alpheus Zakhele [KZN/NZ/002/PM]
MATA, Patrick [EC2272/97ALB]
MATELA, Tsepo [JB00992/02PS]
MATHEBULA, Caleb [JB05750/03NWRUS]
MATHIBA, Johannes Lebogang [JB01854/03NW]
MATJUDA, Makwetsa Willington [JB04812/02NPTZA]
MATLADISA, Tsileng [JB03212/02NPLTM]
MATLOA, Andries [JB01029/02PS]
MATOBOLA, Mokone Jacob [JB05756/03VT]
MATSOLE-MOKWEBO, Germina Puleng [JB06418/01ERKAT]
MAVUKA, Nkosinathi Minti Sydney aka Colbert Kgomane [JB01280/01GTSOW]
MAXHAM, Sandile, John [EC2014/97UIT]
MAYISELA, Victor Sipho [JB02393/01MPNEL & JB05926/01GTSOW]
MAZIBUKO, Amos [KZN/ZJ/439/IX]
MAZIBUKO, Petros Nqobile [KZN/NN/106/PM]
MAZUNGULA, Sizwe Douglas [EC0098/96TSI]
MBALANE, Matwethu Sheshe [EC/2586/97ELN]
MBANJWA, Thandani Africa [KZN/NN/101/PM]
MBATHA, Zamokwakhwe Andries [JB02046/01GTSOW]
MBEJE, Bertha [KZN/ZJ/288/RI]
MBEKI, Monwabisi Kwanda [EC0308/96PLZ]
MBELE, Andrew Vusi [JB00457/01GTSOW]
MBELE, Mbundlu Enoch Nqumako [EC1790/97ETK]
MBEMBE, Derrick [KZN/LPM/113]
MBEMBE, Thobane [KZN/LPM/113]
MBETA, Kholekile Leslie [CT00126/FLA]
MBONGO , Sasa [KZN/FS/350/DN]
MBONGO, Aaron Mzondeki [JB05070/03VT]
MCHUNU, Edward Sibongakonke [KZN/NAM/071/DN]
MCHUNU, Elsie [KZN/SN/112/PM]
MCHUNU, Vincent Mazwi [KZN/NN/166/PM]
MCITSHA, Thami Gilbert [JB04578/01GTSOW]
MDAKA, Reckson Khayizeni [JB03336/02NPLTM]
MDAKANE, Nkosinathi Vincent [KZN/NN/334/DN]
MDLALOSE, Knowledge [KZN/NNN/040/DN]
MDLALOSE, Thamsanqa Blessing [KZN/NNN/034/DN]
MDLULI, Levy [JB03947/02PS]
MENDU, Alson Fikile [KZN/ZJ/317/PS]
MENDU, Fikile [KZN/HEM/007/PS]

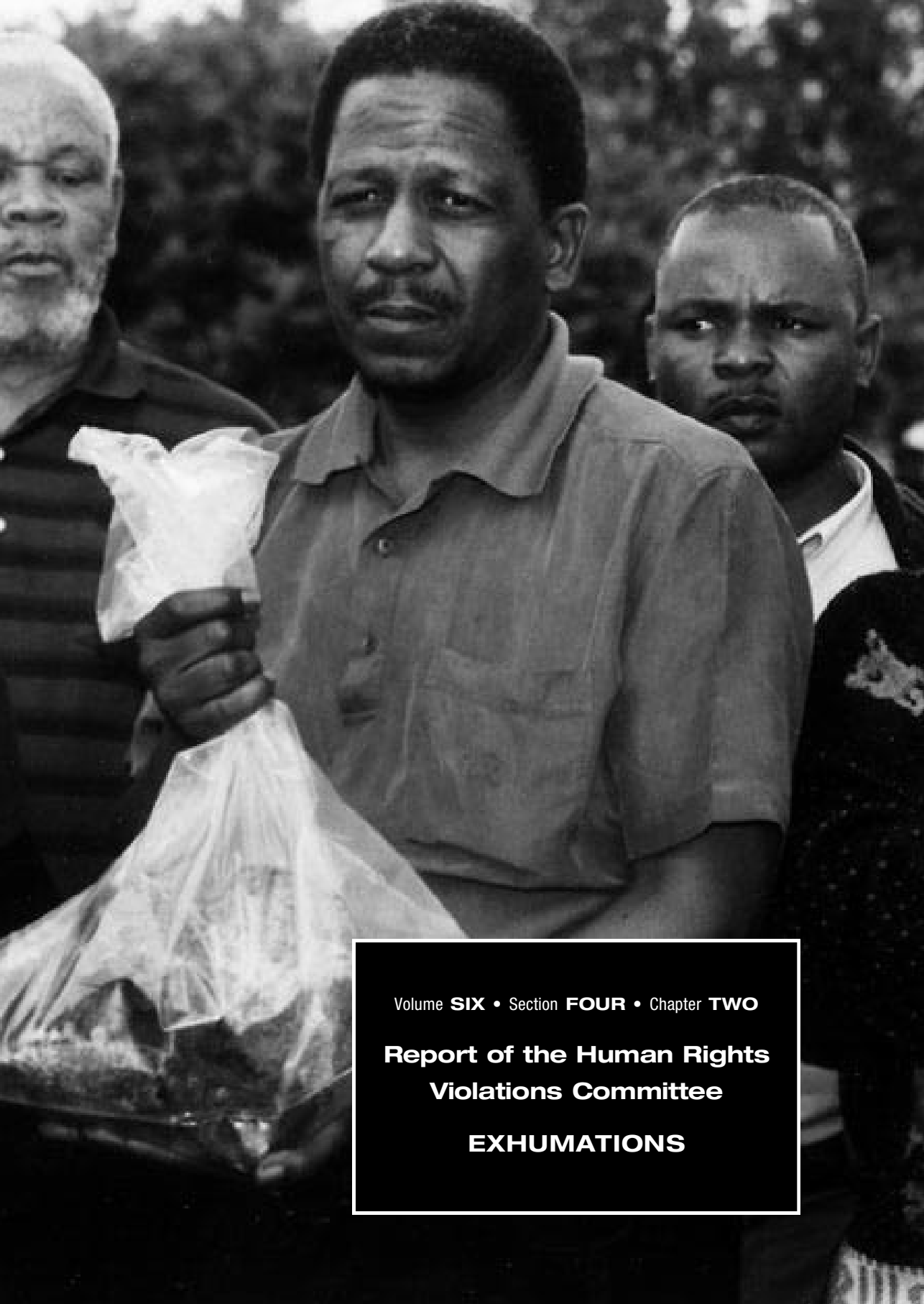
MESHACK, Eric 'Konkon' [JB1190/03NW]
MFEKA, Dumisani Daniel [KZN/GZ/010/PM]
MFETI, Phindile Baninawe [EC0020/96STK]
MGIJIMI, Lucky [EC2638/97]
MGUGUNYEKA, David [CTO1038/FLA]
MHLONGO, Mbusi [KZN/MR/153/DN]
MHLONGO, Smanga [KZN/NN/012/DN]
MHLONGO, Tobias Bhekithemba [KZN/ZJ/416/MA]
MHLONGO, Vusumuzi [KZN/MR/251/EM]
MKALIPHI, Theophillus [KZN/MR/114/DN]
MKHIZE, Khehla [KZN/GM/083/DN]
MKHIZE, Mlungisi [KZN/NNN/270/PM]
MKHIZE, Siphiwe Eugene ‘Fana’ [KZN/NM/113/DN]
MKHIZE, Zinhle Patience [KZN/NMS/037/MP]
MLAMBO, Bheki Emmanuel [JB00456/01GTSOW]
MLAMBO, Fanyane [KZN/HG/325/EM]
MLANDELWA, Sijumbo [EC0880/96ETK]
MMALEDIMO, Thomas Tumishi [JB01033/02NPPTB]
MMATLI, Andries [JB02692/02PS]
MNCONYWA, Mzwanpheli Livingston [JB04991/01ERKAT]
MNCWABE, David [KZN/ZJ/247/PM]
MNGADI, Beatrice [KZN/MG/001/DN]
MNGOMEZULU, Stephen [KZN/ARS/029/DN & KZN/SS/202/DN]
MNISI, Sylvester [JB00959/01MPNEL]
MNWANA, Thamsanqa Anthony [JB06003/01GTSOW]
MNYAKENI, Thomas [JB02203/01MPMOU]
MNYAZANA, Thembinkosi, Sindiswa [KZN/MR/143/NC]
MODISE, Goitsemodimo [JB03698/03NWRUS]
MOFOKENG, Matshediso [JB05732/03VT]
MOGAKI, Sidney Thabo aka Sydney [JB03091/01GTSOW]
MOGANO, Silas [JB01733/01GTTEM]
MOHALE, Oupa Jan [JB03323/02PS]
MOIMA, Mzokhona Nicholas [KZN/TCM/005/DN]
MOKABA, Daniel Madimetja [JB00532/02PS]
MOKGOTOE, Temba Joseph [JB01076/01GTSOW]
MOKOENA, Andrew aka Chicks [JB00672/02NPPTB]
MOKOENA, Daniel [JB00190/01GTSOW]
MOKOENA, Mathathe David [JB01640/03VT]
MOKOENA, Moeketsi [JB01575/01ERKAT]
MOLEBATSI, Fannie Solomon [JB00650/03WR]
MOLEFE, Mandla Innocent [KZN/PM/102/MP & KZN/PM/048/MP]
MOLOI, Johannes Moraleltlatsa 'Joe' [JB04576/01GTSOW]
MORUDU, Moss [JB00520/02PS]
MOSE, Luyanda Eric [EC0953/96/ELN]
MOSITO, Isaac Ike [JB06027/01GTSOW]
MOTAUNG, Ephraim [KZN/LIT/003/FS]
MOTEMA, Godfrey Mogele [KZN/ZJ/076/DN]
MOTHOA, Paulos Papa [JB03041/01MPMOU]
MOTLAFI, Isaac [JB02516/01MPMOU]
MOTSAPI, Michael [KZN/KWB/011/FS]
MOTSEPE, Moses Tefo [JB04960/01ERKAT]
MOTSETSE, Paul Sabata [JB05338/03WR]
MOYO, Mosima Milford aka Letsoala [JB06391/02NPPTB & JB06449/02NPPTB]
MPAHLA, Jomo [EC2222/97ELN]

MPELE, Jonas [JB04903/03VT]
MPONDO, Mlungisi Michael [CT00293/FLA]
MPUTANA, Matuse [EC2324/97[CTK]
MRWEBI, Tyhilekile Solomzi [EC2011/97STK]
MSIBI, Halifen Majene [JB04942/03VT]
MSIMANG, Siphiwe Edgar aka Selby Hlatshwayo [JB04984/01ERKAT]
MSIMANGO, Eric Fana [JB00973/01GTSOW]
MSINDWANA, David Zolisa [CT03042/[KZN & EC0551/96ETK]
MSOMI, Sibusiso Paul [KZN/ZJ/003/DN]
MSOMI, Sicelo Gestophus a.k.a.Sporo Mangena [KZN/SANG/008/DN]
MTEBULE, Ignatius 'Iggy' aka 'Gab' [JB01411/02NPTZA, KZN/DJ/001/AM & JB0260/01/GTSOW]
MTETWA, Mandla Lucas [KZN/MS/0015/PS]
MTHEMBU, Dumisani Victor [KZN/TG/073/DN]
MTHEMBU, Nhlanhla Gerald [KZN/GZ/091/PM]
MTHEMBU, Thandanani Jacob [KZN/FS/411/DN]
MTHETHWA, Emmanuel [KZN/NNN/599/ST]
MTHETHWA, Michael [KZN/FN/133/DN]
MTHETHWA, Paulos Mandla [JB00948/01MPNEL]
MTHIMKHULU, John Mphekeleli [JB05577/03VT]
MTHINI, Mbali [KZN/SM/999/DN]
MTHIYA, Unknown [KZN/NNN/516/DN]
MTHOMBENI, Samuel Mhlekwa [JB02739/01MPMOU]
MTSHALI, David Mjikiza [JB00961/01MPNEL]
MTSHALI, Walter Buhlebuyeza [KZN/FS/404/PM]
MVUKA, Andrew Seuntjie [JB01930/03NW]
MVULANA, Sifiso [KZN/NN/144/PM]
MVULANE, Lindiwe [KZN/FS/350/DN]
MVUNYISWA, Ndlanganyana [EC1794/97ETK]
MWELASE, Dennis Mzikayifani [KZN/GM/094/DN]
MYENI, Bonginkosi [KZN/GS/014/PS]
MZELEMU, Ambrose Mathayi [KZN/SWN/001/PS]
MZIZI, Khep [KZN/GM/071/DN]
MZOBE, Bhekezakhe [KZN/NM/046/DN]
MZOLO, Andile [KZN/PMB/003/PM]
NARE, Phillip [JB05738/02PS]
NARE, Sannie [JB05738/02PS]
NCUBE, December [JB00303/01GTSOW]
NCUBE, Gideon [JB02408/01GTSOW]
NCUBE, Mac Makhathini [JB04064/01GTSOW]
NDABA, Aubrey Jabulani [KZN/GM/098/DN]
NDABA, Jabulani Aubrey [KZN/GZ/053/PM]
NDALA, Lucky Alfred [JB03954/01ERKWA]
NDALISO, Hector Sibulelo [CT00953/OUT]
NDELU, Mbandla [KZN/ZJ/383AM]
NDLOVANA, Christian Thomas [JB01227/02PS]
NDLOVU, Eulogius Trusty a.k.a. George Matlala [KZN/FS/373/DN]
NDLOVU, Handsome S [JB03470/02NPLTM]
NDLOVU, Kwenza [KZN/NG009/DN]
NDZOYIYANA, Madodana [EC/1659/97ETK]
NDZUNGA, Elvis Ngajuse [KZN/TG/065/DN]
NENE, Scelo [KZN/MZ/066/DN]
NGALOSHE, Edward Thobile [JB03439/03WR]
NGCEMU, Thabani [KZN/NNN/030/DN]
NGCOBO, Donald Siphiwe [KZN/ZJ/021/DN]

NGCOBO, Muzwempi Cyprian [KZN/GM/031/DN]
NGELE, Luvuno Wellington [EC2425/97ETK]
NGEMA, Alpheus [JB06072/01ERKAT]
NGOBENI, Samuel Mdunwazi [JB06392/02NPTZA]
NGONO, Mbulelo Alfred [EC0330/96PLZ]
NGUBO, Accadius Busani Cedric [KZN/ NNN/289/PM]
NGWANYA, Themba Wilfred [KZN/NC/0007/DN]
NGWENYA, Buswabuphele Phillip [KZN/NNN/521/PM]
NGWENYA, Jobe [JB04083/99OVE]
NGWENYA, Shepherd [JB05745/01GTSOW]
NHELENGETHWA, Not specified [CTO2970/GAU]
NIKA, Maphi [EC2241/97ALB]
NIKELO, Senzile Christopher [KZN/TIS/042/KRS]
NKALANGA, Daniel [JB01494/01MPNEL]
NKHOLA, Nkosinathi [EC2620/97ELN]
NKIWANE, Mncedisi Helper [JB02648/01GTSOW]
NKONYANA, Samson Themba [JB03421/01ERKAT]
NKOSI, Carlton [JB06348/01ERKAT]
NKOSI, Mboneni Petrus [JB00951/01MPNEL]
NKOSI, Nombulelo Thelma [JB00175/01ERKAT]
NKOSI, Nomusa Ethel [KZN/NM/219/HA]
NKOSI, Samuel [JB03848/01MPWES]
NKWANYANA, Vusi [KZN/NNN/321/EM]
NODOSHA, Maqhilane Solamase [EC2064/97ETK]
NOJOKO, Moses Bongani [JB05185/01GTSOW]
NOMGQOKWANA, Brian ‘Malawu’ Miselo [EC0665/96PLZ]
NONDALA, Vuyo [EC/0232/96ALN]
NOT SPECIFIED, Sibongiseni [KZN/NNN/207/PS]
NSIBANDE, Syden aka Special [JB04084/01GTSOW]
NTANTISO, Sicelo [EC/0410/96ELN]
NTINGA, Boyi Sandile Ernest [KZN/PM/108/MP]
NTLOKO, Zola Alfred,[CTO1047/HEL]
NTOMBELA, Jafta Jabulani [KZN/ZJ/109/WE]
NTOMBELA, Nicholas [KZN/SS/265/EM]
NTULI, Abel Z [JB02542/01MPMOU]
NTULI, Phiwayinkosi [KZN/HG/1026/EM]
NTULINI, Mbuyiselo Patrick [CTO1355/HEL]
NXUMALO, Jabulani [KZN/NN/052/DN]
NXUMALO, Musa [KZN/NNN/393/EM]
NXUMALO, Sibongile [KZN/MP/412/MP]
NXUMALO, Siphiwe [KZN/NG/222/DN]
NYAKAZA, Michael Mzamadoda [JB00764/01GTTEM]
NYAWUZA, Jabulile [KZN/KM/522/DN]
NYAWUZA, Nicholas [KZN/NN/155PM]
NYAWUZA, Zanele [KZN/KM/522/DN]
NYEMBEZI, Mlise Hallock [EC2231/97STK & EC2740/97STK]
NZAMA, Pius Vusumuzi [KZN/SRM/001/DN]
NZAMA, Prince Norbert Nhlanhla [KZN/SRM/001/DN]
NZIMANDE, Beauty Thulile [KZN/NNN/122/PS]
NZIMANDE, Unknown baby [KZN/NN/253/PM]
PARKIES, Bongani [JB03184/01ERKAT]
PEBANE, Phakiso Samson [KZN/SS/305/DN]
PENYA, James Mongadi [JB00196/01GTSOW]
PENYANE, Zanyiwe [JB05346/01ERKAT]

PETERSEN, Hendrik [CTO40001/KIM]
PHADI, Jacob Japi [JB00412/03WR]
PHAKALITHA, Tshediso [CTO1533/KAR]
PHANDLE, Indi David aka Rubber [JB05781/01ERKAT]
PHEWA, Musa Sbhu [KZN/ZJ/148/DN]
PHIRI, Paulus Oupa [JB05028/03VT]
PIETERSEN, James 'Klonkies' [EC1150/96PLZ]
PULE, Thabo Stanley [JB05719/01GTSOW]
QANYA, Steven [JB05934/01GTSOW]
QHINGA, Mzwandile [KZN/SD/080/DN]
QWABE, Baban Aaron [KZN/SELF/064/DN]
RADEBE, Dumisani [KZN/MP/204/MP]
RADEBE, Jerry [JB01786/01GTTEM]
RADEBE, John Gibson [KZN/MP/025/BL]
RADEBE, Monto Samuel [JB01614/03VT]
RADEBE, Shedi Richard [JB05828/01ERKAT]
RADEBE, Sibongiseni Richard [KZN/GM/084/DN]
RAKABE, Kgashane Phillemon [JB00313/01GTTE]
RAKUBU, Joseph 'Joe' [CT00143/KIM]
RAMANTSI, Malusi James [JB00393/03WR]
RAMOKOKO, Ernest Justice [JB00327/01GTSOW]
RANYAOA, Kunyumane Arios aka Thulani Sibeko [JB005976/01 ERKWA & JB00160/01ERKWA]
RIKHOTSO, David [JB06379/01GTSOW]
S[ECHOGELA, Gaopalelwe Benjamin [JB04112/03NW]
SABATHA, Nzimadze [JB0590/01MPNEL]
SCOTT, Nkululeko Glen [EC2806/97KAR]
SEDIBANA, Simon Mafadi [JB03518/02NPPTB]
SELEPE, Metsheki Ishmael [KZN/TG/060/DN]
SEMETHE, Francis Mdlefetsane [JB05154/01ERKAT]
SENNA, Morailwa Iqbad [JB05498/03NWRUS]
SEPOTOKELE, Benjamin Motswagole [JB02767/03WR]
SETHEBE, Lewis Ndolo [JB01250/01GTSOW]
SHABALALA, Jeffrey Sipho [KZN/GM/061/DN]
SHABALALA, Siboniso [JB00189/01GTSOW]
SHABANGU, George [JB02849/01 & JB04141/02PS]
SHABANGU, Lucas David [JB02205/01MPMOU & JB04778/01MPMOU]
SHANDU, unspecified [KZN/WW/334/DN]
SHANGASE, Fano [KZN/NG/277/MP]
SHANGE, Alpheous Magwegwe [KZN/MR/157/DN]
SHANGE, Thulani Doctor [JB00506/01ERTEM]
SHANGE, Vincent Lucky [JB00506/01ERTEM]
SHIBURI / SHIVURI Elias [JB04071/01GTSOW]
SHIRINDA, Lawrence [JB03337/02NPTZA]
SHIRINDA, Phineas [JB06393/02NPPTB]
SHOZI, Doda Elias [KZN/FN/130/DN]
SHOZI, Mhawukelwa Nkosiyabo [KZN/NM/290/EM]
SIBANGO, Pulwana Leonard [CT00711/GAU]
SIBIYA, Eunice [KZN/NNN/207/PS]
SIBUKU, Molefe aka Thuso Lesupa [EC2246/97ALN]
SIKHAFUNGANA Khanyiso [EC2509/97ETK]
SIKHAKHANE, Maswampi [KZN/GSN/178/MP]
SILANGWE, Mhletywa [EC2152/97ETK]
SIMELANE, Mbapha David [JB05730/01ERKWA]
SIMELANE, Nokuthula Aurelia [JB00280/01MPWES]

SIMELANE, Thembinkosi Vincent [KZN/KM/512/DN]
SITHEBE, Bongani Enoch [JB05881/03VT]
SITHOLE, Innocent [KZN/NN/095/PM]
SITYATA, Similo Sizwe Matolweni [EC0579/97ELN & EC2193/97STK]
SKOSANA, Ephraim Baba [KZN/SMB/126/FS]
SKOSANA, Jan Nara [JB02555/01MPMOU]
SMANGA, Sthembile [JB04025/01ERKAT]
SOGIBA, Zamubuntu [CT03706/HEL]
SONO, Lolo Corlette [JB00188/01GTSOW]
SONQISHE, Thembe Wilmott [CT00965/[ECA]
SOSIBO, Maxwell Mbhekeni [KZN/NNN/557/DN]
SOSIBO, Nhlanhla [KZN/NNN/459/RI]
SOTHIYA, Kaponsie Alfred [KZN/ZJ/036/DN & KZN/NCB/021/DN]
TANANA, Xolile Matthews [EC0491/96ELN]
THABANE, Nqabe Joseph [JB05823/01ERKAT]
THANJEKWAYO, Barnabas Nsikelelo [JB05469/01ERKAT]
THOSAGO, Solomon Phaladi [JB01945/02NPPTB]
THOTHOBOLO, Kenneth Itumeleng [JB06386/01GTSOW]
THUSI, Mbeki Zipred [JB04897/01GTSOW]
THUSI, Mkeyi Alpheus [KZN/NCB/006/DN]
TIYO, Lwazi [CT00693/WIN]
TLHAPI, Ramatua Nicholas aka Boikie [JB01185/03NW, JB0118/03NW, JB01187/03NW, JB01452/03NW]
TOTO, Fexie Siphiwo [CT00540/GEO]
TSELANE, Motlogelwa [JB06119/03NWRUS]
TSHABALALA, Amos Buti [JB00314/01ERKAT & JB02318/01ERTEM]
TSHABALALA, Sibusiso Mcmillan (nickname Morgan) [JB02879/01GTSOW]
TSHANGISA, Miniyakhe [KZN/MR/242/WE]
TSITIRO, Jeremiah [JB03049/01ERKWA]
TSOTETSI, Samuel Maloyo [JB03954/01ERKWA]
TSOTSOTSO, Aarone Mokhele [KZN/HG/002/FS]
TUKU, Edward [CTO9003]
TWALA, Joseph Nkani [JB04667/01ERKAT]
TWALO, Gwaza Duckworth [EC0128/96KWT]
TYULU, Tamsanqa Abraham [EC0174/96UIT]
UNKNOWN, Petrus [JB01704/03NW]
XABA, Dumisani Norman [JB06308/01ERKAT]
XABA, Joseph Mbonankulu [JB05071/01ERKAT]
XULU, Joel Msizi [KZN/NN/050/DN]
XULU, Mkhombiseni Herron [CTO5013/[KZN]
ZACA, Nhlomla [KZN/FN/142/DN]
ZENGELE, Willie Motlalentoa [JB01157/03VT]
ZIKALALA, Zakhele Lawrence [JB04502/03VT]
ZIQUBU, Dingane Robert Thulani [KZN/NN/302/DN]
ZITHA, Vusi [KZN/NNN/065/DN]
ZOKUFA, Milton [JB01897/03WR
ZONDI, Mbazo [KZN/FN/113/DN
ZULU, Abednigo Mfaniya [JB05105/03NWRUS]
ZULU, David Mbuti [JB03377/01ERKAT]
ZUMA , Shaka [KZN/SN/169/DN &SN/114/PM]
ZWANE, Kuki [JB05784/01GTSWO]
ZWANE, Not specified [CT02918/[KZN]
ZWANE, Zanele [KZN/GM/074/DN]
ZWINGE, Tayitile [EC2341/97[CTK] (...p550)



Volume **SIX** • Section **FOUR** • Chapter **TWO**

Report of the Human Rights Violations Committee

EXHUMATIONS

Exhumations

INTRODUCTION

1. The Truth and Reconciliation Commission (the Commission) undertook a number of exhumations with the aim of providing healing to the families of victims. When successful, exhumations allowed families to retrieve the last physical remains of their loved ones, so that they could bury them according to ceremonies of their own choice. In this way, many families could begin the process putting to rest the painful questions and memories that had haunted them for so long.

The cases of Barney Richard Molokoane, Victor Lunga Khayiyana and Vincent Seleke

2. One of these cases involved the exhumation of the remains of three MK operatives who had been shot dead near Piet Retief in the Transvaal on 28 November 1985.

3. Mr Barney Richard Molokoane, Mr Victor Lunga Khayiyana and Mr Vincent Sekete were killed while on a Special Operations sabotage mission, and were buried as paupers. Following an investigation carried out by the Commission's Johannesburg office, their graves were traced and the remains exhumed. Their families attended the exhumation and were able to rebury them. The Molokoane and the Khayiyana families had suffered other losses of family members during the political conflict, and these exhumations provided some relief.[21]

The case of Phila Portia Ndwandwe

4. The remains of Ms Phila Portia Ndwandwe, an MK operative known as Zandile, were exhumed from Elandskop Farm in KwaZulu-Natal on 12 March 1997.

5. Members of the Port Natal Security Branch had abducted Ms Ndwandwe from Swaziland in October 1988. After a failed attempt to recruit her, Ms Ndwande was shot dead and secretly buried. Her whereabouts remained a mystery. Indeed, many believed that she had defected to the security forces. This painful

21 See Volume Two, Chapter Six, p. 549.

suspicion was dispelled when amnesty applications from her killers revealed the truth about her disappearance and led Commission investigators to her grave.

6. Forensic examination of her remains revealed that she had been shot in the head execution-style, probably while kneeling. Following press reports on the exhumation, Ms Ndwandwe's young son was united with his grandparents for the first time.[22]

The case of Ntombikayise Priscilla Khubeka

7. Six members of the Terrorism Investigation Section of the Port Natal Security Branch and two C1/Vlakplaas operatives applied for amnesty for their role in the abduction, death and subsequent disposal of the body of Ms Ntombikayise Priscilla Ngcobo (née Khubeka) in April or May 1987.

8. Ms Khubeka lived in KwaMashu, a township to the north of Durban, and was suspected of acting in a co-ordinating capacity between external and internal units of MK. She was allegedly responsible for the storage of weaponry, organising safe-houses and collecting intelligence on possible MK targets.

9. Two C1/Vlakplaas askaris, Xola Frank Mbane and one Dube, part of a C1 team under the command of Captain Adriaan David Baker working with the Port Natal Security Branch, were tasked with making contact with her. This they successfully did. Mr Mbane, who did not apply for amnesty, alleged that their infiltration efforts resulted in the entrapment and killing of three MK combatants. This was denied by all applicants.

10. In April or May, possibly two months after the operation had commenced, Mr Mbane drove Ms Khubeka to Battery Beach. She was abducted by the Port Natal team, blindfolded, possibly bound and taken to an abandoned shooting range at Winkelspruit, south of Durban. Still blindfolded, she was then subjected to interrogation by a team consisting of Colonel Andy Taylor, Captain Hentie Botha, Sergeant Laurie Wasserman, Sergeant Cassie van der Westhuizen, Joe Coetzer and Warrant Officer 'Bossie' Basson.

11. During the interrogation, which was conducted largely in Zulu by Colonel Taylor, he struck Ms Khubeka across the back with a sjambok. According to Captain

22 See Volume Two, Chapter Six, pp. 543,545.

Botha, this was not a severe assault but intended to convey the gravity of the situation and persuade her to co-operate with them:

CHAIRPERSON: *Did he hit her hard with this sjambok?*
MR BOTHA: *Chairperson, I would say yes, he hit her hard; but the blows with the sjambok were not the type of blows which would be dealt to grievously injure the person. It was to indicate, 'I'm serious with what I'm asking you to do now' …*
MR LAX: *How could he hit her hard and not hurt her?*
MR BOTHA: *I'm trying to describe that the degree of the blow was not to the extent that it was taken out and hit hard in comparison to a form of torture. It was more to indicate: 'I'm hitting you in order to prove a serious point.'*

12. While Botha testified that the interrogation lasted approximately fifteen to twenty minutes and that Taylor struck her approximately ten to fifteen times with the sjambok, Sergeant van der Westhuizen's testimony suggests an interrogation of about an hour. Both these accounts were disputed by *askari* Mbane who alleged that the interrogation lasted for about two hours and, although he was outside, he could hear 'screams of pain'.

13. Botha and other applicants testified that, during the course of the interrogation, Ms Khubeka agreed to co-operate with them, but that:

She then suddenly began to gasp for breath, grabbed her chest and fell over. While her body was shaking, she urinated and within seconds lay dead still. I was frightened and someone went to fetch water outside and poured it on her because we thought that she had fainted. She did not respond to the water which I splashed on her face. She had no pulse rate and W/O Basson brought a mirror and held it in front of her mouth. There was no breath. I realised that she was dead, possibly from a heart attack. Khubeka was physically a big woman and in my opinion overweight.

14. According to the applicants, they then decided to dump her body in the vicinity of her home and tasked Sergeants Wasserman and Salman Gerhardus du Preez to do this. This decision was informed by the fact that she had died of natural causes and they thus expected that no foul play would be indicated by a post mortem examination. Inexplicably, however, her body was dumped that night somewhere near the Bhambayi informal settlement, some distance away from her home.

15. Later Captain Botha established that her family was unaware of her death and appeared to believe that she had gone into exile. It was subsequently rumoured that she had left the country for Mozambique because of the attentions of the Security Branch.

16. However, the version given by the applicants was seriously challenged when the Commission's Investigative Unit exhumed remains believed to be Ms Kubeka's from a pauper's grave at Charlottedale Cemetery, Stanger. After the exhumation, DSR Naidoo of the SAP Medico-Legal laboratory conducted a post-mortem examination of the remains, concluding that they matched those of Ntombi Khubeka. In addition, a spent 7.65 bullet fell from the skull, indicating that she had been shot in the head. This was contrary to the perpetrators' account of her death.

17. An attempt to use DNA testing from samples of bone and teeth failed as these had deteriorated and could not be used for DNA typing. The skull was then sent to Dr P Venezis, Regius Professor of Forensic Medicine and Science and Head of Department at the University of Glasgow, a recognised authority on a facial identification technique that entails the use of video superimposition.

18. Dr Venezis concluded that the skull-to-photo superimposition he carried out revealed an excellent match in all respects with the photographs examined.

    I am satisfied that there is an excellent match between the photographs examined and the skull in question and I am of the view therefore that it is highly likely that the skull is part of the remains of Ntombi Kubheka.

19. The applicants challenged these findings and demanded that another expert, based at the SAPS Forensic Science Laboratory in Pretoria, examine the skull.

20. Sergeant TM Briers of this laboratory concluded that:

    All the above landmarks have been taken into consideration and it is found that the skull and face on both photographs are consistent with each other. No contradictions were found.

21. The applicants did not challenge Brier's conclusions, although they continued to contest the results of the investigation. In reviewing the evidence, the Amnesty Committee found the forensic evidence 'compelling':

What is striking in the final analysis is that, in our view, all the above aspects taken together point to the inescapable conclusion that the body exhumed from the grave at Charlottedale Cemetery, Stanger, is in fact that of the deceased, Ntombikayise Priscilla Khubeka.

22. Applicants Botha, Du Preez, Wasserman and Van der Westhuizen were refused amnesty for failing to make full disclosure. Applicants Radebe and Baker, who had not been present during the interrogation or involved in the disposal of the body, were granted amnesty for her abduction.[23]

WORK ON EXHUMATIONS AFTER 1998

23. The Commission received hundreds of requests from families requesting that it trace and exhume the bodies of loved ones. Unfortunately it was not possible to deal with them all: once the Commission's operational period came to an end, it was not permitted by law to continue with this process.

24. Given the fact that the families of victims were expressing a clear need for continued exhumations, the Commission undertook to discuss future exhumations with the Minister of Justice and the Inter-Ministerial Committee established to deal with matters relating to the Commission. At the end of 1998, the Commission advised then Minister of Justice and the Inter-Ministerial committee that many more families were requesting exhumations. In a number of instances, the requests related to the return of remains from exile and places outside the country. The Commission also advised the Minister that any future exhumation programme would require the establishment of clear guidelines and parameters to ensure its success.

25. One of the outcomes of the consultation was a commitment by the Commission to provide the Ministry of Justice and the Inter-Ministerial committee with a comprehensive report on exhumations already carried out, in order to assist government in making a decision on how it would deal with the matter. This was one of the most significant recommendations made in the Reparation and Rehabilitation Committee's reparation policy.

23 The Amnesty Committee made no finding on Applicant Roelof Visagie as he was outside South Africa at the time of the hearing and did thus not give evidence. Given the disputed evidence, the Committee felt it was not able to dispose of his application in chambers.

26. The compilation of a comprehensive report on exhumations was one of the major tasks assigned to the Human Rights Violations (HRV) Committee in the period after the handing over of the Commission's Final Report in October 1998.

27. The HRV Commissioner put a task team in place to produce this report. The report was intended to deal not only with exhumations that had been carried out, but also to allow the Commission to focus on guidelines and criteria for future exhumations. This process was facilitated at a management level by the Commission's acting CEO, who made the necessary resources available.

28. A further issue that had to be considered was that the Commission had, in the early part of 1998, carried out an exhumation at Boshoek farm near Rustenburg in the Transvaal, which rendered up fifteen bodies instead of the two that had been expected. While the two bodies identified as activists had been handed over to families for reburial, the remaining thirteen needed to be identified so that arrangements for reburial could be made. As an interim measure, the Commission had contracted with Saffas Undertakers to hold the remaining thirteen bodies until such time as the Commission took a decision on how to finalise the matter.

29. The Commission decided that it would be proper to perform a forensic examination on the bodies before taking any decision on dealing with reburial. The matter was placed before the Amnesty Committee which approved the proposed forensic examination. The HRV Commissioner was able to obtain the assistance of the Argentine Forensic Anthropology Team (EAAF), who agreed to perform the forensic tests.

30. Using the facilities of the University of the Witwatersrand, the two EAAF members conducted forensic examinations and were able to establish conclusively that the thirteen bodies exhumed were deceased hospital patients and not political activists at all. Their report is available and is fairly conclusive in this respect.[24] This raised concerns regarding the exhumation procedures adopted in certain cases and was one of the reasons a more detailed audit was then undertaken.

31. The HRV Commissioner set up a task team to conduct a complete audit of all exhumations conducted by the Commission. The team was made up of the HRV Commissioner, the former Commissioner in charge of the Investigation Unit (IU), the former IU director and two researchers.

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24 The Commission extends its thanks to the EAAF for its generous assistance, and to the University of Witwatersrand's Department of Anatomy for making both facilities and personnel available.

32. A review of each of the exhumation case files was conducted in order to confirm the correctness and integrity of the process. All existing documentation relating to exhumations was collected, collated and analysed.

33. Investigators from the Johannesburg office and KwaZulu-Natal provided the task team with the case files. In addition, the chief investigator in charge of exhumations in the Johannesburg office gave the task team a verbal briefing and handed over all case folders, folders containing working notes and reports, various post-mortem and inquest documents, lists of MK deaths supplied by the ANC and a Security Branch photograph album with an index. This was to form the basis of the report.

34. The compilation of the report and dealing with the enquiries that were generated took a year. In the course of that year, the task team scrutinised each individual exhumation case. The task team also dealt with the following issues:
    a An incident list of MK persons killed in combat, ambush or arrest situations was compiled, using a range of documentary sources. This was essential in order to link those exhumed with specific incidents – thus locating the correct post-mortem, inquest and gravesite documentation.
    b Additional mortuary, inquest, photographic and fingerprinting records were sought and obtained.
    c Statements and photographic albums were obtained from the SAPS Forensic Unit that had attended certain of the exhumations.
    d Contact was made with former MK operatives and commanders who had survived and had information about incidents in which those exhumed had died.

35. Information was obtained according to the internationally accepted exhumation procedures used by bodies such as the United Nations.

36. The IU Director canvassed each exhumation case with the various investigators who had been involved with the exhumations.

Evaluation

37. The task team established that the Commission had carried out at least fifty exhumations throughout the country. It also established that a number of exhumations had not been carried out, due to the expiry of the Commission's operational mandate.

38. The task team also established that the methodology followed differed from region to region. In KwaZulu-Natal, the process included the services of a forensic expert and pathologist, who participated in the exhumations and conducted forensic examinations of the remains.

39. Exhumations carried out in Johannesburg placed a greater emphasis on returning the bodies to the families as quickly as possible. Autopsies were not performed due to resistance from families in some cases.

40. The Johannesburg unit also made greater use of the South African Police Services (SAPS), including the SAPS video and canine sniffer units.

41. The KwaZulu-Natal unit relied to a large extent on the pointing out of grave sites by amnesty applicants. Many of the exhumations were carried out at the 'safe houses' of the former Security Branch, where certain activists who had been abducted were interrogated and killed.

42. The sites where bodies were believed to have been buried were cordoned off, and a team for a specialist undertaker's firm would test the soil for signs of recent disturbance and demarcate an area for excavation. This unit also relied on police sniffer dogs to seek out the presence of lime below the soil surface, as lime was often poured over the bodies to hasten their decomposition.

43. Once the correct spot had been located, a pathologist would supervise the removal of soil until the body was located. The pathologist would enter the grave and remove the body – bone by bone. In many cases, the flesh had disintegrated. The presence of the pathologist during the exhumation process ensured that the integrity of the site was protected.

44. The Johannesburg unit focussed its attention on a number of disappearance cases that had been reported to the Commission, involving Umkhonto we Sizwe (MK) operatives who had disappeared or lost their lives, mainly near the borders of South Africa with Lesotho, Swaziland, Zimbabwe and Botswana.

45. MK operatives in a number of incidents had been intercepted while travelling in and out of the country. Many had been killed in shoot-outs with the police or the army. In a number of cases, operatives were abducted and attempts were made to turn them into askaris. Those who did not co-operate with the police were brutally killed and often buried in secret locations or in unnamed graves in cemeteries.

The case of Dikgope 'Magic Bones' Madi

46. The difficulties attending the identification process before an exhumation are illustrated by the case of Dikgope 'Magic Bones' Madi, one of the cases dealt with by the Johannesburg unit.

47. The case involved three MK combatants who had been killed at Tshipise, Venda, in August 1983. The family of one of the combatants, Mr Patrick Motswaletswale, contacted the Ministry of Safety and Security to ask them to investigate the incident. The Ministry, which passed the matter on to the Commission's Johannesburg office, had established that the remaining two combatants were Mr Humbulani Mulaudzi and Mr Andrew Mandi. While they had managed to trace the family of the former, the only information they had about Mr Mandi was that he was originally from Alexandra. The Ministry of Safety and Security, via their Pietersburg office, further established that the three operatives had been buried at Mbaleni in Sibasa and that the location of their graves was known.

48. The Commission was requested to establish the identity of Andrew Mandi and to carry out the necessary exhumations. The investigation identified Andrew Mandi as Andrew 'Magic Bones' Madi, and his body and that of Motswaletswale were exhumed. According to the investigator, identification was made by an MK commander (now deceased) who had been based in Zimbabwe at the time.

49. The case illustrates some of the numerous difficulties and contradictions the task team encountered while auditing exhumation cases

50. The ANC submission to the Commission, which listed deaths in exile, contained no record of an Andrew Mandi. However, it did list an Andrew Madi as having been killed by 'enemy forces' in Zimbabwe in 1979. No record of Andrew Mandi or Madi could be found on the additional lists of MK combatant deaths obtained from ANC headquarters at Shell House, although both contained the names of Patrick Motswaletswale from Sibasa and an MK Basil Zulu as having been killed in 1983. One of the lists indicated that the incident had occurred in Venda sometime in August 1983. There was no reference to a third person, further complicating the matter.

51. The task team located an HRV statement submitted by Mr Matsutse Elias Madi (JB05983/01MPPIT) from Alexandra, Johannesburg. Mr Madi told the Commission

that, on 28 August 1978, his son Dikgope Molefe 'Magic Bones' Madi had told him that a friend had promised to take him across the border into exile. Although the deponent was suspicious and warned his son not to go, Dikgope went out that evening and never returned. The deponent reported the disappearance to the police but was told to search for his son himself. He returned home, 'my heart bleeding'.

52. Some three to four years later, he received an anonymous letter saying that Dikgope was in Tanzania. He heard nothing further until after the unbanning of organisations in 1990. At this stage, another son, Ephraim, informed him about a woman, Ms Lovinest Nyerende from Malawi, who claimed to be Dikgope's girlfriend. According to Ms Nyerende, she had last seen Dikgope in 1978 in Tanzania. He had then gone to Zimbabwe to fetch other exiles, but had never returned to Tanzania. She later heard rumours that he was dead. In July 1992, two ANC officials informed Mr Madi that his son had died in the war in Zimbabwe.

53. This version appeared to confirm the information contained in the ANC submission that Andrew Madi had been killed in Zimbabwe in 1979, thus suggesting that Andrew Madi could not be the same person as the Andrew Mandi who was killed in the Venda incident in 1983. However, the names were virtually identical and there was a strong coincidence in the fact that both were said to have come from Alexandra.

54. Two further HRV statements made to the Commission confirmed that there were indeed three people killed in the Venda incident, but neither shed light on the identity of the third person. Mr Mavhunga Abram Mulaudzi (JB01268/02NPVD) made a statement regarding the death of his son, Humbelani Elvis Tshifhiwa Mulaudzi, at Tshipise in 1983. According to the statement, Mr Mulaudzi identified the body of his son and one of the remaining two as one Mongqretswari (presumably Motswaletswale), also from Venda.

55. Ms Jane Denga (JB01414/02NPVEN) made a statement to the Commission about the torture of her husband, Alfred Mafhungo Denga, who was detained on 4 November 1983 and taken to Masisi Police Station in Mutale. Her husband had been involved in the transportation of three MK operatives, one of whom was a Mutswaletswale from Thohoyandou.

56. Additional information in other records[25] indicated that Mr Denga had subse quently given evidence in the trial of several persons charged with harbouring MK operatives. Denga had told the court that he had been introduced to three MK operatives in November 1981 and had assisted in transporting them on numerous occasions. Evidence to the court by the second in command of Venda Security Branch was that one of the three men had been killed in a joint SAP and Venda Defence Force operation on 29 August 1983.

57. These statements confirmed the incident of August 1983 and, notwithstanding the apparent evidence by the second in command of the Venda Security Branch that only one person had been killed, the identities of Mulaudzi and Motswaletswale. However, neither cast light on the identity of the third victim.

58. Finally an MK operative who had been based in Zimbabwe was able to confirm the identity of the third victim as Dikgope Andrew 'Magic Bones' Madi. This operative, who had been based near Beit Bridge, had fought with ZAPU[26] forces in the late 1970s. In 1983 he infiltrated South Africa but was detained shortly thereafter. While detained, he was taken to identify the bodies of three MK operatives killed in August 1983. He positively identified one as a person he knew as 'Magic Bones.' According to him, he had known 'Magic Bones' well as they had both been in Zimbabwe and had also played soccer together.

Outcome of audit

59. The task team established that more than 60 per cent of the exhumations had been adequately performed by the units in KwaZulu-Natal and Johannesburg.

60. However, it also established that there were certain serious corroboration problems in 20 per cent of the cases. In the case of the remaining 20 per cent, additional corroboration was required and no determination could yet be made on the accuracy of the exhumations.

61. On the basis of the EAAF report, the task team also determined that the thirteen bodies exhumed from the Boshoek Farm were not political cases, and the Commission arranged for their re-interment.

25 Focus 53, p. 4.

26 Zimbabwe African People's Union.

62. The task team also established that a further fifteen exhumation cases had yet to be dealt with by the Commission.

OVERVIEW OF PROBLEMS EXPERIENCED IN THE EXHUMATION PROCESS

63. A comprehensive report of the task team's audit will be handed to the Minister of Justice when the Codicil is handed over in March 2003.

64. The task team's report highlighted the following problems:

Inadequate investigations

65. In a number of cases, gravesite identifications were done without first corroborating the incidents concerned. Without clearly establishing the date and place of an incident, gravesite identification becomes tentative at best. Although many documents have been destroyed by the Security Branch, certain state records often remain. These include occurrence books, inquest registers, state mortuary registers, and municipal burial orders.

66. The Johannesburg IU unit established that, in the former Transvaal, those exhumed were formally buried in cemeteries as paupers. They thus passed through a number of bureaucratic processes, including the records of the judiciary, local authorities and undertakers.

67. In certain cases, these corroborative sources were not consulted. Where they were obtained, they were not always properly correlated, leading to potential errors in the location of cemeteries and grave sites and rendering the identification process questionable.

68. Further, there was a range of secondary sources that could have been used to corroborate incidents, such as contemporaneous newspaper reports and NGO publications.

Absence of forensic examination

69. In the Eastern Cape and KwaZulu-Natal exhumations, forensic examinations of the skeletal remains were carefully conducted to ascertain age, sex, cause of

death and so on. However, the exhumations carried out on in the former Transvaal had not been subjected to forensic appraisal, making identification uncertain.

70. There was also insufficient and sometimes no pre-mortem investigation. The forensic examination carried out on the 'Boshoek remains' sharply highlighted this issue. Families and fellow-combatants could have provided accurate details of age, physical characteristics and photographs. This was done in very few cases.

71. In addition, the absence of a professional exhumation procedure probably resulted in the loss or destruction of forensic evidence. The absence of forensic examination also meant that, in cases where the version provided by the security forces is contested, no evidence exists to challenge their version of events. This has consequences for the possibility of future prosecutions where proper forensic evidence would be required.

72. While the SAPS Forensic Unit was used in certain cases, the task team discovered that they had only participated in the digging and in identification.

73. There was also a failure to make a photographic record of the exhumations and remains. Only the SAPS Forensic Unit photographs are available. Regrettably, they did not generally photograph individual remains.

Documentation

74. The task team also established that documentation was handled poorly by the Johannesburg unit.

Over-reliance on the ANC lists and information

75. The Johannesburg unit placed a great deal of reliance on two lists that the ANC gave to the Commission. These lists detailed the names of MK operatives who had died inside South Africa. The first lists only the name of the operative and the date and place of death, where known. The second list contains real names, combat MK names, place of origin and place and date of death, where known.

76. In many cases, there were several serious discrepancies regarding place and date of death between the two lists. The lists were defective in a number of instances, and this had an impact on the investigations carried out by this unit.

Failure to make use of the Commission's database

77. The Johannesburg unit did not appear to have used the Commission's database to cross-reference its work, nor did it access the HRV statements in the possession of the Commission, many of which contained valuable corroborative information.

Inadequate consultation with MK commanders/operatives

78. Although the unit did, in certain instances, consult with relevant MK personnel and/or commanders, consultation should have been done in every case to establish the nature of the mission and to confirm the identities of the operatives involved. Consequently, identities were sometimes assigned to the deceased without proper corroboration from commanders based inside South Africa or neighbouring countries.

Problems in identification

79. In the course of its audit, the task team discovered that it was extremely difficult to make positive identifications. One example of such a difficulty is the case of Richard 'Bushy' Lentsela. This case also demonstrates the considerable difficulty encountered in attempting to establish the fate of Mr Lentsela, and how important it is to corroborate each piece of information received.

The case of Richard 'Bushy' Lentsela

80. Richard 'Bushy' Lentsela disappeared from Schweizer-Reneke during the mid-1980s.

81. According to one of two HRV statements received from family members, it was believed that Mr Lentsela was an MK operative who was killed with three others in an incident near Warrenton. The statement also referred to a community pamphlet that circulated in the Schweizer-Reneke area during 1986, listing the identities of the four persons killed in this incident. This information provided the first line of enquiry.

82. Mr Lentsela's name was not contained in the ANC submission, nor was it on either of the lists of MK combatant deaths. Various sources confirmed that an incident had occurred near Warrenton on 13 December 1986.[27] However, all of these sources indicated that one person, and not four, had been killed.

27 Terrorism Research Centre; SAP documents; CIS list of MK deaths in combat.

83. Two sources identified the MK operative shot dead as Zonwabele Livingstone Ntolokwana, also known as Lungile, whose name is recorded on the MK lists. The sources indicate that Mr Ntlokwana died on an unknown date in 1987, although one of the lists records the place of death not as Warrenton but Mafikeng. Despite this contradictory information, the identity of the person killed in the Warrenton incident was established as Livingstone Ntlokwana (on the basis of an HRV statement by the Ntlokwana family and an entry in the Warrenton mortuary register). This ruled out the possibility that Mr Lentsela had been killed in this incident.

84. Former activists in the Huhudi-Vryburg-Schweizer-Reneke area were contacted with a view to locating the pamphlet referred to in the HRV statement, said to contain photographs of four persons, including 'Bushy' Lentsela. All three former activists spoken to believed he had been killed in the Warrenton incident, although one indicated that he had heard that Lentsela had been killed in a skirmish elsewhere in the Transvaal. One of the activists traced a copy of the pamphlet, which turned out to have been issued by the SAP. It contained the photographs of four activists wanted by the SAP, one of whom was indeed 'Bushy' Lentsela. While this confirmed police interest in Mr Lentsela, it provided no clue as to his fate.

85. One of the Security Branch photograph albums in the Commisson's possession contained photographs of suspected MK combatants, including a photograph of Mr Lentsela. The photograph had been crossed out and his name cancelled on the index. The 'cancellation' of an activist from the album generally indicated that the person concerned was no longer of interest to the Security Branch, because s/he had either died or been arrested or recruited. This suggested that sometime after the pamphlet had been issued, the Security Branch lost interest in Mr Lentsela.

86. Further investigation and research indicated that 'Bushy' Lentsela had, in all probability, been killed near Nietverdiend in the Western Transvaal. The incident took place on 25 June 1986, when a group of four MK operatives entering from Botswana were shot dead. This incident is confirmed by several sources. Two of these indicate that one of the four people killed was one Tumagole Richard Lentsela. However, Lentsela's name does not appear in the record of the Rustenburg state mortuary which received the bodies, although one of the names is recorded as one Wilson *Bushy* Senne. It is possible that the names recorded in the mortuary register were obtained from false identity documents carried by the operatives, as none was identified by their families at the time.

87. Attempts to locate the inquest documentation were unsuccessful. Several Western Transvaal Security Branch operatives applied for amnesty for this incident, but subsequently withdrew their applications. In a final attempt to establish whether Mr Lentsela was involved, the Commission approached two MK commanders who had been based in Botswana at the time of the incident. They were only able to identify one of the persons in the incident, although one of them thought it possible that one of the others may have been a person named 'Bushy.'

88. While the evidence suggests that Richard 'Bushy' Lentsela was killed in the Nietverdiend incident, further investigation is required to confirm this. Although it is known that the bodies of the 'Nietverdiend Four' were buried as paupers at Hartbeesfontein, no exhumation was conducted, and the identities of a further two need to be established.

LESSONS AND RECOMMENDATIONS

89. The Commission notes that the issue of exhumations is a sensitive one, requiring further work. The Commission will hand the Ministry of Justice a comprehensive report on the work of the task team, detailing successful exhumations, problematic exhumations and a list of the exhumations that still need to be carried out.

90. The Commission notes, for the benefit of the agencies that will carry out exhumations in the future, the lessons that have been learnt through the exhumation process:

Dealing with families, relatives and communities

91. Any investigation or exhumation carried out by any body or structure must be done in consultation with the families or their representatives, and the community.

92. Prior to any exhumation, families should be approached for ante-mortem information.

93. Undignified or unskilful handling of remains may further traumatise families.

94. Families must be given a realistic expectation of the outcome of any investigation or exhumation – given the state of the remains, the number of bodies and problems with identification.

95. Families must be provided with proper information and psychological support.

96. The subsequent process of identification must be explained to the families.

97. The families must be told whether the identification process will rely on simple or traditional techniques or whether more sophisticated technology will be used. In this regard, it is important to advise that sophisticated technology will only be used if it is available and necessary for the process.

98. The notion of what constitutes a family may vary with cultural context. In addition, clear guidelines need to be developed to deal with divided families.

Dealing with identification responsibly

99. In carrying out exhumations, the identification process is critically important.

100. The EAAF[28] has stated that 'the habitual and in our view mistaken procedure often followed is to open a grave first, and conduct the rest of the investigation afterwards'. The investigation and exhumation process should, in their view, be broken into three phases, each of which is intimately connected to the others:
    a Prior to the exhumation taking place, there should be an investigation of the oral and written sources, which allows for the construction of the case history and a working hypothesis.
    b The fieldwork phase includes the retrieval of the body and associated evidence, whether from the site of the discovery or from a regular grave.
    c In the laboratory work phase, the corresponding analysis of remains and other physical evidence should be carried out.

101. In this regard, it will be important for any structure carrying out exhumations to take the following steps into account:
    a 'Identification' is defined as 'individualisation by the attribution of birth, name or other appropriate name to human remains'.[28]
    b Identification is one aspect of the investigation into a death, which seeks answers to other questions (e.g. the cause of death).

28 Luis Fondebrider, *Human Remains Management*. Argentine Forensic Anthropology Team (EAAF).
29 International Committee of the Red Cross (ICRC), The Missing, 10.2002.EN/3.

c An identification can generally be made in three different ways:
   i. visual or customary (relatives or acquaintances viewing the remains, identity documents or tags);
   ii. the weight of circumstantial evidence (matching of ante-mortem data with information collected during the examination), and
   iii. scientific/objective methods (use of dental records, fingerprints or DNA).

102. These three steps do not necessarily follow on one another. However, the usual practice is that, as identification becomes more difficult, the emphasis moves from one to the other. Where possible, visual identification should be complemented by any one of the other two methods. Whatever the approach to identification, it must be adapted to the context.

103. The identification of human remains through DNA typing should be undertaken when other investigative techniques of identification prove inadequate.

Responsibility and accountability for the examination and identification of human remains

104. A number of different civil society structures may decide in the future to embark on exhumation program. In this regard it is important to note the following:
   a The state is the authority with the responsibility to ensure that human remains are examined and identified by qualified and competent people.
   b The examination of remains should be carried out by qualified forensic specialists.
   c Identification is carried out and confirmed by a medically qualified or legally competent person. Such identification should be confirmed only when all the relevant information has been integrated properly.
   d The issuing of a certificate of death is the responsibility of a medically qualified person or the legal officer responsible for making the identification.

Exhumation of human remains

105. The Commission recommends that the following guidelines should be taken into account and strictly applied:
   a the grave site should be located;
   b a security perimeter should be established;
   c the surface and features should be photographed and documented;

d the boundaries of the grave should be established;
e the soil covering the remains should be removed;
f the remains should be exposed;
g the location of the remains should be carefully mapped and photographed;
h the position of any personal effects or other objects not attached to the remains (e.g. keys and bullets) should be carefully noted, labelled distinctly and kept separate;
i the remains should be carefully removed, keeping them together as an entire body or parts of bodies;
j the remains should be stored;
k where appropriate, the family should be permitted visual access to the remains.

Cultural rites

106. In most cultures, sacred rituals dealing with the dead are extremely important. In certain local contexts in Africa, custom demands that 'the spirit of the dead' be officially brought home and inaugurated as an 'ancestor'. Such rituals introduce the spirit to the living. It is believed that such rituals bring the spirit home out from the wilderness and into the home to rest and to watch over the living.

107. The tragedy of politically motivated deaths and disappearances impacts on traditional cultural and spiritual rituals, which can often not be performed. Families are left bereft and kept in a state of suspended mourning, knowing that the dead that can never rest. Certainty about their dead brings families small consolation, as it also renders up memories of how the loved one may have been treated before death.

The need for support

108. Graves may provide answers, but these answers may not be what the families had anticipated. Exhumations may therefore impact negatively on families and communities. Families should be prepared to deal with unexpected outcomes.

109. Families should be carefully prepared by the organisation or institution carrying out the exhumation:
    a An empty grave will cause additional pain to a family.
    b The grave may contain fewer of more individuals than were expected. The search for identity and for relatives of the deceased then begins.

c The remains of women who were pregnant at the time of death result in a double sense of loss.

d Skeletal evidence of great suffering prior to death (such as multiple fractures or dislocations) can provide painful proof of events that occurred before death.

e Witnessing the bones forces families to accept the reality of death, for which they may be inadequately prepared.

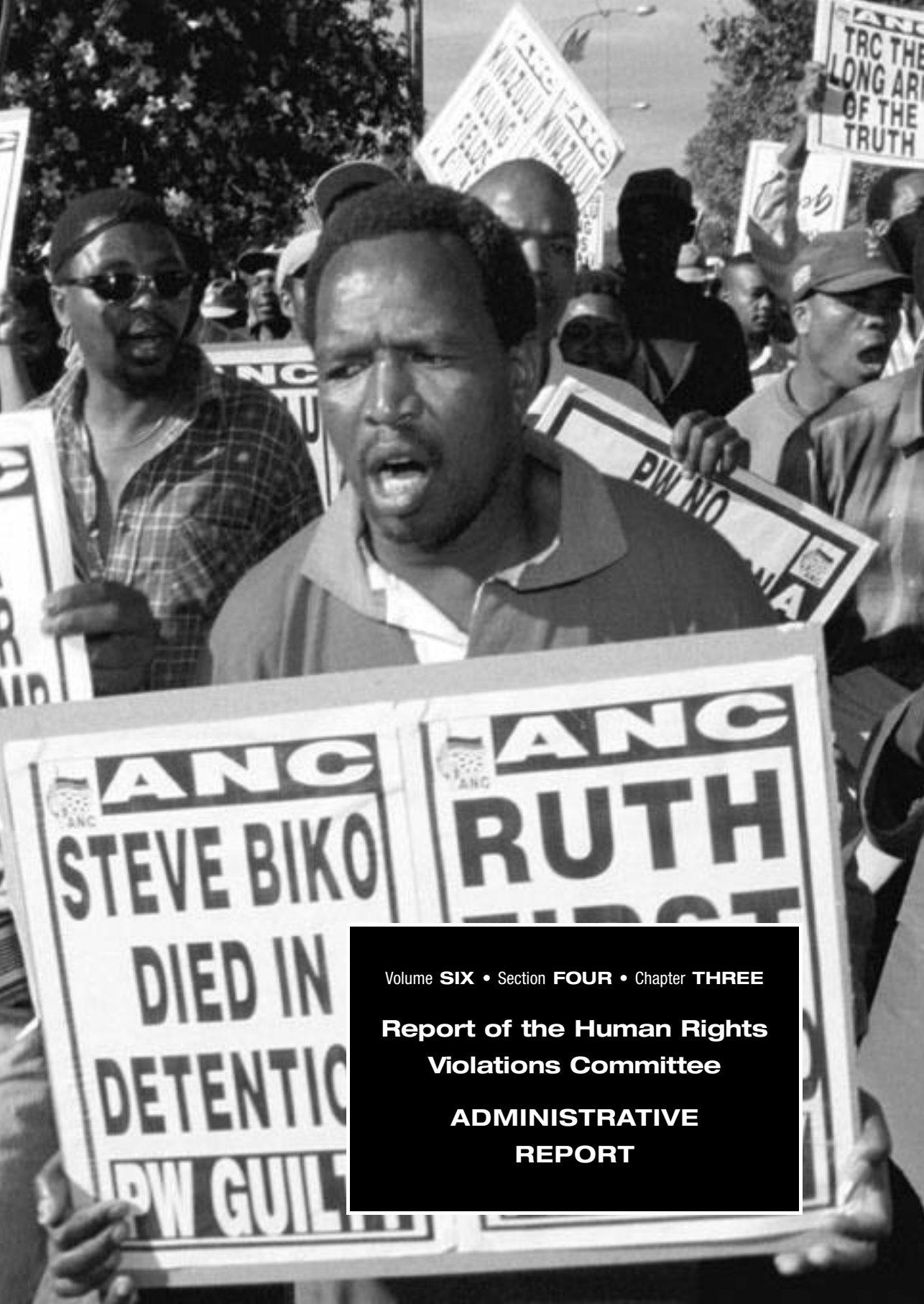
110. Amani Trust, an NGO involved in exhumations in Matabeland, Zimbabwe, has argued that, 'to carry out exhumations without ensuring that families of the exhumed have access to psycho-social and emotional support is irresponsible'.[30]

CONCLUSION

111. The Commission learnt some painful lessons during this process. While exhumations are a powerful mechanism to break the silence and establish the truth, they can do great harm if not conducted properly and with adequate support for families. Those organisations carrying out exhumations must ensure that they are carried out in proper consultation with families and communities.

112. It is only then that exhumations may contribute to a process of healing. (...p570)

30 Shari Eppel, Amani Trust, *Healing the dead to transform the living*, ICRC/The Missing/10.2002/EN/3.



Volume **SIX** • Section **FOUR** • Chapter **THREE**

Report of the Human Rights Violations Committee

ADMINISTRATIVE REPORT

Administrative Report

■ INTRODUCTION

1. The duties and functions of the Human Rights Violations Committee (HRVC) were clearly defined in section 14 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act). The HRVC was mandated to enquire into systematic patterns of abuse; to attempt to identify motives and perspectives; to establish the identity of individual and institutional perpetrators; to find whether violations were the result of deliberate planning on the part of the state or liberation movements, and to designate accountability, political or otherwise, for gross human rights violations.

2. During the operational phase, the HRVC was responsible for gathering victim statements and the holding of hearings – including victim hearings, event hearings, special hearings, institutional hearings and political party hearings. It was greatly assisted in its work by the Investigation Unit of the Truth and Reconciliation Commission (the Commission). The Committee was also responsible for making findings confirming that victims had been the subject of gross human rights violation as defined in the Act. The HRVC acted as the engine of the Commission.

3. The HRVC compiled a number of reports that formed part of the Final Report of the Commission, which was handed to President Mandela on 29 October 1998.

4. The HRVC collected a total of 21 519 victim statements during the two-year operational period. More than 15 000 statements contained at least one gross human rights violation. All in all, the 21 519 statements contained more than 30 384 violations. The HRVC made more than 15 000 findings during this period and completed all of its hearings, as was required in terms of its mandate.

COMPLETING THE FINDINGS PROCESS

5. In order to fulfil the terms of its mandate, the HRVC established a findings process.[31] The HRVC was required to make findings confirming that persons making statements were victims of gross human rights violations as defined in

31 See Volume One, 'Methodology'.

the Act. Findings were made on a 'balance of probabilities'. Statements that were rejected as being untrue became negative findings. In those instances where an incident was considered 'not to be politically motivated' or 'not having a political context', the HRVC would classify the finding as 'not political'. Where a statement dealt with an incident that did not fall within the mandate period, it would be classified as 'out of mandate'. These findings were classified as negative findings and were made at regional level by the regional HRVCs.

6. At the time of the publication of the Final Report, at least one third of the required findings had not been completed and confirmed by the national HRVC. The HRVC still had to make more than 5500 victim findings and confirm more than 2000 negative findings.

7. The findings process turned out to be much more complex and time-consuming than the Commission had anticipated. The Commission was required by law to cease its statement-taking phase and hearing operations by 15 December 1997. However, in that month, victims in the province of KwaZulu-Natal decided to join the process and filed more than 5000 statements with the regional office. Offices in Cape Town, East London and Johannesburg were also flooded with last-minute statements from potential victims.

8. Commission policies and processes required that all of these statements be processed, registered, investigated or subjected to low-level corroboration, and finally to have victim findings made on them. The statements taken as the process was about to end placed a huge administrative burden on the Commission.

9. However, by this time, the Commission had already begun to scale down its staff complement in the regional offices. Moreover, all units dealing with investigation and corroboration had been reduced. As a result, the HRVC could not complete its work. Moreover, the Commission could not publish the victims' volume (Volume Seven), a volume consisting of brief summaries of the experiences of all who were declared victims by the Commission. In addition, a number of disappearance cases and exhumations had not been completed or resolved. It became clear that the Commission needed to find a mechanism to deal with these outstanding issues.

10. This led to a decision by the Commission that, in addition to the Amnesty Committee staying on to complete its work, both the HRVC and the Reparation and Rehabilitation Committee (RRC) would need to appoint a Commissioner to

complete this unfinished business. The Commission requested that the Minister of Justice appoint the Deputy Chair of the Committee[32] to complete the outstanding work of the HRVC. The Commissioner was accordingly appointed by the Minister.[33]

TASKS OF THE HRVC AFTER OCTOBER 1998

11. The tasks outstanding at December 1998 were identified by the HRVC as the following:
    a. Making victim findings on the remaining statements received and confirming the gross human rights violations suffered by victims. As at December 1998, these numbered 5500 in total.
    b. Auditing and verifying the negative findings made at regional level. These negative findings totalled more than 2000 in December 1998. Many of these negative findings were made because the Commission's policy on arson cases had not been clearly established when the findings process had begun. The HRVC was also advised by the Commission's legal advisor that it would need to establish a mechanism to deal with appeals and reviews from potential victims.
    c. Finalisation of the 'popular version' of the Commission's report;
    d. Finalisation of the victim summary project;
    e. Finalisation of the report on disappearances; and
    f. Finalisation of the report on exhumations.

12. The HRVC was also required to carry out an audit of the database with a view to cleaning up contaminated data. The findings process required that the data be checked and verified in order to maintain the integrity of victim findings. This would ensure that the reparation process would not be compromised by incorrect information that could lead to incorrect payments of interim reparation. In addition, the victim summary project required an accurate account of each victim's experiences. This operation had to be carried out before the victim summary project and the exhumation and disappearances reports could be finalised.

13. This report will deal with progress on each of these tasks, the problems experienced and the mechanisms used to solve the problem areas.

32 Commissioner Yasmin Sooka had been one of two deputies to the Chair, Archbishop Desmond Tutu, and she remained behind.

33 She remained in the full time employ of the Committee until January 2001. Thereafter, she acted in a voluntary capacity until the findings were completed.

THE COMPLETION OF VICTIM FINDINGS

14. Completing victim findings was the major task and priority for the HRVC. The Act required that the HRVC establish the 'victim status' of a deponent before s/he could be considered eligible for reparation. Accessing reparation through the RRC was thus dependent on being found to be victim by the HRVC.

15. Earlier findings had been affected by the fact that the HRVC had taken a long time to finalise its policy on what constituted 'severe ill-treatment', one of the violation categories defined in the Act. Initially, the Commission did not treat cases of arson and displacement as gross violations of human rights under this category. However, the nature of the violations emanating from KwaZulu-Natal challenged the narrow definitions originally adopted. Arson and displacement (together with political killings and massacres) were the predominant type of violation during the post-1990s conflict, particularly in KwaZulu-Natal and Gauteng.

16. Because many victim findings were made at a time when the Commission's interpretation of the 'severe ill-treatment' category had not been clearly defined, the HRVC had classified many cases as 'negative'. It became necessary to revisit these negative findings and review them in line with the Commission's new policy decision.

17. This task was assigned to the HRVC commissioner who stayed behind to deal with uncompleted work.

18. The Commissioner also had to deal with the fact that very little corroborative information existed in respect of KwaZulu-Natal matters. Most victims who had been caught up in the violence in this province had not felt secure enough to report the violations they had suffered to the relevant authorities. Furthermore, victims – particularly those who were ANC-aligned – reported that the police had refused to take statements from them.

19. Moreover, when the Commission's investigators requested hospitals and police stations for information, they were told that, as the matters were more than five years old, they no longer had files. This had the potential to cause great hardship to the victims in this province who had, for the most part, lived through a conflict that had lasted much longer than in other parts of the country. They had little hope of assistance if the Commission did not make an effort to find creative ways of corroborating their stories.

20. In a major effort to finalise the KwaZulu-Natal matters, the Commission accessed the records of various groups that had monitored the violence in the province during the conflict years. These included the reports of the Human Rights Commission[34], the reports of John Aitcheson and Mary de Haas, as well as many other groups who had worked with victims of violence.

21. At this late stage, the Commission had very few investigators. Those who remained behind were assigned to dealing with amnesty investigations. The HRVC Commissioner was compelled to pass the onus of gathering corroborative information back to the deponents and families of potential victims. Deponents were requested to obtain affidavits from people in the community who had witnessed the conflict or incident. Thus, if a deponent stated in his/her statement that an incident had occurred during a particular time period, the Commission would cross-reference it with the violence-monitoring reports to ascertain whether there had been reports of violence in that particular area within the stated time period. The Commission would also rely on the corroborating affidavit to confirm the deponent's version of events.

22. The Commission required that findings be made on 'a balance of probabilities'. It was not a court of law and deliberately favoured a policy that gave victims the benefit of the doubt. Thus the standard of proof required was lower than that required in criminal matters, where guilt must be proved beyond reasonable doubt.

23. The problem was compounded by the fact that KwaZulu-Natal is a large province, and the scale of the violence had been so great that it was impossible to identify many of the people who had died. Large-scale mass violations also meant that, in a number of instances, witnesses had been displaced from their original communities or had died subsequently. It became impossible for the Commission to track down all these witnesses or the evidence to support many of the KwaZulu-Natal cases.

24. This is one of the major reasons why so many findings for this region are marked as 'unable', a category that describes cases where there is no corroborative evidence at all.

25. Another problem characteristic of the region was the fact that the violence had carried on beyond the Commission's mandate period. Many deponents made statements about cases which fell into this 'out of mandate' category. Thus many victims were excluded from accessing reparation.

34 Now known as the 'Human Rights Committee'.

Absence of political context

26. Many victims came forward to make statements about incidents that were clearly not political and fell into the realm of criminality. In those cases, the Commission made findings to the effect that the case did not fulfil the political requirement.

Review of findings

27. The Commission wanted to ensure that every possible opportunity was given to potential victims in order to ensure that no one was left out of the process. Deponents and victim support groups were notified that there were cases for which it had not been possible to make positive findings because of the paucity of evidence available to the Commission. They were invited to assist the Commission with gathering the evidence relevant to their particular cases. Victims were thus given the opportunity to supply the Commission with further evidence in order to secure a positive finding. The review/appeal process was kept open until January 2002 to allow victims the opportunity of having their findings changed.

28. The HRVC dealt with more than 3000 appeals/reviews during the period 1999 to January 2002. During this period, with the assistance of deponents and victim groups, the Commission was able to make a number of positive findings. The total number of positive victim findings made by the HRVC is 21 074.

The 'closed list'

29. The HRVC was approached by large numbers of individuals and victim groups who claimed that there were many potential victims who had not been able to make statements to the Commission within the time period allowed by law for the statement-gathering process. The reasons for this ranged from not knowing that there was a cut-off date, to poor communication by the Commission, to unreliable statement-takers who had promised to go back and had failed to do so. Many people also complained that they had made statements to their liberation movement and that these statements had not been forwarded to the Commission. Many complained that their political party had prevented them from coming forward. IFP supporters complained that they had been afraid to participate in the process. More than 8000 statements were collected throughout the country after the Commission had stopped collecting statements.

30. This issue presents a challenge to government. It is clear that many people, through no fault of their own, were unable to make statements to the Commission. While some do, therefore, qualify for reparation, others who may have suffered similar violations do not. This may have a divisive effect in many townships.

31. In many countries that have gone through a similar process, victims have been identified long after the commission has completed its work. There is a recognition that many victims may not have been able to speak out about their pain and suffering at the requisite time. It should be remembered that it took the world more than fifty years to deal with the Holocaust victims. Victims cannot be wished away. Anxious not to burden government with this problem in the future, the Commission adopted a 'closed list' policy which may no longer be appropriate.

32. At the same time, the Commission notes that government has indicated its intention to discuss issue of reparation and future amnesty with the nation. Another item that should be placed on the agenda is the issue of the 'closed list' policy.

THE 'POPULAR VERSION'

33. The Commission had intended to publish a popular version of its report in 1998. Unfortunately, it was unable to complete this task because the Amnesty Committee had not finished its work. Completion of this task was delegated to Commissioners Sooka, Mkhize and Potgieter.

34. A number of extremely talented and creative individuals worked on the 'popular version'. The final document was compiled with the assistance of Professor Njabulo Ndebele and assigned to Professor Bill Naisson of the University of Cape Town and his team.

35. The 'popular version' is now complete. However, decisions still need to be made about the printing and publishing of the book, as well as its distribution strategy. The Commission intends to hand this volume over to the Minister of Justice with the intention that he arrange for it to be published and distributed widely.

THE VICTIMS' VOLUME (VOLUME SEVEN)

36. The Commission decided to prepare a summary of the experiences of each victim who came to the Commission, either through HRVC or the Amnesty

Committee. The completion of this volume became one of the greatest challenges for the HRVC. Many dedicated people worked on creating the summaries and it took over three years to bring this project to fruition.

37. One of the rules adopted was that all summaries would have more or less the same number of words in order to ensure that no one person was perceived to be more important than another.

38. This project became a mission of love and devotion for those who worked on it. The passion of the summary writers and the pain they shared with victims as they wrote their stories is reflected in this volume. In time, it is hoped that it will become a living monument to those who suffered great pain and loss during the years of struggle. Volume Seven will endure in the nation's memory for many years to come. It remains a major achievement of the HRVC.

REPORT ON DISAPPEARANCES

39. The Commission's report on disappearances is contained in Chapter One of this section. Compiling this report took the better part of two years. The task required detailed research and the careful matching of information from a variety of sources including amnesty applications. The HRVC's only human resources for this project were the two remaining researchers who worked extremely hard on compiling the cases for this report. They scanned through the Commission's database, searching for all cases that dealt with the missing and the disappeared. In many instances, if the disappeared person was dead, the case would be classified as a political killing.

40. The Commission has made a number of recommendations with respect to unsolved disappearances. Many of these 'best practices' will be useful guidelines for the future. The recommendations are set out in Chapter 1 of this section.

REPORT ON EXHUMATIONS

41. The HRVC was also responsible for compiling a report on exhumations. This report appears in Chapter Two of the present section. A more comprehensive report has been compiled and will be handed to the Minister of Justice.

DATABASE

42. All the information collected by the HRVC was captured electronically on the Commission's database. This includes testimony from victims' statements, testimony taken at hearings, investigation material, transcripts of section 29 hearings, submissions made by institutions and individuals, and research and corroborative material. Original documents and other hard copy are held in the Commission's archive, which is currently in the custody of the National State Archives.

43. This material represents one of the most remarkable archival collections in the country and belongs to the nation.

44. The Commission has recommended that the National State Archives be the custodian of this archive so that victims and future generations will be able to access it.

45. It is thus important that the material be stored in a way that is accessible to scholars and to the families of victims. For example, the Commission was simply unable to go back to each victim or family that made a statement to inform them of the results of their investigations. By accessing the archives, families will be able to obtain this information.

46. It is therefore important that victims, their families and victim groups be consulted about how to make the Commission's material accessible in a way that does not undermine the integrity of individuals, be they victims or perpetrators. The privacy of victims should also be respected and taken into account when dealing with access.

47. The HRVC concerned itself mainly with victims and their right to know the truth. In the course of its work, it discovered different kinds of truth. It discovered too that truth must be tempered with justice and compassion.

APPENDIX: THE 'THIRD FORCE'

1. In its Final Report to President Mandela in 1998, the Truth and Reconciliation Commission (the Commission) made reference to the 'Third Force' in its discussions on the subject of 'Political Violence in the era of Negotiations and Transition, 1990–1994'[35]. In addition, the Commission made a set of specific findings on the 'Third Force' during this period.[36]

2. The early 1990s witnessed unprecedented levels of political violence, with over 14 000 people killed and many more thousands injured. Although violence permeated the country, most violations occurred in the homeland of KwaZulu and the neighbouring Natal province, and in the PWV (Pretoria–Witwatersrand–Vereeniging) region of the Transvaal. In the latter region, the Human Rights Commission (an independent non-governmental organisation) estimated that some 4756 people were killed between July 1990 and June 1993 alone. While many of these killings can be attributed to the internecine conflicts that developed in many communities, primarily between supporters of the IFP and ANC, there were frequent allegations about the role and complicity of elements within the security forces.

3. The 'third force' label was first used by ANC leadership figures in the wake of a wave of seemingly random attacks on the Witwatersrand and Vaal areas in August and September 1990. As the attacks continued, allegations were made that a 'hidden hand', or 'Third Force,' was involved in orchestrating and fomenting violence – to derail the negotiation process and/or to undermine the ANC's efforts to consolidate its political presence. These attacks were believed to involve covert units of the security forces acting in concert with individuals or groupings, such as the IFP and certain right-wing paramilitary organisations.

4. Although the Commission wishes to restrict the understanding of this phenomenon to the post-1990 period, its origins and genesis can be found in the philosophy of the 'Total Strategy' and the practices of covert counter-insurgency that developed throughout the period from the 1960s to the 1980s.

5. The apartheid state's counter-insurgency efforts intensified during the 1980s, and especially after 1986. As testified to by a number of security force amnesty

35 Volume Two, Chapter Seven.
36 Volume Five, Chapter One, para 126–129.

applicants, the methods employed by specialist covert units included murder, torture, kidnapping and various other covert illegal actions. They also involved the use of proxy and surrogate forces, including freelance criminal elements.

6. The development of intelligence-gathering units with an offensive capacity had proved effective in the Rhodesian situation and was subsequently adapted to the South African context by both the police and military. The devolution of decision-making powers resulted in police units such as Vlakplaas and the Namibian-based hunter-killer unit Koevoet operating with virtual impunity, making it extremely difficult to establish lines of command and accountability.

7. Unlike the police, the military made no disclosures to the Commission about its role in violations, with the exception of admissions about two sets of assassinations executed by South African Defence Force (SADF) Special Forces in 1986. In these cases, the head of Special Forces, Brigadier Joep Joubert, claimed that the chief of the defence force gave him approval. Allegations of complicity in 'third force'-type activities in the 1990s were denied, including those relating to an array of charges generated by General Pierre Steyn's preliminary investigations into covert military operations in late 1992.

8. Such denials and the limited evidence available make it difficult for the Commission to make specific findings, especially on the role of the military. This does not mean, however, that such activities did not take place. Indeed, the security forces were repeatedly involved in a long line of cover-ups of illegal or unlawful activity. This is evident, for example, from evidence about torture and killings that emerged in inquests and trials, which again, in cases such as that of Stanza Bopape, reached the highest echelons of the police.

9. There is no evidence to suggest that this practice was halted during the 1990s. The Harms Commission is a significant example of this: not only were witnesses instructed by their seniors to lie, but the Harms Commission failed to deter them from embarking on further operations.

10. The March 1994 Goldstone Commission report on the criminal activities of the South African Police (SAP), KwaZulu Police (KZP) and Inkatha Freedom Party (IFP) provides further compelling evidence of the fact that senior police officers attempted to subvert a government-appointed commission of inquiry. According to the report, senior members of the SAP repeatedly approached police officers

associated with the Goldstone Commission in the course of the investigation – in ways that could only be construed as obstructive. Further, once the police became aware of Goldstone's interest in false passports, those in possession of such passports were requested to bring them in for destruction. Similarly, Goldstone investigators learnt that Major General Engelbrecht, the last head of the SAP Counter-Insurgency Unit (C-section), had ordered the destruction of all documentation relating to the SAP's involvement with Inkatha.

11. The fact that such cover-ups involved senior officers and continued well into the 1990s reflects the extent to which such groups felt they had the authority to act with total impunity. In such a context, the impression must have been conveyed to the more junior members of such structures that, despite negotiations, they were still at war and could make use of whatever means they had at their disposal, if not to rout, then at least to weaken 'the enemy'. The continued practice of referring to the ANC as 'the enemy' in SADF operational commands clearly underscores this.

12. While allegations of 'third force activities' in no way account for all or even the bulk of violent incidents during this period, these attacks were particularly significant as they appeared to be largely indiscriminate, and consequently spread terror amongst hundreds of thousands of township residents. The types of attacks included drive-by shootings, attacks on trains and taxis, and massacres at social gatherings such as night vigils and shebeens. Regular allegations of collusion between elements of the security forces and the IFP were refuted as propaganda. Although a number of these attacks could be placed within a matrix of revenge violence, many could not. Indeed, they gave the impression of being deliberately designed to provoke further violence.

13. In late 1991, a Johannesburg-based non-governmental organisation, the Community Agency for Social Enquiry (CASE), published a research report[37] that analysed the first twelve months of Reef violence and highlighted the major actors, victims and alleged patterns of control of the violence that erupted during the period from 22 July 1990 to 31 July 1991. The report was based on thousands of reports from a range of newspapers and figures published by human rights monitoring organisations, including the Independent Board of Inquiry into Informal Repression (IBIIR), the Human Rights Commission (HRC), the Centre for Applied Legal Studies (CALS) and Lawyers for Human Rights.

37 *Who is murdering the peace?* CASE, October 1991.

14. The report stated that IFP supporters and the police were reportedly responsible for the vast bulk of the classifiable acts of violence. Furthermore, it was revealed that the targets or victims of the violence were mainly ordinary citizens. Of the 2271 people killed during the period, 87 per cent were recorded as 'general members of the community'. There were reports of direct collusion between members of the SAP in 257 confirmed incidents. The report also showed that IFP-supporting hostels provided the base for massive attacks on squatter camps, and that at least 915 of the total number of 2271 killed during the period were the result of attacks from these hostels.

15. The report suggested that the violence could not simply reflect a violent power struggle between the ANC and IFP, and that the monthly breakdown of the deaths reported during the period made it difficult to believe that the sharp monthly variations were random.

16. The sudden escalation of violence in 1990 coincided with the establishment of Inkatha as a national political party in July, and its attempts to develop a political base in the Transvaal.

17. Inkatha's relationship with apartheid security force agencies had a long history. In April 1986, the State Security Council approved guidelines for a strategy for a counter-revolutionary war, which, amongst other things, emphasised the fact that the forces of revolution should not be combated by the security forces alone, but also by 'anti-revolutionary groups such as Inkatha … or the ZCC[38] as well as the ethnic factor in South African society'.

18. In 1986, the State Security Council also authorised the provision of military training for 200 Inkatha members by the SADF. The special project to support Inkatha was called Operation Marion and was the responsibility of the Directorate of Special Tasks, a section within the office of the Chief of Staff (Intelligence), which was also responsible for supporting insurgency initiatives in neighbouring front-line states.

19. Support for Inkatha continued in the early 1990s. It is now known that President de Klerk approved a Strategic Communication (Stratcom) propaganda project in 1990, which included financial support by the SAP for Inkatha. In July 1991, the existence of a secret police project to fund Inkatha was revealed in the media.

38 Zion Christian Church.

In response to these revelations – which became known as 'Inkathagate' – President de Klerk reshuffled his two leading security ministers, Malan and Vlok, and ordered a new review of secret projects.

20. It is also now evident from evidence presented to the Commission that elements in both the police and the IFP continued to collude with one another throughout the negotiation period, and that the police, mainly through Vlakplaas operatives, supplied considerable amounts of weaponry to the IFP during the 1990s. This was also covered by the March 1994 Goldstone report, which implicated members of the SAP, KZP and IFP in the supply of weapons to the IFP. This included a massive arms cache unearthed in KwaZulu-Natal during 1999, which was provided to the IFP by Vlakplaas, ostensibly for the purpose of training self-protection units. The Commission received a number of amnesty applications corroborating this evidence from both Vlakplaas and IFP operatives. Eugene de Kock, for example, claimed that his unit provided and sold weapons directly to hostels on the East Rand and elsewhere. When Vlakplaas was officially closed down in 1991, unit members were redeployed to work on the recovery of illegal firearms. This provided a perfect cover for the further distribution of weapons and other fraudulent activities. Chapter One of the Investigation Unit's Gun Running Report deals with the 'receipt of weapons by the IFP' and describes the background and systematic distribution of weapons in the PWV[39] region.

21. In addition, the Commission received detailed testimony from Vlakplaas operatives about the specific nature of relations with senior IFP officials operating in both the Transvaal and Natal. Security police resources were used, and a core group of IFP members was allegedly placed on the Vlakplaas payroll for a short period of time. According to De Kock, the relationship was known about, approved and even encouraged by senior police officials.

22. When the IFP's Transvaal Youth Brigade leader, Themba Khoza, was trapped in the grounds of the Sebokeng hostel after the massacre of nineteen hostel inmates on the night of 3/4 September 1990, the local police fabricated evidence to ensure that Khoza and the 137 IFP supporters arrested with him could not be linked to the firearms found in the boot of Khoza's vehicle and apparently used in the massacre. According to Vlakplaas operatives, the weapons found matched those they had provided to Khoza the previous day, while Khoza's car was provided by the Security Police. Vlakplaas also allegedly put up Khoza's bail money.

39 Pretoria-Witwatersrand–Vereeniging.

23. Amnesty was granted to the head of the Vaal Triangle Security Police, Jacobus Francios Conradie (AM4123/96), who admitted to 'defeating the ends of justice'. The officer investigating the massacre, the head of the Vaal Triangle Murder and Robbery Unit, Jacobus Jacobs (AM 4373/96), and an officer at the scene of the crime, Arthur John van der Gryp (AM 4146/96) were also granted amnesty. Conradie denied that his actions to assist Khoza were approved or authorised, but claimed that he had acted unilaterally when he found out how important Khoza was to the police.

24. While the three amnesty applicants' versions of events largely corroborate one another, other important issues that are not thoroughly covered in their applications saw the light of day at the Section 29 in camera hearings. Regrettably, these amnesty applications were heard in chambers, preventing any further opportunity to explore the case and its broader implications in terms of collusion between the security forces and the IFP.

25. Although no admissions have been made by the IFP regarding these allegations, several investigations undertaken by the National Department of Public Prosecutions are believed to have reached an advanced stage, indicating that there is *prima facie* evidence against certain individuals.

26. Disclosures made regarding the Sebokeng incident support the assertion that 'third force' elements were at play. Not only did one of the security forces' most 'successful' counter-insurgency units supply weaponry to the Inkatha attackers, but the police were also successful in protecting one of the most prominent Inkatha leaders in the region in the legal process following the massacre.

27. Consistent allegations that Themba Khoza and other IFP leaders in the region were involved in the distribution of weapons and had regular meetings with security forces representatives such as Eugene de Kock further supports the findings in the Commission's Final Report.

28. The Commission thus finds that, while little evidence exists of a centrally directed, coherent or formally constituted 'Third Force', a network of security and ex-security force operatives, frequently acting in conjunction with right-wing elements and/or sectors of the IFP, was involved in actions that could be construed as fomenting violence and which resulted in gross human rights violations, including random and target killings.[40]

40 Volume Five, Chapter Six, para 129.

29. Allegations of 'third force' activity reached a crescendo in the wake of the Boipatong massacre in June 1992. The Commission did not undertake detailed investigation into all allegations of security force complicity. Instead it relied on a number of reports submitted to it by monitoring groups who went into Boipatong immediately after the massacre and compiled reports based on the testimony received. The Commission made a series of detailed findings in which it alleged that there had been direct collusion between the security forces and the IFP, and that the security forces' direct participation in the massacre was alleged. Conversely, the Amnesty Committee accepted the version of most amnesty applicants, who denied any security force involvement in the massacre, and rejected the evidence of Andries Matanzima Nosenga, the one applicant who supported victims' assertions that the security forces were complicit. The Amnesty Committee did, however, leave open the possibility of security force complicity: it acknowledged the victims' allegations, while accepting that there was no evidence to connect the amnesty applicants with them. The Commission does not accept that allegations about this complicity were fabricated.

30. An analysis by the Commission's Investigation Unit into available material relating to the massacre and subsequent investigations raises a number of serious shortcomings or issues that raise doubts about the credibility of the police investigation into allegations of police involvement. Within two weeks of the massacre, for example, the SAP officer tasked to investigate the allegations reported that they had been proven to be untrue. The Commission's enquiries established that approximately fifty witnesses testified about the direct or indirect involvement of the security forces. It appears that several of the witnesses were either ignored or deliberately not presented. A number of other shortcomings were presented in the Investigation Unit report.

31. October 1992 seems to have been a turning point for 'third force' activities. The Goldstone Commission's discovery that a Military Intelligence operation against the ANC was still operational led to the appointment of General Steyn by President de Klerk to investigate the allegations of armed forces involvement in the violence. At the same time, Colonel de Kock was approached by his superiors and asked to resign from the police force.

32. Although General Steyn's and subsequent investigations were largely inconclusive in terms of proving SADF involvement in a wide range of illegal and/or unauthorised activities – including 'third force'-style attacks – the pall of suspicion and incriminating evidence has not been lifted. Analysis of violence

statistics indicates that typical hit-squad attacks declined after mid-1992 while the level of political violence rose steadily until 1994.

33. By the 1990s, patterns of security force conduct that crossed the boundaries of legality emerged. This conduct was condoned and in some instances encouraged. A network of security force operatives – bound by oaths of blood and secrecy – had been developed, with informal channels of communication and in possession of, or with access to, material resources and weaponry. While the new De Klerk government significantly dismantled many formal securocrat structures, little obvious attempt was made to dismantle these networks or to change the mind-set of operatives' intentions to continue an all-out war on the ANC and its allies. Indeed, where efforts were directed at uncovering such networks – as with the establishment of the Harms Commission – security force personnel were instructed by their seniors to lie, sending a clear signal that these were simply public relations initiatives and that they were not intended to change the *status quo*. The fact that Vlakplaas personnel continued with unlawful activities at the very time that the Harms Commission was sitting is clear testimony to this. Given this background, it is unsurprising that evidence emerged of security force involvement in the violence and destabilisation of the 1990s.

34. Various explanations for the violence in the early 1990s have been proffered that do not necessarily take into account the role of the security forces. These have included assertions that the violence was essentially symptomatic of the rapid political change that was taking place, fuelled by ethnic divisions and socio-economic pressures. Certainly, existing tensions between Inkatha and the ANC were exacerbated, fuelled by the mobilisation of ethnic and political tensions. There is also evidence that individuals and groups in some areas were targeted on the basis of their ethnic background. But such ethnic division was far from being monolithic or monocausal in its manifestations.

35. While such explanations for the violence addressed critical aspects of why it was happening, they were largely unsatisfactory in that they failed to engage either with the specific dynamics of violence in particular communities or with emerging patterns and trends. Violence often appeared to take on a life of its own – cycles of revenge often triggered by indiscriminate and unprovoked attacks. Assumptions of guilt and responsibility were manifest. Attempts to instil reason and constraint were drowned by calls for action. The need to defend frequently and rapidly against attacks metamorphosed into offensive action.

36. There were also understandable concerns that the picture being drawn by many commentators and analysts was manipulated and skewed – unconsciously or even deliberately (as much of the internecine conflict in certain communities in the 1980s had been) – as part of a broader depiction of 'black on black' violence. This was interpreted in some quarters as part of a deliberate strategy to undermine the ANC alliance and the broader objectives of democratic transformation by creating the perception and imagery that political opportunities for the black majority would result inevitably in conflict and violence. As such, violence was interpreted as a political tool in the power play for the negotiated settlement.

37. We are therefore presented with a spectrum of views about the violence and 'third force' allegations. These range from benign interpretations of government and security force action at one level to allegations of a specific agenda to destabilise political opponents at the other.

38. Within this spectrum of views, a host of important questions and issues has been raised, many of which the Commission was not able to address adequately, due to a lack of resources and time constraints. Other relevant structures have not really addressed the outstanding issues either. Unresolved issues include an analysis of exactly what the government did to address the violence, and whether its response can be classified as adequate or reasonable; the extent to which the government had lost control of its security forces; a detailed analysis of how the security forces reacted to and addressed violence in various locations, and the role of leadership and the rank and file, their attitudes and the limitations and obstacles to their work.

39. During the late 1980s, the security forces intensified their counter-insurgency efforts at the same time as the government was developing its preliminary contacts with the ANC. Repression and violence were evidently an integral component of a broader political strategy at this stage. However, the extent to which this was carried over into the negotiations period of the early 1990s is less clear.

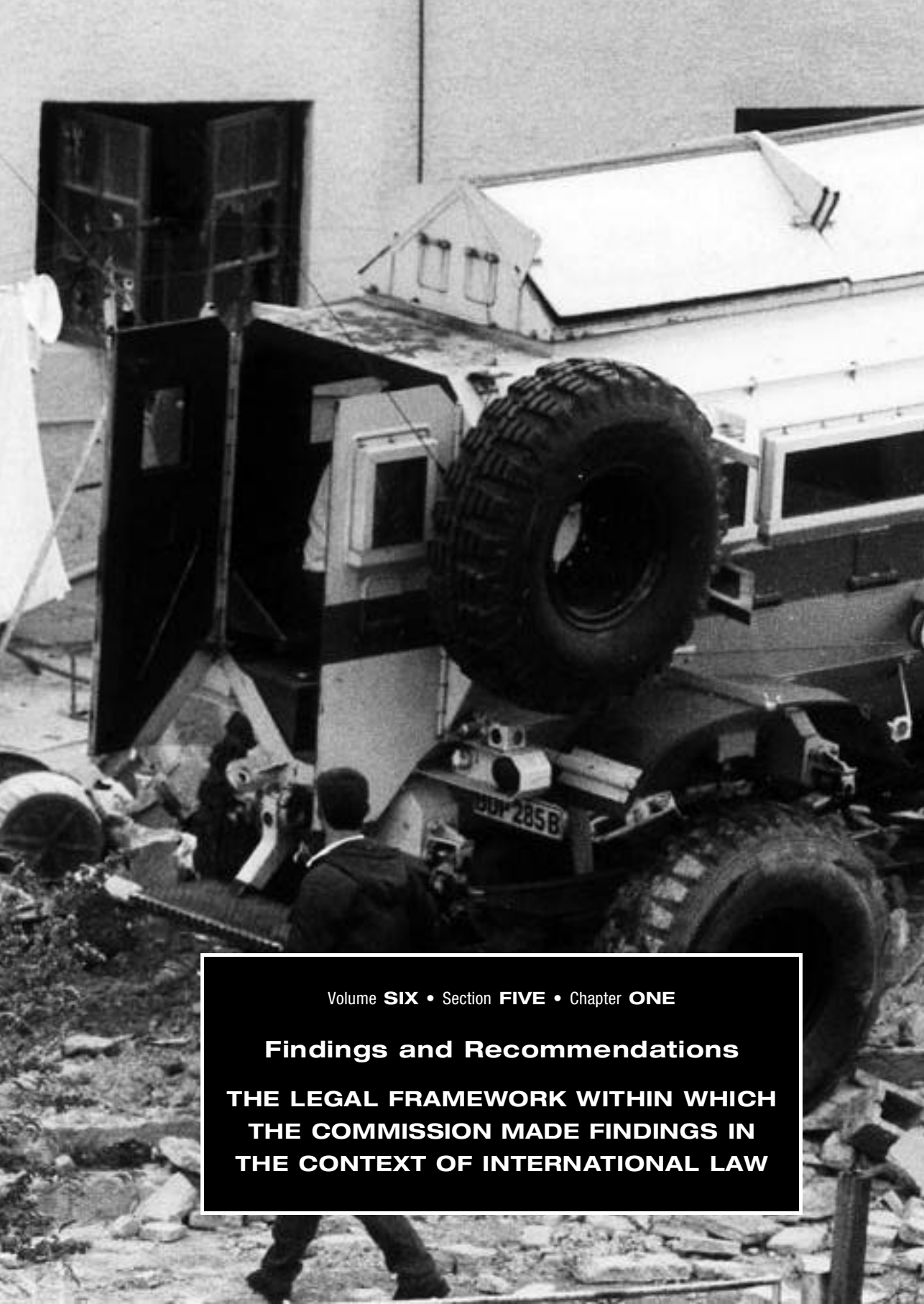
40. Understanding the characteristics of violence in the 1990s, therefore, requires a more nuanced appreciation of security force practices and policy within the context of political change and the limits of institutional transformation that accompanied this.

41. While the involvement of security force individuals and structures in 'third force' violence was to some degree corroborated, the quality and quantity of available

evidence, whilst significant, is generally thin. No detailed or focused investigations were initiated; few amnesty applications were received, and lines of command and accountability were not established.

42. The Commission was also unable to establish the extent of covert networks and how they evolved and mutated during the conflict period. Consequently, it is not clear whether the senior security force personnel involved represented their own, state or right-wing agendas. In a rapidly changing political situation with shifting alliances, the Commission accepts that it is probable that there were several agendas involved, at different levels within political and security force hierarchies.

43. In this context, explanations for and allegations relating to the dynamics of and rationale behind 'third force' activities remain vociferously contested. The Commission believes that more light must be shed on the role and activities of the military and the police, and especially on the role of covert and other specialist units during the violence in both the 1980s and 1990s. Ongoing research suggests that there is considerably more to be uncovered in this respect. The Commission therefore believes that further enquiries and investigations regarding 'third force' allegations are an essential part of a broader process in terms of developing our understanding of past conflict and those responsible for it. (...p589)



Volume **SIX** • Section **FIVE** • Chapter **ONE**

Findings and Recommendations

THE LEGAL FRAMEWORK WITHIN WHICH THE COMMISSION MADE FINDINGS IN THE CONTEXT OF INTERNATIONAL LAW

Legal Framework

THE LEGAL FRAMEWORK WITHIN WHICH THE COMMISSION MADE FINDINGS WITHIN THE CONTEXT OF CURRENT INTERNATIONAL LAW

■ INVESTIGATING GROSS HUMAN RIGHTS VIOLATIONS

1. The Truth and Reconciliation Commission (the Commission) was charged with the task of investigating and documenting gross violations of human rights committed during the period March 1960 to May 1994. In the course of doing so, it was required to compile as complete a picture as possible of the conflicts of the past.

DEFINING GROSS HUMAN RIGHTS VIOLATIONS

2. The Promotion of National Unity and Reconciliation Act No. 34 of 1995, (the Act) defined a gross human rights violation as:

   the violation of human rights through (a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date [10 May 1994] within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive;[1]

3. The language used in the Act to describe gross human rights violations deliberately avoided the use of terms associated with the legal definitions of crimes in South African law. Thus 'killing' was used rather than 'murder' in order to allow the Commission to examine these violations without having to consider legal justifications or defences used by perpetrators for such conduct. The Commission could therefore make findings that those who had suffered these violations were victims. Chapter Four of Volume One sets this out more elaborately.

1 Section 1(1)(ix).

Interpreting the definitions

Killing

4. 'Killing' was interpreted to include the following:

   a the killing of civilians, irrespective of whether they were deliberately targeted or innocent bystanders caught in the crossfire, and
   b those who were executed for *politically motivated* crimes, irrespective of whether the killing had the sanction of the state, tribunals set up by the liberation movements or 'people's courts' established by communities.[2]

5. The only exception that the Commission took into account was that of combatants who had died in the course of the armed conflict and were clearly identified as such. The Commission's position in this regard is further elaborated in Volume One, Chapter Four of the Final Report. In this the Commission was guided by the Geneva Conventions' distinction between 'combatants'[3] and 'protected persons'[4].

Torture

6. The Commission accepted the international definition of torture: that is, the intentional infliction of severe pain and suffering, whether physical or mental, on a person for any of the following purposes:
   a obtaining from that or another person information or a confession;
   b punishing a person for an act that s/he or a third party committed or is suspected of having committed;
   c intimidating her, him or a third person; or
   d any reason based on discrimination of any kind.

7. Pain or suffering that arises from, is inherent in, or is incidental to a lawful sanction does not qualify as torture.[5]

2 These interpretations reflect the Commission's position on the death penalty and political killings, which is in line with international human rights law.

3 Geneva Conventions, Article 43 (Paragraphs 1 and 2) of Additional Protocol I of 1977.

4 Geneva Conventions, Common Article 3 of all four conventions of 1949. See Appendix 1.

5 Article 1(1), Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Abductions

8. This term was defined as the 'forcible and illegal removal or capturing of a person'. It was applied to those cases where people had 'disappeared' after having last been seen in the custody of the police or of other persons who were using force. It does not include those who were arrested or detained in terms of accepted human rights standards.

Severe ill-treatment

9. This term was defined by the Commission as:

acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim, taking into account the context and nature of the victim.

10. The Commission took a number of factors into account when determining on a case-by-case basis whether an act qualified as severe ill-treatment. These included the duration of the suffering or hardship, its physical or mental effects and the age, strength and state of health of the victim. Violations included rape, sexual abuse, severe assault, harassment, solitary confinement, detention without trial, arson and displacement. A fuller list of acts that constituted violations is included in the Commission's Final Report.[6]

ESTABLISHING ACCOUNTABILITY

11. One of the main objectives of the Commission was to establish the identity of the individuals, authorities, institutions and organisations involved in the commission of gross violations of human rights. The Commission was also tasked with establishing accountability for the violations, and determining the role played by those who were involved in the conflicts of the past. In dealing with these complex issues, the Commission was guided by the provisions of section 4 of its enabling Act.

12. The Commission made findings of accountability in respect of the various role players in the conflict on the basis of the evidence it received. It should be noted that it did this in its capacity as a commission of inquiry and not as a court of law. The Commission's findings are, therefore, made on the basis of probabilities and should not be interpreted as judicial findings of guilt, but rather as findings of accountability within the context of the Act.

6 Volume One.

13. The Commission based its conclusions on the evidence and submissions placed before it. It did not focus only on legal and political accountability, but also on establishing moral responsibility.

Moral responsibility

14. In its Final Report, the Commission stated:[7]

A responsible society is committed to the affirmation of human rights and, to addressing the consequences of past violations) which presupposes the acceptance of individual responsibility by all those who supported the system of apartheid or simply allowed it to continue to function and those who did not oppose violations during the political conflicts of the past.

15. In the Final Report, the Commission defines not only legal and political accountability, but also boldly asserts the notion of moral responsibility. The Commission finds that all South Africans are required to examine their own conduct in upholding and supporting the apartheid system. The abdication of responsibility, the unquestioning obeying of commands, submitting to fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all part of the multi-layered spiral of responsibility that lays the path for the large-scale and systematic human rights violations committed in modern states.

16. There were those who were responsible for creating and maintaining the brutal system of apartheid; those who supported this brutal system and benefited from it, and those who benefited from the system simply by being born white and enjoying the privileges that flowed from that. Others occupied positions of power and status and enjoyed great influence in the apartheid system, even though they had no direct control over the security establishment and were not directly responsible for the commission of gross human rights violations. It is only by acknowledging this benefit and accepting this moral responsibility that a new South African society can be built. What is required is a moral and spiritual renaissance capable of transforming moral indifference, denial, paralysing guilt and unacknowledged shame into personal and social responsibility. This acceptance of moral responsibility will allow all those who benefited from apartheid – including the business community and ordinary South Africans – to share in the commitment of ensuring that it never happens again.

7 Volume One, Chapter Five, para 101.

17. Those who must come under special scrutiny are those who held high office, those who occupied positions of executive authority and those cabinet ministers whose portfolios did not place them in a direct supervisory capacity over the security forces. While the Commission's findings are not judicial findings, the Commission finds them to be morally and politically responsible for the gross human rights violations committed under the apartheid system, given:
    a the specific responsibilities of cabinet ministers who oversaw aspects of the apartheid structure in areas that formed key aspects of apartheid's inhumane social fabric (education, land removals, job reservation, the creation of the Bantustans, for example);
    b the knowledge they had (given the extensive information regarding apartheid crimes in the public domain), or the knowledge that they are presumed to have had, given their access to classified information – at the highest level – about gross violations of human rights, and
    c their power to act, given their official leadership positions.

LEGAL ACCOUNTABILITY

18. In deliberating on its findings, the Commission was guided by international humanitarian law and the Geneva Conventions.

Apartheid as a crime against humanity

19. The International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the United Nations (UN) General Assembly in 1973, states in Article 1 that apartheid is a crime against humanity. The Convention is one of a series of General Assembly and Security Council resolutions condemning apartheid as a crime against humanity. This legal categorisation has been echoed in the jurisprudence of the International Court of Justice and the International Law Commission's Draft Articles on State Responsibility and Crimes against the Peace and Security of Mankind. The classification of apartheid as a crime against humanity has been confirmed, and apartheid has been treated as similar to other egregious crimes such as genocide, slavery and colonialism in international sources as wide-ranging as the African Charter on Human and People's Rights and the International Criminal Tribunal for the former Yugoslavia.

20. The International Law Commission's description of a crime against humanity[8] has been interpreted to suggest that such a charge can be brought against a single individual for a single act if that act is on a large scale, and/or if that act can be situated in a systemic pattern of violations[9]

Implications of this classification for the prosecution of human rights crimes under apartheid

21. While executing its mandate, the Commission gained a deep understanding of the apartheid system as a whole and its systematic discrimination and de-humanisation of those who were not white. Moreover, the Commission received a number of submissions from various institutions and structures, requesting that it interpret its mandate more broadly than was defined in the founding Act. Whilst taking these submissions very seriously, the Commission was bound by its legislative mandate to give attention to human rights violations committed as specific acts, resulting in killing, abduction and severe physical and/or mental injury, in the course of the past conflict. Although the Commission endorsed the internationally accepted position that apartheid was a crime against humanity, the focus of its work was not on the effects of the laws and policies passed by the apartheid government. The Commission has been criticised in some quarters for this approach.

22. It could be argued that the new government has an obligation, in terms of inter national law, to deal with those who were responsible for crimes committed under apartheid, even though their acts were considered legitimate by the South African government at the time. On the other hand, the international community declared apartheid to be a crime against humanity and saw the apartheid government as illegitimate. It can therefore be argued that crimes under apartheid have international implications and demand an appropriate response from the new state.

23. However, the Commission acknowledged in its Final Report that the urgent need to promote reconciliation in South Africa demanded a different response, and that large-scale prosecution of apartheid criminals was not the route the country had chosen. This does not mean, however, that those who were in power during the apartheid years should not acknowledge that the crimes committed in the name of apartheid were grave and heinous. Had there been no such

8 ILC, 1886 Draft Code of Crimes against the Peace and Security of Mankind.
9 Judgment of Tadic case, 7 May 1997, para 649.

settlement, had the negotiating parties not decided to put reconciliation first, there would have been serious consequences for members of the former Cabinet and Tricameral Parliament, for those who held high office in the security forces, intelligence and the judiciary, and for others who were responsible by virtue of their positions of authority and responsibility.

24. The liberation movements were cognisant of this at the time of negotiations. They were, however, also sharply aware of the fact that prosecutions could endanger the peace process; hence the need for an accountable amnesty provision which did not encourage impunity, while at the same time taking account of the rights of victims. Furthermore, it has always been understood that, where amnesty has not been applied for, it is incumbent on the present state to have a bold prosecution policy in order to avoid any suggestion of impunity or of contravening its obligations in terms of international law.

Importance of this classification for reparation

25. The recognition and finding by the international community that apartheid was a crime against humanity has important consequences for the victims of apartheid. Their right to reparation is acknowledged and can be enforced in terms of international law.

26. The classification of apartheid as a crime against humanity emphasises the scale and depth of victimisation under apartheid and, to that extent, adds further weight and urgency to the need to provide adequate and timely responses to the recommendations of the Commission. It also enhances the legitimacy of the Commission's recommendations in respect of reparations, which now require urgent implementation. The classification also gives greater legal legitimacy to the Commission's recommendations for the institutional reform of apartheid institutions (including the security forces, public administration, the judiciary and business).

27. The Constitutional court in the Azanian People's Organisation (AZAPO) case took the issue further. Not only did it recognise the rights of victims, but it also confirmed the statutory duty of the state to provide an appropriate reparation policy for victims emanating from the Commission process.

Importance of this classification for the struggle of the liberation movements against the apartheid state

28. As elaborated more fully in the section on African National Congress (ANC) violations (see below), the legal designation of apartheid as a crime against humanity has important consequences for the struggle conducted by the liberation movements. In terms of international law, the designation of apartheid as a crime against humanity has ensured that the legal status accorded to the war waged against the former apartheid state is that of a 'just war' or '*ius ad bellum*'.[10]

29. The effect of this designation is to render as just the moral, political and legal status of the struggle against apartheid.

30. The criteria for determining whether a struggle can be regarded as a just war are: (i) that those who waged it turned to armed conflict to fight an unjust system, and (ii) that they did this in a context where alternative routes for legal and political action had not only failed, but were likely to trigger further repression.

31. Thus those who waged war against the illegitimate apartheid state had legitimacy conferred upon them in terms of international law.

32. However, a distinction needs to be drawn between the means and the cause. The fact that the cause is just does not automatically confer legitimacy on all conduct carried out in the pursuit of that war (*ius in bello)*. International law imposes a continued obligation on the liberation struggle to employ just means, even in the conduct of a just war.

33. The laws that apply to the conduct of a just war rest on two broad principles: the principle of necessity and the principle of humanity. Simply interpreted, this means that 'that which is necessary to vanquish the enemy may be done', but that 'that which causes unnecessary suffering is forbidden'.

34. The balancing of these two principles has been the subject of much debate and writing in international law.

35. In essence, these principles have meant that combatants in a conflict or war situation enjoy certain rights. If they are captured and disarmed, they are considered to be prisoners of war and must be treated accordingly. This

10 Volume One, Chapter Four.

requires of the party in command of the situation that prisoners of war be safe-guarded against execution or deliberate injury. In the event that they are *hors de combat*[11] because they have surrendered or have been wounded or captured and disarmed, they must be protected. Warfare cannot be continued against them. These principles also apply to non-combatants or civilians (as they are now known). The laws of war require that civilians or non-combatants may not be subjected to deliberate or indiscriminate attacks, reprisal killings, seizures, hostage taking, starvation or deportation, nor may they have their cultural objects and places of worship destroyed.

36. Both civilians and combatants in conflict circumstances are protected against criminal sanctions unless they have been accorded due process of law.

INTERNATIONAL HUMANITARIAN LAW

The Geneva Conventions

37. The Geneva Conventions were adopted in 1949 and additional Protocols I and II in 1977. The Conventions are considered to be binding in international law. Virtually every government in the world has accepted their tenets by ratifying them. However, even where states have not ratified the treaty, they have the force of 'customary international law' – that is, they bind governments irrespective of whether those governments have formally ratified the treaty accepting their obligations. The apartheid state acceded to the Geneva Conventions in 1952. It did not, however, ratify or accept the additional protocols, and sought to argue that it could not be bound by their provisions. However, because the international community does not regard ratification as a criterion for holding a state to be bound, it is generally accepted that, even though the previous government did not ratify these conventions, it was formally bound by the principles enunciated by these bodies during the relevant period, as they are expressions of customary international law on state responsibility for the commission of gross human rights violations.

38. In the case of the ANC, President Oliver Tambo signed a declaration at the headquarters of the International Committee of the Red Cross, Geneva, on 28 November 1980, committing the ANC to be bound by bound by the Geneva Conventions and Protocol I.[12]

11 Out of the fight.

12 See the Appendix to Chapter Three of this section for a full text of the statement and declaration.

Applicability of the Geneva Conventions to the South African conflict

39. The Commission's mandate encompassed the period March 1960 to 10 May 1994, the date of President Mandela's inauguration. Given that Protocols I and II were adopted in 1977, it is appropriate to consider what law was applicable to the conflict raging in South Africa. Of particular note are those sections of the Protocol dealing with grave breaches.

40. The Geneva Conventions and Protocol I draw a distinction between acts that constitute a 'grave breach' and acts that constitute a 'regular breach'.[13]

41. These definitions become important when dealing with those acts or means used during conflict which the Commission found to constitute gross human rights violations. Furthermore, the provisions of the relevant Conventions and Protocol I become particularly important when dealing with the bombing incidents (Khotso House, the Magoo and Why Not Bars, the London ANC office and so on).

The period March 1960 to 1977

42. During the period March 1960 to 1977, the principal treaties that applied to the conflict were the Geneva Conventions, and in particular Common Article 3. Protocols I and II had not yet been drafted.

43. Common Article 2 of the Geneva Conventions states explicitly that, with the exception of Common Article 3 and the Martens Clause, the Conventions exclusively address armed conflicts between states.

44. Whilst on the face of it this may be interpreted to mean that the Geneva Conventions had no application during that period, this is not the case, as a number of bodies within the UN passed resolutions relating to the armed conflict in South Africa. The resolutions covered subjects ranging from apartheid to colonialism and the right to self-determination. In this regard, Resolution 31029(XXXVIII) of the UN General Assembly adopted in 1973 provided as follows:

13 Appendix 2 to this chapter sets out those acts that constitute a grave breach.

The armed conflict involving the struggle of people against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions and the legal status envisaged to apply to the combatants in the 1949 Geneva Conventions and other international instruments are to apply to persons engaged in armed struggle against colonial and alien domination and racist regimes.

45. It can, therefore, be argued that the conflict in South Africa was regarded not as an internal conflict but as an international armed conflict.

46. One should also have regard to the provisions of Common Article 3, which expressly provide that this Article applies 'in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties'. Given that South Africa had acceded to the Geneva Conventions in 1952 and has remained a party ever since, there can be no doubt that it was bound by these provisions.

47. The ANC at this time was a non-state actor and lacked the authority or legal capacity to ratify or accede to the Geneva Conventions. However, the ICRC commentary to Common Article 3 makes it clear that non-state parties to non-international armed conflicts become bound to apply the provisions of Common Article 3 upon ratification or accession by the state party to the conflict. Moreover, the ANC itself, in terms of public statements made during this period, considered itself bound by the core principles enshrined in international humanitarian law. The provisions of Common Article 3, therefore, applied to the military and political activities of the ANC during this period.

48. Violations in terms of Common Article 3 fall under the following four sections:

    a violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
    b taking of hostages;
    c outrages upon personal dignity, in particular humiliating and degrading treatment, and
    d the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees that are recognised as indispensable by civilised peoples.

49. These provisions apply to 'persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds detention, or any other cause'.

The period March 1977 to 1980

50. It is during this period that Protocol I of the Geneva Conventions was drafted specifically to cover the conflict situations in South Africa and Israel.

51. It is important to note that Protocol I was intended to supplement the existing Geneva Conventions and to ensure that national liberation movements were protected in the conflicts that were taking place.

52. In this regard, Article 1(4) of Protocol I sought to confer prisoner of war status on national liberation movement combatants involved in the conflicts in South Africa and Israel. The article provides that 'armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination' are to be treated as international armed conflicts and not as internal conflicts.

53. The effect of this was to bring the conflicts in South Africa and Israel under the ambit of the Geneva Conventions, and specifically of Protocol I.

54. As discussed above, the apartheid government did not accede to the additional protocols, particularly Protocol I. This was in the main due to the fact that it was of the view that Article 1(4) of Protocol I was intended to legitimise the struggle of the liberation movements and provide additional protection for their members.

55. As a liberation movement, the ANC did not apply to the ICRC to ratify or accede to this protocol, thus one can conclude that common Article 3 and not Protocol I continued to apply to the ANC.

The ANC and international humanitarian law: The period 1980 to 1994

56. In 1980, the ANC declared itself to be bound by the general principles of international humanitarian law applicable to the conduct of armed conflicts. The then ANC President Oliver Tambo deposited a declaration[14] with the ICRC

14 See Appendix 3.

declaring the ANC bound by the Geneva Conventions and Protocol I. In fact, the declaration ought to have been deposited with the Swiss Government; but it is the intention of the party making the declaration that is important. By submitting the declaration, the ANC intended to hold itself bound by the Geneva Conventions and Protocol I.

57. As a result of this declaration, the ANC bound itself to apply Protocol I and the Geneva Conventions. In terms of Article 96(3) of Protocol I, the protocol and the Geneva Conventions came into effect immediately in respect of the conflict, despite the fact that the apartheid state had not acceded to the additional protocol.

58. The importance of the declaration is that the ANC became bound to uphold the same obligations and burdens as other parties to the Conventions and Protocols. It also enjoyed the same rights and benefits. The preamble to Protocol I provides that the provisions of the Geneva Conventions and Protocol I:

must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction, based on the nature or origin of the armed conflict or on causes espoused by or attributed to the Parties to the conflict.

59. As discussed above, while the ANC had bound itself unilaterally by way of the declaration to the provisions of Protocol I, the apartheid government did not consider itself so bound. It treated members of the liberation movements as criminals rather than as prisoners of war. The ANC regularly sought to challenge the jurisdiction of the courts on the basis that they were entitled to prisoner-of-war status and invoked the protection of these treaties in an attempt to commute the death sentences of numerous political prisoners. In this they were unsuccessful. Professor John Dugard commented in a book that he wrote on the status of an ANC prisoner of war:[15]

The issue that most starkly illustrates the conflict between perceptions of international law in South Africa is the dispute over the status of captured ANC combatants. From the perspective of most Whites, ANC combatants cannot be accorded prisoner-of-war status as this would confer legitimacy on the ANC and condone the acts of its members. On the other hand, many Blacks view them as 'freedom fighters' engaged in a just struggle entitled to be treated as POW's and not ordinary criminals.

15 Article by John Dugard: *Denationalization of Black South Africans in pursuance of Apartheid*

Furthermore, the General Assembly has recognized the legitimacy of the struggle of the national liberation movements and demanded that the ANC combatants be treated as prisoners-of-war in accordance with the provisions of the Geneva Conventions of 1949 to include 'armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self determination'.

The doctrine of state responsibility

60. The doctrine of state responsibility has emerged through the development of customary international law. In summary, it states that the state is accountable for the commission of gross human rights violations as follows:
    a It is strictly responsible for the acts of its organs or agents or persons acting under its control.
    b It is responsible for its own failure to prevent or adequately respond to the commission of gross human rights violations.

61. It is important to note that South Africa did not until recently become a state party to the principal international human rights instruments. In 1998, the newly democratically elected government ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide convention) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

62. This does not mean that South Africa was not bound by these principles of customary international law at the relevant times. They are regarded as expressions of customary international law on state responsibility for human rights violations and have emerged from the broad rubric of human rights law, which includes the Conventions referred to above, the Universal Declaration of Human Rights, regional human rights instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention for Human Rights, the African Charter on Human and People's Rights, and the judgments of the various human rights bodies such as the decisions of the European Court of Human Rights, the Inter-American Court and Commission of Human Rights and the Human Rights Committee.

63. The decisions of the tribunals for the former Yugoslavia and Rwanda have also had an impact on how the law has developed.

64. The basic principles that have emerged from international customary law can be summarised as follows:

Interpretation of these principles by international human rights bodies, which have application to the question of state accountability

65. In the Velasquez-Rodrigues case[16], the Inter-American Commission on Human rights held that states are strictly responsible for the conduct of their organs or agents who violate human rights norms, whether or not such actors have overstepped the limits of their authority.

66. Thus a state will be held responsible for the actions of an official where excessive force is used that is contrary to law and policy. In South Africa, the practice of the former state was to indemnify the security forces in those incidents where they had used excessive force.

67. It is important to note that, in terms of international law, the state will be held accountable for the act of an agent. The motive or intent of the agent is considered to be irrelevant to the analysis of the crime. In addition, if an agent of the state uses his or her official status to facilitate or cover up a murder s/he commits for personal reasons, the state may still be held responsible for such a gross violation.

68. Another important principle that has evolved from the Velasquez-Rodrigues case is the fact that a state is held responsible for violations perpetrated by any of the organs or structures under its control. In these instances, state responsibility may be invoked independently of any individual responsibility for the crime. All that is required is for the claimant to establish that an agent of the state committed the violation. The fact that the identity of the individual agent who perpetrated the violation is not established does not matter.

69. A difficulty that has been identified in matters of this nature is that the state is the repository of information and is also the party most interested in suppressing the truth. Circumstantial evidence is often all that exists. International human rights law is cognizant of this and thus places the burden on the state to justify it's actions in the face of credible allegations of abuses by state agents.

16 The Inter-American Court of Human Rights, 29 July 1988 (Series C, No. 4)

70. In the case of Kurt v Turkey[17], the European Court of Human Rights held that, once the applicant had shown that the victim was in the custody of the security forces, the responsibility to account for the victim's subsequent fate shifted to the authorities.

71. In the case of Ireland v UK, the European Court of Human Rights applied a strict liability test when dealing with the government of the United Kingdom. In this case, the European Court considered allegations by the Irish[18] that the United Kingdom authorities operating in Northern Ireland were engaged in practices that violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, the Irish alleged that these practices included extrajudicial arrest and internment as well as the use of a coercive set of 'five techniques' in the process of interrogation in order to induce confessions.

72 The court found that that the actions of the UK authorities amounted to a practice 'incompatible with the convention', noting specifically 'the accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system'.

73. Having heard the evidence, the court commented as follows:

It is inconceivable that the higher authorities of a State should be unaware of the existence of such a practice. Furthermore, under the convention, those authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.

74. The development of the principle of strict liability in dealing with states rein forces that liability in international law. In other words, the state is under an obligation to organise its institutional apparatus so as to ensure that fundamental human rights are protected and, where they are violated, to 'investigate and punish those responsible and to provide reparation to the victim'.

17 74 Reports of Judg. Dec. 1152, 1998 111.

18 N Ireland v United Kingdom (1978) 25 European Court of Human Rights (Series A).

The accountability of states in respect of omissions or tolerance of violations

75. International human rights law has evolved to the point where states can be held responsible because they have failed to prevent a violation or to respond to violations as required by international law.

76. The court in the Velasquez-Rodrigues case describes such failure as 'the lack of due diligence to prevent the violation or to respond to it'.

77. This principle expands the accountability of the state to cover the official tolerance of actions, even where proof of the victim's fate is unavailable. The facts of the Velasquez-Rodrigues case revealed evidence of a pattern of forced disappearances. The evidence included the fact that 'it was public and notorious knowledge in Honduras that the kidnappings were carried out by military personnel or the police, or persons acting under their orders …' The Court also heard evidence that the disappearances followed a similar pattern and were carried out in a systematic manner. These facts, taken together with the fact that officials failed repeatedly to prevent or investigate the crimes, were sufficient to hold the state responsible once the case at hand was shown to fit the pattern.

78. The Inter-American Court of Human Rights noted as follows:

If it can be shown that there was an official practice of disappearances in Honduras carried out by the government or at least tolerated by it, and if the disappearance can be linked to that practice, the allegations will have been proven to the court's satisfaction.

79. The court went further and held:

that where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible.

80. Thus the concept of state responsibly or liability for a failure to act or prevent or punish violations is not limited to cases where the perpetrators are state agents and problems exist with regard to a lack of evidence. The state may be held accountable even where private persons or groups act to deprive individuals of their fundamental rights, if it fails to act to investigate and punish such actions.

81. The key factor in testing responsibility is whether a human rights violation has been committed with the support or tolerance of the public authority or if the state has allowed the violation to go unpunished.[19]

82. The European Court of Human Rights has also held that private citizens may hold the state responsible for tolerating human rights abuses that have been carried out. Thus for example, a state whose legal framework leaves individuals vulnerable to violations of their fundamental rights without adequate recourse, or fails to enact laws restraining the excessive use of force by the authorities, or neglects to punish such abuses, may be held accountable at the international level for failing to guarantee rights recognised under international law. (...p607)

19 See Godinez-Cruz, Inter-American Court of Human Rights, 20 Jan 1989 (Series C No. 5); Gangaram Panday, Inter-American Court of Human Rights, 21 Jan 1994 (Series C No. 16).

APPENDIX 1

Applicability of the Geneva Conventions to South Africa

The provisions of the Geneva Conventions that apply to the situation in South Africa are set out below:

1. Common Article 2 to the Geneva Conventions

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them.

The Convention shall apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

2. Common Article 3 to the Geneva Conventions

In the case of armed conflict not of an international character occurring in the territory of one or more of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall, in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To the end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder, of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and the sick shall be collected and cared for.

Any impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict shall further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

3. Fifth paragraph of Protocol I

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict.

Article 1(2) of Protocol I

In cases not covered by this Protocol or by any other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

Article 1(3) of Protocol I

This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

Article 1(4) of Protocol I

The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 96(3) of Protocol I

The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:

(a) The Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;

(b) The said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and

(c) The Conventions and this Protocol are equally binding upon all Parties to the conflict.

Article 1(1) of Protocol II

This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. (...p610)

APPENDIX 2

These Conventions and Protocols must be read together with the 1980 'Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively Injurious or to have Indiscriminate Effects' and the concomitant 'Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and Other Devices' (Protocol II).

Article 3 of Protocol II reads as follows:

General restrictions on the use of mines, booby traps and other devices

This Article applies to:

(a) Mines;

(b) Booby-traps; and

(c) Other devices.

1. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians.

2. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:

   (a) Which is not on, or directed at, a military objective; or

   (b) Which employs a method or means of delivery which cannot be directed at a specific military objective; or

   (c) Which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

3. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those pre cautions, which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

At Article 2, paragraphs 4 and 5, 'Other devices', 'Military Objective' and 'Civilian objects' are defined in the following terms:

'Other devices' means manually emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.

'Military objective' means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

'Civilian objects' are all objects which are not military objectives as defined in paragraph 4.

Frederic de Mulinen, in his handbook published by the ICRC[20] makes the following statement:

43. Sparing of Civilian Persons and Objects:
    Constant care shall be taken to spare the civilian population, civilian persons and civilian objects.
44. Information needed:
    The Commander shall keep himself informed on concentrations of civilian persons, important civilian objects and specially protected establishments.
50. Conduct of Attack
51. Choice of Objectives;
    Within tactically equivalent alternatives, the directions, objectives and targets of attack shall be chosen so as to cause the least civilian damage.
52. Verification:
    The Military character of the objective or target shall be verified by reconnaissance and target identification
53. Weapons
    To restrict civilian casualties and damages, the means of combatant weapons shall be adapted to the target

Thus an operative or soldier who operates outside of the scope of the Conventions is punishable in accordance with ordinary law and loses the protection of the status of a combatant.

20 De Mulinen, Frederic. Handbook on the Law of War for Armed Forces. Geneva:ICRC, 1987, Part 5: Conduct of Operations.

‘Grave Breaches’ specified in Protocol I (Articles 11 and 85)

The following acts:

- Seriously endangering, by any wilful and unjustified act or omission, physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of an armed conflict, in particular physical mutilations, medical or scientific experiments, removal of tissue or organs for transplantation which is not indicated by the state of health of the person concerned or not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and in no way deprived of liberty.

The following acts, when committed wilfully and if they cause death or serious injury to body and health:

- Making the civilian populations or individual civilians the object of attack;
- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects.
- Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- Making non-defended localities and demilitarised zones the object of attack;
- Making a person the object of an attack in the knowledge that he is *hors de combat*;
- The perfidious use of the distinctive emblem of the red cross and red crescent or other protective signs.

The following acts, when committed wilfully and in violation of the Conventions and the Protocol:

- The transfer by the occupying power of parts of its own population into the territory it occupies, or the deportation or transfer of all parts of the population of the occupied territory within or outside this territory;
- Unjustifiable delay in the reparation of prisoners of war or civilians;
- Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

- Attacking clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given, causing as a result extensive destruction thereof when such objects are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort;
- Depriving a person protected by the Conventions or by Protocol I of the rights of fair and regular trial.

'Grave breaches' specified in the four 1949 Geneva Conventions (Articles 50, 51, 130, 147 respectively)

- Wilful killing;
- Torture or inhuman treatment;
- Biological experiments;
- Wilfully causing great suffering;
- Causing serious injury to body or health;
- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

'Grave breaches' specified in the third and fourth 1949 Geneva Conventions (Articles 130 and 147 respectively)

- Compelling a prisoner of war or a protected civilian to serve in the armed forces of the hostile Power;
- Wilfully depriving a prisoner of war or a protected person of the rights of fair and regular trial prescribed in the Conventions.

'Grave breaches' specified in the fourth 1949 Geneva Conventions (Articles 147)

- Unlawful deportation or transfer;
- Unlawful confinement of a protected person;
- Taking of hostages.

(...p614)

Volume **SIX** • Section **FIVE** • Chapter **TWO**

Findings and Recommendations

HOLDING THE STATE ACCOUNTABLE

Holding the State Accountable

1. In its five-volume Final Report, the Truth and Reconciliation Commission (the Commission) was guided by Section 4 of its enabling Act[21] in evaluating the role played by those who were involved in the conflicts of the past. The relevant sections read as follows:

   The functions of the Commission shall be to achieve its objectives, and to that end it shall –

   (a) Facilitate and where necessary initiate or co-ordinate, enquiries into….

      (iii) The identity of all persons, authorities, institutions and organizations involved in gross violations of human rights;

      (iv) The question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs or of any political organization, liberation movement or other -group or individual; and

      (v) Accountability, political or otherwise, for any such violations.

2. Describing how findings were made, the Commission stated:

   … the Commission is of the view that gross violations of human rights were perpetrated in the conflicts of the mandate era. These include:

   The state and its security, intelligence and law-enforcement agencies, the SAP, the SADF and the NIS …[22]

3. The Commission wishes to restate its position in its Final Report that, whilst it has made adverse findings on the basis of the evidence it received, it remains a commission of inquiry and, as such, is not bound by the same rules of evidence as a court of law. The Commission based its findings on a balance of probabilities and its conclusions should not be interpreted as judicial findings of guilt but rather as findings of responsibility within the context of its enabling Act.

4. In making these findings, the Commission was guided in its deliberations by international humanitarian law and the Geneva Conventions. The Commission

21 The Promotion of National Unity and Reconciliation Act No. 34 of 1995.

22 Volume Five, Chapter Six, p. 209.

also endorsed the internationally accepted position that apartheid was a crime against humanity.

5. Whilst the Commission was obliged by its enabling act to evaluate the conduct of all those responsible for committing gross human rights violations, the Commission did not hold that all parties were equally responsible for the violations committed in the mandate period. Indeed, the evidence before the Commission has revealed that the former state was the major violator.

6. The Commission wishes to restate that a legally constituted and elected government is expected to act lawfully and in accordance with accepted international principles of humanitarian law. A state must be held to a higher standard of moral and political conduct than any other role player in a violent conflict. After all, a state has at its command powers, resources, privileges, obligations and responsibilities that liberation movements and other role players do not.

7. The Commission's primary finding in its previous report was that:[23]

The predominant portion of gross violations of human rights was committed by the Former State through its security and law-enforcement agencies.

Moreover, the South African State in the period from the late 1970's to early 1990's became involved in activities of a criminal nature when, amongst other things, it knowingly planned, undertook, condoned and covered up the commission of unlawful acts, including the extra-judicial killings of political opponents and others, inside and outside South Africa.

In pursuit of these unlawful activities, the State acted in collusion with certain other political groupings, most notably the Inkatha Freedom party (IFP).

8. The Commission made its findings at a time when the amnesty process had not yet been completed. The amnesty process is now complete and the Amnesty Committee has completed its report.[24] This chapter will show that amnesty decisions have tended to support the original findings of the Commission. In dealing with the findings and an analysis of the amnesty process, it is necessary to review how international humanitarian law has evolved to deal with conflicts and gross human rights violations.

23 Volume Five, Chapter Six, p. 212.
24 See Section One of this volume.

THE APPLICATION OF INTERNATIONAL LAW TO THE SOUTH AFRICAN SITUATION

Introduction

9. The Commission made findings against the South African government and its security forces based on the information it received. These included statements from victims, submissions by organs of civil society, political parties, international human rights groups, local non-governmental organisations (NGOs) and community-based organisations (CBOs), confessions made by amnesty applicants and many other interested parties.

10. It was, however, the statements made by individual victims and perpetrators to the Commission that presented the most compelling picture of the reign of terror conducted by the organs and agencies of the former state. Overwhelmingly, these statements revealed a picture of the gross human rights violations that were perpetrated by the state. These included the widespread use of torture, the use of excessive and indiscriminate force in public order policing, the abduction and disappearance of activists and the extrajudicial killing of political opponents and activists.

11. The Commission was able to investigate a number of cases thoroughly and also used its section 29 powers to hold subpoena hearings which effectively compelled many perpetrators to apply for amnesty.

12. In order to ensure the integrity of the information that it received, the Commission applied a policy of low-level corroboration to each case before declaring a person to have been a victim. Many have criticised this policy. However the Commission did not have the capacity to conduct a full-scale investigation into each case. Therefore, it selected cases and conducted strategic investigations. The Commission acknowledges the fact that more thorough investigations may have yielded more information about particular individuals and incidents. However, it is the Commission's view that it is unlikely that this would have impacted on its view of the role that the former state played in the commission of gross human rights violations, nor on its view that the former state acted in a criminal manner.

13. It is indeed the Commission's opinion that more information would simply have strengthened the patterns that had already emerged.

14. The Commission recorded the fact that patterns of abuse manifested themselves throughout South Africa in much the same way. These were not isolated incidents or the work of mavericks or 'bad apples'; they were the product of a carefully orchestrated policy, designed to subjugate and kill the opponents of the state. In any event, the Commission's findings are supported by the submissions made by many victims to various human rights organisations during the apartheid period.

15. The Commission has also been criticised for making findings without having completed the amnesty process. It should be noted, however, that the Commission did take cognisance of the information contained in many applications. Further, the Commission did not make findings in respect of specific incidents where applications had not been heard or where the Amnesty Committee had not yet made a decision.

FINDINGS OF THE COMMISSION IN RESPECT OF THE FORMER STATE AND ITS ORGANS

Categories of gross human rights violations defined in the Act

State responsibility for torture

16. The Commission found in its five-volume Final Report that torture was systematic and widespread in the ranks of the South African Police (SAP) and that it was the norm for the Security Branch of the SAP during the Commission's mandate period.

17. The Commission also found that the South African government condoned the practice of torture. The Commission held that the Minister of Police and Law and Order, the Commissioners of Police and Commanding Officers of the Security Branch at national, divisional and local levels were directly accountable for the use of torture against detainees and that Cabinet was indirectly responsible.

18. The Human rights instruments that are pertinent to the question of torture include:
    a. The International Covenant on Civil and Political Rights;
    b. The Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, and
    c. The International Convention on the Elimination of All Forms of Racial Discrimination.

19. These Conventions require that no one shall be arbitrarily deprived of life and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

20. The Convention Against Torture requires that each State Party 'take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'. The Convention allows no exception to this, and for that reason it is important to note the following:

No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency may be invoked as a justification for torture.

21. The Commission made its findings on torture based on evidence received from victims through the human rights violations process, perpetrators in amnesty applications and evidence given before the Commission by senior politicians and security force officials of the former government. In addition, local and international human rights groups made a number of submissions to the Commission, based on the studies they had carried out during the apartheid period.

22. The Commission received over 22 000 statements from victims alleging that they had been tortured. In most instances, the torture had been at the instance of members of the security forces.

23. The Commission received a number of applications from amnesty applicants applying for more than ninety-eight incidents of torture and severe assaults.

24. It is important to note that, although the Commission received over 22 000 statements from victims and only very few amnesty applications for torture, many human rights groups estimated that more that 73 000 detentions took place in the country between 1960 and 1990. It was established practice for torture to accompany a detention. Detention, arrest and incarceration without formal charges were commonplace in South Africa at that time. Whilst a plethora of laws existed to silence political dissent, the notorious section 29 of the Internal Security Act 74 was used to detain people indefinitely, without access to a lawyer, family member, priest or physician. Section 29 also permitted the state to hold a detainee in solitary confinement.

25. It is accepted now that detention without trial allowed for the abuse of those held in custody, that torture and maltreatment were widespread and that, whilst officials of the former state were aware of what was happening, they did nothing about it.

26. The torture techniques that have been identified through these cases are the following: assault; various forms of suffocation, including the 'wet bag' or 'tubing' method; enforced posture; electric shocks; sexual torture; forms of psychological torture, and solitary confinement.

27. A submission made to the Commission based on a study released by doctors between September 1987 and March 1990[25] found that 94 per cent of detainees in the study claimed either physical or mental abuse. The study found that the beating of detainees was widespread and that half of those alleging physical abuse still showed evidence of the abuse on physical examination. On assessment of their psychological status, 48 per cent of the former detainees were found to be psychologically dysfunctional.

28. Deaths in detention were also commonplace and were the result of the treatment meted out to persons in custody.

29. The Commission found that a considerable number of deaths in detention were a direct or indirect consequence of torture, including those cases where detainees had taken their own lives. The Commission declared those deaths to be induced.

30. In its Final Report, the Commission found that 'little effective action was taken by the state to prohibit or even limit [the use of torture] and that, to the contrary, legislation was enacted with the specific intent of preventing intervention by the Judiciary'.[26] The Commission found that the South African government condoned the use of torture as official practice.[27]

25 Affiliated to NAMDA practicing at a clinic near the centre of Durban.

26 Volume Two, Chapter Three, p. 220.

27 Ibid.

31. Whilst the Commission received thousands of statements alleging torture, few amnesty applications were received specifically for torture. Those received were from applicants Andries Johannes van Heerden [AM3763/96]; Willem Johannes Momberg [AM4159/96]; Stephanus Adriaan Oosthuizen [AM3760/96]; PJ Cornelius Loots [AM5462/97]; Jacques Hechter [AM2776/96]; Christo Nel [AM6609/97]; Lieutenant Colonel Antonie Heystek [AM4145/97]; Colonel Anton Pretorius [AM4389/96]; Helm 'Timol' Coetzee [AM4032/96]; Johannes Jacobus Strijdom [AM5464/97]; Paul van Vuuren [AM6528/97]; Roelof Venter [AM2774/96]; Eric Goosen [AM4158/96]; Marius Greyling [AM8027/97]; Karl Durr [AM8029/97]; Frans Bothma [AM8030/97]; Andy Taylor [AM4077/96]; WCC Smith [AM5469/97]; Jeffrey Benzien [AM5314/97], and Gert Cornelius Hugo [AM3833/96].[28]

32. It is clear that it was the norm for agents of the state to carry out various torture practices on those who were in their custody or incarcerated. In dealing with questions of accountability, one needs to establish whether the state was aware of the torture taking place and whether it took any action to prevent it happening. In other words, did the state take any action against its agents for the commission of torture and, once it knew that torture was widespread, did it do anything to prevent its repetition?

33. The former government conceded that torture occurred, but claimed that it represented the actions of a few renegade policemen. Former President FW de Klerk stated in his submission to the Commission that:

The National Party is prepared to accept responsibility for the policies that it adopted and for the actions taken by its office bearers in the implementation of those policies. It is however not prepared to accept responsibility for the criminal actions of a handful of operatives of the security forces of which the Party was not aware and which it never would have condoned.[29]

34. Contrary to Mr de Klerk's claim of ignorance of the practice, Mr Leon Wessels, the National Party's former deputy Minister of Police, conceded that it was not possible to deny knowledge of torture. Mr Wessels testified at a special hearing on the role of the State Security Council that:

it was foreseen that under those circumstances people would be detained, people would be tortured, everybody in the country knew that people were tortured.[30]

28 For details see Volume Two, Chapter Three, pp. 214–18. See also section on Torture and Death in Custody, pp 187–214.

29 Second submission by the National Party, 14 May 1997, p. 10.

30 Johannesburg hearing, 14 October 1997.

35. The principles that have been enunciated earlier in this chapter can be summarised as follows:
    a The state is held strictly responsible for the conduct of its agents who commit gross violations of human rights.
    b State responsibility may be invoked even where the identity of the agent is unknown.
    c The state has the evidentiary burden to explain its action in the face of credible allegations of abuse by state agents.
    d States are also held responsible for 'lack of due diligence to prevent the violation or to respond to it' (official tolerance).

36. A key factor here is proving that the human rights violation took place with the support or tolerance of public authority or that the state allowed the violation to go unpunished.

37. The Commission noted in its Final Report that victim statements and amnesty applicants implicated a number of senior officers for having had knowledge of or having covered up incidents of torture. In the case of Mr Stanza Bopape, the then Commissioner of Police covered up the actions of the officers responsible for Bopape's death. Condonation of torture by superior officers was further evidenced by the fact that most well-known torturers were promoted to higher positions.

38. The Commission also noted that no prosecutions resulted from allegations of torture, even though the use of torture emerged in most political trials. The cases of Ahmed Timol, Neil Aggett and Lindy Mogale are pertinent.

39. Magistrates and judges seldom protected detainees or ruled in their favour, even though a pattern of abuse was familiar.

40. In a number of cases, the families of victims or detainees themselves laid charges against the state, resulting in out-of-court settlements.

41. More distressing is the fact that many judges and magistrates continued to accept the testimony of detainees, despite the fact that most of them knew that the testimony had been obtained under interrogation and torture whilst in detention. In this way, the judiciary and the magistracy indirectly sanctioned this practice and, together with the leadership of the former apartheid state, must be held accountable for its actions.

42. A number of human rights bodies made representations to the state about the treatment of detainees and persons in custody. In April 1982, the Detainees Parents Support Committee met with the Minister of Law and Order and the Minister of Justice to submit a dossier that included seventy-six statements alleging torture. The dossier named ninety-five individuals as perpetrators and covered the period 1978 to 1982. The ninety-five individuals were all members of the Security Branch and came from eighteen different branch offices. Of the eighteen offices detailed, John Vorster Square, Protea police station and the office in Sanlam building in Port Elizabeth headed the list. A report was subsequently made to parliament, which was informed that forty-three of these cases had been investigated and that eleven of the claims were unfounded. Presumably the remaining thirty-one were found to be of substance, yet no action was taken.

43. In May 1983, the Ad Hoc Committee of the Medical Association of South Africa (MASA) published a report as a supplement to the South African Medical Journal in which it stated that:[31]

there are insufficient safeguards in the existing legislation to ensure that that maltreatment of detainees does not occur. Persuasive evidence has been put before the Committee that where harsh methods are employed in the detention and interrogation of detainees, this may have extremely serious and possibly permanent effects on the physical and mental health of the detainee...

44. The only response from government was a set of directives issued by the Minister of Law and Order in December 1982 as safeguards for those detained under Section 29 of the Terrorist Act. Paragraph 15 stated that:

A detainee shall at all time be treated in a humane manner with proper regard to the rules of decency and shall not in any way be assaulted or other wise ill-treated or subjected to any form of torture or inhuman or degrading treatment.

45. The state did not bother to ensure that the directives were explained and no system was put in place to monitor whether detainees were being treated properly or that their human rights were being safeguarded.

46. The case of Mr Stanza Bopape implicates a number of superior officers in the cover-up and tolerance of torture.

31 This followed the study done by NAMDA referred to earlier.

47. Given the statements of victims, their families, the testimony of amnesty applicants such as Messrs Charles Zeelie, Jeffrey Benzien, Andy Taylor and Paul van Vuuren, and Generals Loggerenberg, Van der Merwe and others on the practice of torture and the condonation and cover up by superior officers when cases went horribly wrong, there can be no doubt that torture was widespread, well known and tolerated.

48. Although aware of the opprobrium being directed at them for this practice, the state continued to do nothing to end it. The state also did nothing about the violators or the agency that harboured them, the Security Branch. No mechanisms were put in place to monitor whether torture was still happening, nor to prevent it from happening. Neither the superior officers nor the officers carrying out the torture were sanctioned in any way. The attitude of the former state can only be described as one that 'tolerated and officially condoned' the practice of torture and the actions of their agents.

49. The Commission therefore confirms the findings it previously made, based on the further evidence it has received that the former state and its agents were responsible for the torture of those they regarded as opponents; and that the state perpetuated a state of impunity by tolerating and sanctioning the practice of torture, the legacy of which still exists today.

Abductions

50. The Commission received fifty-seven amnesty applications for eighty incidents of abduction. The fifty-seven applications included the abduction of thirty-five Umkhonto we Sizwe (MK) operatives, eighteen of whom were abducted inside the country and seventeen outside South Africa.

51. Of the fifty-seven abductions, more than twenty-seven resulted in the death of the victim. This raises the possibility that targeted assassinations may have been the perpetrators' intention from the outset.

52. The Commission also received more than 1500 statements dealing with disappearances, including enforced disappearances.

53. The Commission stated in its Final Report that the former state's primary purpose in carrying out abductions was to obtain information. Abductees were often killed in a bid to protect the information that had been received.

54. The victims of these abductions either belonged to MK or supported the movement internally. Amnesty applicants testified that they found it preferable to abduct rather than detain officially. Once the information was obtained, the abducted person would be killed. In many other instances, applicants testified that they attempted to 'turn' or 'recruit' individuals into working for the state. The Commission also learnt that, where the attempt to turn the abductee failed, killing the individual became necessary – although many amnesty applicants denied this. However, in terms of international law, families merely have to prove that the abductee was last seen alive in the hands of an agent of the state for the obligation or onus to explain the deceased's whereabouts to fall on the state.

55. The Commission also stated in its Final Report that this *modus operandi* allowed for greater freedom to torture without fear of consequences. The testimony of many *askaris* at amnesty hearings was at odds with that of white members in their particular units. In their testimony, *askaris* highlighted the brutality of the torture and abuse that many abductees were subjected to. The cases of Nokuthula Simelane[32] and Moses Morodu[33] offer examples of this.

56. It is also possible that operatives lost all sense of reality when dealing with abductees and became totally enmeshed in the brutality of the moment. Had the abductee been released or the body found, the heinous behaviour of the abductors and torturers would have been revealed. This was possibly an even more powerful motive to conceal the truth.

57. In its findings on extrajudicial killings, the Commission noted that a particular pattern was established: that is, political opponents were abducted, interrogated and then killed. In evidence that emerged through the amnesty process, another pattern emerged: that of abduction followed by torture or undue pressure to inform and/or become an informer or *askaris*. Those who did not succumb in this way were killed. Information was then leaked to MK that those who had been captured had been turned and had become *askaris*. The most devastating effect of this practice was that those who were abducted did not come home and that families had to live with the political stigma that their loved ones were perceived to be traitors.

32 Amnesty hearings, Pretoria, 28–30 June 1999 and 29–30 May 2000; AC/2001/185.
33 Amnesty hearing, 26 October 1999; AC/2000/010.

58. These abductions must be distinguished from those incidents where the intention of the perpetrators at the outset was to assassinate political opponents. In such operations, the abduction itself was merely a means to capturing the person, and the interrogation and torture that followed were secondary to the intention to kill.

59. Thus the cases of Griffiths Mxenge, Topsy Madaka and Siphiwe Mthimkulu, the 'Pebco Three', the 'Cradock Four' and the Ribeiros should be classified as political assassinations rather than abductions. Here the intention of the perpetrators was to eliminate the individuals concerned and to silence them forever.

60. In the KwaNdebele group of cases, abduction was followed by interrogation, torture and beatings and the abductee was then returned. The intention of these abductions was to intimidate and silence opposition.

61. The principle of customary international law is to hold the state responsible in instances such as these on a strict liability basis. Thus, the former state must be held strictly responsible for the abductions, disappearances and deaths of the abductees. The state is held responsible even in those instances where the perpetrator may not have intended that the final consequence of the abduction would be the death of the abductee. The intention of the perpetrator is irrelevant; the fact of the matter is that death ensued.

62. In those instances where the purpose of the abduction was killing, the state incurs responsibility for both the killing and the abduction. In terms of the accepted principle, even where the perpetrator responsible for the abduction or the disappearance has not been identified, it simply needs to be established that forced disappearance was committed by a police agent. In such an instance, the state is held responsible for accounting for the disappearance.

63. International human rights law places the burden on the state to account for the actions of its agents. Thus it is not sufficient for the state to allege (as it did in the cases of Nokuthula Simelane[34] and the four MK members abducted from Lesotho (namely Nomasonto Mashiya, Joyce Keokanyetswe 'Betty' Boom, Tax Sejamane and Mbulelo Ngono)[35] that they recruited or turned these agents and that were returned to exile in order to infiltrate the movement.

34 Amnesty hearings, Pretoria, 28–30 June 1999 and 29–30 May 2000. See also AC/2001/185.

35 See amnesty hearings, Johannesburg, 10–13 October 2000 and Bloemfontein 13–15 November 2000.

64. In all of these cases, using the strict liability test, it is likely that the state would be held criminally liable for their disappearances. In the case of Kurt v Turkey, the European court of human rights held that, once the applicant was in the custody of the security forces, the responsibility to account for the victim's subsequent fate shifted to the authorities.

65. In terms of international law and a state's responsibility to guarantee human rights, a state can be held responsible for failing to prevent or respond to a violation. As early as the 1980s, the former state was aware of the fact that disappearances were taking place. Allegations were mounting against the security forces as being responsible.

66. The question is: what did the state do to investigate the allegations being made or what action did the state take against those alleged to be involved in such practices?

67. Although it has been shown that agents in the employ of the state were responsible for the abductions of many political activists, that a pattern had been established and that this had become part of an orchestrated grand plan, the leadership of the former state continued to deny its responsibility for these gross human rights violations. Indeed, in the light of the above, Mr de Klerk might want to reconsider his theory of 'bad apples and mavericks'[36]. There is no doubt that the apartheid state must be held responsible for the actions and deeds of its agents and that the state's failure to investigate or to take action created a climate of impunity and criminality in the security forces.

68. A key factor when deciding whether a state is responsible is whether the violation has taken place with the support or tolerance of the authority or the state has allowed the violation to go unpunished. In this instance, the state allowed the death squads to act with impunity and abduct, interrogate, torture and kill. Nothing was done to stop them, even when the disappearances became public.

69. Instead the state continued to claim innocence and chose rather to sully the reputations of those who had been abducted and killed. As a result, the minds and memories of family members and loved ones have been haunted by uncertainty, suspicion and mistrust as they continue to wonder whether the loved one was a spy and why the loved one has not returned home.

36 Evidence by Mr FW de Klerk on behalf of the National Party to the TRC, 14 May 1997.

70. The amnesty cases and the evidence of the victims before the Commission have been sufficient to establish a pattern and an assumption that these victims must have died at the hands of the forces that abducted them. In this regard, efforts must be made to restore their dignity and true reputations as patriots who paid the price and were killed in the violence of the past.

71. The law must also take its course in dealing with those who came forward with half-truths and lies. Efforts must be made to integrate and ease the lot of those who became *askaris*. In most instances, their testimony was at considerable variance with that of their white colleagues and superiors. We may never know what pressure was placed on them to 'turn'. What we do know is that, in those instances where they did not succumb or refused to do so, they were killed horribly. The cases of Simelane and Masiya are examples of this.

State responsibility for extrajudicial killings

72. The Commission noted in its Final Report that, as the levels of conflict intensified in the country, the security forces came to believe that it was far preferable to kill people extrajudicially than to rely on the legal process. Many amnesty applicants testified to this in their applications. Deaths in detention began in the 1960s and were attributed to suicides, accidents and natural causes. [37]

73. Thereafter came the clandestine killings and the death squads. A factor that may account for the rise in extrajudicial deaths and the setting up of death squads was the law that required an inquest in the case of an unnatural death. In order to have an inquest, a body must be produced and examined. While the dead cannot speak for themselves, a forensically examined body could and often did.

74. Inquests are the judicial arena in which the magistracy has shown blind and obdurate loyalty to the former state over the rule of law. In most inquest hearings, despite evidence to the contrary, the word of the police and particular members of the Security Branch was accepted almost unquestioningly, often leaving families and those who defended them astonished.

75. The value of the inquest proceedings was that, in many instances, families of victims were represented by lawyers, who did their utmost to uncover the truth and used the law to do it. This is where the reputation of the former government

37 See Volume Two, Chapter Three, pp. 205–15.

came unstuck. The apartheid government was obsessed with rule by law, and laws were created to cover almost every illegitimate act they could get away with. However, it was legal proceedings in inquest matters that stripped away the veneer of legitimacy and revealed the venality of the agents of the state. The adverse publicity that the government attracted abroad as a result of these deaths in detention forced the state to go underground and look for other mechanisms to deal with persons perceived to be political opponents.

76. Brigadier Jack Cronje [AM2773/96], one of the first officers to appear before the Amnesty Committee, testified that the Security Branch was given orders in 1986 to drop all restraint when dealing with the enemies of the state.

It didn't matter what was done or how we did it, as long as the floodtide of destabilization, unrest and violence was stopped.

77. This, in effect, gave the security forces *carte blanche* to maim and kill, allowing the former apartheid state to move even further into the criminal arena. This was particularly so in the case of its internal operations, where it had to operate at a covert and clandestine level so that no operation was traceable to the state. It was this that led directly to the setting up of various death squads in the country – such as the Civil Co-operation Bureau (CCB) and Vlakplaas – and the training of surrogate forces such as the hit squads in KwaZulu and Natal.

78. In its quest for legality, the former state tried to draw a veil of legitimacy over its operations in the neighbouring states. Even today the military argues that its operations were legitimate, authorised and thus legal. Raids were increasingly openly acknowledged. These raids remain questionable in international law.

79. The fact that our amnesties may not be valid across our borders has meant that there have been almost no applications for amnesty from members of the military.

80. A factor that the state also relied on was that assassinations could be blamed on the liberation movements and, where people disappeared, the police often claimed that those involved had gone into exile. The fact that there was nobody to draw attention to the actions of the state meant that there was no call for an inquiry or inquest, thus creating a further level of impunity for agents of the state. As time went on, the deeds became more daring and more grisly. This is, of course, the problem with license and impunity, where political actions become increasingly blurred and descend into total criminality. It accounts for

why people like Colonel Eugene de Kock and some amnesty applicants will remain in custody. Some of their actions were acts of sheer criminality.

81. The Commission relied on a preliminary analysis of amnesty applications. Three years later, now that the amnesty process is complete, it is clear that the information that emerged from the amnesty hearings confirms the patterns and classifications made in the Final Report.

82. The archive of the Commission has been considerably enriched by the detail that has emerged through the amnesty hearings.

83. Amnesty applications can be categorised as follows:
    a abductions followed by killing (discussed earlier);
    b assassinations of persons considered to have a high political profile both inside and outside the country;
    c assassinations of individual MK and Azanian People's Liberation Army (APLA) personnel both inside and outside the country, and
    d cross-border raids.

84. Again, if one examines the picture that emerges from the amnesty process, it is clear that authorisation for individual assassinations took place at different levels. Agents believed that they had a general mandate to kill political opponents whom they believed to be contributing towards the instability of the state. Evidence in the 'Pebco Three' hearing confirms that there had been an instruction from the Minister of Law and Order to 'destabilise the Eastern Cape'. The testimony in amnesty hearings supports the view that, as far as external operations were concerned, approval was usually sought from Security Branch headquarters.

85. TREWITS[38], which was set up in 1986, probably represented the state's attempt to collect and share intelligence between all structures, with the intention of operating in a more co-ordinated manner and planning joint operations. Given the fact that both National and Military Intelligence sat on this structure, the state cannot deny that intelligence was used to identify and then eliminate those regarded as political opponents.

86. It is the entrapment operations of the state that really engender a sense of revulsion and horror because they targeted not trained military cadres, but callow township youth who were perceived to be threats to the state because of their

38 See Volume Two, Chapter Three, pp. 275–98 for a discussion on the establishment of TREWITS and target development.

political beliefs. The operations involved mainly youth and school activists who were perceived to be potential MK recruits. The nature of the different operations reveals real evil in their planning and execution. The incident of the 'Nietverdiend Ten'[39] and the KwaNdebele youth[40] highlight the grisly machinations of state agents.

87. The supply of defective hand grenades to the Duduza youths by the Soweto security structure defies all rules of justice.[41] What kind of state targets its own youth in this way? How can a politician fail to ask questions after hearing about these incidents?

88. The decision to grant amnesty in this instance raised some serious questions for the Commission. Did we not take reconciliation too far? Surely the killing of youths cannot be justified as political, and raises questions about the proportionality factor.

89. The amnesty applicants have confirmed their own role in the extrajudicial killings of political opponents. In terms of their actions, they have breached the provisions of the Geneva Conventions and the principles enshrined in international humanitarian law. They have also contravened South Africa's own domestic law. In confirming that they acted as members of the security forces, their actions create a problem for the former state, which must shoulder the responsibility for their actions. There can be little doubt that, in setting up these covert death squads, the former state could have had no misunderstanding about the intention of these units, and indeed intended that those identified as political opponents would be identified, targeted for assassination and ultimately killed. When a state resorts to acting or causing its agents to act outside the boundaries of the law, it acts criminally and must be seen as a criminal state. In the Commission's opinion, the former state must be held responsible for the killings of political opponents in that it knowingly planned, authorised, sanctioned, condoned and covered up the commission of these unlawful acts. It acted extrajudicially and criminally, thus leading the Commission to conclude that it ultimately became a criminal state.

90. The findings of the Amnesty Committee support that view.

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39 Amnesty hearings, Johannesburg, 21–31 October 1996; Pretoria, 24 February–13 March 1997 & 6–8 April 1999; AC/1999/30, AC/1999/31, AC/1999/188, AC/1999/190, AC/1999/192, AC/1999/193, AC/1999/194, AC/1999/197; Final Report, Volume Two, Chapter Three, pp. 264–5.

40 Amnesty hearings, Johannesburg, 21–31 October 1996; Pretoria, 24 February–13 March 1997 & 13 April 1999; AC/1999/30; AC/1999/33, AC/1999/189, AC/1999/191;AC/1999/248; Final Report, Volume Two, Chapter Three, p. 264.

41 Volume Two, Chapter Three, pp. 259–398; Volume Three, Chapter Six, pp. 628–631; Amnesty hearings, Pretoria, 2–5 August 1999; AC/2000/58.

COMMAND RESPONSIBILITY

Introduction

91. In dealing with the question of Command responsibility, a key case that has come to embody the contradictions in modern International law is that of General Tomayuki Yamashita.[42] General Yamashita was tried by a United States Military Commission at the end of the Second World War for atrocities committed by Japanese forces in the Philippines – which included murder, rape and pillage. On the 6 February 1946, General Douglas MacArthur affirmed the death sentence imposed on General Yamashita.

92. Yamashita appealed to the United States Supreme Court, arguing that he had neither committed the crimes for which he had been found responsible nor ordered that they be committed. Writing the judgment for the Appeal Court, Chief Justice Harlan Fiske Stone rejected Yamashita's appeal and stated:

[T] his overlooks the fact that the gist of the charge is an unlawful breach of duty by an army commander to control the extensive and widespread atrocities specified …It is evident that the conduct of military operations by troops whose excesses are unrestrained by the order or efforts of their commander would almost certainly result in violations…Hence the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.

93. Justices Wiley B Rutledge and Frank Murphy dissented. Judge Murphy wrote:

Nowhere was it alleged that that [Yamashita] personally committed any of the atrocities, or that he ordered their commission, or that he had any knowledge of the commission thereof by members of his command.

94. These conflicting views raised in the Yamashita case represents the two main schools of thought on the question of command responsibility. On the one hand, General MacArthur, Chief Justice Stone and the military commission considered it to be a dereliction of duty for a Commander not to control the behaviour of his troops. The approach embodies a 'should have known or must have known' approach. Justice Murphy's dissent represents the other view, namely that prosecutors must prove that a commander knew about the commission of

42 Yamashita v. Styer, Commanding General, U.S. Army Forces, Western Pacific, US Supreme Court 327 U.S. 1 (1946).

widespread crimes by his troops before his failure to take action against such conduct makes him criminally liable.

95. Not surprisingly, the second is the approach that is followed today. Article 86 of Protocol I of 1977 (additional to the Geneva Convention of 1949 regarding the duty of the parties to an international armed conflict to act against grave breaches) provides that 'if they knew, or had information which should have enabled them to conclude in the circumstances at the time' such crimes were taking place, they are required to 'take all feasible measures within their power to prevent or repress their commission'.

96. One of the most important statements made in modern history is that made by the prosecution in its summation at Nuremberg in the High Command case:

Somewhere, there is unmitigated responsibility for these atrocities. It is to be borne by the troop? Is it to be borne primarily by the hundreds of subordinates who played a minor role in this pattern of crime? We think it is clear that it is not where the deepest responsibility lies. Men in the mass, particularly when organized and disciplined in armies, must be expected to yield to prestige and authority, the power of example…Mitigation should be reserved for those upon whom superior orders are pressed down, and who lack the means to influence general standard of behavior. It is not, we submit, available to the commander who participates in bringing the criminal pressures to bear, and whose responsibility it is to ensure the preservation of honorable military traditions.[43]

97. Yet the Nuremberg Military Tribunal refused to apply this 'almost strict liability' standard. Instead, it established that in order to hold a superior responsible for the criminal acts of his subordinates:

there must be a personal dereliction that can only occur where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part. In the latter case it must be a personal neglect amounting to wanton, immoral disregard of the action of his subordinates amounting to acquiescence.

98. In the United States v Leeb[44], the tribunal found that the commander must have had knowledge of an order or have acquiesced in its implementation.

43 Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945 to 1 October 1946 (Sessions 187 and 188, 26–27 July 1946).

44 Von Leeb (High Command Case), Trials of the Major War Criminals before the International Military Tribunal under Control Council Law, Nuremberg, No. 10 (1951).

99. The statute adopted by the Security Council for the operations of the tribunal for the former Yugoslavia follow the standard of Protocol I and the dissenting view of Justice Murphy in the Yamashita case.

100. In essence, this view provides that commanders are culpable only if they knew about crimes that were being committed by their forces and did not do what they could to stop them.

101. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the case of Celebici, concluded that Protocol I was customary international law.

102. The international tribunals set up for the former Yugoslavia and Rwanda have made rulings on the question of command responsibility. Their rulings are pertinent to understanding international customary law on this point, with particular reference to two categories of individual responsibility for commanders or other superiors. They examine their potential responsibility, which may arise because of their role either in planning, instigating or assisting perpetrators of the violations, and that which they incur for the actions of their subordinates. In both instances, the legal implication of the omissions on the part of state authorities is also canvassed.

Responsibility for complicity

103. In dealing with the atrocities of the past, the search for justice and accountability has meant that it is important to go beyond those who commit the crimes – the trigger-pullers – and to identify those who are complicit in the violations because they planned and conceptualised them.

104. In international law this concept has been formulated in various legal instruments. At Nuremberg, Council Control Law No. 10 singled out accessories, consenting participants, those connected with plans to commit crimes, and members of organisations associated with the crime. Likewise, Article 111 of the Genocide Convention criminalised conspiracy, incitement and complicity in the commission of genocide. The International Law Commission included complicity in its elaboration of the Nuremberg principles. Article 7 (1) of the ICTY statute provides that:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

105. In a further legal development, the Rome Statute of the International Criminal Court criminalises a range of associated acts, such as ordering, soliciting, inducing, aiding, abetting or assisting in the commission of the crime in a detailed scheme that conditions guilt on specific acts or mental state.

106. The tribunals have interpreted each of the elements of Article 7(1). In terms of the Blaskic case[45], an 'order' does not need to be in writing or in any particular form. It can be explicit or implicit and can be proved through leading evidence of a circumstantial nature. Nor does it require that the superior give the order directly to the perpetrator. In the Akayesu[46] case, the court held that it was the *mens rea* of the superior that was important, not the *animus* of the perpetrator – that is, the subordinate who executes the order. If one applies this principle to the occasion when Minister le Grange instructed General Petrus Johannes Coetzee to assemble a team to strike at the offices of the ANC in London in 1982, it becomes clear that he took part in the crime. Minister le Grange is deceased but, had be been alive, he would no doubt have needed to apply for amnesty for this act to escape potential prosecution. In this instance, General Coetzee applied for amnesty for his role in the London bombing.

107. General Mike Geldenhuys, the then Commissioner of Police, expressed his opposition to the fact that serving policemen were to be used. He appears thereafter to have played no role beyond remaining silent. Minister le Grange instructed General Coetzee that, notwithstanding his objections: 'the government had decided to that the operation would need to go ahead'. Commissioner Geldenhuys could in all probability be held responsible for his omission in that he knew of the intention to commit a crime in another country and did nothing about it.

108. In the Tadic[47] case, the trial chamber of the ICTY elaborated on the meaning of 'accomplice' liability and concluded that the accomplice is guilty if 'his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident' and that he 'had knowledge of the underlying act'. This test was not challenged and has been adopted by other chambers of the ICTY. In the Akayesu case, the ICTR defined 'planning' to mean 'one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases'.

45 Appeals Chamber, ICTY, paras 281–2 citing The Prosecutor v Jean Paul Akayesu, Judgement of ICTR Trial Chamber, 2 September 98.

46 Appeals Chamber, ICTY, paras 281–2 citing The Prosecutor v Jean Paul Akayesu, Judgment of ICTR Trial Chamber, 2 September 98.

47 Prosecution v Dusko Tadic, Judgment of the Trial Chamber II, 7 May 1997, ICTY.

109. 'Instigating' was defined as 'prompting another to commit an offense with a causal connection between the instigation and the perpetration of the crime'. The ICTY held that whilst 'a causal relationship between the instigation and the physical perpetration of the crime needs to be demonstrated (i.e. that the contribution of the accused has an effect on the commission of the crime), it is not necessary to prove that the crime would not have been perpetrated without the accused's involvement'.

110. If one applies these principles to our situation, Minister le Grange would have been held responsible for the 1985 incident known as Operation Zero Zero. In terms of testimony before the Amnesty Committee, Le Grange authorised a plan that provided for the issue of defective hand grenades to a number of young Congress of South African Students (COSAS) activists on the East Rand. The hand grenades were to be used in operations against the state. However, the timing devices had been tampered with, which resulted in seven youths being killed and eight severely injured. In addition, a young woman who was suspected of being an informer was 'necklaced'[48], making her one of the first necklace victims in the country. Whilst Minister le Grange might not have known that Ms Maake Skosana would be killed, there is a causal link between her death and the hand grenade incident.

111. In 1987, the then Minister of Law and Order Adriaan Vlok [AM4399/96] authorised the destruction of Cosatu House[49] in central Johannesburg on the night of 3 May 1987. A team from Vlakplaas, assisted by the Witswatersrand Security Branch and including its technical and explosives sections, undertook the operation. Although nobody was killed, there were approximately twenty people in the building at the time. The building itself was extensively damaged. Minister Vlok could technically have been charged for attempted murder.

112. In July 1988, Minister Vlok authorised the placing of dummy explosives in several cinemas around South Africa to provide a pretext for the seizure and banning of the film, *Cry Freedom*, which details the death of detainee Steve Biko at the hands of the Port Elizabeth Security Branch. This action followed a number of unsuccessful attempts to exert pressure on the Publications Control Board to ban the film. In giving reasons for his actions before the Commission, Minister Vlok expressed the view that he had tried the legal route and failed,

48 Burnt to death using petrol and a tyre placed around the victim.

49 Headquarters of the Congress of South African Trade Unions (COSATU).

and had therefore resorted to illegality as he had judged 'that this film would have been a risk as it was inciteful'.

113. In August 1988, Minister Vlok was allegedly ordered by then State President PW Botha to render Khotso House 'unusable', but to do so without loss of life. Khotso House was the headquarters of the South African Council of Churches, considered to be an opponent of the former state. Numerous anti-apartheid organisations, including the United Democratic Front, also had offices in the building. This case provides an interesting study as, in his evidence before the Amnesty Committee, Minister Vlok testified that, although he had not been given specific instructions to bomb Khotso House, he could not think of a legal way to carry out the State President's injunction. He also testified that, since President Botha had said that 'it should involve no loss of life', he was led to believe that that Mr Botha had been suggesting unlawful means. This operation, which was also conducted by Vlakplaas with assistance from the Witwatersrand security Branch and the explosives section at security Branch Headquarters, took place on the night of 31 August 1988. Given the legal principles enunciated above, there can be little doubt that Mr PW Botha remains liable for these operations.

114. All of these operations indicate that there was direct political authorisation for these unlawful activities, which involved loss of life and/or the potential for loss of life and damage to property.

115. The pattern that was followed by successive apartheid governments was to pass to laws to legitimise their conduct. When that failed, they did not hesitate to act outside of the law and resort to criminality.

116. In the Blaskic case[50], aiding and abetting was defined as providing practical assistance, encouragement or moral support with a substantial effect on the perpetration of the crime. In terms of the Blaskic decision, an omission may constitute aiding and abetting as long as the 'failure to act had a decisive effect on the commission of the crime'. The *mens rea* in such a case consists of 'knowledge that his acts assist the commission of the crime' and the accused must have 'intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct'. The Blaskic judgment notes that: 'it is sufficient that the aider and abettor knows that one of a number of crimes will be committed'.

50 Appeals Chamber, ICTY, paras 281–2 citing The Prosecutor v Jean Paul Akayesu, Judgement of ICTR Trial Chamber, 2 September 98.

117. In the Foca case[51], the trial chamber described 'aiding and abetting' as a contribution which may take the form of 'practical assistance, encouragement or moral support which has a substantial effect on the perpetration of the crime. In this instance, the assistance need not have a causal connection to the act of the principal and it may involve an act or omission and take place before, during or after the commission of the crime'. In order for an individual to be held responsible for aiding and abetting, s/he must know that the acts assist in the commission of a specific crime by the principal. While the individual is not required to share the principal's *mens rea*, 'he must know of the essential elements of the crime (including the perpetrator's *mens rea)* and take the conscious decisions to act in the knowledge that he thereby supports the commission of the crime.'

Command responsibility (omissions)

118. Under international law, an individual may be held responsible for omissions by the doctrine of superior or command responsibility. As set out earlier in this section, this doctrine is ancient in origin and emerged as an important principle particularly after World War II. It has also been a subject of considerable importance for international tribunals, which have recognised command responsibility as a principle firmly established in international law.

119. Article 7(3) of the ICTY statute reflects this rule:

The fact that any of the acts was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

120. The command responsibility principle is also present in Article 86(2) of the First Additional Protocol to the Geneva Conventions of 1949, which provides that:

The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

51 Appeals Chamber, ICTY, para 391 citing The Prosecutor v Furandzija supra paras 235 and 249.

121. Command responsibility requires three elements following proof of the crime itself:
    a a superior–subordinate relationship between the accused and the perpetrator of the crime;
    b that the accused knew or had reason to know that the crime was about to be or had been committed; and
    c that the accused failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator.

122. The same principle has been applied in dealing with civil responsibility under the Alien Tort Claims Act in the United States. In the case of Paul v April[52], a federal court held that Prosper Avril, a Haitian military dictator, was personally responsible for a systematic pattern of egregious abuses, since the perpetrators acted under his instructions and within the scope of the authority granted by him. The court heard evidence that he had known that the torture was being committed.

123. In the case of Forti v Suarez-Mason,[53] the court noted that:

    under International law, responsibility for torture, summary execution or disappearances extends beyond the person or persons who actually committed those acts – anyone with higher authority who authorized, tolerated or knowingly ignored those acts is liable for them.

124. Using this principle, all former heads of the apartheid state could be held responsible for the commission of gross human rights violations committed by their agents.

125. The meaning of each of the elements of command responsibility require some discussion.

Superior–subordinate relationship

126. Jurisprudence on this point envisions that the principle of superior responsibility encompasses heads of state, political leaders and other civilian superiors in positions of authority.

52 901 F. Supp. 339 (SD FLA 1994).
53 672 F. Supp. 1531, 1537-8 (N.D. CAL.1987).

127. In clarifying this issue, it is important to note the following:
    a The commander may be at any level.
    b The commander, even if in an *ad hoc* command position, is responsible for the acts of men operating under him.
    c Control may be direct or indirect.
    d Control may be *de facto* as well as *de jure*.

128. The Foca[54] case clarifies that a superior–subordinate relationship cannot be determined by reference to formal status alone. What must be established is whether the superior had the material ability to exercise his powers to prevent and punish the commission of the subordinates' offences.

129. It is clear that those superiors (either *de jure* or *de facto*, military or civilian) who are clearly part of a direct or indirect chain of command and who have the power to control or punish the acts of subordinates incur criminal responsibility.

130. The tribunals have not interpreted 'chain of command' literally but have held rather that as long as the fundamental requirement of an effective power to control the subordinate, in the sense of preventing or punishing criminal conduct is satisfied, the principle will hold.

Knowledge

131. Knowledge has been elaborated in international law to include: 'knew or had information which should have enabled them to conclude in the circumstances at the time'; 'knew or had reason to know'; 'either knew or, owing to the circumstances at the time should have known', and 'either knew, or consciously disregarded information which clearly indicated that subordinates have or are about to commit international crimes'. International law takes into account the law as elaborated after the World War II trials and the terms of Additional Protocol I to the Geneva Conventions, which was written in 1977.

132. The ICTY interpreted customary international law in the Celebic case to be that a superior cannot be held responsible unless:

    He effectively knows, through direct or circumstantial evidence at his disposal, that his subordinates have committed or are about to commit the crimes; or

    He has reason to believe that they have or are about to commit such crimes.

54 Appeals Chamber, ICTY.

133. The Celebic case draws a distinction between military commanders and civilian superiors, suggesting that a higher standard of proof will be required in the case of civilian superiors.

134. In the Blaskic case, the trial chamber restated the Celebic decision and then conducted its own review of the war crimes case from World War II. The trial chamber concluded that:

after World War II, a standard was established according to which a commander may be liable for crimes by his subordinates if he failed to exercise the means available to him to learn of the offence and, under the circumstances, he should have known and such failure to know constitutes criminal dereliction.

135. After turning to the Additional Protocol, the trial chamber in this judgment found that:

if a commander has exercised due diligence in the fulfilment of his duties lacks knowledge that crimes are about to be or have been committed, such lack of knowledge cannot be held against him. However, taking into account his particular position of command and the circumstances prevailing at the time, such ignorance cannot be a defense where the absence of knowledge is the result of negligence in the discharge of his duties: this commander had reason to know within the meaning of the Statute.

136. This standard does not mean that the superior must have information on subordinate offences in his actual possession in order for liability to attach. It is sufficient that the superior has some general information in his possession that, 'would put him on notice of possible unlawful acts by his subordinates'. The information may be written or oral and does not need to be in the form of reports submitted pursuant to a monitoring system; nor does it have to provide specific information about unlawful acts. In the Celebic case, the Appeals Chamber posits, for example, that if a military commander has received information that some of the soldiers under his command have a violent or unstable character or have been drinking prior to going out on a mission, this may be considered as meeting the knowledge requirement. In this regard, the fact that the state used individuals like Eugene de Kock, Ferdi Barnard and others like them may attach liability to those who appointed them to carry out these deeds. They should indeed have expected them to do so because of the identification of quirks in their character.

Reasonable and necessary measures

137. The question of whether a commander took appropriate steps to prevent atrocities is a factual issue and is dependent on the circumstances of each case. International law is clear that, whilst a superior cannot do the impossible, he can be held responsible for failing to take measures within his real capacity. The ICTY has also held that punishing a perpetrator after the event does not satisfy this obligation if the commander had reason to know beforehand that crimes might be committed. It is not necessary that there should be a causal link between the superior's omission and the violation.

138. The Kordic and Cerkez[55] cases deal with the twin obligations of preventing and punishing.

the duty to prevent should be understood as resting on a superior at any stage before the commission of a subordinate crime if he acquires knowledge that such a crime is being prepared or planned or when he has reasonable grounds to suspect subordinate crimes. The duty to punish naturally arises after a crime has been committed. Persons who assume command after the commission are under the same duty to punish. This dirty includes at least an obligation to investigate the crimes to establish the facts and to report them to the competent authorities, if the superior does not have the power to sanction himself. Civilian superiors would be under a similar obligation, depending upon the effective powers exercised and whether they include an ability to require the competent authorities to take action.

139. If one applies this test to some of the cross-border operations, a number of people could find themselves facing criminal action, given the fact that hardly anybody applied for amnesty for these operations.

140. General Coetzee testified as to his involvement in the Maseru raid and the raid on Gaborone. It is known that these raids were authorised by the former government, despite the fact that no minuted decision can be found in either the records of the State Security Council or Cabinet. Many high-ranking individuals, including Minister Vlok, have argued that, if such unlawful activity had been authorised , such authorisation would be reflected in minutes. The fact that these two raids were not reflected in minutes negates this argument.

141. It is clear that the Commission has no reason to change its findings. In addition, were the state to pursue a vigorous prosecution policy, many high-ranking politicians could find themselves sitting behind bars. (...p642)

55 Trial Chamber, ICTY.

Volume **SIX** • Section **FIVE** • Chapter **THREE**

Findings and Recommendations

HOLDING THE ANC ACCOUNTABLE

Holding the ANC Accountable

INTRODUCTION

1. In its five-volume Final Report, the Truth and Reconciliation Commission (the Commission) fully endorsed the international law position that apartheid was a crime against humanity. It also recognised that both the African National Congress (ANC) and the Pan Africanist Congress (PAC) were internationally recognised liberation movements that conducted a legitimate struggle against the former South African government and its policy of apartheid.

2. The Commission noted that the ANC made submissions to the Commission, including handing over a report on internal inquiries it had conducted in exile. It is important to restate that the ANC was, in all respects, more frank and co-operative with the Commission than either the state or the PAC.

FINDINGS

3. The Commission noted that, of the three main parties to the conflict, only the ANC committed itself to observing the tenets of the Geneva Protocols and, in the main, conducting the armed struggle in accordance with international humanitarian law. This report acknowledges the commitment of the ANC to upholding the Geneva Protocols as well as its comparative restraint in conducting the armed struggle – at least in terms of the manner in which it identified its targets and its leadership's decision to instruct its cadres to abandon the land-mine campaign when it became clear that it was resulting in the deaths and injuries of innocent civilians.

4. However, the Commission drew a distinction between the conduct of a 'just war' and the question of 'just means'. The Commission found that, whilst its struggle was just, the ANC had, in the course of the conflict, contravened the Geneva Protocols and was responsible for the commission of gross human rights violations. For this reason the Commission held that the ANC and its organs – the National Executive Council (NEC), the Secretariat and its armed wing Umkhonto we Sizwe (MK) – had, in the course of their political activities

and in the conduct of the armed struggle, committed gross human rights violations for which they are morally and politically accountable.

THE POSITION AFTER THE HANDING OVER OF THE FINAL REPORT

5. As mentioned above, the Commission wishes to place on record that it sought in its findings to draw a distinction between a 'just war' and 'just means'. It did not criminalise the struggle. It was, however, obliged in terms of its mandate set out in its founding Act[56] to determine the question of responsibility for the commission of gross human rights violations.

6. On the eve of handing over its Final Report, the ANC sought to interdict the Commission from doing so. The essence of the application was to challenge the Commission's interpretation of the *audi alterem partem* rule and to compel the Commission to meet with it to discuss the proposed findings. This court challenge is dealt with in Section One, Chapter Four of this volume. The High Court of the Western Cape found against the ANC, thereby allowing the Commission to hand its report over to President Mandela. There was, however, a great deal of acrimony between the Commission and the ANC about the findings made. Yet the fact is that the Commission said nothing that had not already been brought to the Commission by the ANC itself. It was indeed the ANC's disclosures and acknowledgment that gross human rights violations had been committed in the conduct of the struggle that assisted the Commission in coming to its conclusions.

7. In February 1999, at a sitting of both houses of parliament convened to discuss the Report, Deputy President Thabo Mbeki reiterated his complaint that the ANC had not been able to meet with the Commission to discuss its findings against the ANC. He made the following statement:

What we had sought to discuss with the TRC pertained to such obviously important matters as the definition of the concept of gross violations of human rights in the context of a war situation and other issues relating to war and peace and the humane conduct of warfare. One of the central matters at issue was, and remains, the erroneous determination of various actions of our liberation movement as gross violations of human rights, including the general implication that any and all military activity which results in the loss of civilian lives constitutes a gross violation of human rights. Indeed, it could also be said that the erroneous

56 The Promotion of National Unity and Reconciliation Act No. 34 of 1995, (the Act).

logic followed by the TRC, which was contrary even to the Geneva Conventions and Protocols governing the conduct of warfare, would result in the characterisation of all irregular wars of liberation as tantamount to a gross violation of human rights. We cannot accept such a conclusion[57].

8. The Commission is not required to respond to criticism of its findings by the ANC and other critics. However, at the time that the findings of responsibility were made, the work of the Amnesty Committee was not complete and there was some expectation that the Commission would re-examine these findings in the light of the amnesty decisions and the evidence received through this process. In doing so, it is necessary to deal with both international law and international humanitarian law.

INTERNATIONAL HUMANITARIAN LAW

9. The Geneva Conventions were adopted in 1949 and South Africa acceded to them in 1952. In 1977, additional Protocols I and II were adopted. In 1980, the ANC deposited a declaration with the President of the International Committee of the Red Cross (ICRC) committing the ANC to international humanitarian law.[58]

10. The principles of international humanitarian law that apply to the situation in South Africa are set out in Chapter One of this section. The chapter also deals with the ANC's declaration that it would govern the conduct of its struggle in accordance with international humanitarian law.

Moral equivalence

11. One of the criticisms the ANC levelled at the Commission was that of 'moral equivalence'. The ANC claimed that the Commission equated the actions of those who fought a just cause against apartheid with those who fought in defence of an unjust cause.

12. The Commission's position has always been[59] that it was obliged by statute to deal even-handedly with all victims. Its actions in this respect were guided, amongst other things, by the principle that victims should be treated equally, without discrimination of any kind. Despite this, however, the Commission did not suspend moral judgment and drew a distinction between the actions of the state and those of the liberation movements.

57 Hansard: Feb 5–March 26 1999.

58 See the Appendix to this chapter.

59 See Volume One.

13. When dealing with the question of even-handedness and moral equivalence (whether making its findings against the state, the liberation movements or other parties), the Commission relied on internationally accepted human rights principles. In order to arrive at a definition of a gross human rights violation, the Commission relied on the definition contained in the Act and, in making its assessment, took into account the political context and the circumstances within which the violation had taken place.

14. This did not, however, mean that the Commission treated the conflict as a conflict between equal parties. The Commission recognised that the might of the state, with all its power and legitimacy (however ill-conferred) was in a far stronger position than were the liberation movements.

15. The Commission also never characterised the war that the former state waged against its own people as either morally or legally justified.

16. The Commission also took care not to use apartheid definitions of legal conduct.

IUS IN BELLO AND *IUS AD BELLUM*

17. The ANC also criticised the Commission for failing to deal adequately with the fact that the apartheid state acted in breach of the Geneva Conventions and the Additional Protocols. According to this view, the actions that the state considered to be legitimate were war crimes. For this reason it is important to elucidate the distinction between a 'just war' and 'just means'.

18. In its five-volume Final Report, the Commission stated the following:

The application of some of the principles and criteria of just war theory have proved difficult and controversial, especially when dealing with unconventional wars, that is wars of national liberation, civil wars and guerrilla wars within states. The distinction between means and cause is a dimension of just war theory that cannot be ignored. Often this distinction is made in terms of justice in war (ius in bello) and justice of war (ius ad bellum).

19. In dealing with the doctrine of justice in war, the Commission stated:

There are limits to how much force may be used in a particular context and restrictions on who or what may be targeted. Two principles dominate this body of law:

The use of force must be reasonably tailored to a legitimate military end;

Certain individuals are entitled to specific protection, making a fundamental distinction between combatants and non-combatants. Thus even an enemy soldier who is armed and ready for combat may be harmed and even killed, but a civilian or a sick, wounded or captured soldiers may not be harmed.

20. The Report stated further:

The Commission's confirmation that the apartheid system was a crime against humanity does not mean that all acts carried out in order to destroy apartheid was necessarily legal, moral and acceptable. The Commission with the international consensus that those who were fighting for a just cause were under an obligation to employ just means in the conduct of this fight.

As far as justice in war is concerned, the framework within which the Commission made its findings was in accordance with international law and the views and findings of international organisations and judicial bodies. The strict prohibitions against torture and abduction and the grave breach of killing and injuring defenceless people, civilians and soldiers 'hors de combat' required the Commission to conclude that not all actions in war could be regarded as morally or legally legitimate, even where the cause was just.

21. Given the ANC's own commitment to upholding the Geneva Conventions and the various principles of international humanitarian law – as well as its own Declaration in 1980 – it is difficult to understand why it wishes to pursue this argument. The Commission, however, stands by this distinction. Hans-Peter Gasser, a former Senior Legal Adviser to the ICRC has stated:

The rules of international law apply to all armed conflicts, irrespective of their origin or cause. They have to be respected in all circumstances and with regard to all persons protected by them, without any discrimination. In modern humanitarian law, there is no place for discriminatory treatment of victims of warfare based on the concept of 'just war'.

22. Professor Kader Asmal, a member of the ANC National Executive and a leading expert in international law, explained the ANC's commitment to the Geneva Conventions as follows:

The applicability of the humanitarian rules of war to conflicts between an incumbent state and a national liberation movement fighting for self-determination is

clearly accepted. The Protocols to the 1977 Geneva Conventions are intended to apply to such a conflict and were subscribed to by the ANC in 1980. Although the Apartheid state did not ratify the relevant Protocol, that Protocol merely codified pre-existing contemporary law on the subject. Thus both belligerents in South Africa were under an obligation to treat the conflict as one governed by the law of war. Under Article 85, paragraph 5 of the Geneva Protocol,' grave breaches' of the Convention and Protocol constitute war crimes.[60]

23. The report of the Motsuenyane Commission on conditions in the ANC camps in Angola spelt out the ANC's obligations under international humanitarian law, as well as the applicability of Article 75 of Protocol I of 1977 and Common Article 3 of the Geneva Conventions on the conditions and treatment of MK prisoners in their custody. The Motsuenyane Commission also referred to the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights. This report was accepted by the ANC and its findings were referred to the Commission.

24. Thus a just cause cannot mean that all restraint in the conduct of the war should be allowed to fall away. Although the cause of the liberation movements amounted to a just war, certain incidents that impacted on those who were *hors de combat* and 'civilians' were considered to be breaches of international law. A number of incidents involving indiscriminate bombings that led to the injury and death of civilians are regarded in law as breaches, the responsibility for which the group or movement that committed these acts must acknowledge.

25. This debate is a crucial one in modern times as the distinction between 'freedom fighter' and 'terrorist' becomes more blurred.

26. Again, the principle that derives is that the fact that the liberation movements' cause was just does not mean that they were not required to act justly in the conduct of that war. Thus the *ius in bello* cannot be separated from the *ius ad bellum.*

27. In essence, the effect of this distinction is to hold individuals, organisations, states and organs of the state accountable for their actions. Thus military commanders cannot evade the consequences of their orders; nor can subordinates evade punishment or accountability on the basis of having followed orders. The

60 Asmal,K, Asmal L, and Roberts, RS, Reconciliation through Truth: A Reckoning of Apartheid's Criminal Governance. Cape Town, David Phillip, 1996.

responsibility to act within the boundaries of international humanitarian law binds all actors, both state and non-state parties. According to Professor Kader Asmal:

Traditionally, these two branches of international law have addressed separate issues: international humanitarian law has been concerned with the treatment of combatants and non-combatants by their opponents in wartime, while international human rights law has been concerned with the relationship between states and their own national son peacetime. Yet, even in earlier times, they shared a fundamental concern: a commitment to human dignity and welfare, irrespective of the status of the individual (combatant or non-combatant) and of the circumstances under which his rights and responsibilities are to be exercised (peacetime or wartime)[61].

SPECIFIC FINDINGS

28. The Commission made its findings based, in the main, on frank and substantial submissions by the ANC and the testimony of both the political and military leadership at public hearings. In addition, the Commission took into account the statements of victims and testimony received from amnesty applicants and during section 29 hearings.

29. The Commission stated that:

The ANC has accepted responsibility for all actions committed by members of MK under its command in the period 1961 to august 1990. In this period there were a number of such actions – in particular the placing of limpet and landmines – which resulted in civilian casualties. Whatever the justification given by the ANC for such acts – misinterpretation of policy, poor surveillance, anger or differing interpretations of what constituted a 'legitimate military target' – the people who were killed or injured by such explosions are all victims of gross human rights violations of human rights perpetrated by the ANC. While it is accepted that targeting civilians was not ANC policy, MK operations nonetheless ended up killing fewer security force members than civilians.

61 Ibid.

30. With respect to the actions of MK during the armed struggle, the Commission found that:

Whilst it was ANC policy that the loss of civilian life should be avoided, there were instances where members of MK perpetrated gross violations of human rights in that the distinction between military and civilian targets was blurred in certain armed actions, such as the 1983 Church street bombing of the SAAF headquarters, resulting in gross violations of human rights through civilian injury and loss of life.

In the course of the armed struggle there were instances where members of MK conducted unplanned military operations using their own discretion, and, without adequate control and supervision at an operational level, determined targets for attack outside of official policy guidelines. While recognising that such operations were frequently undertaken in retaliation for raids by the former South African Government into neighbouring countries, such unplanned operations nonetheless often resulted in loss of life, amounting to gross violations of human rights. The 1985 Amanzimtoti shopping centre bombing is regarded by the Commission in this light.

In the course of the armed struggle the ANC through MK planned and undertook military operations which, though intended for military or security force targets sometimes went awry for a variety of reasons, including poor intelligence and reconnaissance. The consequences in these cases, such as the Magoo Bar incident and the Durban esplanade bombings were gross violations of human rights in respect of the injuries to and loss of lives of civilians.

While the Commission acknowledges the ANC's submission that the former South African government had itself by the mid-1980's blurred the distinction between military and 'soft' targets by declaring border areas 'military zones' where farmers were trained and equipped to operate as an extension of military structures, it finds that the ANC's landmine campaigns in the period 1985 –1987 in the rural areas of the Northern and Eastern Transvaal cannot be condoned, in that it resulted in gross violations of the human rights of civilians including farm labourers and children, who were killed or injured, The ANC is held accountable for such gross human rights violations.

Individuals who defected to the state and became informers and/or members who became state witnesses in political trials and/or became Askaris were often labelled by the ANC as collaborators and regarded as legitimate targets to be killed. The Commission does not condone the legitimisation of such individuals as military targets and finds that the extra-judicial killings of such individuals constituted gross violations of human rights.

The Commission finds that, in the 1980's in particular, a number of gross violations of human rights were perpetrated not by direct members of the ANC or those operating under its formal command but by civilians who saw themselves as ANC supporters. In this regard, the Commission finds that the ANC is morally and politically accountable for creating a climate in which such supporters believed their actions to be legitimate and carried out within the broad parameters of a 'people's war' as enunciated by the ANC.

31. If these findings are analysed, it can be seen that they fall into the following categories:
    a attacks ostensibly on military targets but where civilians are killed and injured;
    b unplanned and indiscriminate attacks on targets outside of official policy guidelines and which affect civilians;
    c planned military operations that go wrong and where civilians are killed;
    d the deliberate targeting of individuals labelled as traitors;
    e attacks carried out by MK on both military and civilian targets, and
    f attacks carried out by supporters of the ANC. In this regard, actions by UDF supporters and the SDUs are pertinent.

32. If one examines each of these categories in terms of the Geneva Conventions and Protocol I[62], they are clearly defined as grave breaches.
    a Articles 50, 51, 130 and 147 specify the following grave breaches of the four Geneva Conventions respectively: wilful killing; torture or inhuman treatment; biological experiments; wilfully causing great suffering; causing serious injury to body or health, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.
    b The following are considered to be grave breaches in terms of Articles 130 and 147 of the third and fourth Geneva Conventions: compelling a prisoner of war or a protected civilian to serve in the armed forces of the hostile power, and wilfully depriving a prisoner of war or a protected person of the rights of fair and regular trial prescribed in the conventions.
    c The following are considered to be grave breaches of the fourth Geneva Convention in terms of Article 147: unlawful deportation or transfer; unlawful confinement of a protected person, and taking of hostages.

62 See Appendix 2 to Chapter One of this section.

d Articles 11 and 85 of Protocol I specify what constitutes a grave breach. For our purposes, the following acts, when committed wilfully and if they cause death or serious injury to body and health constitute grave breaches: making the civilian population or individual civilians the object of attack; launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects; launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage civilian objects; making non-defended localities and demilitarised zones the object of attack; making a person the object of an attack in the knowledge that he is *hors de combat*, and depriving a person protected by the Conventions or by Protocol I of the rights of a fair and regular trial.

33. An analysis of the information received by the Commission confirms that there were no actions of note taken by MK inside South Africa during the period 1964 to 1975.

34. The period 1976 to 1984, however, saw a steady rise in the number of armed attacks. The Commission recorded a total of 265 incidents in this regard.

35. Another notable feature of this period are attacks on police stations and police officers, who were deemed to be collaborators and were therefore seen as legitimate targets for execution.

36. David Simelane and Obed Masina, for example, were granted amnesty for the killing of Sergeant Orphan Hlubi Chapi outside his Soweto home in June 1978. It was, however, the formation of the ANC Special Operations Unit in 1979 that led to the launch of several high-profile attacks on police stations, state infrastructure and a major attack on SADF personnel, namely the Church Street bombing. Here a car bomb placed outside the South African Air Force headquarters in Pretoria led to the deaths of nineteen people. In terms of the numbers of casualties, this was the most devastating attack by MK in its entire history. The Commission received amnesty applications for a total of seventy-nine incidents carried out by this unit during this period.[63]

63 See Section Three, Chapter Two in this volume.

37. The amnesty applications reveal that, whilst orders were given in certain cases, targets were for the most part selected by the unit in question. For example, Mr Maake, a member of the Nchabaleng unit which operated around Kwandabele, was responsible for the death of a local police officer. Maake testified at his amnesty hearing that decisions about specific operations were taken by the unit itself. Mr Shoke, a member of another unit, testified that:

What you must understand that guerrillas as opposed in fact to conventional forces, we exercise what we call command initiative, you rely on the initiative of the individual and everybody in MK was being prepared in fact to become a Commander.

38. Whilst some units testified to the fact that decisions were taken by consensus, there is no doubt that that a number of civilians were killed because of the individualised nature of target selection. In addition, assassinations frequently targeted police officers or individuals perceived to be collaborators with the former state. For example, the members of the elimination unit ('Icing Unit') engaged in six operations, including three assassinations, before they were caught in September 1986.

39. Evidence before the Commission in respect of targets indicates that attacks were aimed primarily at the state and its organs and those who were branded as collaborators, and that it was not ANC policy to engage in operations that deliberately targeted civilians. In his amnesty hearing, Aboobaker Ismail testified as follows:

We never set out deliberately to attack civilian targets. We followed the political objectives of the African National Congress in the course of a just struggle. However in the course of a war, life is lost, and the injury to and the loss of life of innocent civilians becomes inevitable. The challenge before us was to avoid indiscriminate killing and to focus on security forces.

40. Yet, despite the stated intentions and the clear policy of the ANC with regard to the selection of targets, the majority of these casualties were civilians.

41. Another facet of MK operations was the targeting of those regarded as collaborators. These included police officers, their family members, councillors, state witnesses in trials, and suspected informers. In terms of the Geneva Conventions and Protocol I to the Conventions, all of these killings are regarded as grave breaches and therefore constitute 'war crimes' in terms of the definitions.

42. In the submission made by the ANC to the Commission in response to its findings, the ANC made it clear that they regarded spies as legitimate targets for killings. In addition, they raised the fact that civilians killed in the course of attacks on military targets were permissible collateral damage.

43. After its Kabwe Conference, the ANC hardened its stance on civilians. The ANC stated in its submission to the Commission that the Kabwe Conference:

reaffirmed ANC policy with regard to targets considered legitimate: SADF and SAP personnel and installations, selected economic installations and administrative infrastructure. But the risk of civilians being caught in the crossfire when such operations took place could no longer be allowed to prevent the urgently needed, all round intensification of the armed struggle. The focus of the armed operations had to shift towards striking directly at enemy personnel, and the struggle had to move out of the townships to the white areas.

44. Testimony from amnesty applicants indicates that they clearly saw civilian casualties as a necessary consequence of military operations, almost an acceptable form of collateral damage.

45. It is equally clear that action was rarely taken against operatives or units who were responsible for these breaches of humanitarian law. Whilst the ANC acknowledged in its submission that a number of attacks carried out by MK were not in line with ANC policy, it is clear that the operatives concerned were not censured, nor were they repudiated by the movement. The ANC did, however, seek to educate the rank and file on what constituted ANC policy.

46. There is no doubt, however, that as the number of civilian casualties began to rise, ANC President Oliver Tambo and the leadership of the ANC became gravely concerned. In 1987, Mr Tambo expressed his concern about the number of unnecessary civilian casualties resulting from the landmine campaign and ordered that all cadres be fully educated about ANC policy with regard to legitimate targets. Failure to comply with these orders would be considered violations of policy and action would be taken against offenders.

47. In 1988, the NEC issued a statement on the conduct of the armed struggle and expressed its concern at the recent spate of attacks on civilians. Whilst amnesty applicants were fairly sanguine about the legitimacy of their targets, the political leadership was clearly concerned.

ACTS COMMITTED BY CIVILIANS PRIOR TO 1990

48. While MK operations undoubtedly contributed significantly to resistance activities, particularly in the pre-1990s period, civilian activity inside the country took place on a larger scale. The submission made to the Commission by the Foundation for Equality before the Law cited 80 507 unrest-related incidents in the period 1984 to 1992. It also referred to 979 cases of burning and 'necklacing'.

49. In its five-volume Final Report, the Commission described the United Democratic Front (UDF) as a loose federation that brought together a large number of social, civic and political organisations of differing backgrounds, racial constituencies and political orientations. The purpose of the UDF was to act as an umbrella body for opponents of the state who sought to achieve a non-racial, democratic and unitary state. Whilst its founding document stated that it was not a front for the banned liberation movement, it became increasingly supportive of the ANC.

50. The UDF became the rallying point for a wide range of affiliates comprising youth and civic organisations, scholar and student organisations, church and welfare organisations, trade unions, sporting and cultural organisations, and political and quasi-political organisations. It was able to mobilise very large groups of people for rallies and meetings, which were characterised by powerful oratory and wide-ranging demands for political change.

51. The Commission stated that, from 1985, the UDF sought to dismantle government and security force control and administration. It sought to promote and enact the concept of 'people's power', which envisaged administrative, welfare and judicial functions in the townships being assumed by community-based and sectoral organisations. This included the establishment of forums to administer civil and criminal justice through people's courts.

52. The Commission made the following findings against the UDF:[64]

The Commission acknowledges that it was not the policy of the UDF to attack and kill political opponents, but finds that members and supporters of UDF affiliate organisations often committed gross violations of human rights in the context of widespread State-sponsored or –directed violence and a climate of political intolerance.

64 Volume Five, Chapter Six, pp. 246–7.

The UDF facilitated such gross violations of human rights in that its leaders, office bearers and members, through their campaigns, public statements and speeches, acted in a manner which helped create a climate in which members of affiliated organisations believed that they were morally justified in taking unlawful action against State structures, individual members of State organisations and persons perceived as supporters of the State and its structures. Further, in its endorsement and promotion of the 'toyi-toyi', slogans and songs that encouraged and/or eulogised violent actions, the UDF created a climate in which such actions were considered legitimate. Inasmuch as the State is held accountable for the use of language in speeches and slogans, so must the mass democratic movement and liberation movements be held accountable.

The Commission finds that factors referred to in the paragraph above led to widespread excesses, abuses and gross violations of human rights by supporters and members of organisations affiliated to the UDF. These actions include:

- *The killing (often by means of 'necklacing'), attempted killing and severe ill-treatment of political opponents, members of state structures such as black local authorities and the SAP, and the burning and destruction of homes and properties;*
- *The violent enforcement of work stay aways and boycotts of, among others, private and public transport and private retail shops, leading to killing, attempted killing and severe ill-treatment;*
- *Political intolerance resulting in violent inter-organisational conflict with Azapo and the IFP, among others.*

The UDF and its leadership:

- *Failed to exert the political and moral authority available to it to stop the practices outlined above, despite the fact that such practices were frequently associated with official UDF campaigns such as consumer boycotts or campaigns against black local authorities. In particular, the UDF and its leadership failed to use the full extent of its authority to bring an end to the practice of necklacing, committed in many instances by its members and supporters.*
- *Failed to take appropriately strong or robust steps or measures to prevent, discourage, restrain and inhibit its affiliates and supporters from becoming involved in action leading to gross violations of human rights, as referred to above.*

- *Failed to exert sanctions or disciplinary action on member organisations whose members were involved in the gross violations of human rights described above, or failed to urge such member organisations to take appropriate actions against their members.*
- *The Commission notes that the political leadership of the UDF has accepted political and moral responsibility for the actions of its members. Accordingly the UDF is accountable for the gross violations of human rights committed in its name and as a consequence of its failure to take the steps referred to above.*

53. The Commission based its findings on the evidence it received both through the human rights violations and the amnesty processes. However, partially because the UDF had already disbanded by 1991, and because no central structure existed to encourage amnesty applications, the number of amnesty applications received do not tally with the figures that the Commission received in respect of violations. The Commission received eighty-five applications, which included fourteen acts not considered to be gross human rights violations. The remaining seventy-one applications dealt with offences ranging from arson affecting government property to gross human rights violations in which people were killed.

54. Whilst it was not UDF policy to kill, there is no doubt that the targeting of certain individuals and their families for killing and arson involving their property was tolerated and encouraged in certain quarters. Some of the most shocking incidents took place during this era. Many organisations targeted those they regarded as traitors and collaborators. Police officers, councillors in the former local government, informers and their families were regarded as fair game.

55. For example, in the amnesty application of Mr Mziwoxolo Stokwe for the killing of Mr Skune Tembisile Maarman, Stokwe testified that COSAS identified Maarman as a police informer and stoned him to death. Later he was necklaced. Eight people including Stokwe were charged for his killing. Stokwe and his group also launched attacks on the homes of perceived collaborators, including a school principal and two councillors.

56. When Stokwe discovered that one of the comrades, Ntiki Fibana, had agreed to appear as a witness for the State, the group decided to deal with her in the following way:

We got information that Ms Ntiki was at her home together with the police with intention of removing her property. We rushed to the place and when the police

saw the crowd they drove away, they left Ntiki inside the house. We took her out and set the house alight. Thereafter we stoned her to death and set her alight with the tyre on her neck. No meeting took a decision to kill Ms Ntiki, but we had to deal with the situation immediately as she was there during that conflict moment. After we killed, we had a meeting where we took a decision to cross the borders of South Africa, to Lesotho for military training and to join Umkhonto weSizwe.

57. Whilst these kinds of incidents are considered to be gross human rights violations, they need to be contextualised. At the time, the country was engulfed in violence in which the apartheid state was the primary actor. It had established covert units, including death squads, whose main intention was to assassinate those considered to be political opponents, and was using all its might to crush opposition. Youth were targeted and enticed into entrapment operations. It would have been quite impossible for the UDF leadership to control the violence and actions of groups within communities all over the country. While the leadership may have uttered words of restraint, it is unlikely that they would have been heeded. This context of violence gave rise to some of the worst excesses in our country.

58. In testimony before the Amnesty Committee, Mr Stokwe stated the following:

As a member of Cosas, when it was said that the country must be ungovernable, those were the means to try and send a message to the government. That is why we are in this present situation today. In a war, if you focus on a certain target and there are stumbling blocks in front of you, you would start with them because we would not be able to reach our goal because they were informers. So in order to reach our target, we had to start with them, so that was our strategy.

59. Amnesty was also sought for an incident in which a police officer, Mr Benjamin Masinga, was killed by members of UDF affiliated organisations. Masinga was taken from his house, attacked with sticks, stones, bricks and axes rendering him unconscious. He was dragged to a nearby school, was doused with petrol and was then set alight.

60. These and other incidents reveal that the perpetrators believed that they were acting under a broad political directive to eliminate those considered to be a threat to the struggle and the movement. In some instances they had contact with members of MK and the ANC but, even where this had been the case, they

testified that they were not acting under orders. They saw it as their role to make the country ungovernable and to eliminate those who were perceived to be 'collaborators'.

61. There is no evidence of UDF leadership encouraging killing or the commission of gross human rights violations. It is also clear from the testimony before the Commission that they did not play an active role in the commission of gross human rights violations. However, the general clarion call that they made to make the townships ungovernable and to eliminate those who collaborated led to the commission of gross human rights violations for which the leadership of the UDF must accept responsibility.

62. Information that emerged from the hearings of the Amnesty Committee strengthens the findings made by the Commission in its Final Report.

GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY THE ANC IN EXILE

Introduction

63. In its five-volume Final Report, the Commission recorded that it had received the reports of the Stewart, Skweyiya, Sachs and Motsuenyane Commissions of Inquiry. All of these commissions had been appointed by the ANC. The Commission also had sight of the report of the Douglas Commission. These commissions of inquiry investigated allegations of human rights abuses in the ANC camps and in exile. The Commission also received evidence from victims testifying to their experiences both in the camps and in exile.

64. The Commission must also record its appreciation to the ANC for the frank way in which it handled this question during its submissions to the Commission and during the two political party hearings. The disclosures made enabled the Commission to get a sense of the problems encountered when dealing with young people in the camps and how justice was dispensed in the camps. The ANC also handed over a file that dealt with a number of the executions that had taken place in the camps.

65. A number of section 29 hearings took place, during which those named as responsible for abuses were questioned about their role and the prevailing conditions. The Commission received twenty-one amnesty applications from

members of the ANC's security department. However, nine applications were later withdrawn. This deprived victims of the opportunity to find out what had happened to their loved ones.

66. The twelve remaining applications included four killings, three cases of negligence that may have contributed to deaths, one shooting and eleven cases of assault of persons in the custody of the ANC. All of these applications were granted. Eight of them were dealt with at a public hearing.

67. Whilst the movement at a leadership level made frank disclosures, the same cannot be said of the welfare desk. The Commission was required to deal with this desk on a daily basis in order to verify information supplied by victims and their families. In more than 250 instances, the Commission was unable to obtain any response from the welfare desk, thereby creating further suspicions in the minds of many families about the deaths or disappearances of loved ones.

68. The death of Mr Thabo Naphtali provides one example of this. In terms of the evidence given to the Commission, he was accidentally shot during a night skirmish in the camp at Viana. Although his family knew that he had gone into exile, the movement neither notified them that he had died nor informed of the circumstances of his death. They discovered these facts only at the amnesty hearing.

69. In terms of international law, the fact that persons died in custody at the hands of the ANC places the responsibility for their deaths on the ANC.

70. The Commission recorded the following findings, on the basis of the evidence before it:[65]

The ANC and particularly its military structures responsible for the treatment and welfare of those in its camps were guilty of gross violations of human rights in certain circumstances and against two categories of individuals, namely suspected 'enemy agents' and 'mutineers'.

The Commission found that suspected agents were routinely subjected to torture and other forms of severe ill treatment and that there were cases of such individuals being charged and convicted by Tribunals without proper attention to due process, sentenced to death and executed. The Commission found that the

65 Volume Five, Chapter Six, p. 242.

human rights of individuals so affected were grossly violated. Likewise, the Commission found that the failure to communicate properly with the families of such victims constituted callous and insensitive conduct.

The Commission also found that all so-called mutineers who were executed after conviction by military Tribunal, irrespective of whether they were afforded proper legal representation and due process or not, suffered a gross violation of their human rights.

With regard to the allegations of torture and ill treatment, the Commission found that although torture was not within ANC policy, the security department of the ANC routinely used torture to extract information and confessions from those being held in camps particularly in the period 1979–1989. The Commission noted the various forms of torture detailed by the Motsuenyane commission, namely the deliberate infliction of pain, severe ill-treatment in the form of detention in solitary confinement, and the deliberate withholding of food and water and/or medical care, and finds that they amounted to gross violations of human rights.

71. The Motsuenyane Commission submitted its report to the ANC in August 1993. Its conclusion was that there had been severe abuses in ANC detention camps over a number of years. In one detention camp, the Commission concluded that:

Quatro was intended to be a rehabilitation centre. Instead, it became a dumping ground for all who fell foul of the Security Department, whether they were loyal supporters accused of being enemy agents, suspected spies or convicts. All were subjected to torture, ill-treatment and humiliation far too frequently to achieve its purpose as a rehabilitation centre.

72. The Motsuenyane Commission also found that adequate steps were not taken in good time against those responsible for such violations.

Commentary

73. Testimony before the Amnesty Committee has confirmed that there were abuses in exile. The security department of the ANC routinely used torture and assault as a means to extract information from those it suspected of being enemy agents or dissidents. In those instances where operatives were executed, it is clear that there were some instances of due process being afforded to those accused of offences. In the main, however, due process was given perfunctory observance and these so-called trials cannot be conceived of as remotely

resembling fair trials or hearings. These actions are contraventions of the Geneva Conventions and Protocol I.

74. The information that the Commission received subsequent to the submission of its five-volume Final Report has confirmed that the Commission was correct in making the findings that it did.

GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY SELF-DEFENCE UNITS

75. In its Final Report, the Commission made the following finding against the ANC in respect of the commission of gross human rights violations perpetrated by self-defence units (SDUs):

Whilst the Commission accepts that the violent conflict which consumed the country in the post-1990 period was neither initiated by nor in the interests of the ANC, the ANC must nonetheless account for the many hundreds of people killed or injured by its members in the conflict. While the ANC leadership has argued that its members were acting in self-defence, it is the Commission's view that at times the conflict assumed local dynamics in which proactive revenge attacks were carried out by both sides. High levels of political intolerance among all parties, including the ANC, further, exacerbated this situation; the Commission contends that the leadership should have been aware of the consequences of training and arming members of SDUs' in a volatile situation in which they had little control over the actions of such members. The Commission therefore found that in the period 1990 to 1994, the ANC was responsible for:

- *Killings, assaults and attacks on political opponents including members of the IFP, PAC, Azapo and the SAP*
- *Contributing to a spiral of violence in the country through the creation and arming of self-defence units (SDUs).*

While acknowledging that it was not the policy of the ANC to attack and kill political opponents, the Commission finds that in the absence of adequate command structures and in the context of widespread state-sponsored or directed violence and a climate of political intolerance, SDU members often 'took the law in their own hands' and committed gross violations of human rights.

The Commission takes note that the political leadership of the African National Congress and the command structure of Umkhonto WeSizwe accepted political and moral responsibility for all the actions of its members in the period

1990–1994 and therefore finds that the leadership of the ANC and MK must take responsibility and be accountable for all gross violations of human rights perpetrated by its membership and cadres during the mandate period.

76. The finding was based on evidence that the Commission received from victims who testified or made statements to the Commission, evidence at hearings and submissions handed to the Commission.

Response of the ANC

77. In its response to the Section 30 finding, the ANC argued that the finding:

has the deliberate intention, contrary to the truth readily available to the TRC, of shifting the blame for the political violence which occurred in the period since 1990 away for the apartheid regime to the democratic movement and condemning the oppressed for the efforts they took to defend themselves against a very intense campaign of repression and terror.

78. The ANC also restated what it had said in its submission to the Commission in May 1997:

The post-1990 violence was the work of the state, was organised at the highest level, and was aimed at strengthening the hand of the government at the negotiations table by forcing a progressively weakened ANC into a reactive position in which it would be held hostage to the violence and forced to make constitutional concession.... the ANC was not engaging in 'ongoing conflict', nor were the majority of the people on the ground embroiled in 'ongoing conflict': they were being attacked by covert units operating in accordance with the wishes of the apartheid regime.

Amnesty process

79. The Commission received a number of applications from members of ANC-aligned SDUs for violations committed during the 1990s. However, this was the result of a concerted effort made by a few individuals. Regrettably, a large number of SDUs were not reached in time and many did not have access to legal assistance. In certain instances, they did not qualify because of ongoing violence, which culminated in further incidents of violence linked but occurring beyond the mandate period. In this regard, the Commission visited a number of young people in prison.

Environment in the townships during the period in question

80. In the period following the unbanning of the ANC, the townships were in turmoil. The stakes were high for both the state and its surrogate, the IFP, both of whom were opposed to the ANC taking power. Township residents were constantly under attack by surrogate forces of the state, which included members of the IFP, renegade forces and members of the rightwing who were, in many instances, armed by the state.

81. The violence affected particularly Gauteng and KwaZulu/Natal. It was against this backdrop of state-sponsored violence that the activities of the SDUs took place.

Findings in respect of SDUs

82. In assessing whether the findings that were made in respect of the SDUs remain relevant in the light of the evidence emerging from the amnesty process, the Commission needed to confirm the following:
    a Was the ANC responsible for the creation and arming of the self-defence units?
    b Was the Commission's finding that there was not an adequate command structure correct?
    c Whilst acknowledging the state's role in sponsoring the violence, did SDUs take the law into their own hands and perpetrate gross human rights violations?
    d Did all of this contribute to the violence of the 1990s?

The ANC's role in the creation of self-defence units

83. The SDU's were created amidst the spiralling violence of the negotiation period. The former state engaged in a strategy of negotiating with the liberation movements on the one hand and fomenting violence on the other. This meant that supporters of the ANC were left vulnerable to attack by dark surrogate forces, which later became known as the 'Third Force'.[66] After a mass funeral in Soweto in 1990, ANC President Nelson Mandela publicly pledged the ANC's commitment to the formation and training of SDUs. In addition, at its consultative conference in Durban 1990, the ANC resolved to take steps to defend itself with all the means at its disposal and to create people's self-defence units as a matter of urgency as it came under increasing pressure at local level to intervene and respond to the violence.

66 See Appendix to Section Four in this volume.

84. In its attempts to manage and control the process, the ANC released a document called 'For the sake of our lives', which attempted to prescribe and regulate the structures and activities of the SDUs. The thrust of this policy document was that SDUs should operate in terms of a political rather than a military strategy and that the long-term goal should be peace. It was envisaged that SDUs would be well trained and highly disciplined.

85. The document envisaged that, although MK members would play a role in the establishment of SDUs, it was imperative that they be controlled from within communities because of the past history of informally established units. It was also envisaged that the units would receive political instruction of some sort. Local MK members were granted permission to participate in these structures. MK involvement took the form of recruiting and training of SDU members and supplying weapons. In some instances, individual members of MK participated in the clashes and skirmishes that took place.

86. ANC policy required that selected units supplied certain SDU units with weapons. A special unit was set up within the ANC to assist with the arming of SDUs. These included Ronnie Kasrils, Aboobaker Ismail, Riaz Saloojee, Muff Anderson and Robert McBride. All of these applied for amnesty for supplying weapons and assisting SDUs. In the KwaZulu/Natal area, Jeff Radebe, Ian Munro Phillips and Sipho Joel Daniel Sithole were involved in the supply of weapons and assistance to the SDUs.

87. It is important to note that the ANC was not the only supplier of weapons. In most instances, the SDU units had other sources of supply.

88. There is no doubt that the ANC played a major role in establishing SDUs in both the Transvaal and KwaZulu/Natal areas.

Command structures

89. In KwaZulu and Natal, SDUs consisted in the main of loose formations comprising youth and community members in a particular community. There was no formal command structure. However, while ANC branch leadership often assumed the command of these structures, ANC structures themselves were often not well established or formalised and consisted of a handful of supporters who came together for particular events or occasions. Thus ordinary residents living in ANC-aligned areas might find themselves having to participate in an

attack simply because they lived in an area. In many instances, there was no specific commander and the group that came together acted in concert either to defend themselves or to launch an attack.

90. What emerged from the amnesty process was that geographical location played a crucial role. Living in a particular area compelled you to take sides in the conflict. In addition, clan or group loyalty often dictated from whom people received their orders. This meant that ostensible political conflicts were fused with other motives, land disputes and issues of an economic nature. Revenge and reprisal featured strongly in the ongoing conflict.

91. These issues must, however, be viewed against the larger political conflict and violence being sponsored by the former state.

92. In Gauteng, the Tokoza units stayed in close contact with the ANC, and the local branch played a monitoring and disciplinary role. Despite this, these units were also responsible for acts of great violence. In many other townships in Gauteng, links depended largely on whether strong ANC branches existed at a local level. In a number of instances, MK members also played a role in establishing and training SDU members. Vosloorus is an example of this. In most instances, SDUs were established through community structures, often in response to attacks from the IFP.

Role of leadership

93. In their evidence, amnesty applicants in Gauteng stated that, whilst they consulted with leadership on policy and guidelines, they did not inform them of their plans and did not advise them about the nature of their operations. Decision-making took place at community level.

94. Whilst many prominent ANC leaders played a major role in supporting local SDUs, in KwaZulu and Natal they also played a crucial role in peace-building efforts.

95. Evidence emerging from amnesty applications confirms that many SDU members on the ground were cognisant of the fact that the ANC at national level was pursuing a strategy of peace through negotiations. However, at a regional level, the violent conflict between the warring sides reduced the impact of the national strategy. Survival required that you be ready to defend yourself. Testimony from the amnesty hearings reveals that, at a community level, many felt that leadership was not in touch with what was happening on the ground.

96. Another factor that played a major role in the conflict was the fact that ANC-aligned communities could expect little or almost no support from the police or any other state structure. Communities were left to defend themselves against attacks, which often resulted in their taking the law into their own hands.

97. Thus leadership of the SDUs was effectively in the hands of local ANC branches. While ANC policy did not allow for killing other than of a defensive nature, communities in these compelling circumstances tended to take their own decisions. Generally speaking, the ANC national and regional leadership was not involved in these decisions and, indeed, engaged in peace-building efforts in an attempt to restore peace.

98. Furthermore, in the vast majority of instances, no report was made to the national leadership after an attack. In many instances, operatives felt that, because no order or authorisation had been given, there was no necessity to report. The Commission's original finding that there was no adequate command structure is correct and is clearly borne out by the evidence that emerged from the amnesty process. In fact, command was *ad hoc* and dependent on the circumstances of the day in a particular area.

Were the SDUs responsible for the commission of gross human rights violations?

99. The picture that emerges from the amnesty process is that communities found themselves in conflict with the IFP and the state. As they could not rely on protection from the organs of the state, they felt compelled to take the law into their own hands to protect themselves. Evidence reveals that issues of a personal nature – such as loyalty to a particular chief or clan – often became intertwined in the particular conflict. The support that the former state lent to the IFP meant that ANC-aligned communities were at a great disadvantage. They became very vulnerable and an easy target for 'Third Force' activity. Within this context, gross human rights violations were perpetrated.

Nature of violations committed by SDUs

100. The Commission's founding Act determined that killings, abductions, torture, severe ill-treatment and attempts, plots and conspiracies to commit the above constituted gross human rights violations. Amnesty applicants have testified in

their amnesty applications to killings; arson attacks on homes of members of the IFP, police officers and those perceived to be collaborators, and attacks on hostels. In a number of instances, houses were occupied at the time of the attacks. Abduction of suspects was a particular *modus operandi* of the East Rand SDUs. This was followed by interrogation of suspects, and later by summary execution. In this sense, SDUs acted no differently from agencies of the state in using torture as a mechanism to extract confessions from alleged suspects that they were 'IFP members'. In most instances, these confessions were believed and often resulted in the 'suspect' being killed. However, one has to question the validity of an admission made under duress.

101. SDU members were responsible for the targeted killing of those they suspected of being informants, collaborators and members of the IFP. In many instances, identification was made on spurious grounds. Many young members of SDU units were involved in reconnaissance work, the cleaning of weapons and lesser offences such as the collection of money from residents for weapons.

102. In KwaZulu and Natal, members of SDUs targeted many IFP members for assassination. An example of this is the killing of a prominent IFP leader, Mr Mkhize, in Umkomaas in November 1990. Those ANC members suspected of being informers or of having defected to the IFP or the state were also targeted for assassination. Fatal mistakes were made by SDU members, which resulted in the deaths of many who were innocent. In one such incident, a bus containing school children was ambushed in the belief that it was carrying members of the IFP. In this tragic incident, six children were killed and many others were injured. The reason the amnesty applicants advanced for the attack was that the IFP was forcing them to leave the area and that they were being displaced from their homes.

103. Internecine war also took place within the ranks of the SDUs. A number of SDU members were killed in internal clashes. Internal fighting among the ranks of different units as well as with members of the ANC Youth League was a major problem. In Tokoza, an 'eye for an eye' policy was adopted. If an SDU member took the life of a member, his life would be forfeit. A number of amnesty applicants testified about this. The evidence is often chilling, as applicants describe the brutal circumstances under which most of these youth lived. It was often kill or be killed.

104. In one incident involving members of a SDU and members of the ANC Youth League, nine ANC members were killed. Several of the victims were under 17 years of age. In this incident, the victims were first shot and later hacked and stabbed to death.

105. Cognisant of this rising problem, a unit was established in the Cape to deal with the tensions between members of different SDUs. They too became involved in the violence that was taking place.

106. In KwaZulu and Natal, internal disputes between ANC and SACP members led to bitter conflict, so that Mr Harry Gwala was forced to intervene in the matter and broker a peace deal. Mr Blade Nzimande also approached the parties to settle the dispute. Most peace efforts failed and a number of people on both sides of the conflict were killed.

107. A small number of SDUs were involved in armed robberies. Robberies were certainly not considered to be ANC policy, but they took place nevertheless. In one incident in KZN, a number of people were killed and others injured. There is also no doubt that many of the incidents involved the personal agendas of individuals rather than the movement. One such incident involved an attack on the Lembede family at their shop, ostensibly on the grounds that they were IFP members. This family is related to the late Anton Lembede, a former ANC President.

108. Similarly a number of SDUs in Gauteng were involved in armed robberies, ostensibly to obtain funds to purchase weapons.

Conclusion and validity of findings

109. It is clear from the evidence that emerged in the amnesty hearings that the conflict took on a life of its own. Once SDUs were established, attempts by ANC leadership to establish control failed dismally. Youth with little or no proper training made decisions spontaneously, based on the need to deal with unfolding events. Often the attacks that took place were in the nature of reprisal strikes; but many were simply based on revenge or the need to get even. Target selection was often capricious and usually followed by killing. Again, the mere labelling of an opponent as the 'IFP' or an 'informer' legitimated the killing of that particular person. The immature way in which people were identified as belonging to

another group had tragic consequences. Clothes in some instances would be used as an identifying mark, or the speaking of Xhosa instead of Sesotho.

110. The evidence that emerged from the amnesty process confirms the correctness of the original findings that the Commission made in respect of SDUs. The evidence has also revealed much more of the political context within which the conflict took place. The picture that emerges is of structures let loose once they had been established. Had ANC leadership been more pro-active in the control and management of these units, there is no doubt that many of incidents would not have taken place and fewer lives would have been lost. Although the ANC did not train all of the units and was not the major supplier of arms, it was politically responsible for the establishment of these units and should have played a greater role in managing them. This failure led directly to the commission of gross human rights violations by many SDUs. In the circumstances, the findings of the Commission are still valid. (...p670)

APPENDIX

ANC Statement on Signing Declaration on Behalf of the ANC and Umkhonto we Sizwe. Adhering to the Geneva Conventions of 1949 and Protocol I of 1977. At the Headquarters of International Committee of the Red Cross, Geneva, November 28, 1980

Mr President

Ladies and Gentlemen

The African National Congress of South Africa is deeply honoured to be received today by the International Committee of the Red Cross and by its President, M. Alexandre Hay. Our movement, the oldest national liberation movement in Africa, has had a number of meetings with the delegates of the ICRC in the past and we have come to respect their probity and fairness. The Red Cross has rightly been described as the guarantor of the impartiality and efficacy of the famous Conventions of 1949 whose reaffirmation and development in 1977, largely under the auspices of the ICRC, has led to our presence here in Geneva today.

We recognise that your Committee, associated as it is with the work of the Conventions and the need to provide relief and hope to prisoners of war and civilians caught in the violence of war, must remain non-political if it is to retain the trust of governments. But you will not, I hope, take it amiss if I explain the presence of the delegation of the African National Congress in Geneva today to participate in what is a solemn and historic ceremony for my movement.

Apartheid, the policy of official discrimination enshrined in the law and constitution of South Africa, has now been legally denounced as a crime against humanity and has led to an International Convention for the Suppression and Punishment of the Crime of Apartheid. Protocol I of 1977 itself recognises that 'practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination' constitute grave breaches of the Conventions and must therefore join the list of crimes identified at the Nuremberg War Crimes Tribunal.

The international community has therefore recognised that the war waged by this nefarious system against the vast majority of its population is not merely a matter of domestic concern and that any conflict which arises in South Africa cannot be described as a civil war.

The state of war which exists in South Africa is a war of national liberation, for self-determination on the basis of the Freedom Charter, whose adoption we are celebrating the 25th anniversary this year. It is, as Article 1 of Protocol I of 1977 recognises, an armed conflict in which peoples are fighting against 'colonial domination and alien occupation and against regimes in the exercise of their right to self-determination'.

In the past 12 years, since the Teheran conference on Human Rights, the development of international law under the auspices of the United Nations has led to a recognition that the concept of international armed conflict extends to cover wars of national liberation. The International Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in Geneva from 1974 to 1977, gave concrete expression to such a development.

We in the African National Congress of South Africa solemnly undertake to respect the Geneva Conventions and the additional Protocol I in so far as they are applicable to the struggle waged on behalf of the African National Congress by its combatants, Umkhonto we Sizwe.

In consequence, we demand that the South African regime stop treating our combatants as common criminals. The regime has no right to execute them as it did our noble patriot Solomon Mahlangu and as it would have in the case of James Mange if it had not been for the strength of international public opinion. It has no right to impose savage sentences of imprisonment, contrary to the rules and spirit of international law. There is, therefore, a heavy obligation and an imperative duty on States Parties to the Geneva Conventions to ensure that the South African regime observes the basic tenets of civilisation in its treatment of ANC prisoners of war. This is envisaged both in the Geneva Conventions (to which the South African regime is a party) and in Article 1(1) of the 1977 Protocol where States Parties to the Convention undertake 'to respect and to ensure respect for this Protocol in all circumstances'. It is therefore incumbent on South Africa's major trading partners to encourage the South African regime, whether or not the regime ratifies the Protocol, to stop committing war crimes by executing our combatants, torturing them and generally ill-treating them contrary to international law.

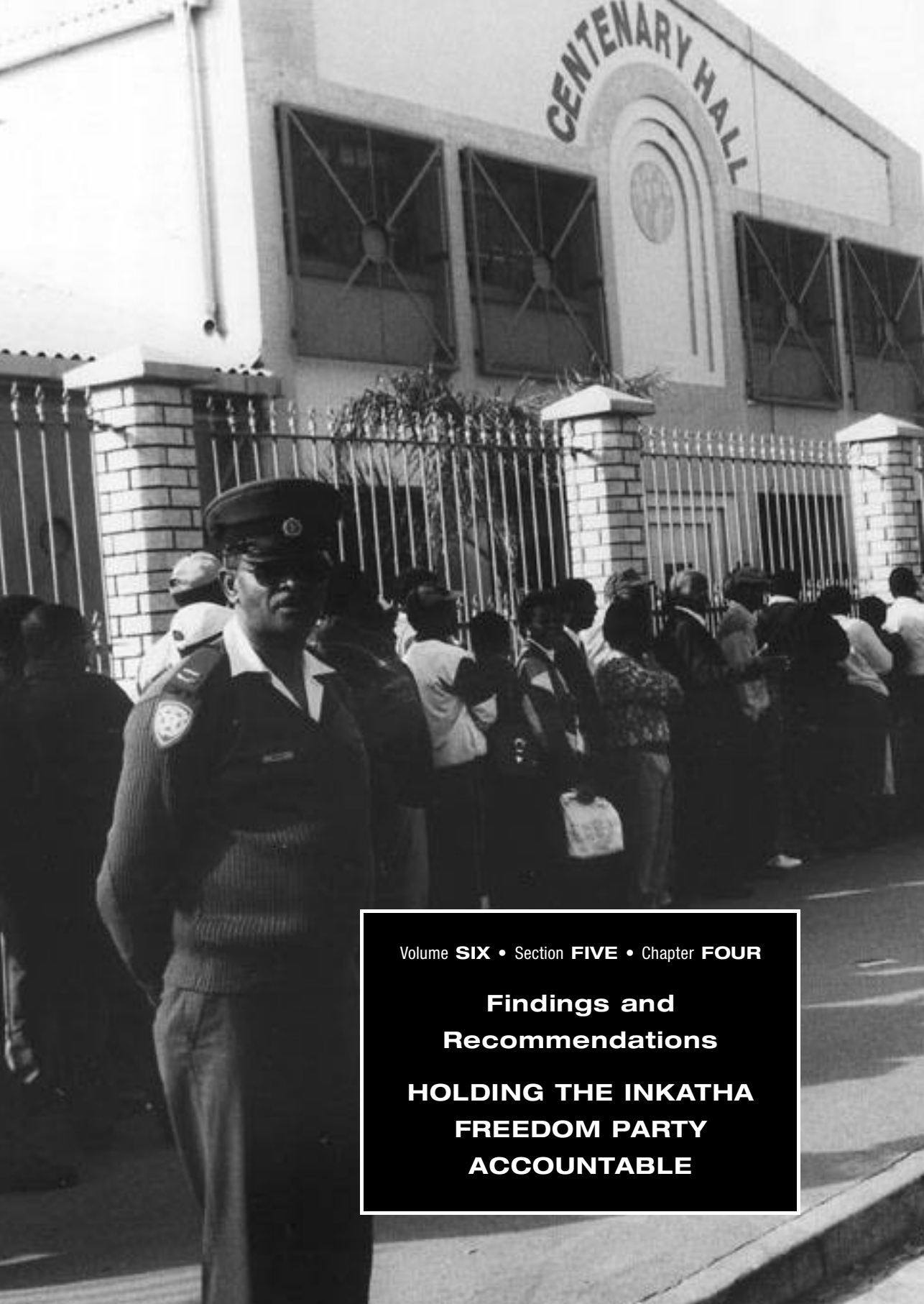
We in the African National Congress have taken the serious step of making a solemn Declaration at the headquarters of the ICRC this afternoon because we have for nearly 70 years respected humanitarian principles in the struggle. We have always defined the enemy in terms of a system of domination and not of a people or a race.

In contrast, the South African regime has displayed a shameless and ruthless disregard for all the norms of humanity.

In signing this Declaration, the African National Congress of South Africa solemnly affirms its adherence to the Geneva Conventions and to Protocol I of 1977. As we have done in the past, so shall we continue, consistently and unreservedly, to support, fight for and abide by the principles of international law. We shall do so in the consciousness of justice, of progress and peace. It is therefore a historic duty that I fulfil on behalf of the African National Congress by signing the following declaration:

> *It is the conviction of the African National Congress of South Africa that international rules protecting the dignity of human beings must be upheld at all times. Therefore, and for humanitarian reasons, the African National Congress of South Africa hereby declares that, in the conduct of the struggle against apartheid and racism and for self-determination in South Africa, it intends to respect and be guided by the general principles of international humanitarian law applicable in armed conflicts.*
>
> *Wherever practically possible, the African National Congress of South Africa will endeavour to respect the rules of the four Geneva Conventions of 12 August 1949 for the victims of armed conflicts and the 1977 additional Protocol I relating to the protection of victims of international armed conflicts.*

O R Tambo
President
ANC of South Africa (...p673)



Volume **SIX** • Section **FIVE** • Chapter **FOUR**

Findings and Recommendations

HOLDING THE INKATHA FREEDOM PARTY ACCOUNTABLE

Holding the Inkatha Freedom Party Accountable

1. In its Final Report, the Truth and Reconciliation Commission (the Commission) made findings against the Inkatha Freedom Party (IFP) and associated structures and institutions. In particular, it found against the IFP that:

   The IFP was responsible for the commission of gross violations of human rights in the former Transvaal, Natal and KwaZulu, against persons who were perceived to be leaders, members or supporters of the UDF, the ANC or its alliance partners

   such violations formed part of a systematic pattern of abuse which entailed deliberate planning on the part of the organisation.

2. The Commission based this finding on, *inter alia:*
   a speeches by the IPF president and senior party officials that had the effect of inciting supporters of the IFP to commit acts of violence;
   b the arming of IFP supporters in contravention of existing legislation;
   c mass attacks by IFP supporters on communities and leaders of the United Democratic Front (UDF) and/or the African National Congress (ANC);
   d collusion with the South African government's security forces to commit violations; in particular, a pact with the South African Defence Force (SADF) to create a paramilitary force for the organisation with the intention of causing death and injury to UDF/ANC members;
   e the establishment of a hit squad within the KwaZulu Police and the Special Constable structure of the SAP with the intention of causing death or injury to UDF/ANC supporters;
   f training large numbers of IFP supporters, under the auspices of the Self-Protection Project, with the objective of preventing the holding of elections in April 1994 by violent means;
   g conspiring with right-wing organisations and former members of the government's security forces to commit acts that resulted in loss of life or injury, and
   h creating a climate of impunity by expressly or implicitly condoning gross human rights violations and other unlawful acts committed by members of the IFP.

3. The Commission made further findings against several groups aligned to the IFP:

Caprivi trainees

4. The Commission found that, in 1986, the SADF conspired with Inkatha to provide the latter with a covert, offensive paramilitary unit ('hit squad') to be deployed illegally against persons and organisations perceived to be opposed to or enemies of both the South African government and Inkatha. The SADF provided training, financial and logistical management and behind-the-scenes supervision of the trainees who were trained by the Special Forces unit of the SADF on the Caprivi Strip.

5. The Commission found that this illegal deployment of the Caprivi trainees led to gross violations of human rights, including killing and attempted killing, for which it found former President PW Botha, General Magnus Malan and Dr MG Buthelezi accountable.

KwaZulu Police

6. The Commission found that the KwaZulu Police (KZP), in the period 1986 to 1994, acted in a biased and partial manner and overwhelmingly in furtherance of the interests of Inkatha, and later the IFP, in that:
   a through acts of commission, it worked openly with Inkatha, and through acts of omission, it failed to protect or serve non-IFP supporters;
   b it was responsible for large numbers of politically motivated gross human rights violations (killings, attempted killings, incitement and conspiracy to kill, severe ill-treatment, abduction, torture and arson), the victims of which were almost exclusively non-IFP members;
   c it neglected to observe basic investigative procedures;
   d it deliberately tampered with evidence;
   e it ensured that KZP and IFP suspects in political violence matters were concealed, often for lengthy periods, in KZP and SADF camps;
   f it issued false police certificates and identity documents to members of the IFP who were involved in political violence, in order to prevent their arrest and convictions and to facilitate their continued criminal activities; and

g it took part in killings and purported to investigate the very matters in which its members had been involved as perpetrators.

7. In conclusion, the Commission found that, although there were honourable exceptions in that some members of the KZP did carry out their duties in an unbiased and lawful manner, the KZP generally was characterised by incompetence, brutality and political bias in favour of the IFP, all of which contributed to the widespread commission of gross human rights during the period under review.

Special Constables

8. The Commission found that the Special Constables were deliberately established and trained to assist Inkatha against the latter's political enemies, and that Special Constables, acting alone and in concert with Riot Unit 8 of the SAP, regularly committed serious unlawful acts in order to support and assist Inkatha in the period prior to and during the so-called 'seven-day war'.

Esikhawini hit squad

9. The Commission found that, in 1990, senior members of the IFP conspired with senior members of the KZP to establish a hit squad in Esikhawini Township near Empangeni, Natal, to be deployed illegally against people perceived to be opposed to the IFP. The hit squad consisted of Caprivi trainees and members of the KZP. Its members took instructions from senior members of the IFP and of the KZP to eliminate political activists affiliated to the ANC and the Congress of South African Trade Unions (COSATU), as well as members of the SAP who were seen not to be supportive of the IFP.

Self-protection unit members

10. The Commission found that IFP self-protection unit (SPU) project, although officially placed within the ambit of the Peace Accord and containing an element of self-protection, was also intended to furnish the IFP with the military capacity to prevent by force the central government and the Transitional Executive Council (TEC) from holding elections which did not accommodate the IFP's desires for self-determination. Such armed resistance entailed the risk of unlawful death and injuries to persons.

RESPONSE TO THE COMMISSION'S FINDINGS

11. The IFP criticised the Commission's report and, in the parliamentary debate on the report held on 25 February 1999, Mr MA Mncwango of the IFP said of the Commission that it:

has remained stuck in the mind-set of the total onslaught against the IFP that is the legacy of yesterday's politics. Its final report is a clumsily crafted anecdotal mythology through which it has sought to give credibility to yesterday's liberation propaganda ... The final report of the TRC will be consigned to the dustbin of history .[67]

12. He suggested that the work of the Commission had been negatively affected by its bilateral origins as a political accommodation between the ANC and NP and consequently was 'clueless' in its analysis of 'black-on-black conflict', unlike its work in regard to the white/black conflict.

13. With regard to findings made against Dr MG Buthelezi, he said that the Commission's main source of information came from the 'twisted' confessions of people seeking amnesty who had told the Commission what it wanted to hear. He noted with regard to the Caprivi and Esikhawini hit squad operatives:

This distortion clearly happened in the testimony of discredited witnesses and self-confessed killers such as Daluxolu Mandlanduna Luthuli, Romeo Mbambo and Andries Nosenga, who are changing their versions of the facts of their crimes until they concocted lies to implicate Minister Buthelezi in their activities (interjections). In due course, all these were proved to be lies.

14. In respect of the findings made against Dr Buthelezi as President of the IFP and former leader of the KwaZulu Government, Mncwango said that:

While the TRC found no evidence of wrongdoing, or a specific violation of human rights by Dr Buthelezi, it seeks to hold him accountable for the generic violation of human rights. This is legally obscene and morally repugnant. …. One is politically accountable when certain actions may be the consequence of the policies adopted by a leader. But Minister Buthelezi never adopted any policy other than non-violent passive resistance and the echoing demand for all-inclusive negotiations, which in the final analysis were exactly what caused the demise of apartheid and led to the birth of the new South Africa.

67 Hansard, 25 February 1999, p. 77.

15. Mr Mncwango is not correct in his assertion that 'the TRC found no evidence of wrongdoing, or a specific violation of human rights by Dr Buthelezi …'. The Commission did in fact make findings against Dr Buthelezi himself. The Commission found that Dr Buthelezi knew that the Caprivi trainees were to be illegally deployed in an offensive manner against people perceived to be anti-Inkatha and was aware that such armed resistance would entail the risk of unlawful death and injury. He was held accountable for killings and attempted killings. The Commission also found that, with regard to the SPUs and the establishment of the Mlaba Camp in the 1993/4 pre-election period, one of the aims of the training was to furnish Inkatha with the military capacity forcibly to prevent the holding of elections, and that Dr Buthelezi was aware that such armed resistance would entail the risk of unlawful death and injury. The Commission found that the SPU project constituted a conspiracy to commit gross human rights violations, for which, *inter alia*, Dr Buthelezi was held accountable.

16. In coming to its findings on Dr Buthelezi's involvement in the Caprivi trainee exercise, the Commission had regard to very substantial quantities of former State Security Council memoranda and documents, which recorded the progress of the training project in significant detail. These documents, the authenticity of which was never challenged, established that senior SADF officers (Lt. Colonel van Niekerk and Colonel van den Berg) met with Dr Buthelezi on 31st October 1989. This was after the SADF had withdrawn from the Caprivi project. Van Tonder summarised this meeting in a report to a superior officer (Vice Admiral Putter) as follows:

The Chief Minister expressed his concern over the situation in Mpumalanga and the fact that he was losing the 'armed struggle'. He referred to the 'cell' idea for offensive action, which did not get off the ground.

17. At the same meeting Dr Buthelezi expressed concern that he was:

losing the armed struggle and in that regard emphasized that 'offensive steps' were still a necessity; meaning the deployment of 'hit squads'.

18. Van Tonder was specifically subpoenaed by the Commission to comment on this report, and he confirmed his recollection of the meeting. He records Mr MZ Khumalo as saying that, at the very least, Dr Buthelezi still required 'cells' capable of taking out undesirable members.

19. Mr Mncwango went so far as to accuse one of the Commissioners, namely the Revd Dr Khoza Mgojo, as having been 'personally involved in supplying arms used in the seven-day war to the fighting units in Richmond'. According to Mr Mncwango, the late Mr Sifiso Nkabinde said in an affidavit that Dr Mgojo had 'used the Federal Theological Seminary (Fedsem) in Imbali as a stock facility for the weapons and he personally handed out these weapons'. To date, no evidence has been tendered to the Commission or to any other structure to support this claim in any way.

REVIEW PROCEEDINGS BROUGHT BY MINISTER BUTHELEZI AND THE IFP

20. Some two years after the publication of the Interim Report presented to the President on 29 October 1998, Minister Mangosuthu Buthelezi and the IFP sought to review and set aside certain findings made by the Commission. They did so essentially on the basis that the findings in question were defamatory of Dr Buthelezi and the IFP. They also complained of certain procedural irregularities.

21. Originally the applicants sought an order recalling the Report and expunging the findings to which they took offence. Although that relief was abandoned, they sought an order compelling the Commission to publish in its final Report a statement setting out certain 'errata' and requiring the Commission to forward the errata to all parties to whom the Report has been distributed where this was practically possible.

22. Dr Buthelezi and the IFP (the Applicants) complained that some thirty-seven findings contained in the Commission's Report – which implicated them in gross human rights violations, criminality and conspiracy – could not have been based on factual and objective information. The Applicants also contended that the Commission had failed to comply with fair procedures and did not afford them a proper and appropriate opportunity to make representations to it in respect of evidence in its possession and the findings it intended to make. The Applicants complained that the findings unjustifiably infringed their entitlement to a good name and reputation and have impaired their right to dignity and political activity free of unwarranted attack. They complained that the findings in question represented a failure by the Commission, its commissioners and employees to apply their minds to the evidence, as there was no rational connection between the factual evidence and the findings made.

23. The Commission contended that the findings were justifiable and that there had been no procedural unfairness. The Commission also contended that there had been an unreasonable delay in launching the application and that no satisfactory explanation for the delay of two years had been furnished. A delay of this magnitude was especially serious in regard to the nature of the mandate of the Commission and its limited lifespan.

24. It was apparent from the Applicants' founding papers that their primary concern was the finding by the Commission that they were implicated in the establishment of a covert offensive para-military unit (also referred to as a 'hit squad') that was deployed against the political enemies of the Applicants. Indeed this was the only finding which was prominently attacked in their legal papers. The Commission contended that the findings in question were proper and, in the light of the oral and authenticated documentary evidence and information on hand, beyond question.

25. The Commission refused to change these critical findings. It was, however, amenable to negotiation on the adjustment of certain lesser findings in order to facilitate settlement and the issue of its Codicil.

26. The case was settled out of court only a few days before the matter was set down for hearing on 29 January 2003. The Commission agreed to the adjustment of certain lesser findings, such as those relating to the activities of certain gangs and the compilation of statistics derived from victim statements. With regard to these findings the Commission replaced findings against the IFP to read as findings against 'members and/or supporters of the IFP'. The Commission has also adjusted similar findings in relation to the ANC and other role players.

27. The bulk of the complaints advanced by the IFP and Minister Buthelezi were rejected by the Commission. Its findings concerning Minister Buthelezi's accountability in his representative capacity as the President of the IFP, the Chief Minister of KwaZulu and the only serving Minister of Police in the KwaZulu Police also remained undisturbed. The Commission was satisfied that there was overwhelming evidence to support these and other key findings concerning the IFP and Minister Buthelezi.

28. As part of the settlement, the Commission agreed to publish an appendix in which the IFP and Minister Buthelezi explained why they disagreed with the core findings of against them.[68] (...p680)

68 See appendices to this chapter, below.

APPENDIX 1

"A"

SCHEDULE OF CHANGES AND CORRECTIONS TO THE TRC REPORT

Pursuant to review proceedings instituted by the IFP and Minister Buthelezi, upon reconsideration of its initial findings and upon receipt of extensive representations made by the IFP and Minister Buthelezi, the following changes and corrections to the TRC report are made. The original text is followed by the adjusted text.

1. Volume 2, Chapter 5, paragraph 248

248 The Commission heard evidence of the involvement of Caprivi trainees in the KwaMakhutha massacre on 21 January 1987 in which thirteen people, mostly women and children, were killed and several others injured in the AK-47 attack on the home of UDF activist Bheki Ntuli. A large number of people including former Minister of Defence General Magnus Malan and MZ Khumalo of the IFP, were tried for murder in 1996 in the Durban Supreme Court. Although the accused were acquitted, the Supreme Court found that Inkatha members trained by the SADF in the Caprivi were responsible for the massacre and that the two state witnesses, being members or the SADF Military Intelligence, were directly involved in planning and execution of the operation. The court was not able to find who had provided backing for the attack.

Paragraph 248 is amended as follows:

The Commission heard evidence of the involvement of Caprivi trainees in the KwaMakhutha massacre on 21 January 1987 in which thirteen people, mostly women and children, were killed and several others injured in the AK-47 attack on the home of UDF activist Bheki Ntuli. A large number of people including former Minister of Defence General Magnus Malan and MZ Khumalo of the IFP, were tried for murder in 1996 in the Durban Supreme Court. Although the accused were acquitted, the Supreme Court found that Inkatha members trained by the SADF in the Caprivi were responsible for the massacre and that the two state witnesses, being members of the SADF's Directorate of Special Tasks, were directly involved in planning and execution of the operation. The court was not able to find who had provided backing for the attack. The Commission is mindful of the fact that senior members of the former SA Defence Force and Inkatha were acquitted in this lengthy trial on charges of murder and conspiracy to murder. In its findings, the Commission explains fully, in Volume 3 (Regional Profile) as well as in volume 5 (Findings Volume), the basis upon which it found, on a balance of probabilities, that the SADF and Inkatha are nonetheless accountable for the human rights violations committed by Caprivi trainees.

2. Volume 1, Chapter 12, paragraph 44 (l) , page 444:

Tembisa (26-28 November 1996).
Commissioners heard stories of state repression in the 1980s in this township and in the neighbouring Ivory Park informal settlement. In the 1990s, the IFP-aligned Toaster gang committed many violations in the context of violence between the ANC and the IFP.

This paragraph is amended as follows:

Tembisa (26-28 November 1996).
Commissioners heard stories of state repression in the 1980s in this township and in the neighbouring Ivory Park informal settlement. In the 1990s, the Toaster gang, comprising members who claimed to be IFP supporters, committed many violations in the context of violence between the ANC and the IFP.

3. The statement in volume 2, chapter 5, para 283, p. 476:

283 As such, hit squad members had access to KwaZulu government resources, such as vehicles, arms and ammunition. A measure of protection from prosecution was made possible through the collusion of the KZP as well as instruments of the state security forces. Further, Inkatha officials conspired with senior KZP officials to set up hit squads to eliminate ANC/SDU elements. The activities of the hit squads operating in the Esikhawini area near Richards Bay, the New Hanover area of the Natal Midlands, and the activities of a hit squad known as the Black Cats in Wesselton and Ermelo in the Transvaal are documented in other sections of the Commission's report.

This paragraph is amended as follows:

283 As such, hit squad members had access to KwaZulu government resources, such as vehicles, arms and ammunition. A measure of protection from prosecution was made possible through the collusion of the KZP as well as instruments of the state security forces. Further, certain Inkatha officials conspired with senior KZP officials to set up hit squads to eliminate ANC/SDU elements. The activities of the hit squads operating in the Esikhawini area near Richards Bay, the New Hanover area of the Natal Midlands, and the activities of a hit squad known as the Black Cats in Wesselton and Ermelo in the Transvaal are documented in other sections of the Commission's report.

4. Volume 2, Chapter 5, paragraph 198, page 454:

198 Inkatha dominated the KwaZulu government (both its executive and its bureaucracy) to the extent that the government and Inkatha became interchangeable concepts. The organization effectively ruled the KwaZulu government as a one-party state and used KwaZulu government resources and finances to fund Inkatha party-political activities and in the execution of gross human rights violations against non-Inkatha supporters. The KZP came into existence in 1981 and was disbanded in 1994 following the April 1984 elections. Chief Buthelezi was the only ever serving Minister of Police in KwaZulu. Violations committed by the KZP are dealt with later in this report.

This paragraph is amended as follows:

198 Inkatha dominated the KwaZulu government (both its executive and its bureaucracy) to the extent that the government and Inkatha became interchangeable concepts. The organisation was the only political party that participated in the KwaZulu Government. The Commission heard evidence and made

findings that in certain instances, KwaZulu Government resources and finances were used to fund party-political activities and in the execution of gross human rights violations against non-Inkatha supporters. The KZP came into existence in 1980 and was disbanded and integrated into the SAPS in 1994 following the April 1994 elections. Chief Buthelezi was the only ever serving Minister of Police in KwaZulu. Violations committed by the KZP are dealt with later in this report. The SA Commissioner of Police retained a measure of control over the KZP.

5. Volume 2, Chapter 5, paragraph 279, page 475:

279 The role of the IFP in the political violence in the early nineties is dealt with under the relevant sections of the Commission's report. In brief, the IFP was found to the foremost perpetrator of gross human rights violations in KwaZulu and Natal during this period. Approximately 9 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal form 1990 to May 1994. This constituted almost fifty per cent of all violations reported to the Commission's Durban office for this period and over one-third of the total number of gross human rights violations reported for the thirty-four-year period of the Commission's mandate.

This paragraph is amended as follows:

279 The role of the IFP in the political violence in the early 90s is dealt with under the relevant sections of the Commission's report. In brief, the statistical evidence, based on statements made to the Commission by witnesses, indicates that the foremost perpetrators of gross human rights violations (GHRVs) in KwaZulu and Natal for this period, were persons who were named by witnesses as being supporters of, or aligned to, the IFP. Approximately 9000 GHRVs were perpetrated by such persons in KZN and Natal form 1990 – 1994, which constituted 50% of all violations reported to the Commission's Durban office for this period, and over 33% of the total number of GHRVs reported for the 34 year period of the Commission's mandate. However, in the light of the fact that the vast majority of members and supporters of the IFP stayed away from the Commission, the Commission was denied the opportunity of recording the testimonies of the large numbers of IFP members and supporters who were victims of violence at the hands of supporters of the ANC or its affiliates. Accordingly, any statistical date concerning the respective culpability of the IFP and the ANC during these years, must be seen and understood in the light of the above.

6. Volume 2, Chapter 5, paragraph 280, page 475,:

The following passage is inserted at the beginning of para 280:

The Commission held public hearings into the violence in March 1990, that became known as the Seven Day War, but did not have the benefit of the participation of members and supporters of the IFP, who chose not to participate in the hearings. Thereby the Commission did not have the benefit of hearing the IFP's perspective of the nature and causes to this very intense period of violence and its findings are based on submissions received mainly form those involved in the conflict under the ANC banner.

7. Volume 2, Chapter 5, paragraph 282, page 476:

282 The Commission has made a finding that IFP supporters were conscripted into hit squads and that the activities of these hit squads became widespread in KwaZulu and Natal during the 1990s. From information received by the Commission, it would appear that the hit squad operations flowing from the Caprivi training and other political networks were predominantly supportive of the IFP, drawing in officials of the KwaZulu government and KZP as well as senior politicians and leaders of the party.

This paragraph is amended as follows:

282 A small number of IFP supporters and/or members became involved in hit squad activities, in various parts of KZN and Natal during the 1990s. Some of those involved had received training form the SA Defence Force in the Caprivi Strip and the evidence before the Commission indicated that they liaised with senior officials of the KZ Government and Inkatha Freedom Party.

7. Volume 2, Chapter 5, paragraph 285, page 477:

285 Inkatha supporters were also responsible for the commission of gross human rights violations in the province of KwaZulu/Natal in the run-up to the 1994 elections, when the IFP engaged in a campaign to disrupt the electoral process. During this period, Inkatha received arms and ammunition from right-wing organisations as well as sections of the security forces and embarked upon paramilitary training projects in which IFP supporters were trained in weapons handling and paramilitary tactics. This campaign continued until 29 April, just six days before the elections, when the IFP announced that it would contest the elections. The Commission found that approximately 3 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal form July 1993 to May 1994. This constituted more than 55 per cent of all violations reported to the Commission's Durban office for this period.

This paragraph is amended as follows:

285 Inkatha supporters were also responsible for the commission of gross human rights violations in the province of KwaZulu/Natal in the run-up to the 1994 elections which seriously disrupted the process leading up to the elections. During this period, certain senior IFP members received arms and ammunition from right-wing organisations as well as sections of the security forces and embarked upon paramilitary training projects in which IFP supporters were trained in weapons handling and paramilitary tactics. Just six days before the elections, when the IFP announced that it would contest the elections, political violence in the region came to an abrupt end. The Commission found that approximately 3 000 gross human rights violations were perpetrated by alleged Inkatha supports/ and or members in KwaZulu and Natal from July 1993 to May 1994. This constituted more than 55 per cent of all violations reported to the Commission's Durban office for this period. Allowance must be made for the fact that many IFP supporters declared that they would not report violations perpetrated against the IFP and would not participate in the Commission's process.

9. Volume 3, Chapter 3, first paragraph of the finding at paragraph 182 (page 220):

182 The Commission has made a comprehensive finding concerning Operation Marion. It is contained in a lengthy document which includes the full reasons for the finding and which can be found in the State Archives. The main features of the finding are as follows:

This paragraph is amended as follows:

182 The Commission has made a comprehensive finding concerning Operation Marion. It is contained in a lengthy document which includes the full reasons for the finding and which can be found in the State Archives. The Commission is mindful of the fact that senior members of the former SA Defence Force and Inkatha were acquitted in this lengthy trial on charges of murder and conspiracy to murder. In its findings, the Commission explains fully, in this volume as well as in volume 5 (Findings Volume), the basis upon which it found, on a balance of probabilities, that the SADF and Inkatha are nonetheless accountable for the human rights violations committed by Caprivi trainees. The main features of the finding are as follows:

10. Volume 3, Chapter 3, first sub-paragraph at paragraph 292, pages 267-268:

292 The full findings of the Commission on the event which became known as the Seven day War are recorded elsewhere in the Commission's report. In summary, they are as follows:

This paragraph is amended as follows:

292 The Commission held public hearings relating to the Seven-Day War, but did not have the benefit of the participation of members and supporters of the IFP, who chose not to participate in the hearings. The Commission did not have the benefit of hearing the IFP's perspective of the nature and causes of this intense period of violence and its findings are based on submissions received mainly form those involved in the conflict under the ANC banner. The full findings of the Commission on the event which became known as the Seven day War are recorded elsewhere in the Commission's report. In summary, they are as follows:

11. Volume 3, Chapter 3, the second last indented subparagraph of paragraph 294, page 270:

An informal inquest held in 1991 found that 'persons unknown' were responsible for the deaths. A second inquest was held in May 1995. The inquest magistrate, RA Stewart, found that former special constable Welcome Muzi Hlophe (aka 'BigBoy' Hlophe), SAP Lance Sergeant Peter Smith, KwaZulu government driver Abraham Shoba and a fourth unknown man were prima facie directly responsible for the killings. He also found that the original investigating officer, Major Joseph van Zyl, was an accessory to the killings and recommended that an investigation be opened with a view to a possible conviction of Van Zyl. He further found that the then Secretary of the KwaZulu Legislature, Mr. Robert Mzimela, KwaZulu employee Z Mkhize, and then head of the KLA Protection Unit Major Leonard

Langeni had been implicated in a cover-up operation. (Mzimela and Langeni were both involved in the operations of the Esikhawini hit squad – see below)

This paragraph is amended as follows:

An informal inquest held in 1991 found that 'persons unknown' were responsible for the deaths. A second inquest was held in May 1995. The inquest magistrate, RA Stewart, found that former special constable Welcome Muzi Hlophe (aka 'BigBoy' Hlophe), SAP Lance Sergeant Peter Smith, KwaZulu government driver Abraham Shoba and a fourth unknown man were prima facie directly responsible for the killings. He also found that the original investigating officer, Major Joseph van Zyl, was an accessory to the killings and recommended that an investigation be opened with a view to a possible conviction of Van Zyl. He further recommended an investigation into the roles of senior KwaZulu Government and Police officials who were strongly suspected of being involved in a cover-up operation.

12. Volume 2, Chapter 7, paragraph 186, page 625:

186 Inkatha was found to be the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990s. Approximately 9 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal from 1990 to May 1994. This constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period.

This paragraph is amended as follows:

186 Statistical evidence, based on statements made to the Commission by witnesses, indicates that the foremost perpetrators of gross human rights violations (GHRVs) in KwaZulu and Natal for this period, were persons who were named by witnesses as being supporters and/ or members of the IFP. Approximately 9000 GHRVs were perpetrated by such persons in KZN and Natal form 1990 – 1994, which constituted 50% of all violations reported to the Commission's Durban office for this period, and over 33% of the total number of GHRVs reported for the 34 year period of the Commission's mandate. However, in the light of the fact that the vast majority of members and supporters of the IFP stayed away from the Commission, the Commission was denied the opportunity of recording the testimonies of the large numbers of IFP members and supporters who were victims of violence at the hands of supporters of the ANC or its affiliates. Accordingly, any statistical date concerning the respective culpability of the IFP and the ANC during these years, must be seen and understood in the light of the above.

13. The finding in Volume 2, Chapter 7, paragraph 195, page 626:

THE COMMISSION MADE A COMPREHENSIVE FINDING ONTHE SEVEN DAY WAR AND ON THE ACCOUNTABILITY OF THE PRIMARY ROLE-PLAYERS IN A CONFLICT THAT RESULTED IN THE COMMISSION OF MANY HUNDREDS OF GROSS VIOLATIONS OF HUMAN RIGHTS. THE ROLE-PLAYERS INCLUDE: THE RIOT UNIT OF THE SAP, INCLUDING SPECIAL CONSTABLES, AND THE SOUTH AFRICAN DEFENCE FORCE.

14. Volume 2, Chapter 7, paragraph 551, page 709 will be amended by the addition of the following bullet point:

* The IFP perspective on the root causes, dynamics, political objectives and circumstances of the armed struggle and the so-called black-on- black conflict.

15. Volume 3, Chapter 3, paragraph 106, page 190:

160 By far the majority of reports of severe ill treatment were attributed to Inkatha. The number of acts attributable to Inkatha was double the number attributed to the police and more than three times the number attributed to the ANC. The number of reports of torture in this period rose to five times that of the previous period. The overwhelming majority of these acts were attributed to the SAP. The majority of reports of associated violations that occurred in the province during this period were attributed to the SAP, followed by those attributed to Inkatha. A small number of similar acts were attributed to other parties and organisations, namely, the ANC, the UDF , the KZP and the SADF.

The paragraph is amended as follows:

160 By far the majority of reports of severe ill treatment were attributed to members and/ or supporters of Inkatha. The number of acts attributable to IFP members and/ or supporters was double the number attributed to the police and more than three times the number attributed to members and/ or supporters of the ANC. The fact that the Commission received a greater number of reports implicating Inkatha must be considered within the context of most IFP members having elected not to participate in the Commission's process, and the IFP itself having distanced itself form the Commission's work after its initial submission. The number of reports of torture in this period rose to five times that of the previous period. The overwhelming majority of these acts were attributed to the SAP. The majority of reports of associated violations that occurred in the province during this period were attributed to the SAP, followed by those attributed to members and/ or supporters of Inkatha. A small number of similar acts were attributed to other parties and organisations, namely, the ANC, the UDF , the KZP and the SADF.

16. Volume 2, Chapter 7, the finding at paragraph 251, page 640:

THE COMMISSION FINDS THAT, ALTHOUGH THE SPU PROJECT WAS OFFICIALLY PLACED WITHIN THE AMBIT OF THE PEACE ACCORD AND THAT SELF-PROTECTION FORMED AN ELEMENT THEREOF, INHERENT IN THE PROJECT WAS ALSO AN INTENTION TO FURNISH INKATHA WITH THE MILITARY CAPACITY TO PREVENT BY FORCE THE HOLDING OF ELECTIONS WHICH DID NOT ACCOMMODATE INKATHA'S DESIRES FOR SELF-DETERMINATION. SUCH ARMED RESISTANCE WOULD ENTAIL THE RISK OF UNLAWFUL DEATH AND INJURY TO PERSONS AND, AS SUCH, CONSTITITUTES A CONSPIRACY TO COMMIT MURDER.

The Commission will delete the last sentence of the bolded statement and substitute the statement with the following statement:

THE COMMISSION FINDS THAT, ALTHOUGH THE SPU PROJECT WAS OFFICIALLY PLACED WITHIN THE AMBIT OF THE PEACE ACCORD AND THAT SELF-PROTECTION FORMED AN ELEMENT THEREOF, INHERENT IN THE PROJECT WAS ALSO AN INTENTION TO FURNISH INKATHA WITH THE MILITARY CAPACITY TO

DISRUPT THE HOLDING OF ELECTIONS WHICH DID NOT ACCOMMODATE INKATHA'S DESIRES FOR SELF-DETERMINATION. THIS VERACITY OF THIS CONCLUSION HAS BEEN DISPUTED BY THE IFP.

16. Volume 2, Chapter 7, paragraph 253, page 641:

253 An informal alliance between the right wing and the IFP emerged after the formation of COSAG in 1993. The alliance played itself out in weapons smuggling an paramilitary training, primarily on white farms and KwaZulu nature reserves. There were also a few cases where IFP and right-wing members took part in joint attacks.

Paragraph 253 is substituted by the following paragraph:

253 An informal alliance between the right wing and the IFP emerged after the formation of COSAG in 1993. The alliance played itself out in weapons smuggling and paramilitary training, primarily on white farms and KwaZulu nature reserves. There were also a few isolated cases where certain IFP and right-wing members took part in joint attacks.

18. Volume 3, Chapter 3, last 3 sub-paragraphs of paragraph 208, page 239:

A formal inquest (Howick Inquest 13/88) into the killing of the three MAWU members found nine known Inkatha members responsible for the killings. Despite the inquest finding, no one has been charged for these killings to date. One of those named was Mr Vela Mchunu, a 'Caprivi trainee'. In order to prevent Mchunu from form testifying at the inquest, KZP Captain Leonard Langeni and Chief Minister Buthelezi's personal assistant, Mr MZ Khumalo, arranged for him to be hidden at the Mkhuze camp. IN 1987, Sarmcol signed a recognition agreement with UWUSA, the Inkatha-aligned trade union, set up in opposition to COSATU.

In March 1998 .....to the factory floor.

THE COMMISSION FINDS THE KILLING OF PROMINENT TRADE UNIONISTS IN MPHOPHOMENI TOWNSHIP BY MEMBERS OF INKATHA AND THE KZP SET IN MOTION A LENGTHLY PERIOD OF POLITICAL CONFLICT RESULTING IN WIDESPREAD GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH INKATHA AND THE KZP ARE HELD ACCOUNTABLE.

This paragraph is amended as follows:

A formal inquest (Howick Inquest 13/88) into the killing of the three MAWU members found nine known Inkatha members responsible for the killings. Despite the inquest finding, no one has been charged for these killings to date. One of those named was Mr Vela Mchunu, a 'Caprivi trainee'. In an apparent attempt to prevent Mchunu from testifying at the inquest, KZP Captain Leonard Langeni and Mr MZ Khumalo, a senior Inkatha official, arranged for him to be hidden at the Mkhuze camp. In 1987, Sarmcol signed a recognition agreement with UWUSA, the Inkatha-aligned trade union, set up in opposition to COSATU.

In March 1998 .....to the factory floor.

THE COMMISSION FINDS THE KILLING OF PROMINENT TRADE UNIONISTS IN MPHOPHOMENI TOWNSHIP BY MEMBERS OF INKATHA AND THE KZP SET IN MOTION A LENGTHLY PERIOD OF POLITICAL CONFLICT RESULTING IN WIDE-SPREAD GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH ELEMENTS OF INKATHA AND THE KZP ARE HELD ACCOUNTABLE.

19. Volume 3, Chapter 3, paragraph 259, pages 256 – 7

The Commission has made a comprehensive finding regarding the KZP, in which it is described, inter alia, as a highly politicised force, openly assisting the IFP – by omission and by active participation -in the commission of gross human rights violations, as well as being grossly incompetent.

This paragraph is amended by the insertion of the first sentence below:

In investigating the activity of the KZP, which was disbanded and integrated into the SAPS in 1994, the Commission did not have the benefit of eliciting the view-point of and evidence from the KZP, as most of its senior members did not volunteer evidence to the Commission. The Commission has made a comprehensive finding regarding the KZP, in which it is described, inter alia, as a highly politicised force, openly assisting the IFP – by omission and by active participation - in the commission of gross human rights violations, as well as being grossly incompetent.

20. Volume 3, Chapter 3, first two sub-paragraphs of the finding at paragraph 390, pages 306 –7:

THE COMMISSION FINDS THAT, DURING THE PERIOD 1993 – 1994, THE SELF-PROTECTION UNIT PROJECT (SPU),ALTHOUGH OFFICIALLY PLACED WITHIN THE AMBIT OF THE PEACE ACCORD AND CONTAINING AN ELEMENT OF SELF PROTECTION, WAS ALSO INTENDED TO FURNISH THE INKATHA FREEDOM PARTY WITH THE MILITARY CAPACITY TO, BY FORCE, PREVENT THE CENTRAL GOVERNMENT AND THE TRANSITIONAL EXECUTIVE COUNCIL FORM HOLDING ELECTIONS WHICH DID NOT ACCOMMODATE THE IFP'S DESIRES FOR SELF-DETERMINATION.

IT WAS ADMITTED AT THE TIME BY THE PERSONS NAMED BELOW THAT SUCH ARMED RESISTANCE WOULD ENTAIL THE RISK OF UNLAWFUL DEATH AND INJURY TO PERSONS.

The second bolded paragraph starting with the words "It was admitted" and ending with the words "injury to persons" will be deleted. The first bolded paragraph will be amended as follows:

THE COMMISSION FINDS THAT, DURING THE PERIOD 1993 – 1994, THE SELF-PROTECTION UNIT PROJECT (SPU), ALTHOUGH OFFICIALLY PLACED WITHIN THE AMBIT OF THE PEACE ACCORD AND CONTAINING AN ELEMENT OF SELF PROTECTION, WAS ALSO INTENDED BY SENIOR INKATHA MEMBERS TO FURNISH THE INKATHA FREEDOM PARTY WITH A PARAMILITARY CAPACITY TO, BY FORCE, DISRUPT THE CENTRAL GOVERNMENT AND THE TRANSITIONAL EXECUTIVE COUNCIL FORM HOLDING ELECTIONS WHICH DID NOT ACCOMMODATE THE IFP'S DESIRES FOR SELF-DETERMINATION.

21. Volume 3, Chapter 3, paragraph 296, page 270:

296 In 1991, as a result of these concerns, Daluxolo Luthuli summoned Gcina Brian Mkhize [AM4599/97] to a meeting in Ulundi. Mkhize was a 'Caprivi trianee' who had joined the KZP and was posted to the Esikhawini Riot Unit in 1990. The meeting was held at KZP Captain Leonard Langeni's office in Ulundi early in 1991. At the time, Langeni was the officer commanding the then KLA Protection Unit. Others present at the meeting were Luthuli, Prince Gideon Zulu (then KwaZulu Minister of Pensions), Mr M R Mzimela (then Secretary of the KwaZulu Legislature), and Mr MZ Khumalo (then personal assistant to Chief Buthelezi).

This paragraph is amended as follows:

296 According to Daluxolo Luthuli and Gcina Brian Mkhize [AM4599/97] in 1991, as a result of these concerns, Luthuli summoned Mkhize to a meeting in Ulundi. Mkhize was a 'Caprivi trianee' who had joined the KZP and was posted to the Esikhawini Riot Unit in 1990. The meeting was held at KZP Captain Leonard Langeni's office in Ulundi early in 1991. At the time, Langeni was the officer commanding the then KLA Protection Unit. Others present at the meeting were Luthuli, Prince Gideon Zulu (then KwaZulu Minister of Pensions), Mr M R Mzimela (then Secretary of the KwaZulu Legislature), and Mr MZ Khumalo , a senior Inkatha official.

22 Volume 3, Chapter 3, second bolded sub-paragraph at paragraph 308, pages 276 –9:

INKATHA LEADERS APPROACHED THE INKATHA CENTRAL AUTHORITY IN ULUNDI BECAUSE THEY WERE CONCERNED THAT THEY WERE IN THE PROCESS OF LOSING THE STRUGGLE.

This sub-paragraph is amended as follows:

LOCAL INKATHA LEADERS IN ESIKAWENI APPROACHED CERTAIN SENIOR INKATHA OFFICIALS IN ULUNDI BECAUSE THEY WERE CONCERNED THAT THEY WERE IN THE PROCESS OF LOSING THE STRUGGLE.

The following sub-paragraph is inserted as the final bolded sub-paragraph of the bulleted findings relating to the hit squads on page 278:

THE COMMISSION NOTES THAT THE IFP DISPUTES THE VERSIONS OF DALOXOLO LUTHULI, GCINA BRIAN MKHIZE AND OTHERS. THE COMMISSION NOTES FURTHER THAT THOSE IFP MEMBERS IMPLICATED DID NOT MAKE THEMSELVES AVAILABLE TO THE COMMISSION TO REBUT THE EVIDENCE.

23. Volume 3, Chapter 3, finding at paragraph 318, page 286:

THE COMMISSION FINDS THAT THE KILLING OF SIXTEEN PEOPLE ON 8 NOVEMBER 1990 WAS CAUSED BY UNKNOWN SUPPORTERS OF THE IFP FROM THE BRUNTVILLE HOSTEL, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN INKATHA-SUPPORTING HOSTEL-DWELLERS ARE HELD ACCOUNTABLE.

This paragraph is amended by an insertion of an additional sentence and will read as follows:

THE COMMISSION FINDS THAT THE KILLING OF SIXTEEN PEOPLE ON 8 NOVEMBER 1990 WAS CAUSED BY UNKNOWN SUPPORTERS OF THE IFP FROM THE BRUNTVILLE HOSTEL, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN INKATHA-SUPPORTING HOSTEL- DWELLERS ARE HELD ACCOUNTABLE. THE COMMISSION NOTES THAT SINCE THE IFP DECLINED TO PARTICIPATE IN HEARING THAT THERE MAY BE OTHER PER-SPECTIVES WHICH IT DID NOT HAVE THE BENEFIT OF RECEIVING AND ANALYSING.

24. The statement in Volume 5, Chapter 6, finding at the 5th sub-paragraph of paragraph 109, page 229:

IN KWAZULU SPECIFICALLY, THE HOMELAND GOVERNMENT AND POLICE FORCE (KZP) WERE RESPONSIBLE FOR:

The 5th sub-paragraph is amended as follows:

IN KWAZULU SPECIFICALLY, ELEMENTS OF THE HOMELAND GOVERNMENT AND POLICE (KZP) WERE RESPONSIBLE FOR:

25. Volume 5, Chapter 6, sub-paragraphs e, I and j of paragraph 116, pages 231 – 2:

e the establishment in early 1986 of a covert, offensive paramilitary unit trained, armed and paid by Military Intelligence, and their deployment throughout KwaZulu until September 1990, during which the 'Caprivi trainees' killed large numbers of people and permanently altered the political landscape in the areas in which they were deployed (see separate find below);

i the deployment of a joint KZP-IFP hit squad in Esikhawini township in 1990, and the resultant killing of over 100 people (see separate finding below);

j the deployment of the IFP-based 'Black Cats' hit squad in Wesselton and Ermelo in 1990, and the resultant killing of large numbers of people;

Subparagraphs (e), (i) and (j) are amended as follows:

e the establishment in early 1986 of a covert, offensive paramilitary unit trained, armed and paid by Military Intelligence, and their deployment throughout KwaZulu until September 1990, during which the several 'Caprivi trainees' killed large numbers of people and permanently altered the political landscape in the areas in which they were deployed (see separate find below);

l the deployment of a hit squad in Esikhawini township comprising elements of the KZP and certain Inkatha supporters in 1990, which resulted in the killing of over 100 people (see separate finding below);

j the deployment of the 'Black Cats' hit squad in Wesselton and Ermelo comprising Inkatha supporters in 1990, and the resultant killing of large numbers of people;

26. Volume 5, Chapter 6, paragraph 117 – 119, page 232:

117 The above mentioned incidents represent iconic events over the past twelve years in which IFP office-bearers, members and supporters were involved in acts of serious political violence. They do not purport to be a complete list of such incidents. However, the most devastating indictment of the role of the IFP in political violence during the Commission's mandate period is to be found in the statistics compiled by the Commission directly from submissions by victims of gross human rights violations. These established the IFP as the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990-94 period. Indeed, IFP violations constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period, and over one-third of the total number of gross human rights violations committed during the thirty-four-year period of the Commission's mandate. The statistics also indicate that IFP members, supporters and office-bearers in KwaZulu and Natal were responsible for more than 55 per cent of all violations reported to the Commission's Durban office for the period between July 1993 and May 1994.

118 Other statistics derived from the Commission's database show that Inkatha/the IFP was responsible, in the mandate period, for some 3 800 killings in the Natal and KwaZulu area compared with approximately 1 100 attributed to the ANC and some 700 to the SAP. The IFP remains the major perpetrator of killings on a national scale, being allegedly responsible for over 4 500 killings compared to 2 700 attributed to the SAP and 1 300 to the ANC. These statistics suggest that the IFP was responsible for approximately 3.5 killings for on killing attributed to the ANC. A graph included in the Natal regional profile (Volume Three) illustrates that in 1987-88 the IFP exceeded even the SAP in terms of numbers of people killed by a single perpetrator organisation.

119 It must be noted here that, for much of the period in which the Commission was able to accept human rights violations statements, the IFP discouraged its members and supporters from making submissions to the Commission. The result is that only about 10 per cent of all statements taken in KwaZulu-Natal came from people linked to the IFP. The significant point is that the statistics derived from the Commission's database do not diverge from those published by other national and international bodies. All of these are consistent in identifying the IFP as the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994.

The last sentence in paragraph 118 has been deleted and the paragraphs are amended as follows:

117 The above incidents represent iconic events over the past twelve years in which IFP office-bearers, members and supporters were involved in acts of serious political violence. They do not purport to be a complete list of such incidents. However, the most devastating indictment of the role of members and/ or supporters of the IFP in political violence during the Commission's mandate period is to be found in the statistics compiled by the Commission directly from submissions by victims of gross human rights violations. These established that members and/ or supporters of the IFP were the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990-94 period. Indeed, such violations constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period, and over one-third of the total number of gross human rights violations committed during the thirty-four-year period of the Commission's mandate. The statistics also indicate that IFP members, supporters and office-bearers in KwaZulu and Natal were responsible for more than 55 per cent of all violations reported to the Commission's Durban office for the period between July 1993 and May 1994.

118 Other statistics derived from the Commission's database show that members and/ or supporters of the IFP were responsible, in the mandate period, for some 3 800 killings in the Natal and KwaZulu area compared with approximately 1 100 attributed to the members and/ or supporters of the ANC and some 700 to the SAP. Members and/ or supporters The IFP remains the major perpetrator of killings on a national scale, being allegedly responsible for over 4 500 killings compared to 2 700 attributed to the SAP and 1 300 to members and/ or supporters of the ANC. These statistics suggest that members and/ or supporters of the IFP was responsible for approximately 3.5 killings for on killing attributed to the members and/ or supporters of the ANC.

119 It must be noted here that, for much of the period in which the Commission was able to accept human rights violations statements, the IFP discouraged its members and supporters from making submissions to the Commission. The result is that only about 10 per cent of all statements taken in KwaZulu-Natal came from people linked to the IFP. The significant point is that the statistics derived from the Commission's database do not diverge from those published by other national and international bodies. All of these are consistent in identifying members and/ or supporters of the IFP as the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994. The Commission notes that a complete picture of the IFP-ANC conflict could not be formed due to the failure of by many IFP members and supporters to participate in the Commission and the absence of many countervailing complaints of violations against the IFP.

27. Volume 5, Chapter 6, first paragraph 121 pages 233 – 6:

121 The formal finding of the Commission in regard to the IFP is set out below:

DURING THE PERIOD 1982-94, THE INKATHA FREEDOM PARTY, KNOWN AS INKATHA PRIOR TO JULY 1990 (HEREINAFTER REFERRED TO AS "THE ORGANISATION') WAS RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE FORMER TRANSVAAL, NATAL AND KWAZULU AGAINST

- PERSONS WHO WERE PERCEIVED TO BE LEADERS, MEMBERS OR SUP PORTERS OF THE UDF, ANC, SOUTH AFRICAN COMMUNIST PARY (SACP) AND COSATU;
- PERSONS WHO WERE IDENTIFIED AS POSING A THREAT TO THE ORGANISATION;
- MEMBERS OR SUPPORTERS OF THE ORGANISATION WHOSE LOYALTY WAS DOUBTED.
- IT IS A FURTHER FINDING OR THE COMMISSION THAT SUCH VIOLATIONS FORMED PART OF A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE ORGANISATION.
- THE COMMISSION BASED THIS FINDING ON THE FOLLOWING ACTIONS OF THE IFP:
- SPEECHES BY THE IFP PRESIDENT, SENIOR PARTY OFFICIALS AND PERSONS ALIGNED TO THE ORGANISATION'S IDEALOGY, WHICH HAD THE EFFECT OF INCITING SUPPORTERS OF THE ORGANISATION TO COMMIT ACTS OF VIOLENCE;

- ARMING THE ORGANISATIONS'S SUPPORTERS WITH WEAPONS IN CONTRAVENTION OF THE ARMS AND AMMUNITION, AND EXPLOSIVES AND DANGEROUS WEAPONS ACTS;
- MASS ATTACKS BY SUPPORTERS OF THE ORGANISATION ON COMMUNITIES INHABITED BY PERSONS REFERRED TO ABOVE, RESULTING IN DEATH AND INJURY AND THE DESTRUCTION AND THEFT OF PROPERTY;
- KILLING OF LEADERS OF THE POLITICAL ORGANISATIONS AND PERSONS REFERRED TO ABOVE;
- COLLUSION WITH THE SOUTH AFRICAN GOVERNMENT'S SECURITY FORCES TO COMMIT THE VIOLATIONS REFERRED TO ABOVE;
- ENTERING INTO A PACT WITH THE SADF TO CREATE A PARAMILITARY FORCE FOR THE ORGANISATION, WHICH WAS INTENDED TO AND DID CAUSE DEATH AND INJURY TO THE PERSONS REFERRED TO ABOVE;
- ESTABLISHING HIT SQUADS WITHIN THE KZP AND THE SPECIAL CONSTABLES STRUCTURE OF THE SAP TO KILL OR CAUSE INJURY TO THE PERSONS REFERRED TO ABOVE;
- UNDER THE AUSPICES OF THE SELF-PROTECTION UNIT PROJECT, TRIANING LARGE NUMBERS OF THE ORGANISATIONS'S SUPPORTERS WITH THE SPECIFIC OBJECTIVE OF PREVENTING, BYMEANS OF VIOLENCE, THE HOLDING OF ELECTIONS IN KWAZULU-NATAL IN APRIL 1994, UNDER A CONSTITUTION WHICH DID NOT RECOGNISE THE ORGANISATIONS'S DEMANDS FOR SOVEREIGNTY. IN ORDER TO ACHIEVE THIS OBJECTIVE, THE KWAZULU GOVERNMENT AND ITS KWAZULU POLICE STRUCTURES WERE SUBVERTED;
- CONSPIRING WITH RIGHT-WING ORGANISATIONS AND FORMER MEMBERS OF THE SOUTH AFRICAN GOVERNMENT'S SECURITY FORCES TO COMMIT ACTS WHICH RESULTED IN LOSS OF LIFE OR INJURY IN ORDER TO ACHIEVE THE OBJECTIVE REFERRED TO ABOVE;
- CREATING A CLIMATE OF IMPUNITY BY EXPRESSLY OR IMPLICITLY CONDONING GROSS HUMAN RIGHTS VIOLATIONS AND OTHER UNLAWFUL ACTS COMMITTED BY MEMBERS OR SUPPORTERS OF THE ORGANISATION.
- CHIEF MG BUTHELEZI SERVED SIMULTANEOUSLY AS PRESIDENT OF THE IFP AND AS THE CHIEF MINISTER OF THE KWAZULU GOVERNMENT AND WAS THE ONLY SERVING MINISTER OF POLICE IN THE KWAZULU GOVERNMENT DURING THE ENTIRE THIRTEEN-YEAR EXISTENCE OF THE KWAZULU POLICE. WHERE THESE THREE AGENCIES ARE FOUND TO HAVE BEEN RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS, CHIEF MANGOSUTHU BUTHELEZI IS HELD BY THIS COMMISSION TO BE ACCOUNTABLE IN HIS REPRESENTATIVE CAPACITY AS THE LEADER, HEAD OR RESPONSIBLE MINISTER OF THE PARTIES CONCERNED.

This paragraph is amended as follows:

121 The formal finding of the Commission on the actions by members, supporters or officials of the organisation, is set out below:
DURING THE PERIOD 1982-94 MEMBERS, SUPPORTERS AND/ OR OFFICIALS OF THE INKATHA FREEDOM PARTY, KNOWN AS INKATHA PRIOR TO JULY 1990 (HEREINAFTER REFERRED TO AS "THE ORGANISATION') WERE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE FORMER TRANSVAAL, NATAL AND KWAZULU AGAINST:

- PERSONS WHO WERE PERCEIVED TO BE LEADERS, MEMBERS OR SUP PORTERS OF THE UDF, ANC, SOUTH AFRICAN COMMUNIST PARY (SACP) AND COSATU;
- PERSONS WHO WERE IDENTIFIED AS POSING A THREAT TO THE ORGANISATION;
- MEMBERS OR SUPPORTERS OF THE ORGANISATION WHOSE LOYALTY WAS DOUBTED.
- IT IS A FURTHER FINDING OF THE COMMISSION THAT SUCH VIOLATIONS FORMED PART OF A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE MEMBERS, SUPPORTERS OR OFFICIALS OF THE ORGANISATION.

THE COMMISSION BASED THIS FINDING ON THE FOLLOWING ACTIONS OF THE IFP:

- SPEECHES BY SENIOR PARTY OFFICIALS AND PERSONS ALIGNED TO THE ORGANISATION'S IDEALOGY, WHICH HAD THE EFFECT OF INCITING SUP PORTERS OF THE ORGANISATION TO COMMIT ACTS OF VIOLENCE;
- ARMING THE ORGANISATIONS'S SUPPORTERS WITH WEAPONS IN CONTRAVENTION OF THE ARMS AND AMMUNITION, AND EXPLOSIVES AND DANGEROUS WEAPONS ACTS;
- MASS ATTACKS BY SUPPORTERS OF THE ORGANISATION ON COMMUNITIES INHABITED BY PERSONS REFERRED TO ABOVE, RESULTING IN DEATH AND INJURY AND THE DESTRUCTION AND THEFT OF PROPERTY;
- KILLING OF LEADERS OF THE POLITICAL ORGANISATIONS AND PERSONS REFERRED TO ABOVE;
- OCCASIONAL COLLUSION WITH THE SOUTH AFRICAN GOVERNMENT'S SECURITY FORCES TO COMMIT THE VIOLATIONS REFERRED TO ABOVE;
- ENTERING INTO A PACT WITH THE SADF TO CREATE A PARAMILITARY FORCE FOR THE ORGANISATION, WHICH WAS INTENDED TO AND DID CAUSE DEATH AND INJURY TO THE PERSONS REFERRED TO ABOVE;
- ESTABLISHING HIT SQUADS WITHIN THE KZP AND THE SPECIAL

CONSTABLES STRUCTURE OF THE SAP TO KILL OR CAUSE INJURY TO THE PERSONS REFERRED TO ABOVE;

- UNDER THE AUSPICES OF THE SELF-PROTECTION UNIT PROJECT, TRIANING LARGE NUMBERS OF THE ORGANISATIONS'S SUPPORTERS WITH THE SPECIFIC OBJECTIVE OF PREVENTING, BYMEANS OF VIOLENCE, THE HOLDING OF ELECTIONS IN KWAZULU-NATAL IN APRIL 1994, UNDER A CONSTITUTION WHICH DID NOT RECOGNISE THE ORGANISATIONS'S DEMANDS FOR SOVEREIGNTY. IN ORDER TO ACHIEVE THIS OBJECTIVE, THE KWAZULU GOVERNMENT AND ITS KWAZULU POLICE STRUCTURES WERE SUBVERTED;
- CONSPIRING WITH RIGHT-WING ORGANISATIONS AND FORMER MEMBERS OF THE SOUTH AFRICAN GOVERNMENT'S SECURITY FORCES TO COMMIT ACTS WHICH RESULTED IN LOSS OF LIFE OR INJURY IN ORDER TO ACHIEVE THE OBJECTIVE REFERRED TO ABOVE;
- CREATING A CLIMATE OF IMPUNITY BY EXPRESSLY OR IMPLICITLY CONDONING GROSS HUMAN RIGHTS VIOLATIONS AND OTHER UNLAWFUL ACTS COMMITTED BY MEMBERS OR SUPPORTERS OF THE ORGANISATION.

CHIEF MG BUTHELEZI SERVED SIMULTANEOUSLY AS PRESIDENT OF THE IFP AND AS THE CHIEF MINISTER OF THE KWAZULU GOVERNMENT AND WAS THE ONLY SERVING MINISTER OF POLICE IN THE KWAZULU GOVERNMENT DURING THE ENTIRE THIRTEEN-YEAR EXISTENCE OF THE KWAZULU POLICE. WHERE THESE THREE AGENCIES ARE FOUND TO HAVE BEEN RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS, CHIEF MANGOSUTHU BUTHELEZI IS HELD BY THIS COMMISSION TO BE ACCOUNTABLE IN HIS REP-RESENTATIVE CAPACITY AS THE LEADER, HEAD OR RESPONSIBLE MINISTER OF THE PARTIES CONCERNED.

28. Volume 5, Chapter 6, paragraph 122, page 234;

122 The Commission also made comprehensive findings with regard to a number of key incidents involving members of the IFP in KwaZulu-Natal, all of which are dealt with in more detail in the Natal regional study in Volume Three of this report. The commission has also made a finding on the KZP, which has been dealt with in the chapter on Homelands in Volume Two.

This paragraph is amended as follows:

122 The Commission also made comprehensive findings with regard to a number of key incidents involving members and/ or officials of the IFP in KwaZulu-Natal, all of which are dealt with in more detail in the Natal regional study in Volume Three of this report. The commission has also made a finding on the KZP, which has been dealt with in the chapter on Homelands in Volume Two. (...p696)

APPENDIX 2

In its interim report the TRC made a number of adverse findings concerning the IFP and its President, Minister Mangosuthu Buthelezi. Both the IFP and Minister Buthelezi have taken issue with these findings. To that end, they instituted legal proceedings with a view to reviewing and setting aside those findings and requiring the TRC to publish appropriate corrections in its final report. The TRC accepts the validity of certain of these criticisms and has accordingly made appropriate corrections in its final report. In order to settle the dispute in respect of the remaining complaints and to enable the TRC to complete its mandate, the parties have agreed that the TRC will publish this appendix to the final report reflecting the viewpoint of the IFP and Minister Buthelezi concerning those findings with which they disagree.

APPENDIX TO THE FINAL TRC REPORT REFLECTING THE VIEWS OF THE INKATHA FREEDOM PARTY AND MINISTER BUTHELEZI CONCERNING THE FINDINGS MADE IN THE INTERIM TRC REPORT

In the review proceedings the IFP and Prince Buthelezi challenged some 37 findings made by the TRC in its interim report. In relation to some of the findings the TRC has made appropriate corrections in its final report. In respect of other findings which are in issue the views of the IFP and Prince Buthelezi are reflected below.

The findings of the TRC in question are, contrary to the statutory obligation imposed on it by section 4(e) of the Promotion of National Unity and Reconciliation Act 34 of 1995 ('the Act'), not based on factual and objective information and evidence received by the TRC. There is no rational connection between the evidence and material before the TRC and the conclusions reached by it in this regard.

The IFP and Prince Buthelezi wish to record in this regard that:

- The findings implicating the IFP and Prince Buthelezi in gross human rights violations, criminality and conspiracy are without any factual basis.

- The IFP and prince Buthelezi at no stage endorsed policies based on violence, criminal conduct or an armed struggle and they only advocated non-violence, passive resistance and self-defence where legally justified.

- The IFP and Prince Buthelezi have serious reservations regarding the

establishment and functioning of the TRC and its ability to make objective and factually correct findings. The TRC was the product of a mutual political accommodation reached between the ANC and the NP to the exclusion of the other participants in the conflicts of the past. The TRC was thus inclined to approach its mandate by focusing on black-on-white and white-on-black conflicts. It was ill-equipped to deal with black-on-black conflict and explore the genesis, dynamics, purposes and strategies of this conflict. The TRC process was conducted at a time very close to the animosity and tensions of the conflicts of the past and without the benefit of a historical perspective. In this context evidence was taken without any effective means of independent or adversarial verification.

- Notwithstanding the reservations which the IFP and Prince Buthelezi had regarding the TRC, they made written and oral representations to the TRC at the appropriate stages. The TRC has no taken account of these representations in arriving at its findings.

- In many instances the TRC's findings are based on unreliable, uncorroborated or hearsay evidence provided by persons who acknowledged that their conduct constituted an offence or delict. These persons sought amnesty in respect of such conduct which could only be granted if a link between their conduct and a political objective was established. This resulted in untruthful, unreliable or generally vague evidence which in some cases reflected adversely on the IFP or Prince Buthelezi. Such evidence should not have been accepted at face value by the TRC.

- The TRC acted contrary to the provisions of section 30 of the Act which required it to act in a procedurally fair manner and give notice of its contemplated findings to persons who might be implicated. The requirement of procedural fairness was aimed not only at protecting those persons who might be adversely affected but also at enabling the TRC to assess the other side of any given story or allegation. Firstly, the TRC failed to give the IFP and Prince Buthelezi notice of most of its contemplated findings. This meant that they were not afforded the opportunity of rebutting such findings and did not allow the TRC to consider their response to any particular allegation. Secondly, in respect of certain contemplated findings the TRC gave notice of such findings but failed to identify the evidence supporting such findings to enable the IFP and Prince Buthelezi to adduce countervailing evidence. Thirdly, in those cases where adequate notice of the contemplated

findings was given enabling the IFP and Prince Buthelezi to respond thereto the TRC failed properly to apply its mind to the response submitted. Despite the rep resentations that were made rebutting these findings, the actual findings published in the interim report were in all material respects identical to the contemplated findings.

The TRC made a number of finding relating to black-on-black conflict. In this regard the figures of casualties suggested by the TRC are unsubstantiated and have been extrapolated through statistics based on an undisclosed and obviously erroneous methodology. Contrary to what is stated in the TRC's report, almost 400 Inkatha leaders were killed in a systematic plan of targeted mass assassination. More than 10,000 Inkatha members and supporters were killed and hundreds of thousands of them were dispossessed or suffered untold misery and gross human rights violations because of the armed struggle waged against Inkatha.

The TRC made certain findings relating to the KZP which suggested that on occasions they co-operated with the SAP in perpetrating gross human rights violations. These findings ignored certain relevant facts and are wrong. As the ruling part of KwaZulu, Inkatha had the responsibility of maintaining law and order. The TRC ignored the reality that Prince Buthelezi had no operational control over the KZP which, in terms of law, was under the control of the South African Government in respect of all matters relating to its deployment, training, promotion and operational control. Nothing in the TRC Report or in any credible evidence before the TRC detracts from the fact that Prince Buthelezi never ordered, authorized, approved, condoned or ratified any gross human rights violations.

Certain of the findings in the TRC report endeavour to connect crimes committed by individuals or groups operating at community level with the IFP or Prince Buthelezi. In particular the TRC has in its report reconstructed events relating to the training of 206 young people by the SADF in the Caprivi Strip. The findings in this regard are erroneous and in conflict with the approach taken by the Durban Supreme court to similar evidence before it in extensive criminal proceedings. These people were chosen on the basis of criteria determined by the SADF and trained by it in accordance with its chosen requirements. The training was requested by the KwaZulu Government solely to protect the lives of government officials and the integrity of government structures and assets which were being targeted by terrorism and insurrection related to the armed struggle. Prince Buthelezi was at the time reliably informed of ANC plans to assassinate him, which information was confirmed before

the TRC in the testimony of President Mbeki. The KwaZulu Government never had operational control of these trainees. No basis exists for suggesting Prince Buthelezi could have believed that 206 barely trained security guards could be deployed against hundreds of thousands of ANC cadres who were well equipped and well trained by Soviet and Cuban military personnel.

In fact, Inkatha and the KZG were the only major participants in the conflicts of the past which had no control over a private army to be deployed for political purposes. Private armies were available both to the exiled political forces, such as the ANC and the PAC through the military training camps abroad, as well as to the leaders of the TBVC states and, obviously, to the SAG. Prince Buthelezi's refusal to accept nominal independence was, as admitted by former State President FW de Klerk, the major cause of the demise of the great scheme of apartheid, as it prevented the SAG from consolidating its claim that the white minority was no longer ruling over the majority of disenfranchised black South Africans. The fact that the Zulu people remained South Africans and did not have an independent state, forced the chief Minister of the KZG to provide for their security.

This as the background leading to the training of the Caprivi trainees which was fully scrutinized during the 8 month Malan trial referred to in the TRC report. The trial court found nothing illegal in such training. In arriving at its conclusions the TRC failed to pay proper regard to the evidence before the Court and its judgment.

The TRC in making certain findings in relation to self protection units misconceived their true nature. The training of SPUs was legal and was intended to achieve legal purposes relating to community policing and defense supervised by the National Peace Accord. Factually, SPUs never became involved in the conflict of the past. The only contrary evidence available to the TRC was that of someone whose political allegiance changed from the IFP and its Leader. He was involved in the setting up of a military camp for self-protection training, which he did without any knowledge of the IFP Leader. The TRC never offered the opportunity to the IFP to produce evidence to counter the false testimony placed before it, during in camera hearings at which the IFP was not represented no afforded an opportunity to test such evidence.

The TRC wrongly concluded that the IFP and its Leader could have made plans to disrupt the April 1994 elections by deploying a thousand people trained for a few weeks, against the combined might of the SAP, the SADF and MK, the ANC's private army. In fact, the IFP and its Leader never considered any plan to disrupt the April

1994 elections, the Central Committee (the decision making body of the IFP) never passed a resolution to that effect and the IFP's structures were never involved in any illegal activity. When the IFP expressed its opposition to the 1994 elections, it did so in a principled fashion, relying on its usual methodology of passive resistance and nonviolence, by exercising its democratic option of not participating in such elections.

In various findings made by the TRC against the IFP it sought to create links between a variety of violent activities taking place within community dynamics and individual crimes on the one hand and Inkatha on the other hand. At no stage did Inkatha advocate a policy of violence. In fact, the public and private pronouncements of Inkatha's leader, Prince Buthelezi, indicate that he constantly urged members and supporters to refrain from violence. The TRC has ignored this body of evidence and has sought to rely on a statement by Prince Buthelezi reiterating the recognised principle that people are entitled to self defence and a statement in the KwaZulu Legislative Assembly in which he reaffirmed his legal responsibility to protect public officials and government assets against acts of violence.

The TRC has tried to make the findings against the IFP mirror the findings made against the South African Government and the ANC. Through the chain of command within the armed struggle the ANC had control of and was responsible for the violence and gross human rights violations committed by its members and supporters, who were acting in accordance with ANC stated policies. The same applies in respect of the covert operations of the South African Government and the illegal activities of the SAP and the SADF, which were conducted within the parameters of an existing structure accountable to certain leaders. In the IFP there was no chain of command or integrated structure which can in any way link community and individual violence to Inkatha or its Leader. In making its findings the TRC had ignored the absence of any causal link and has incorrectly adopted an extended notion of accountability.

Prince Buthelezi served simultaneously as President of the IFP and the Chief minister of the KwaZulu government and during the period 1982-1994 was the Minister of Police in the KwaZulu Government. The TRC sought to hold Prince Buthelezi politically accountable for the commission of gross human rights violations allegedly perpetrated by the entities by virtue of the positions which he held. As appears from this appendix prince Buthelezi does not accept that he can be held accountable, politically or otherwise, in his representative capacity for the commission of any gross human rights violations.

The TRC sought even to connect the IFP to the activities of the groups known as the 'Black Cats' and the 'Toaster Gang' as well as the activities of other groups which perpetrated violence within community level conflicts. Within this context the TRC adopted the expression 'hit squads' to refer to any group of people involved in community violence, suggesting that such people were structurally organized for such nefarious purposes and constantly involved in their pursuance. The reality is that the overwhelming majority of violence by Inkatha's members and supporters was the produce of occasional activities of unstructured groups without any underlying plan. On the contrary, the evidence submitted to the Goldstone Commission demonstrates that the violence targeted against Inkatha followed systematic and well strategized patterns and was the product of an underlying political campaign. (...p702)

Volume **SIX** • Section **FIVE** • Chapter **FIVE**

Findings and Recommendations

HOLDING THE PAN AFRICANIST CONGRESS ACCOUNTABLE

Holding the Pan Africanist Congress Accountable

FINDINGS

1. In its Final Report, the Truth and Reconciliation Commission (the Commission) made findings of accountability against the Pan Africanist Congress (PAC) in respect of the commission of gross human rights violations.

2. The Commission stated in its report that it recognised the PAC as a legitimate liberation movement which had waged a just struggle against the apartheid government. However, in the course and conduct of that struggle, it had committed gross violations of human rights.

3. While the PAC did not formally commit itself to upholding the provisions of the Geneva Conventions or the Additional Protocols, it was nevertheless bound by international customary law and, in particular, by international humanitarian law.

4. The Commission made three major findings against the PAC. It made a finding against the PAC's armed grouping of the 1960s, Poqo; a finding against the PAC for violations committed in exile, and a finding against its armed wing APLA in the later period.

FINDING ON POQO

5. The Commission stated in its Final Report that:

While the Commission takes note of the explanation tendered by the PAC that its activities in the early 1990's need to be understood in the context of the 'land wars of the time', it nevertheless finds that the PAC and ***Poqo*** *were responsible for the commission of gross violations of human rights through* ***Poqo's*** *campaign to liberate the country. This unleashed a reign of terror, particularly in the Western Cape Townships. In the course of this campaign, the following groups suffered gross violations of their human rights:*

- Members of the police, particularly those living in Black townships;
- The so-called 'Kataganese', dissident members of the PAC who opposed

the campaign and were subjected to physical attacks and assassinations by other Poqo members;
- Representatives of traditional authority in the homelands, that is Chiefs and headmen;
- White civilians in non-combat situations.[69]

6. In making these findings, the Commission relied on evidence received from victims and witnesses who made statements and submissions to the Human Rights Violations Committee. In terms of the evidence received, the commission of human rights violations by PAC members began with the activities of its 1960s armed grouping, Poqo. These included forcible conscription drives and attacks on the South African Police, white civilians, and alleged 'collaborators' and 'dissidents' within the movement.

7. Poqo's activities in the early 1960s unleashed a reign of terror, particularly in the Western Cape townships, where it adopted aggressive conscription methods. These allowed no room for dissent and at times resulted in violent intolerance towards members and outsiders who criticised or failed to support its methods.

8. The Commission found that Poqo militants targeted civilians indiscriminately, particularly in the November 1962 Paarl attacks, which resulted in the killing of two white civilians. It found that these attacks (on the prison, the police station and the private homes of white residents) were locally planned and executed in response to serious local grievances arising from the strong enforcement of influx control and the corruption of Bantu Administration Board officers. Although not officially sanctioned by the regional or national PAC leadership, the Paarl attacks fell in line with a mass uprising planned for 8 March 1963, which specifically targeted whites and government agents.

9. The February 1963 attack on a group of whites sleeping at the roadside near Bashee (Mbashe) River Bridge in Transkei, in which five whites were killed, was also found to be an indiscriminate targeting of civilians. A massive police crack-down on the PAC followed. Fifty-five people were subsequently charged with murder, of whom twenty-three were convicted and sentenced to death.

10. The PAC told the Commission that the incident needed to be understood in the context of the land wars of the time. Families were being forcibly moved from

69 Volume Five, p. 244.

their plots and homes without compensation to make way for the construction of a new road between Umtata and Queenstown. In the light of this, the PAC considered their attack to be purely defensive.

11. The Commission took note of the explanation but nonetheless found the PAC and Poqo to have been responsible for the commission of gross violations of human rights in its indiscriminate targeting of civilians.

12. In 1962 and 1963, Poqo members engaged in attacks on representatives of traditional authorities in the homelands, killing two headmen in the St Marks district of Cofimvaba in the Transkei. The attacks were described by the PAC as 'aimed at those headmen and chiefs assisting the dispossession of African people through the rural rehabilitation scheme'. On 12 December 1962, armed Poqo members were intercepted by police while on their way to assassinate Chief Kaiser Matanzima. An armed clash took place at Ntlonze Hill in the Transkei. Seven Poqo members were killed in this encounter and three policemen were seriously injured. The Commission considered this incident to be in the nature of a military encounter in which both sides were armed. It concluded, therefore, that the injuries to the policemen and the deaths of the Poqo members did not constitute gross human rights violations.

13. In the early 1960s, a group of disaffected PAC supporters, dubbed the 'Katangese', began operating outside the PAC's policy framework. They soon became the targets of physical attacks, attempted assassinations and attacks by Poqo gangs.

14. The PAC considered police officers to be an extension of the apartheid machinery and hence legitimate military targets. Spies and informers fell into this category as well. Dissidents in the movement were treated as the 'enemy'. It needs to be remembered that there were continual fears that the liberation movement would be infiltrated by those in the employ of the state. Not unnaturally, vigilance tended to spill over into paranoia.

15. The PAC deliberately targeted 'white farmers' as they were considered to be 'settlers' and thus 'acceptable' targets for killing.

16. The activities of Poqo belong to the 1960s and it is not surprising that the Commission received no amnesty applications from members of Poqo for violations committed during this period. Nor did the PAC furnish the Commission

with any further information related to these matters, providing no reason for the Commission to change its findings in respect of Poqo.

17. The finding with respect to Poqo thus remains unchanged.

FINDING ON PAC 'INTERNAL' VIOLATIONS

18. Like the African National Congress (ANC), the PAC executed a number of persons in custody in their camps without due process. This was usually on the instructions of its high command. In terms of the Protocols, such killings are considered to be grave breaches of the conventions.

19. In its Final Report, the Commission made the following finding:

The Commission finds that a number of members of the PAC were extra-judicially killed in exile, particularly in camps in Tanzania, by APLA cadres acting on the instructions of its high command, and that members inside the country branded as informers or agents, and those who opposed PAC policies were also killed. All such actions constituted instances of gross violations of human rights for which the PAC and APLA are held to be responsible and accountable.[70]

20. In assessing this finding, it is important to note that the violations that occurred in the ranks of the PAC in exile were largely the result of divisions within the PAC leadership, military command structures and APLA members. Evidence received by the Commission revealed that many such violations took place. Whilst the Commission received a number of statements from victims regarding their treatment in exile, it received only one amnesty application in connection with these violations. Unlike the ANC leadership, the PAC leadership made no submissions on this issue to the Commission.

21. The Commission also received statements from families of individuals who went 'missing in exile', and heard evidence of the killing and attempted killing of PAC cadres in exile for which the PAC was allegedly responsible. It also received evidence in respect of a number of cases of assault and torture in PAC camps in Tanzania. Assault and torture were used as mechanisms to deal with suspected dissidents or infiltrators. The PAC did not have a security division responsible for handling such matters. Nevertheless, sections 1.4 and 1.5 of its Disciplinary Code provided constitutional justification for the use of 'firm iron discipline' and

70 Volume Five, 'Findings'.

for ‘chopping off without ceremony’ factional elements in the movement, ‘no matter how important’.

22. The Commission found the PAC responsible for the extrajudicial killing and attempted killing of a number of PAC members in exile, particularly in the camps in Tanzania.

23. In reviewing these findings, the Commission records that it received no further information affecting the substance of this finding subsequent to the publication of its Final Report. Moreover, it reiterates that the Geneva Protocols applied to the PAC, even though the latter may not have considered itself bound by its provisions. The Convention on Torture makes it clear that torture is not permitted in any circumstances. Hence, cases of torture clearly constitute contraventions and gross human rights violations. Moreover, the execution of persons in custody without due process is considered to be a grave breach of the Protocols.

24. There is thus no reason, compelling or otherwise, for the Commission to change its findings in respect of these incidents.

VIOLATIONS AGAINST PAC MEMBERS AT HOME

25. The PAC was also responsible for violations against its own members inside South Africa after 1990, for which five applications for amnesty were received. In the main, they involved the killings of suspected informers. The Commission found the PAC responsible for the killing and attempted killing of members branded as informers and agents, as well as of those who opposed PAC policies.

26. The Amnesty Committee received four amnesty applications for the killing of three individuals suspected of collaborating with the security police. In one instance, a fellow PAC and APLA member was seen in the company of a police officer and was allegedly overheard talking to him and promising to report on a PAC meeting. He was killed. The amnesty committee accepted the amnesty applicant’s explanation.[71]

27. In another application, an amnesty applicant took a decision to kill a comrade whom he regarded as an informer. Although he failed to do so, he himself was injured and captured in the course of his last attempt. He applied for amnesty for

71 See Section Three, Chapter Four of this volume.

the attempted killing. The Amnesty Committee accepted his version and his proposition that the attempted killing of this police informer was politically justified.[72]

FINDINGS ON GROSS HUMAN RIGHTS VIOLATIONS COMMITTED BY PAC/ APLA DURING ITS ARMED STRUGGLE

28. The Commission's major finding on the Azanian People's Liberation Army (APLA) was in respect of the commission of gross violations of human rights committed in the course of the armed struggle inside the country during the 1980s and 1990s.

29. The Commission stated that:

[w]hile the PAC proclaimed a military strategy of a protracted people's war, which involved the infiltration of guerrillas into the country to conduct rural guerrilla warfare and attacks in the township, in actuality, the primary target of its operations were civilians. This was especially so after 1990 when, in terms of its 'Year of the Great Storm' campaign, the PAC/Apla targeted whites at random and white farmers in particular.

30. The Commission noted but rejected the PAC's explanation that the killing of white farmers constituted acts of war. To the contrary, the Commission found PAC actions against civilians and whites to have constituted gross violations of human rights for which the PAC and APLA leadership was held morally and politically responsible and accountable.

31. The Commission found that:

[t]he targeting of civilians for killing not only constitutes a gross violations of human rights of those affected but a violation of international humanitarian law. The Commission notes but rejects the PAC's explanation that its killing white farmers constituted acts of war for which it has no regrets and apologies. To the contrary, the Commission finds PAC action directed towards both civilians and whites to have been a gross violation of human rights for which the PAC and Apla leadership are held to be morally and politically responsible and accountable.

32. In dealing with this issue, an important factor to bear in mind is the PAC's political platform, captured in a statement made by Brigadier Mofokeng at the armed forces hearing:
The enemy of the liberation movement of South Africa and of its people was

72 Ibid.

always the settler colonial regime of South Africa. Reduced to its simplest form, the apartheid regime meant white domination, not leadership, but control and supremacy. The pillars of apartheid protecting white South Africa from the black danger, were the military and the process of arming of the entire white South African society. This militarization, therefore, of necessity made every white citizen a member of the security establishment.

33. The vast majority of amnesty applications fall into this category and will be considered in greater detail below.

SUBMISSION MADE BY THE PAC IN RESPONSE TO THE FINDINGS MADE BY THE COMMISSION

34. In terms of section 30 of its founding Act, the Commission sent the PAC a notice setting out its proposed findings on 27 August 1998. The PAC responded on 21 October 1998 through its secretary-general, Mr Ngila Muendane. The response reached the Commission's offices after the cut-off date and was not considered or taken into account at the time of the publication of the Commission's Final Report. In reviewing its findings, however, the Commission returned to the submission made by the PAC.

35. The first objection that the PAC raises in the submission is that the Commission labelled it a gross violator of human rights. The PAC argues that, if the Commission determined that its struggle was just, it was contradictory to find it a violator of gross human rights. The PAC made this point again after the Commission had handed over its Final Report to President Mandela in October 1998.

36. The second issue raised by the PAC was that of 'legal equivalence'. This echoed objections raised by the ANC that violations committed by members of the liberation movements were given legal equivalence to those perpetrated by members of the security forces.

37. Beyond this, the PAC did not respond in any detail to the Commission's findings; nor did it make reference to the problems and reservations it had raised with the Commission while the process was underway. Instead, it affirmed the work of the Commission, despite some general reservations on the Commission's findings on the liberation movements in general.

PAC COMMENTS DURING PARLIAMENTARY DEBATE

38. In the parliamentary debate on the Commission's Report, held on 25 February 1999, PAC President Dr Stanley Mogoba noted that the Commission had revealed the painful truth of past apartheid atrocities but had not succeeded in bringing about reconciliation:

The TRC unavoidably opened the wounds of many families who were hurting in silence. The skeletons of this country came tumbling out of the cupboards. Some of us who had experienced the terrible side of the apartheid repression knew some of the truth, but only a fraction of the truth.

39. However, while Dr Mogoba praised the Commission for 'the positive contribution' it had made in 'the manner in which it revealed the painful truth of past atrocities and shocking barbarity during apartheid', he criticised it for condemning the liberation movements for atrocities perpetrated during the liberation struggle:

Although the context of hostilities, war and the struggle for survival is grudgingly admitted, the condemnation is nevertheless made. How we may ask, can people who were fighting and killing to uphold an oppressive and inhuman apartheid system, which was roundly condemned as a crime against humanity, be placed on the same scales of justice with the victims of that system?[73]

40. This, indeed, was the criticism levelled at the Commission by all the liberation movements, despite the fact that they themselves had played a leading role in drafting the legislation that required the Commission to adopt an 'even handed' approach to the commission of gross human rights violations. The legislation did not make a distinction between the state and any other party. It required the Commission to investigate *all* gross human rights violations. Moreover, in making its findings, the Commission found the former apartheid state to be the major perpetrator responsible for state-sponsored violence.

41. The Commission considered that the war waged by the liberation movements was a just war and upheld the finding of the United Nations that apartheid was a crime against humanity. Thus the fight against the apartheid government was considered to be just and legitimate. Reference should be made to Additional Protocol I to the Geneva Conventions of 1949 covering armed conflicts in which

73 *The Sowetan*, 30 October 1998.

74 Provisions relating to Geneva Convention of 1949 relating to the protection of victims in armed conflicts, (Protocol 1) 1125 53 U.N.T.S.

people are fighting against racist or colonial regimes,[74] which was specially created to deal with the struggles being conducted in South Africa and Israel. The conflict was therefore regarded as an international armed conflict.[75]

42. The PAC sought disingenuously to blur the lines between a 'just cause' and 'just means', striving to make the point that, if the struggle it waged was just, it could not possibly be a violator. Their point of departure was that, if the cause is just, it follows that the actions performed in support of that cause must also be just. In terms of the Geneva Convention and the Protocols, the means used also have to be just.

43. Taken one step further, the PAC insisted on the view that anybody they considered to be the enemy in terms of their own policy constituted a 'legitimate' target. This view is contrary to the provisions of international humanitarian law, which considers the only acceptable or legitimate target to be a 'combatant'. In addition, civilian casualties are perceived to be grave breaches of the Geneva Conventions and the party responsible for the killing is considered to have committed a gross violation of human rights.

44. The PAC also makes the point that the majority of people who die in war are innocent and that that is the very nature of war. This assertion, of course, evades the fundamental purpose of international humanitarian law which is to ensure that innocent people such as civilians are not killed, maimed and tortured and that they, particularly, are protected from the impact and ravages of war.

Application of the Geneva Conventions

45. The Geneva Conventions and the Additional Protocols set out comprehensively the situations in which grave breaches are said to be committed.[76] The Geneva Conventions stipulate that, even if one of the parties in a conflict is not a party to the Conventions, the other party will remain bound. Article 1(2) of Protocol I specifically states that, in cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience. Reference was made in the chapter dealing with the ANC[77] to the fact that this Protocol was intended to deal with those situations where 'peoples are fighting

75 See this section, Chapter Three, 'Holding the ANC Accountable'.

76 See Appendix 2 to Chapter One of this section.

77 Chapter Three of this section

against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and the Declaration of Principles of International law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations'. These Conventions are designed to limit the brutality of war and the loss of civilian life and, in particular, to hold accountable those who wage war in an unacceptable fashion.

46. Common Article 3 defines what kinds of acts constitute violations. There are a total of four acts that, if committed in respect of 'persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause' constitute grave breaches. They include the following:
    a violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
    b taking of hostages;
    c outrages upon personal dignity, in particular humiliating and degrading treatment, and
    d the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

47. Given the provision of Common Article 3, it can be seen that this argument of the PAC is disingenuous and cannot be taken seriously. Whilst it is true that innocent people lose their lives, it is by no means acceptable that they should do so.

FINDINGS

Police officers as 'legitimate' targets

48. The PAC makes the assertion that they considered all police officers to be legitimate targets because they were the agents of apartheid and thus criminals. Their involvement with the apartheid government made them a legitimate target of the liberation movement.

49. An anomalous factor is that the vast majority of attacks against police officers took place at times when they were technically off duty. In most of these

instances, their houses were attacked and often their families were included in the attack.

50. In this regard, the PAC makes the point that one cannot draw a distinction between the period when police officers are at work and the period when they are off duty. It asserts further that, even when they were off duty, they were reporting to the state.

51. The main thrust of the PAC's argument is that police officers were considered by the vast majority of township residents to be agents of the state, and that in the eyes of the liberation movements they were regarded as collaborators and therefore constituted legitimate targets. The question of being on or off duty or in plain clothes or uniform was not at issue.

52. There is no doubt that police officers were perceived by ordinary people to be an extension of the state and thus legitimate targets of the liberation movements. In most of the townships, police were perceived to be the enemy and in many instances played the role of maintaining the apartheid government's power. This is not true of all police officers, but it is certainly true of the vast majority who became police officers during the apartheid era. One of the most painful experiences for most members of the community was the fact that police officers were an extension of apartheid authority and were responsible for carrying out many brutal acts against members of the community. In a number of instances, they were responsible for the arrest and detention of loved ones. In a vast number of cases, black policemen were responsible for the torture of activists in the townships.

53. In its submission, the PAC makes the point in vivid language:

When is a criminal not a criminal? Is he a criminal only when he commits a crime and stops being such when he retires to his bedroom at night? Would we say that the police must stop pursuing him simply because his now with his family and enjoying a Sunday meal.

54. It goes on to make the point that the apartheid government did not make that distinction.

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55. The PAC points out that, in terms of their own definitions, 'all police were the enemies of oppressed people because under that system they were obliged to work even when they were off duty'.

56. However, even if one accepts the argument that police officers were an extension of the apartheid system and thus legitimate targets, this does not remove from the PAC responsibility for attacks on police officers when they were *hors de combat* or when, unacceptably, innocent family members were killed or injured in these attacks.

57. Furthermore, it is not correct to assume that all police officers collaborated with the former state. In many instances, they joined the force because there was little opportunity for them to do anything else. Are they to be considered any more complicit in the apartheid system than magistrates or other persons who accepted jobs in the apartheid system?

58. If one accepts the argument that police officers were an extension of the apartheid apparatus, does this make a police station a legitimate target? In one case, applicants sought amnesty for an attack on a police vehicle in Diepkloof during which one policeman was killed and another injured.

59. In another incident, amnesty was sought for an attempted attack on the Yeoville police station. In this particular incident, the applicants were intercepted before they got to the police station. However, one SAP member was injured in the crossfire that ensued.

60. A question that must be considered is: Are all policemen who served in the apartheid force to be considered combatants and thus legitimate targets?

61. If one accepts the PAC's argument with regard to police officers, then neither the PAC nor ANC can be held responsible for the commission of gross human rights violations for these attacks. However, if one applies a strict interpretation of the Conventions, they would nevertheless be held accountable.

Traditional leaders as 'legitimate' targets

62. The PAC treated traditional leaders who co-operated with the state as an extension of the apartheid system and thus as legitimate targets.

63. In 1962, members of Poqo attacked representatives of traditional authority in the homelands, killing two headmen in the St Marks district of Cofimvaba, Transkei. These attacks were described by the PAC as being 'aimed at those headmen and chiefs assisting the dispossession of African people through the rural dispossession scheme'.

64. On 12 December 1962, armed Poqo members were intercepted by police while on their way to assassinate Chief Kaiser Matanzima. An armed clash took place. In this encounter, seven Poqo members were killed and three policemen seriously injured. In its original report, the Commission considered this to be a combat situation.

65. The question these incidents raise is whether those who became part of the apartheid system became legitimate targets as identified by the PAC. The above situation relates to but one example of the iniquity of the apartheid system, which dispossessed people of their land, often violently, and frequently replaced hereditary leadership with chiefs of their own. Yet the targeting of traditional leaders and chiefs cannot be condoned and must constitute a gross human violation. Thus the motivation for the attacks can be understood but not condoned.

Civilians and farmers as 'legitimate' targets

66. In its second submission to the Commission, the PAC confirmed its earlier stance that whites under apartheid were beneficiaries of the system, that every white person was part of the defence lines of apartheid, and that the Commission had to accept that every white home during the apartheid era was some kind of garrison.

67. While the Commission did not deal conclusively with the notion of 'beneficiaries', there is no doubt that white people were the beneficiaries of apartheid and its largesse. White people cannot escape the fact that being white in South Africa enabled them to benefit from the system at the expense of the black majority. Having said that, the Commission cannot accept the argument that every white person must be considered part of the apartheid defence system

and that every white home must be considered to be a garrison. This is absurd and must be rejected. There were a large number of white people who not only opposed apartheid but who also fought against it in a variety of different ways, including the taking up of arms.

68. An analysis of the amnesty applications received from the PAC reveals that a total of thirty-two applications were received for attacks on civilians. In these incidents, twenty-four people were killed and 122 seriously injured.

69. These attacks formed part of the PAC's 'Operation Great Storm'.

70. A number of applicants claimed that the attacks were not motivated by racism. Rather, as whites were seen to be complicit in the government's policy of apartheid, they constituted a legitimate target.

71. Mr Letlapa Mphahlele, APLA director of operations, stated at a media briefing in Bloemfontein on 28 October 1997 that APLA offered no regret or apology for the lives lost during 'Operation Great Storm' in 1993. He said that his 'proudest moment was seeing whites dying in the killing fields'. He also accused the Amnesty Committee of being 'a farce and a sham' which sought to 'perpetuate white supremacy'.

72. Despite such spurious attacks on the Amnesty Committee, there is no doubt that the Committee considered the arguments of applicants very seriously – with the result that APLA members received amnesty for the most heinous of crimes on the basis that they complied with the requirements of the amnesty process. The Amnesty Committee has itself sustained serious criticism for some of these decisions, which many felt represented too generous an interpretation of 'proportionality'.

Attacks on civilians

73. Attacks on civilians included those made on the King William's Town Golf Club; Steaks restaurant in Claremont, Cape Town; Yellowwoods Hotel, Fort Beaufort; St James Church in Kenilworth, Cape Town; the Heidelberg Tavern in Observatory, Cape Town, and Amy Biehl in Guguletu, Cape Town.[78]

78 Amnesty applications for targeting white civilians are detailed in this volume, Section Three, Chapter Four.

74. A common feature of these attacks is the fact that they involved indiscriminate attacks on civilians. Whilst applicants have stated in their amnesty applications that the intended targets were military or security force personnel, no proper investigation was carried out to determine whether their perceptions were correct. In fact, in most of the incidents, their information or intelligence was incorrect and suspect.

75. In terms of the Geneva Conventions, civilians are protected by principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. There can be no justification for the choice of civilians as targets.

76. The amnesty decisions have supported the stance the Commission took with regard to attacks on civilians. No compelling evidence has been provided to the Commission to persuade it to change its findings in respect of the attacks on civilians. Indeed, the evidence that emerged from amnesty hearings supports the original findings. While the motive for the attacks are understood and, in most instances, the Commission can understand the rage that motivated them, motive cannot change the fact that the victims in most cases were innocent civilians who were unarmed.

77. The findings that the Commission made in respect of the PAC and APLA in regard to attacks on civilians must stand.

Farmers as 'legitimate' targets

78. The Commission made findings against the PAC and APLA for their indiscriminate attacks on farmers. The second submission made by the PAC is curious in this respect, suggesting that, in making this finding, the Commission is biased in favour of white people. The rest of the PAC's argument is fairly spurious.

79. The Commission received a total of twenty-seven applications from the PAC and APLA for attacks on farms, committed between the period 1990 and 1993. In these attacks, twelve people were killed and thirteen injured. The majority of these applications were granted.

80. APLA and PAC operatives testified that it was part of their strategy and policy in terms of 'Operation Great Storm' that farmers would be attacked in order to drive white farmers from their farms in order to get their land back.

81. These operations involved the deliberate targeting of white farmers and are quite unlike the ANC's landmine operations in farming areas. Whilst it is true that farmers in many of the border areas were trained and issued with weapons so that they could take part in commandos patrolling the area, not all of the farmers so targeted were an extension of the apartheid system.

Specific amnesty applications dealing with attacks on white farmers

82. One of the incidents for which amnesty was applied involved an attack on Mr RJ Fourie on the farm 'Stormberg'. Mr Fourie was attacked from behind, ambush style, and killed. A witness made a submission to the amnesty committee to the effect that the deceased was not interested in politics and was known to be a progressive farmer in the area. He had assisted his workers to improve their stock, housed them in brick houses with running hot and cold water and built a school for their children on the farm, as well as a soccer club.

83. In another incident, the amnesty application involved the killing of Mr John Bernard Smith, also a farmer. Mr Oliphant, one of the applicants, testified that it was the objective of the PAC to wage the struggle for the return of land to the African people, which was why he had become involved in that operation. Another applicant testified that it was part of PAC policy to intensify the armed struggle in order to strengthen the hands of the PAC in the negotiating process. He described the attacks on the farmers as one of the phases of the campaign. The PAC believed that the farming community had participated in the dispossession of the African people and that they were beneficiaries of the land taken away from the Africans.

84. None of the reasons advanced in any of the amnesty applications can condone the fact that, in most of the attacks, the farmers targeted and killed were ordinary civilians, in no way linked to different commando groups. They cannot therefore be seen as an extension of the security forces. In terms of the Conventions, they do not, therefore, constitute a legitimate target. Nor are they considered combatants.

85. The finding made in respect of findings of accountability for gross human rights violations committed against farmers by the PAC and APLA must therefore stand. They were responsible for the commission of gross human rights violations. In most instances the nature of the attack was almost that of an ambush.

PAC/ANC conflict

86. The Commission received four applications for offences committed in the course of the conflict between the PAC and the ANC. While the applicants received amnesty, the evidence led at the hearings cast doubt on whether they were dealing with each other in a combat situation. The evidence that was led spoke of the ongoing violence in the area, but the targeting of opponents often resulted in innocent people being killed. Nevertheless, the PAC must accept responsibility for these killings, which constitute gross human rights violations.

Applications refused

87. The Committee received a number of amnesty applications from persons in custody, which it refused either on the grounds that the incidents were not politically motivated or on grounds of lack of full disclosure. In most of these incidents, the applicants remain in custody serving sentences.

88. The leaders of the PAC maintain that a number of their cadres are languishing in apartheid jails and that special arrangements should be made to pardon them. At a parliamentary briefing after the debate on the Commission's report, Dr Stanley Mogoba, the President of the PAC, made a call to the State President to pardon 'the many freedom fighters who are still languishing in our prisons'.

Now that the TRC work is finished – or is about to be finished – it is time, perhaps, to call on our President, perhaps as a farewell gift or gesture, to give Presidential pardon to these prisoners from the liberation struggle. Many grieving families would be eternally grateful to our President for that. I also want to say that this argument and this discussion must be separated from the discussion on general amnesty. I am not talking about general amnesty.

DIFFICULTIES EXPERIENCED BY PAC APPLICANTS

89. It is important for the Commission to acknowledge the great difficulty that the PAC/APLA cadres experienced in filing proper amnesty applications. They were hampered by the fact that, at the time, the Legal Aid Board appointed inadequate Counsel to assist them. In many instances, counsel did not bother to read the Commission's founding Act or endeavour to understand it. It was only after legal practitioners such as Mr Bandazaya were appointed that these applicants began to be properly represented.

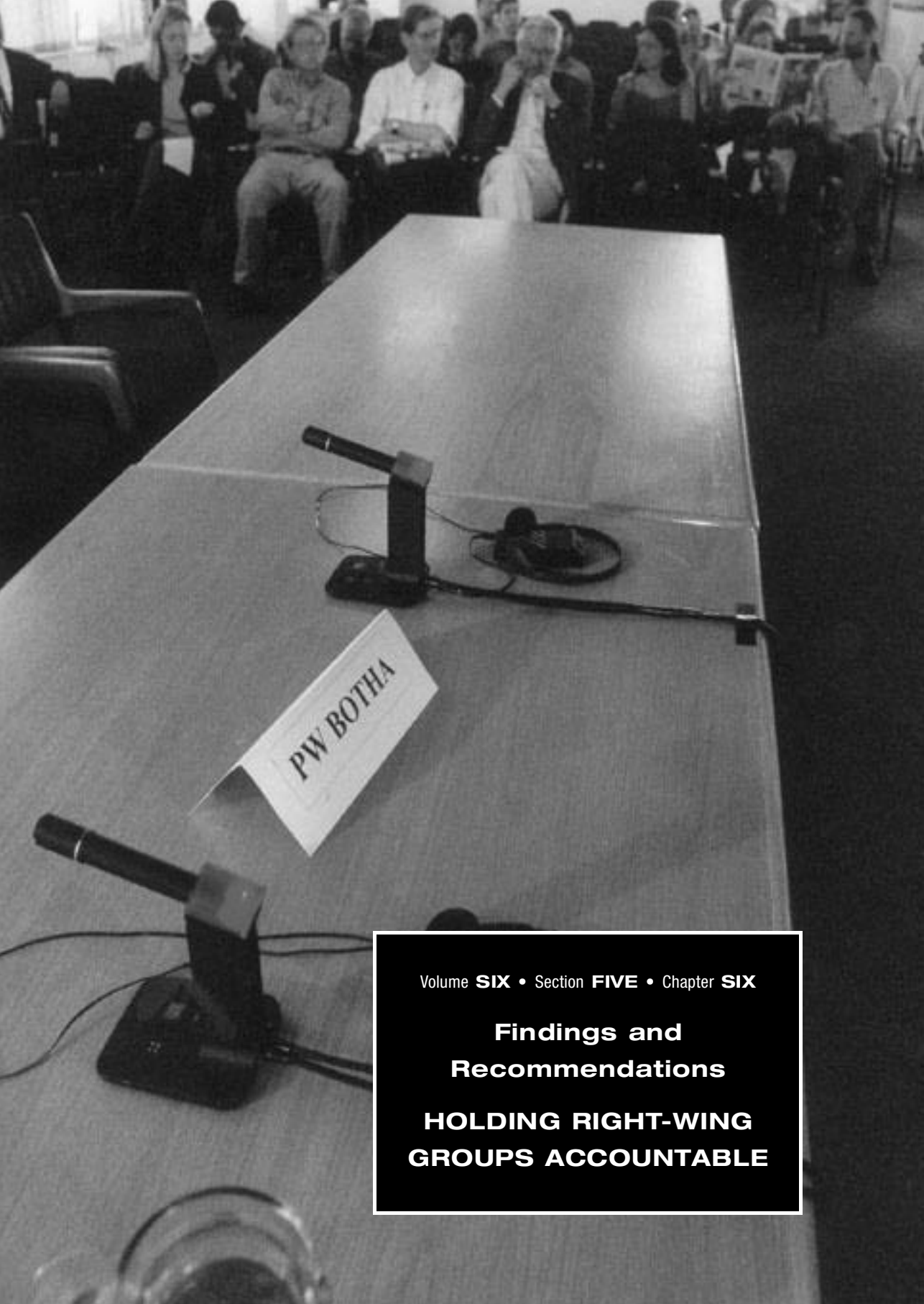
90. There is no doubt that a number of people still in custody did not apply for amnesty for a variety of reasons, including the fact that they were not properly advised. The government will need to consider this issue from a humanitarian point of view. It is commendable that the President of the PAC does not consider that another amnesty deal should follow.

Pardons

91. Recently the President pardoned a number of PAC amnesty applicants who had been denied amnesty by the Committee. This decision was widely criticised by civil society and victims, as the pardons were perceived to be a ploy to grant amnesty using the 'presidential pardon' process. There has been a demand from civil society that the President explain why he took this decision, as the use of the presidential pardon to grant amnesty is seen as undermining the work of the Commission whose mandate it was to grant amnesty on an accountable basis.

CONCLUSION

92. The evidence that emerged from the hearings of the Amnesty Committee did not lead to any alteration in the findings of the Commission as recorded in the Final Report. (...p720)



Volume **SIX** • Section **FIVE** • Chapter **SIX**

Findings and Recommendations

HOLDING RIGHT-WING GROUPS ACCOUNTABLE

Holding the Right-Wing Groups Accountable

INTRODUCTION

1. The Truth and Reconciliation Commission (the Commission) made findings against right-wing opposition groups in its Final Report.[79] These findings were based on the evidence and testimony it received. This included speeches that had been made by senior leaders inciting followers to commit acts of violence against those labelled 'the enemy', the arming of supporters in contravention of the law, and random racist attacks on black civilians.

2. The Commission noted that an important aspect of the insurrection was the clandestine collusion between right-wing forces, members of the security forces and the Inkatha Freedom Party (IFP). This led to the commission of gross human rights violations and the training of IFP paramilitary forces in the hope of preventing the ANC from coming to power.

3. In addition, particularly in the period leading to the holding of the first democratic elections, right-wing supporters embarked on a campaign to destabilise the country and to prevent the holding of elections. The storming of the World Trade Centre and the assistance rendered to the Bophuthatswana homeland by the right wing are examples of this. In terms of the leadership of the right wing, the Commission specifically held Generals Constand Viljoen and Peter Groenewald and Mr Eugene Terre'Blanche accountable for the reign of terror carried out by the various groups and their individual supporters.

4. At the time when the Commission made its findings on the right wing, a number of right-wing amnesty applications had already been heard. However, the Commission decided that findings would be revisited once all decisions of the Amnesty Committee became available.

79 Volume Five.

SUMMARY OF FINDINGS

5. The Commission stated in its Final Report:

In the late 1980's and early 1990's, a number of Afrikaner right-wing groups became active in the political arena. They operated in a loose coalition intent on securing the political interests of conservative Afrikaners through a range of activities seemingly intent on disrupting the negotiations process then underway. Operating both within and outside the negotiations process, members of these groups undertook actions which constituted gross violations of human rights.

6. Specifically:

The Commission finds that the Afrikaner Volksfront and structures operating under its broad umbrella were responsible, between April 1993 and May 1994, for gross violations of human rights of persons perceived to be supporters and leaders of the ANC, SACP, UDF, PAC, National party and other groups perceived not to support the concept of Afrikaner self-determination or the establishment of a volkstaat, to that end, the movement's political leaders and military generals advocated the use of violence in pursuit of the movement's aims and/or in an attempt to mobilise for an insurrection.

REVIEW OF FINDINGS

7. It is important to review the findings in the light of evidence that has emerged from the amnesty process.

Membership of right-wing groups

8. The amnesty applications reveal that many amnesty applicants claimed membership of one or more right-wing groups. In total, 107 applications were received for amnesty, with 71 per cent of the applicants claiming membership of the Afrikaner Weerstandsbeweging (AWB), 10 per cent of the Conservative party and the remaining 19 per cent claiming membership of a variety of right-wing organisations. The most prominent group was the AWB, under the leadership of Eugene Terre'Blanche. More than forty of his supporters applied for amnesty. Of these, 68 per cent of applications were granted.

Nature of violations

9. Most amnesty applications pertaining to the period prior to 1990 relate to attacks that were intensely individualist, uncoordinated and extremely racist in nature. Amnesty applications for the period after February 1990 reveal a more co-ordinated plan, with better organised and more orchestrated attacks. Two of the best-known incidents were the occupation of the World Trade Centre in 1993 and the support by members of the AWB of the Bantustan administration in Bophuthatswana in 1994.

10. The Commission agreed to the request by President Mandela that it extend the period available for amnesty applications in the interests of reconciliation in order to accommodate the right wing and the Pan Africanist Congress (PAC), the majority of whose violations took place after the original date and during the run-up to elections. This decision proved fruitless as the Commission received no further applications, particularly for the two incidents described above. Thus the argument forwarded by General Viljoen that extending the date would promote reconciliation did not impact on the process.

CONFIRMATION OF FINDINGS

Collusion between the right wing and the security forces

11. Amnesty applications confirm that in a number of incidents, covert units within the security structures assisted in arming right-wing groups. The amnesty application of Mr Leonard Veenendal[80], a member of the Civil Co-operation Bureau (CCB), confirms this.

Collusion with the IFP

12. Right-wing amnesty applicants confirmed that they formalised their ties with the IFP. They were responsible for supplying the IFP with weapons and also worked very closely with IFP groups on the north and south coasts of KwaZulu-Natal. In at least two instances, joint attacks were planned and carried out – at the Flagstaff police station and on the Seychelles restaurant. Mr Walter Felgate, formerly a member of the IFP, testified at a section 29 hearing that the right wing had offered to procure weapons to the IFP. The amnesty applications of Messrs Gerrit Phillipus Anderson and Allan Nolte confirm this.

80 See Veenendal case in Section Three, Chapter Six; [AM3675/96].

Links with international right-wing groups

13. Amnesty applications also confirm that right-wing groups had links with other international right-wing groups. However, deeply held suspicions regarding an international right-wing conspiracy in respect of the murder of Mr Chris Hani were not confirmed in the amnesty process, due to a number of factors.

Attacks on individuals

14. In their evidence, amnesty applicants confirmed that they had targeted and attacked those they regarded as the enemy. The attack by Mr Eugene Terre'Blanche and his supporters on Professor Floors van Jaarsveld[81] is an example of such an attack. His children testified in the amnesty hearing that this attack had contributed to the humiliation of their father and his loss of standing in his community. While the expressed motive for the attack was that that they regarded the new direction that Van Jaarsveld had given to Afrikaner history as contrary to the then South African Constitution, which recognised God as the highest authority, it became quite clear during the hearing that the real motivation for the attack was his willingness to accommodate change.

Attacks on black people

15. The right wing carried out a number of racist attacks[82]. One of the worst of these was carried out by Mr Barend Strydom, a member of the Wit Wolwe ('White Wolves'). The attack was carried out indiscriminately against black people, eight of whom were killed. Strydom filed an amnesty application for this attack but later withdrew the application.

16. Members of the Orde Boerevolk attacked a bus full of black commuters in Durban in which seven people were killed. The motivation they expressed for the attack was an earlier Azanian People's Liberation Army (APLA) incident. In another incident, Mr George Mkomane was killed because he was in a so-called 'white' area at night without permission.[83] What is sickening is the random indiscriminate nature of the attacks on people simply because they were black. Despite attempts by amnesty applicants to justify the political nature of these attacks, their testimony reveal that, in most instances, their motives had been

81 See Section Three, Chapter Six in this volume.

82 Ibid.

83 Ibid.

purely racist. One of the worst attacks was carried out by the AWB on innocent civilians outside Ventersdorp, which led to the killing of four people, including two children.

Possession of arms, explosives and ammunition.

17. The Commission received thirty-one amnesty applications for the illegal possession of arms, explosives and ammunition – stolen, in a number of instances, from military bases.

Sabotage of the transitional process

18. The Commission received thirty-five applications for a range of violations involving attempts to sabotage the negotiations process. These consisted of attacks on individuals and included assassinations. A number of innocent individuals were killed for no apparent reason. The killing of Mr Chris Hani by Messrs Clive Derby Lewis and Janusz Walus threatened the stability of the country in the period leading up to the elections. The constraint shown in the ranks of Umkhonto we Sizwe (MK), the African National Congress (ANC) and the vast majority of the country in dealing with the killing is testament to how deeply people were committed to making peace work.

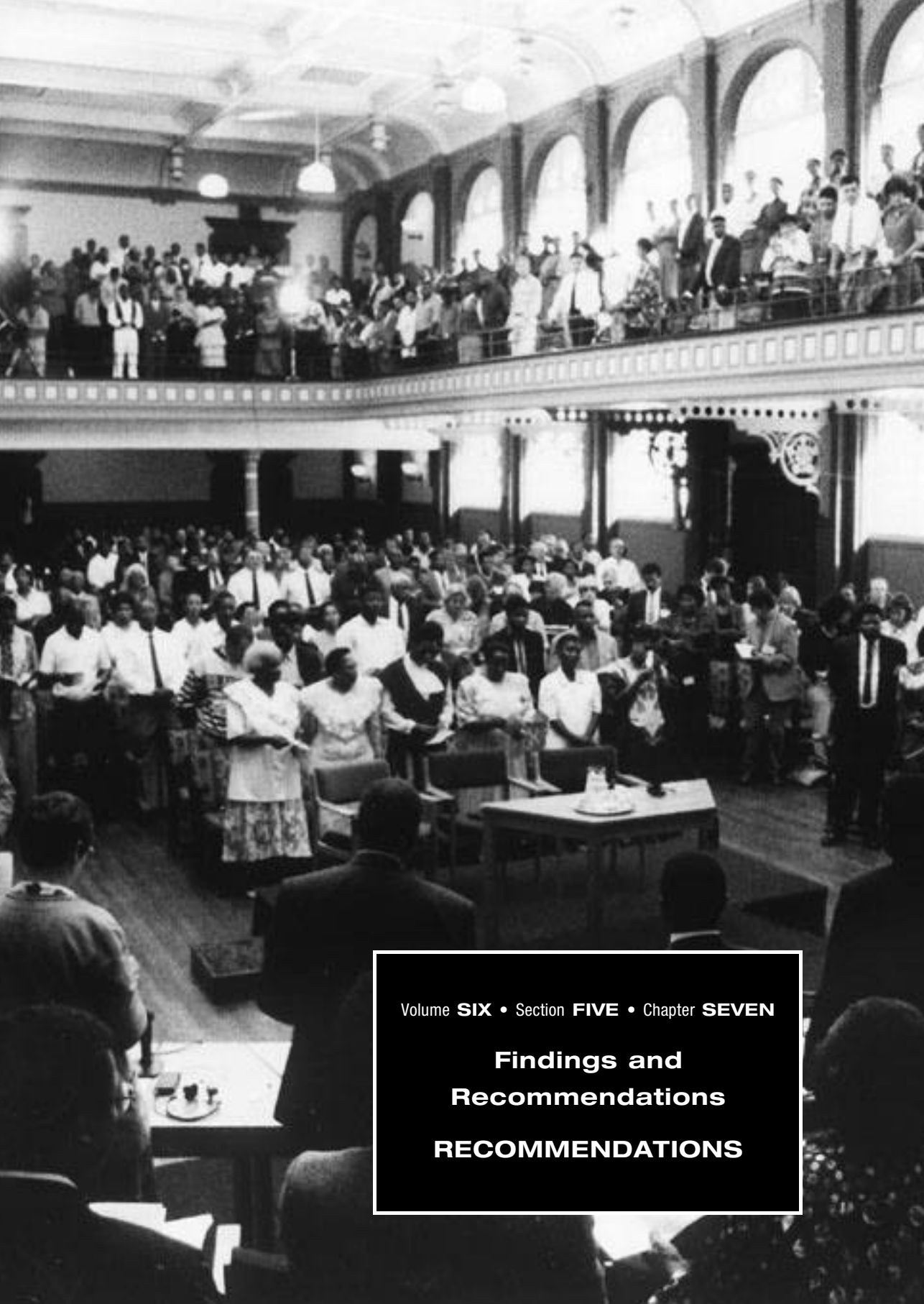
Bombings

19. The AWB, the Boereweerstandsbeweging (BWB) and the Afrikaner Volksfront (AVF) all engaged in bombing activities during the pre-election period. Much of the bombing was designed to sow terror and to destabilise the country in the period leading up to the elections. A number of offices belonging to the ANC, schools that admitted children of different race groups, and magistrates' courts were attacked. Businesses belonging to Indians were also targeted. The offices of the Independent Electoral Commission in a number of areas, as well as other institutions and offices associated with the election, were targeted and bombed, as were railway lines and power installations.

CONCLUSION

20. The evidence that emerged from the amnesty applications and hearings confirms the original findings made by the Commission in respect of right-wing groups. The testimonies of the applicants were tantamount to confessions that the right wing embarked on a campaign of terror and violence designed to destabilise the country at an extremely sensitive time. Right-wing groups were responsible for committing gross human rights violations as defined by international human rights law. In most instances, the victims were innocent civilians whose only 'sin' was the fact that they were black. The motive for these violations was that members of the various right-wing groups were opposed to majority rule and to a change in their way of life. There was no nobility or morality to their cause, despite their attempts to justify their actions.

21. Having considered the amnesty applications and hearings on the right-wing, the Commission has no reason to change the findings it made in its Final Report. (...p726)



Volume **SIX** • Section **FIVE** • Chapter **SEVEN**

Findings and Recommendations

RECOMMENDATIONS

Recommendations

RECONFIRMATION OF REPARATION AND REHABILITATION RECOMMENDATIONS IN FINAL REPORT

1. The Truth and Reconciliation Commission (the Commission) reconfirms the Reparation and Rehabilitation Committee's recommendations drawn up in terms of sections 25 and 26 of its founding Act[84] and set out in its Final Report.[85]

RECONFIRMATION OF RECOMMENDATION FOR A SECRETARIAT TO OVERSEE IMPLEMENTATION

2. The Commission confirms and supports the recommendation in its Final Report that a Secretariat be established in the Presidency to oversee the implementation of the recommendations of the Commission. It is recommended that the Secretariat:

    a be responsible for reporting on and publishing an annual report on the status of victims for a period of six years following the publication of this Codicil to the Commission's Final Report;
    b establish a particular presence and visibility in rural areas;
    c establish a Presidential Award for innovative and inclusive projects aimed at 'keeping the memory of the past alive' in schools, research centres and institutions of higher learning;
    d focus on reparations and democracy-related capacity-building through the specialised training of development workers.

REPARATION TRUST FUND

3. The Commission recommends and urges that a Reparation Trust be set up and trustees appointed.

4. The Reparation Fund should be managed by government, organised local and international business and civil society.

84 The Promotion of National Unity and Reconciliation Act No. 34 of 1995.
85 Chapter Five of Volume Five.

5. The purpose of the trust will be to raise funds, to audit the budget for victim support and to be responsible for financial controls and accounting.

ONCE-OFF WEALTH TAX

6. The Commission recommends and urges that government impose a once-off wealth tax on South African business and industry.

BENEFICIARY CONTRIBUTION TO REPARATION FUND

7. The Commission recommends and urges that all beneficiaries of apartheid make a contribution to the Reparation Fund.

NATIONAL PROGRAMME OF ACTION

8. The Commission recommends and urges that government and civil society adopt the national programme of action proposed by the South African Human Rights Commission, and work towards a society free of racism, xenophobia and related intolerance.

9. It proposes further that government move urgently to implement related programmes, particularly amongst young people.

ANNUAL REPORTING DURING BUDGET VOTE

10. The Commission recommends and urges that all ministers with portfolios relating to issues affecting victims report annually on the status and circumstances of surviving victims during the budget vote in parliament for a period of six years following the publication of this Codicil to the Commission's Final Report.

SPECIAL ARRANGEMENTS FOR EDUCATION

11. The Commission recommends and urges that the Department of Education, the South African Qualifications Authority and institutions of higher learning make special arrangements for entry into tertiary educational institutions of those whose secondary and tertiary education was interrupted by the struggle, as was done for those whose studies were interrupted by World War II.

KEEPING THE PAST ALIVE

12. The Commission recommends and urges that the curriculum of the South African Human Rights Commission National Education Centre include projects that aim to encourage children to keep the past alive.

TASK TEAM TO DEAL WITH DISAPPEARANCES AND EXHUMATIONS

13. The Commission recommends and urges government to act on the recommendation of the Commission in regard to dealing with disappearances and exhumations and to establish a task team to deal with these matters.

'HEALING THE MEMORY' CONFERENCE

14. The Commission recommends and urges that government convene an urgent conference aimed at healing the memory in respect of those who did not return.

CONFERENCE DEDICATED TO THE FALLEN

15. The Commission recommends and urges that government convene a conference dedicated to the memories of those who were executed or killed in such circumstances that their honour and reputation and their loyalty to their organisations were deliberately slandered by others, often causing their families and friends great distress and sometimes leading to the death and torture of family members.

APOLOGY BY HEAD OF STATE ON BEHALF OF PERPETRATORS OF GROSS VIOLATIONS OF HUMAN RIGHTS

16. The Commission recommends and urges that, as head of state, the President of the Republic of South Africa apologises to all victims on behalf of those members of the security forces of the former state and those armed forces of the liberation movements who committed gross violations of human rights.

THE COMMISSION'S DATABASE

Preamble

17. The Commission created and maintained a database to manage the data requirements of the three Committees. The database was used to register human rights violations statements and amnesty applications as they were lodged with the Commission, after which teams of data processors stored the names of the victims, the violations they suffered and details of the alleged perpetrators. During the life of the Commission, the database was upgraded to assist with the management of the work of the Reparations and Rehabilitation Committee. It is still being used by the staff of the President's Fund today to record disbursements made.

18. By the time the Commission closed, the database had become a rich repository of information about the nature, scale, location, dates, types and consequences of violations of human rights suffered by South Africans. As such, it is an essential primary source of valuable historical material, which must be made accessible to future generations.

Data provision

19. The Commission recommends that the database be owned, managed and maintained by the National Archives and Records Service of South Africa, who must take responsibility for ensuring that the database:

    a forms the cornerstone of an electronic repository of historical materials concerning the work of the Commission;
    b is enriched by electronic multi-media facilities to support audio-visual and other graphic materials;
    c is in a format that allows for distribution to schools, other educational institutions and the general public by means of CD-ROM or other portable electronic format, and
    d uses language that is accessible to the majority of South Africans.

Data reconciliation

20. The work of the Amnesty Committee continued after that of the Human Rights Violations (HRV) Committee had been completed, so a process of data reconciliation is necessary to compare and contrast the victims and violations described in

Amnesty applications with those gathered by the HRV Committee. The Commission recommends that:

a the database be updated with the victim and violation details from the tran scripts of amnesty hearings which, for security reasons, were not always recorded on the database prior to the hearing, and
b the details of the victims and violations mentioned in each amnesty application be reconciled with those recorded by the HRV Committee, to ensure that every victim in need of reparation and rehabilitation is identified and noted.

Database conversion

21. The Commission's database is a custom-built system whose functionality was designed primarily to record victims and violations to support the work of the three Committees. Its current format does not lend itself easily to use by researchers or the general public.

22. The Commission therefore recommends that the database:

a be converted to run on technology best suited for Internet-based, read-only access, using open-source software wherever possible;
b be web-enabled in a user-friendly, searchable format, and
c have facilities for extracting the data for further research and analysis.

WEBSITE

23. The Commission established a website, which became popular amongst researchers and scholars of transitional justice. The contents of that website currently appear in a section on the Department of Justice website.

24. The Commission recommends that custody of the website should be held by the National State Archives, who should manage it in a way that ensures maximum accessibility. The Commission recommends that the Archives, in consultation with the various stakeholders, should decide on the physical location of the site.

WITCHCRAFT

25. The Commission received statements from many victims as well as a number of amnesty applications regarding the use of witchcraft in the commission of gross

human rights violations. 'Witchcraft' and 'tradition and culture' were major factors cited in a number of cases as being the motivation for the commission of gross human rights violations.

26. The Commission, and in particular the Amnesty Committee, accepted 'witchcraft' as a political motive sufficient within the context of the founding Act to grant amnesty to those applicants who had satisfied the provisions of the amnesty legislation. The political context of the time warranted this approach.

27. However, the Commission notes that this problem is endemic particularly in many parts of Limpopo province. The Commission received hundreds of statements regarding this issue after the cut-off date.

28. The Commission recommends therefore that the authorities note this problem as a matter of urgency, and embark on an education program and take action to stop practices related to witchcraft that lead to the commission of gross human rights violations.

EXERCISE OF THE PRESIDENTIAL PARDON

29. The following comments and recommendation are made in the full knowledge that the Commission operated under enormous political and legal constraints and that it was not a holy cow that was not itself open to criticism:

30. With this in mind, the Commission notes:

    a the recent pardons extended by the President and
    b the President's constitutional discretion to pardon those who have committed crimes, and further,
    c that it in no way wishes to impugn or intervene in this discretion.

31. The Commission is, however, of the view that this presidential discretion should not be used to subvert the rights of victims by framing blanket amnesties through a pardon process.

32. The Commission therefore recommends that in the event that the President is considering a further amnesty provision, the following should be taken into account:

    a that the rationale for establishing the Commission should not be undermined and that the value of its work should not be compromised through such a process;

b that real reconciliation comes from facing the demons of the past honestly and demanding truth and accountability, and

c that victims should not be 'revictimised' and that any amnesty should take into account their needs and their right to the truth and full disclosure and ultimately reparation.

33. The Commission is thus of the view that any amnesty and pardon must make provision for the rights of victims and maintain the constitutionality of our new state based on disclosure and a respect for the human rights of all.

POPULAR VERSION

34. The Commission will hand the Minister of Justice the completed popular version of the Truth and Reconciliation Commission's report.

35. The Commission recommends that the Minister has this printed, published and distributed to schools and tertiary institutions in conjunction with the Ministry of Education.

'CLOSED LIST' POLICY

36. The Commission, anxious not to impose a huge burden on the government, adopted a 'closed list' policy. Effectively this limited the payment of reparation only to those victims who made statements to the Commission before 15 December 1997. In the period between December 1997 and January 2002, victims' groups confirmed to the Commission that they had collected more than 8000 statements from victims who, for a variety of reasons, were unable to access the Commission. The consequence of ignoring this group of people has potentially dangerous implications for South Africa, as communities may become divided if some receive reparation that is not accessible to others who have had similar experiences.

37. The Commission is of the view that the 'closed list' policy should be reviewed by government, in order to ensure justice and equity. It needs to be noted that, in many other countries which have gone through similar processes, victims have been able to access reparation many years after the truth commission process has been completed. (...p733)

Report of the Chief Executive Officer

INTRODUCTION

1. The activities of the Truth and Reconciliation Commission (the Commission) were suspended on 28 October 1998. Notwithstanding this suspension, the Amnesty Committee had to continue with its functions until a date determined by proclamation by the President. In addition, the Amnesty Committee was required to take over certain duties and functions of the other two statutory Committees, namely the Committee on Human Rights Violations (HRVC) and the Committee on Reparation and Rehabilitation (RRC). These duties were related to matters that had not been finalised before 31 July 1998, excluding enquiries and hearings and matters emanating from the amnesty process. To assist the Amnesty Committee in this regard, the President appointed two existing Commissioners to that Committee.

2. In 1988 an amendment to the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) gave the President the power to reconvene the Commission to consider the Committee's report and determine a date for the dissolution of the Commission. On 16 November 2001, the President determined 31 March 2002 as the date for the final dissolution of the Commission.[1]

3. The responsibility conferred by the amendment was far from simple. Indeed, the forty months that followed the suspension of the Commission were in many ways as challenging and in certain instances even more difficult and strenuous than the thirty-two months prior to the suspension. The Amnesty Committee became the administrative and operational centre of the Commission but was, at the same time, faced with drastic cuts in funding and human resources. It was also under continuous pressure to finalise the outstanding work in the shortest possible time, while at the same time being expected to deliver a product that would serve as a solution to national problems, especially with regard to the victims of gross human rights violations. Statistics show that more correspondence, telephonic enquiries and personal interviews with or in connection with victims were attended to after 1998 than before.

1 Government Gazette No. 22833 dated 16 November 2001.

4. During this period the Commission experienced three events that affected the administrative operations of the Commission:
   a Following the resignation of the former CEO, the Commission appointed Advocate Martin Coetzee as CEO with effect from 1May 1999.
   b During June 1999, Dr P Maduna MP replaced Dr AM Omar MP as Minister of Justice and as minister responsible for the Commission.
   c On 18 August 2000, Judge H Mall, Chairperson of the Amnesty Committee, passed away.

5. This report represents an effort by the chief executive officer (CEO) to reflect on the operational and administrative functions of the Commission for the period November 1998 to March 2002. Although an independent report, it may be read in conjunction with the report of the CEO in the Commission's Final Report[2], as matters dealt with in that report will not be revisited. It should also be read in conjunction with the report of the Executive Secretary of the Amnesty Committee.[3]

6. The section following this report contains the managerial reports of the various departments within the Commission (Legal, Information Technology, Media and Finance). These reports may also be read with the corresponding sections in the Final Report.[4]

MANAGING THE COMMISSION

7. Managing an unconventional institution born out of controversy and political compromise and tasked to find a common ground upon which to promote national unity and reconciliation in South Africa was never going to be easy. Doing it with dedicated Commissioners and Committee members and a corps of loyal managers and employees whose commitment and dedication were exceptional certainly made it a lot more bearable.

8. As a result of the very solid foundation laid by the previous CEO, the various organisational structures were well established, a sound fiscal policy was in place and the respective departments and sections had clear and well-defined areas of responsibility. This meant that the new CEO was able to focus on completing the outstanding work of the Commission as effectively and as quickly as possible.

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2 Volume One, Chapter Nine.

4 Section One, Chapter Two in this volume.

5 Volume One, Chapters Ten to Twelve.

Management of the Commission was done by the CEO assisted by a corps of seven managers. Previously the Commission was managed by no less than a CEO and eighteen managers.

9. Apart from day-to-day management responsibilities, managing the Commission during this period involved ensuring the smooth operation of the following processes:
   a Dealing with continuous public scrutiny and criticism. As an institution of national and international significance, the Commission found itself under constant, and sometimes unrealistic, public pressure to deliver quality outputs within the shortest period of time. To bear its impact, the Commission had to be transparent and accountable to the public through out its entire existence.
   b Attempting to address the needs of those with a constitutional right to be acknowledged for the pain and suffering they had endured during the apartheid era.
   c Providing the machinery for those persons who sought to receive amnesty for committing human rights violations.
   d Establishing and maintaining an efficient and workable relationship between Commissioners, Committee members and staff members.
   e Striving towards establishing and maintaining bilateral co-operation between the Commission and various government departments.
   f Constantly assessing and analysing the Commission's objectives, bearing in mind the available resources and approaching and solving managerial challenges from an integral standpoint. It should be borne in mind that the Commission seldom had the privilege of applying proven and/or tested processes. Many of the Commission's processes had to be 'invented' in accordance with the theoretical and not always practical guidelines as provided by the provisions of the Act.
   g Continuously evaluating the various processes of the Commission, attending to factors delaying these processes, and developing, implementing and maintaining mechanisms aimed at expediting the finalisation of these processes.
   h Making decisions that were people-centred and blending individual needs and aspirations with those of the Commission and the public at large.
   i Motivating staff who, for a period of almost six years, had to deal on a daily basis with the atrocities of the past and who dedicated all their time and energy to giving effect to the objectives and provisions of the Act, with no prospect of any incentive scheme, bonus, gratuity or future employment opportunities following the termination of their contracts.

j Providing the proverbial 'shoulder to cry on' and serving as a 'punching bag' for those deprived and frustrated victims of gross human rights violations as a result of government non-delivery of reparation and rehabilitation.

k Seeking a compromise between expectations and reality.

l Striving towards delivering a product of which the nation could be proud, in the shortest possible period of time and operating within budgetary constraints.

m Sharing joy and sharing sorrow.

n Being proud and at the same time being humbled to have the honour and privilege to serve our country and to contribute towards understanding our past history and make present history.

OPERATIONAL AND MANAGEMENT ACTIVITIES

10. Some of the day-to-day management activities and operations of the Commission included:
    - research activities, including the completion of the analysis emanating from amnesty applications, the political context to these applications, and matters arising from the work of the HRVC and RRC;
    - investigative activities, including the in-depth investigations of amnesty applications;
    - preparation for and finalisation of findings regarding 21 000 deponent statements by the HRVC;
    - summarising the contents of 21 000 deponent statements for inclusion in the report to the President;
    - analysis of more than 7000 amnesty applications;
    - preparation of more than 2500 amnesty applications for public hearings by the Amnesty Committee;
    - scheduling the public hearing of more than 2500 amnesty applications;
    - logistical and security arrangements pertaining to 255 public amnesty hearings, totalling approximately 1632 hearing days;
    - providing witness protection to amnesty applicants and to witnesses at amnesty hearings;
    - recording the hearings of the Amnesty Committee, simultaneous interpretations and transcription services;
    - further development of a coding framework to systematise the processing and capturing, cross-referencing, cleaning and analysing of data;
    - archiving and safekeeping of more than 3000 cubic metres of written documentation, tape and video recordings;

- preparation for and complete assessments of approximately 21 000 victims of gross human rights violations by the single remaining Commissioner of the RRC;
- facilitating the payment of urgent interim reparation to approximately 17 000 victims by the President's Fund;
- attempting to establish the whereabouts or correct addresses of almost 3000 victims of gross human rights violations;
- human resources-related activities, including streamlining the Commission's office layouts, structures, staff orientations, development of skills and the provision of service certificates and references for exiting staff;
- financial activities, including the development and implementation of measures aimed at effecting savings, budget forecasts, negotiations and allocations and the preparation and presentation of audited financial statements;
- attending to a constant flow of enquiries regarding the plight of victims and the issue of reparation;
- legal activities, including assistance to the various Committees and dealing with legal challenges to the Commission and the Amnesty Committee;
- media liaison and communication;
- safety and security of physical and intellectual assets, processes, activities and members of the Commission;
- audits, evaluations and appraisals of the Commission's activities, quality of work, staff performances, efficiency and productivity, and updates of registers, files, reports, financial statements and books, and progress in general;
- accounting and reporting to parliamentary committees on the Commission's activities, processes and progress;
- liaising with governmental departments with regard to issues emanating from the activities and processes of the Commission;
- financial and other support to the Commission by international donors;
- addressing and briefing international conferences, international visitors and interested parties on the functions, activities and processes of the Commission, and
- staff 'roll-out' and close-down plans for the Commission.

CHALLENGES TO THE COMMISSION

11. During its existence, the Commission was faced with numerous challenges, some substantial and others less so. Some of these are discussed briefly here.

Perceptions about the Commission

12. Although the Commission was established as a result of negotiations between the major political role players and owed its existence and functions to an Act passed by a democratically elected parliament, it still came in for a fair share of criticism. There were those who saw the Commission as the instrument of an ANC-led government and a witch-hunt. Others perceived it as perpetrator-friendly, insensitive to the plight of victims and biased towards the former regime and security forces, and some simply saw it as 'a waste of taxpayers' money'. Notwithstanding these negative perceptions, the Commission stuck to its mandate and its commitment to give effect to the letter of the Act and the needs of the majority of our nation.

13. The most difficult aspect to deal with was the granting of amnesty. Everything related to the concept was controversial even before the Act was promulgated or the Amnesty Committee established. Giving the Amnesty Committee the power to grant amnesty meant that a visible body was established that could now be blamed for setting perpetrators free. Throughout its existence, the Commission and its entire staff had to cope and deal with this negative sentiment. The work of the Amnesty Committee also seemed to contradict that of the other Committees of the Commission. The HRVC devoted its time and energy to acknowledging the painful experiences of victims of gross violations of human rights and to identifying those who had perpetrated these gross human rights violations. The Amnesty Committee, on the other hand, set many of these perpetrators of gross human rights violations free from prosecution and from prison on the grounds that they had acted with a political objective and had made full disclosure. In addition, in giving effect to the provisions of the Act, the Amnesty Committee had powers of implementation, whilst the RRC could only make recommendations. Some perpetrators were granted immediate freedom. Victims, however, were required to wait until parliament had accepted or rejected the recommendations of the Commission.

14. The Commission was constantly accused of being perpetrator-friendly and of being insensitive to the plight of victims. Looking back across the whole process now, it is clear that, on the physical side especially, more was done for victims than for perpetrators. Hundreds of thousands of rands and hours were spent on locating victims, transporting them to hearings and providing them with food and accommodation. The hours that were spent on foot trying to locate victims or hiring bulldozers to enable victims in flood-stricken areas to attend amnesty

hearings can certainly not be regarded as an insensitive attitude. The Commission is of the strong opinion that the total amount of time and resources spent on victims during the amnesty process was substantially more than that spent on amnesty applicants.

15. On more than one occasion, the Amnesty Committee subjected to severe criticism by individuals and the media, not because it had not done its work properly, but because it had applied the provisions of the Act and granted certain individuals amnesty. The Committee was also accused of being biased, sometimes in favour of the perpetrators, sometimes in favour of the victims; at times in favour of the liberation movements and at times in favour of the former security forces.

16. The Amnesty Committee tried its utmost to be as objective as humanly possible. Listening to evidence of horrendous acts of gross violations of human rights and to evidence of immense human suffering and inhumane treatment over a period of more than five years certainly did not make it easy. Notwithstanding this, the Amnesty Committee was always aware of the fact that it had to apply the provisions of the Act and that it had a role to play in unearthing the truth. It made it its responsibility to do exactly that. The Amnesty Committee was also very aware of the plight of victims, and everything possible was done to ease their suffering and to give them the recognition they deserved.

17. As has already been mentioned, the RRC was not an implementing body. Its responsibility was to identify those victims who were eligible for reparation and/or rehabilitation and to make recommendations in this regard. Despite this, the RRC was perceived as being responsible not only for identifying the interventions that were needed for reparation and rehabilitation, but also for their implementation. Notwithstanding this, the RRC and its staff never shirked their moral responsibility. They continued to listen to victims and tried their utmost to assist them in the absence of the acknowledgement and implementation of the recommendations made by the Commission in October 1998.

18. In many instances, however, negative perceptions about the Commission and its work arose out of ignorance about its objectives and mandate. At the same time, it was encouraging to experience the high regard in which the Commission was held in the international community. Not only did international delegations and visitors show a keen interest in and appreciation of the work of the Commission, but members of the Commission were also frequently invited to address international conferences on the work and experiences of the Commission.

Operational challenges

19. Operational challenges had the most profound impact on the process as they related to the urgency imposed on the Commission to finish a huge amount of work within the shortest period of time. They included:

Staff

20. In any institution staff members are one of the most valuable assets. Without the commitment and dedication of its entire staff complement, the Commission would not have been able to meet its objectives. Unfortunately, staff members were not always acknowledged for the invaluable role they played. Commissioners, Committee members and management were the public face of the Commission; staff maintained the engine room.

21. Because the Commission was initially expected to have a relatively short lifespan, all staff members were employed on temporary contracts. Ultimately, the Commission functioned for almost six years, and contracts were extended on no less than six occasions. With hindsight, this proved to be a very unsatisfactory situation. Because there was no employment security or certainty about when the process would end, staff members were understandably constantly on the lookout for permanent employment. They were paid only a basic salary; no service bonuses or other incentives were offered. As a result, the Commission lost experienced staff on a regular basis and it became increasingly difficult to fill vacancies.

22. Keeping staff motivated also proved to be very challenging. Lack of job and contractual security and incentives, constant criticism of the Commission, no employment offers from government despite six years' dedicated work seem finally to have filtered through to staff. Indeed, the only thing that kept staff going was their commitment to the Commission's objectives. It was therefore no surprise, when another employment opportunity became available, that staff had no hesitation in taking up that position. In many instances, the projects they were working on or their areas of responsibility had to be taken over by the already over-burdened remaining staff members. In certain cases, especially with regard to committee members, the individuals who left were the only ones able to complete or finalise a certain project or function. One then had to rely on the integrity and goodwill of those concerned. In the majority of instances

the work was satisfactorily completed, but in other instances the completion of a specific task was hamstrung by the non-performance of certain individuals.

Budgetary constraints

23. Without the luxury of precedents, and faced with uncertainties as to the financial implications of the activities of the Commission, it was often very difficult to budget accurately. For example, a public hearing might last less than a day or it might take weeks or even months to complete an application. Sometimes it would take only one telephone call to reach a victim; in other cases it could involve hiring a four-by-four vehicle to reach a victim in a rural area.

24. The requirement to 'do more with less' proved to be very frustrating and even counter-productive. The Commission is of the view that the process could have been finished much earlier had it been in a position to employ more personnel to attend to the professional and administrative aspects of its work. It was disappointing to know and accept that, whilst the Commission regarded itself as a project of national significance, it was regarded by government as only one amongst many national priorities to be financially resourced.

25. The government's failure to approve a severance package for deserving staff meant that management was unable to reward its best performers or to retain some of those who found themselves obliged to move elsewhere during the last crucial months.

Co-operation with the Commission

26. The Commission was an institution of national significance and, from the outset, it was clear that its failure or success would depend, to a large extent, on the co-operation it received from those with an interest in its proper functioning. The Commission relied heavily on the assistance and co-operation of, amongst others, government departments, political parties, victims, witnesses, legal representatives and non-governmental institutions and organisations.

27. Generally speaking, the Commission enjoyed the co-operation of many of the above. Unfortunately there were also instances where some of these deliberately or through a lack of commitment delayed the processes of the Commission. In certain cases it was clear that an uninformed perception about the Commission

played a role; in other cases it was resistance against or non-acceptance of transformation and the new democratic dispensation. Where the objectives of the Commission were not in line with certain party political objectives, co-operation was sometimes deliberately withheld. Finally, some individuals saw the Commission as an opportunity to further their own careers or to improve their financial status.

28. The Commission and its staff consequently had to put in a great deal of energy and effort into overcoming these obstacles, not for its own purposes, but for the benefit of victims, amnesty applicants and the country as a whole.

29. These are but some of the challenges the Commission was faced with. Fortunately they were not insurmountable, and the Commission was eventually able to complete its mandate.

Concluding remarks

30. In the belief and hope that South Africa will never again be required to set up a similar commission, it is sufficient to make only two general points about setting up any kind of commission of inquiry. First, care should be taken to provide for a proper and well-resourced infrastructure. Second, and more importantly, there should be proper acknowledgement of those who are not in the public eye, but who grind it out in the dungeons and machine rooms.

31. In preparing this report and reflecting on almost six years of serving this extra-ordinary Commission, it was ironic that all the negative experiences were completely surpassed and overshadowed by the positive experiences to such an extent that one is left with a feeling of fulfilment, satisfaction and achievement that can only be experienced and shared by those who also had the opportunity to serve in the same way.

32. It was a humbling experience to have had the opportunity to serve and to be led by a truly remarkable Chairperson assisted by a group of Commissioners and Committee members whose integrity, commitment and dedication have been unrivalled.

33. Tribute must be paid to those persons who decided to forsake their constitutional rights in the interests of finding the truth and striving towards unity and reconciliation.

34. Acknowledgement is also given to those persons who, for the sake of national unity and reconciliation, and despite humiliation and embarrassment, came forward and were sincere in admitting to horrendous acts of human rights violations.

35. Finally tribute is paid to all the staff members, interpreters, transcribers, technicians, lawyers and all those who came into touch with the Commission and who, through their commitment and dedication, and notwithstanding the huge demands that were made on their personal and family lives, played an integral part in bringing this process to a conclusion and contributing to the history of South Africa. (...p744)

Managerial Reports

■ LEGAL DEPARTMENT

General introduction

1. The Legal Department's general responsibilities included the following:
   a overall responsibility on a national level for all legal matters involving the Truth and Reconciliation Commission (the Commission) and its Committees, including advising the Commission and CEO on all matters legal;
   b drafting legal opinions for the Commission in respect of the legal aspects of the work of its various Committees;
   c reviewing all existing contracts and drafting new contracts on behalf of the Commission;
   d preparing the Commission's responses and defence to legal challenges such as reviews of amnesty decisions;
   e liaising with attorneys and counsel on behalf of the Commission and persons appearing before the Amnesty Committee;
   f dealing with all industrial relations/disciplinary matters on behalf of Commission;
   g interacting and liaising with the Ministries of Justice and Constitutional Development; Arts, Culture, Science and Technology; Transport; Defence, and Police Services in respect of a wide range of matters concerning their activities, arising from the investigations and hearings of the Commission, and
   h overall responsibility for the legal assistance programme in terms of section 34 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act).

Documentation Centre

2. The national legal officer was assigned the additional responsibility of managing, supervising and supporting the Commission's Documentation Centre. The Documentation Centre was responsible for the entire body of documentation and information within the Commission. The process included recording all information generated by the Commission on CD-ROM, audio and audio-visual tape, magnetic (audio) tape as well as hard copy. Documents archived by the Documentation Centre included the following:
   a all the Commission's intellectual assets;

b original human rights violations (HRV) statements and Investigative Unit working files;
c amnesty applications;
d amnesty decisions;
e amnesty hearing material (bundles];
f applications for reparation and rehabilitation;
g submissions made to the Commission by a wide range of persons, agencies and institutions in accordance with the investigative hearings of the Commission in terms of section 29 of the Act;
h news clips of all local, national international news and press releases;
i the audio and video recordings of hearings, and
j collections of posters, artefacts (paintings, statues, etc.), photographs, books, journals and police records.

Legal Assistance Programme

3. In terms of Section 34 of the Act, persons who were required to appear before the Commission under a subpoena or notice were entitled to legal representation. The Commission, in conjunction with the Minister of Justice, therefore implemented a legal assistance program to assist indigent persons in obtaining legal assistance.

4. The Legal Aid Board was appointed as an agent of the Commission to administer and reimburse legal representatives for the work done in respect of the Commission's activities.

5. Whilst the normal criterion for qualification to obtain legal assistance was satisfaction of the means test, many people did not qualify, as their income exceeded the limit (sometimes not by very much). This operated unfairly against private persons who might be required to spend considerable time away from home or work with no financial relief for employment lost. The Commission then applied an 'in the interest of justice' test which allowed most people to qualify for legal assistance, and which was given to perpetrators as a matter of course.

6. As of December 1998, it became obvious that the Legal Aid Board's administration was unable to cope with the Commission's instructions. Many hearings were postponed at great cost to the Commission because attorneys had either not been properly instructed or not been paid outstanding fees. In addition, many attorneys had threatened to boycott the process unless payment

of outstanding legal accounts was made before they would accept new work or complete partly-heard matters. As a result, the Legal Assistance Programme was taken over and run by the Commission's Legal Department from August 1999. The agency agreement with the Legal Aid Board was consequently terminated.

7. In order to streamline the legal appointment process, all stakeholders such as state attorneys and Bar Councils (in all nine provinces) were consulted and notified of the new procedures, which entailed the following:
   a The Legal Department was responsible for issuing the instructions to legal representatives in liaison with the administrative component of the Amnesty Committee.
   b The Legal Department would negotiate fees (within the parameters of the Regulations published in terms of Section 34 of the Act) up front and confirm precisely the terms of the instructions before any work was undertaken.
   c The Legal Department would make all necessary accommodation and travelling arrangements with legal representatives and witnesses in consultation with the administrative component of the Amnesty Committee.
   d The Legal Department would scrutinise all accounts presented, corroborate with the Amnesty Committee, tax the account/fees and issue instructions for payment.
   e In respect of security force personnel or liberation force members who were dealt with in terms of section 3(3) of the State Attorneys Act 1958, the Legal Department undertook to assist the state attorneys in assuming all the preliminary work in the preparation of a taxed find account for payment by them.

INFORMATION TECHNOLOGY (IT) DEPARTMENT

General introduction

Network (hardware, software)

8. The Commission initially operated on a wide area network (WAN), which connected all the regional offices. When these offices were closed in September 1998, the WAN was discontinued and the Cape Town office continued to run on a local area network (LAN). Communication between the head office in Cape Town and the satellite offices occurred mainly by Internet. Each office had a stand-alone Internet computer. For security reasons, the LAN was not linked to the Internet.

9. The LAN consisted of workstations and heavy-duty printers connected together by an Ethernet network with a Windows NT server at the centre. The communication protocol was TCP/IP.

10. The workstations ran Windows 95 and the application software was Microsoft Office. The bulk of the office administration work was done using MS Word and the e-mail facility. In addition to Word, the researchers used the Excel spreadsheet to analyse trends in the data and to graph the results of their analysis. The Finance Department used AccPac for the financial and payroll transactions and the Standard Bank BEST system to pay accounts using the Internet.

11. In 2001, a software audit was launched to establish which software was being operated and whether all the software was licensed. This was necessary as there had been a complete staff turnover in the IT Department and there were few records indicating what software had been purchased at the outset of the Commission. After discovering that some software was being used unlicensed, the Commission applied for 'amnesty' during the Business Software Alliance (BSA) Truth or Dare campaign to legalise software. This ensured freedom from prosecution provided that the organisation legalised all its software within a given time frame.

Y2K

12. In 1999, the Commission took precautions against the Y2K computer bug. Y2K cards were installed in all the computers, and patches were downloaded from Microsoft to fix the software. The Commission experienced no Y2K-related problems.

CD-ROM project

13. A CD-ROM project was initiated to preserve the Commission's electronic files. These files were initially backed up onto magnetic tapes, which were deteriorating. All backed-up documents were copied onto searchable CD-ROMs to enable faster and more efficient access. Due to the high staff turnover, it was constantly necessary to refer to files created and research performed by former staff members.

Database development

14. The database was a client–server relational database implemented using Oracle software, which is the industry-standard database technology for this type of

project. Users had a suite of programmes on their workstations. This connected them to the database engines so that they could, for example, register statements and amnesty applications, capture the contents of the violations, carry out complex searches on the data and extract data into spreadsheets. They could also print a variety of computer-generated reports, such as the content of statements or amnesty applications, corroboration carried out, letters of acknowledgement, perpetrator details, incident reports, as well as statistics for monitoring the performance of the information flow.

15. The database linked the findings of the Human Rights Violations Committee (HRVC) with the decisions from the Amnesty Committee to provide lists of victims to the Reparation and Rehabilitation Committee (RRC). The names and addresses of eligible victims were printed from the database for sending application forms for reparation.

Website

16. The website (http://www.truth.org.za) was launched in 1996 as part of the Commission's media strategy. It contained all the transcripts of both HRVC and amnesty hearings, amnesty decision transcripts, press releases and news reports from the South African Press Agency (SAPA). It also contained an interactive Register of Reconciliation that users could sign.

MEDIA DEPARTMENT

17. The Media Department was central to the planning of each and every amnesty hearing. The department would place advertisements in various newspapers and on various radio stations in order to contact victims and/or perpetrators on behalf of the Amnesty Committee before hearings. This work was performed mainly by the media secretary with the assistance of evidence leaders and analysts. The purpose of this practice was two-fold: it helped the Amnesty Committee locate individuals and also informed members of the public about future hearings.

18. The Media Department was the first source of information for journalists and members of the public with enquiries about the Commission and specific amnesty hearings. The department was also responsible for preparing statements about decisions published by the Amnesty Committee.

Interpreting at the Commission's hearings

19. Although interpretation services were not a department of the Commission but were provided for by the Unit for Language Facilitation and Empowerment (ULFE) of the University of the Free State, they formed an integral part of the processes of the Commission and need to be reflected upon.

20. Section 11(f) of the Act stipulated that: '... appropriate measures shall be taken to allow victims to communicate in the language of their choice'. The hearings 'dramatised' the right of victims and those applying for amnesty to follow proceedings in their own language and of course the right to give testimony in their own language. To respect this, the Commission was compelled to institute a multilingual interpreting service with the applicable infrastructure.

21. In the early part of 1996, the Commission finalised an interpreting service agreement with the Language Facilitation Programme of the University of the Free State. This involved the recruitment, appointment and training of interpreters to manage the service. Technical support was provided by Giant Video Screens (Pty) Limited.

The value of interpreting at the hearings

22. The Commission's hearings yielded an extensive word harvest, probably even more extensive than that of the Nuremberg trials. If it is taken into consideration that a simultaneous interpreter produces on average between 14 000 and 20 000 words a day in a meeting lasting six to seven hours, and that this production can be converted into fifty-six to ninety typed pages, the Commission's hearings have resulted in extensive word production. Since the commencement of the hearings of the Commission in April 1996, altogether 57 008 hours of hearings have been interpreted. Converted into days, this already amounts to approximately 7126 hearing interpreting days, which have yielded an interpreting volume of nearly a billion words, which can, in turn, be converted to in the region of 11 million or more typed pages!

23. The duration of interpreted procedures is normally multiplied between two to three times per interpreted language if one is using the current judicial consecutive interpreting system. It has been estimated that, had the Commission opted for consecutive interpretation, the hearings would have continued into the year 2020. Thus what may seem to some as an apparently 'unnecessary'

extravagance of spending financial resources on language (interpreting) reduced the total operating time of the Commission by more than five times. The contribution of the Commission to the interpreting industry in South Africa should not be underestimated. The extensiveness and continuous interpreting service required by the Commission, especially to previously disadvantaged communities, meant that interpreters had to be trained and employed simultaneously. The fact that different African languages were used so consistently and on such a scale, and that people were given the opportunity to tell their stories in their own language at such a highly regarded forum, was indeed an empowering experience.

24. While the vocabulary at HRV hearings was of a more general nature, amnesty hearings took place within a rather strict legal context. Here the interpreter had to have a firm grasp of legal jargon. Lacking the appropriate terminology, interpreters of African languages found the amnesty hearings and the section 29 hearings more difficult.

25. Among the variables involved at hearings of the Commission were the differences in narrative technique from victim to victim, language differences (metaphorically and idiomatically), and tempo and volume of speech.

26. Interpreting at the Commission was no easy task. Many of the freelance interpreters have commented that interpreting as such is not difficult. What made it difficult was the emotional component.
27. The ULFE's team of interpreters covered practically all possible language combinations of the eleven official languages. The statistics on the language combinations for the hearings yielded some interesting facts. (See Table 3 below.)

28. An Afrikaans service was provided at 70 per cent of the hearings. Of the African language services, the Xhosa, Zulu and Sotho services were used the most (respectively 31 %, 35 % and 46 %).

Table 1: Breakdown of time interpreted at the Commission's hearings

	HEARINGS INTERPRETED				ACTUAL TIME INTERPRETED			
	HRV	**AMN**	**Sec 29**	**Total**	**HRV**	**AMN**	**SEC 29**	**TOTAL**
HOURS	2792	11680	632	15104	10856	44456	1696	57008
DAYS	349	1460	79	1888	1357	5557	212	7126

Table 2: Accumulated number of interpreters used at the Commission's hearings

	HRV	AMN	SEC 29	TOTAL
TOTAL AMOUNT OF INTERPRETERS	373	1538	106	2017

Table 3: Number of languages used at the Commission's hearings

LANGUAGE	TOTAL LANGUAGE USAGE	PERCENTAGE OF TOTAL
AFRIKAANS	345	70 %
ENGLISH	495	100 %
NDEBELE	4	1 %
NORTHERN SOTHO	21	4 %
SOTHO	172	35 %
SWATI	14	3 %
TSONGA	18	4 %
TSWANA	62	13 %
VENDA	17	3 %
XHOSA	154	31 %
ZULU	229	46 %

FINANCE DEPARTMENT

General introduction

29. Section 46(2) of the Act as amended set out the financial duties of the Commission and provided for the appointment of a chief executive officer who would also act as the chief accounting officer. Thus the financial accountability for the Commission rested with the chief executive officer. Section 46(5) of the Act required the Commission to prepare an estimate of revenue and expenditure for each year of its operation using a format to be determined in consultation with the Audit Commission. Section 9(1) of the Act directed the Commission to determine remuneration allowances in consultation with the Ministries of Finance and Justice, as well as terms and conditions of employment of staff members who were not state employees.

30. In complying with the financial mandate as directed by the Act and interpreted by the Commission, the chief executive officer delegated managerial responsibility to the director of finance. One of the tasks of the director was to assist the Commission by preparing estimates of revenue and expenditure.

Operations

31. The Finance Department consisted of a financial director, a financial manager, a facilities manager, two bookkeepers, four administrative clerks, two facilities clerks and a senior administrative secretary.
32. When the regional offices were scaled down to satellite offices in 1998 the bank accounts of those offices were closed and were managed from the national office. The national financial director reported to the Commission's chief executive officer. The financial director's activities were diversified to include support services, and the description of the portfolio changed to director of finance and support services.

Revenue

33. The Commission's revenues were allocated as a separate line item in the budget of the Department of Justice and Constitutional Development, which was voted on and approved by parliament.

34. In addition, many international donor countries contributed financially to add value to the process. The Commission was initially under the impression that it could accept donations directly. Legal opinion provided by the state legal advisers, however, indicated that all donations received by the Commission had to be formally approved by the Department of State Expenditure through the Reconstruction and Development Fund.

35. As the Commission's work progressed, it became clear that it would not be able to complete all its work within the prescribed eighteen-month period or even after several further extensions. The result was that parliament approved an Amendment of the Act (Act 33 of 1998). The Amendment provided for the Committee on Amnesty to continue with its functions until a date determined by the President. This meant that the Commission had to approach the Department of Finance for additional funding.

36. The Department of Finance allocated R14 617 000 to the Commission of for the 1999/2000 financial year, based on the assumption that the estimated date for

the final closure of the Commission was set for the end of June 1999. However, the self-imposed deadline could not be met, and an amount of R8.5 million was then allocated to the Commission for the 2000/2001 financial year. Two additional amounts of R17 million and R4 681 million were allocated to the Commission to continue its work through the 2000/2001 financial year. An amount of R10 million was allocated to the Commission for the 2001/2002 financial year to wrap up the Commission's proceedings. This was based on the assumption that the Commission would have been dissolved by the end of September 2001. The President, however, determined 31 March 2002 as the date upon which the Commission would finally be dissolved. This left the Commission with the dilemma that no provision for additional funding had been made. A very welcome donation was made by the Ford Foundation for the finalisation of the Codicil to the Final Report. However, over and above the grant received, the Department of Justice had to be approached for making available additional funding to ensure the proper and smooth closure of the activities of the Commission. At the time of writing this report a final answer in this regard was still awaited from the Department of Justice and Constitutional Development.

37. The audit for the 2000/2001 fiscal year has been completed and will be tabled in parliament before the end of March 2002. Financial statements for the completed fiscal periods 1997/98, 1998/99 and 1999/2000 are attached as Appendices 1, 2 and 3. The financial statements for the 2001/2002 financial year had not yet been set before parliament at the date of publication of this Report. Generally speaking the Commission received very positive reports from the Auditor-General, especially for the 1999/2000 and 2000/2001 financial years. No major shortcomings were identified and in each report it was made clear that compliance with laws and regulations applicable to financial matters has occurred during each year reported on.

Problems encountered and measures taken

38. The CEO/CAO, assisted by the finance and support services director and the rest of management, were guided by the Commission's fiscal policy. A few of the problems encountered in the Commission and the measures taken to solve them are listed below.

39. Ever conscious of the lack of funding and the fact that taxpayers' monies were utilised to fund the activities of the Commission, the CEO, management and the

finance department were constantly looking for and implementing mechanisms to effect savings. These measures proved to be effective and resulted in the Commission being able to fund many of its activities out of savings. Measures that were adopted included the following:

a mechanisms to curb the expenses incurred as a result of the public hearings into amnesty applications;
b proper co-ordination of arrangements relating to public hearings;
c stricter control with regard to travel and accommodation expenses as well as the use of telephones and cellular phones, and
d a structured and effective reduction in the staff complement of the Commission.

Satellite offices

40. The regional offices of the Commission closed down on 30 June 1998. Satellite offices were then established in Johannesburg, Durban (Pinetown) and East London to co-ordinate work still to be done in the regions. These offices were staffed by a total of thirty-seven employees. An office administrator was appointed in each office to manage these offices and report to the CEO.

41. The main task of the satellite offices was to render support services to the reparation and rehabilitation and amnesty processes. The satellite offices also served to make the processes of the Commission more accessible to all South Africans, particularly victims.

Human resources

42. All human resources-related activities were dealt with by the financial director assisted by the regional manager.

43. At its peak the Commission had 438 employees. By November 1998 this number had decreased to 188. From then on the total kept decreasing as a result of resignations and/or a so-called staff 'roll-out' The latter was to a large extent a direct result of budgetary constraints. The Commission's total staff complement for December 2001 was thirty-one and this number was reduced to nine employees for the months of January to March 2002.

44. Terminating a staff member's contract of employment was never easy. Although the CEO was of the opinion that government should accept some responsibility

for those individual staff members who have dedicated years of their lives serving the national process of truth and reconciliation, this view was unfortunately not supported by government. For instance, notwithstanding sincere requests to provide funding for an incentive bonus or some form of gratuity, government remained adamant that no funds were available. In order to see whether staff could be accommodated elsewhere when their contracts were terminated, various government departments were informed of the availability of competent workers. Unfortunately this was to no avail. At the time of writing this report there are still a number of former employees who have not yet been able to secure another job.

Handover of assets to the Department of Justice and Constitutional Development

45. The Act provided for a committee to be responsible for overseeing the handover of the assets of the Commission to the Department of Justice and Constitutional Development. Although the committee was established during 2000, this process only really commenced during October 2001.

46. At the time of writing this report almost 99 per cent of the Commission's assets have been handed over to the Department of Justice and Constitutional Development. These assets include 339 computers, forty-two motor vehicles, seventy-two cellular phones and no less than 3094 pieces of office furniture and equipment.

47. In addition, 1330 linear metres of documentation, comprising amnesty-related documents, statements, video and audio collections and other miscellaneous documentation, were transported from Cape Town to Pretoria over a period of 6 weeks.

48. All documentation relating to reparation and rehabilitation that has been in the possession of the Commission was handed over to the President's Fund based in Pretoria. This Fund will also deal with issues relating to reparation and rehabilitation until such time as a permanent policy in this regard has been adopted by Government.(...p756)

APPENDIX 1

Annual Financial Statements

for the period 1 April 1997 to 31 March 1998

The Chief Executive Officer hereby presents his report and submits the annual financial statements for the period ended 31 March 1998.

■ GENERAL REVIEW

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. During this first financial period the Truth and Reconciliation Commission commenced starting up operations which involved the setting up of its head office in Cape Town as well as three other offices in Gauteng, the Eastern Cape and Kwazulu Natal. The financial activities of the Truth and Reconciliation Commission for the above period centred around continuing its activities as in the previous year. The initial closing down date for the Commission was extended in terms of an amendment to the necessary legislation, which meant that the Commission operated at full capacity for virtually the entire year. The results of these activities are clearly reflected in the attached financial statements and may be summarised as follows:

Operating Surplus for the period	R 8 602 940
Capital Expenditure	R 1 252 719
Net Cash Flow Surplus	R16 651 911

The Cash Flow Surplus mainly arises out of funds held on deposit for donor funds to be expended in the next financial year as well as a surplus achieved on the budget of this financial year.

■ CHIEF EXECUTIVE OFFICER AND SECRETARIES

In terms of S46(1) of the Promotion of National Unity and Reconciliation Act 34 of 1995 the following appointments have been made:-

Chief Executive Officer ..... **Dr B S V Minyuku**
Date of Appointment: 1 March 1996

Executive Secretary to:
The Commission ..... **P van Zyl**
Date of Appointment: 1 March 1996
The Reparation and Rehabilitation Committee ..... **T Grenville-Grey**
Date of Appointment: 18 December 1997
The Human Rights Violations Committee ..... **Dr R Richards**
Date of Appointment: 1 September 1996
The Amnesty Committee ..... **Adv. M Coetzee**
Date of Appointment: 8 August 1997

■ FINANCIAL STATEMENTS

The Chief Executive Officer acknowledges his responsibility for the fair presentation in the financial statements of the financial position and results of operations in conformity with generally accepted accounting practice. The Chief Executive Officer has approved the financial statements set out on pages 4 to 9.

■ EVENTS OCCURRING AFTER BALANCE SHEET DATE

During the month of June 1998, the Commission closed down its three regional offices according to its strategic plan. The financial effect of the closure was that assets of the Commission were transferred to the Department of Justice as stipulated by the Act. The total cost of these assets amounts to R912 066. The book value at year end of these assets amounted to R575 303. This event also meant that regional staff were retrenched as per the roll-out plan of the Commission. A total of 40 staff were retrenched. This represented, at that time, 10% of the Commission's staff complement.

CHIEF EXECUTIVE OFFICER
23 October 1998

TRUTH AND RECONCILIATION COMMISSION

■ BALANCE SHEET AS AT 31 MARCH 1998

	Notes	**1997-98 R**	1996-1997 R
Capital employed			
Accumulated funds		**24 853 873**	16 241 934
Employment of capital			
Fixed assets	3	**8 192 963**	11 473 285
Net current assets		**16 660 910**	4 768 649
Current assets		**23 240 268**	19 557 049
Sundry debtors	4	**1 309 151**	1 582 387
Bank and cash balances		**21 931 117**	17 974 662
Current liabilities		**(6 579 358)**	(14 788 400)
Sundry creditors	5	**6 349 358**	4 401 092
Unapproved donations		**–**	10 313 347
Provisions		**230 000**	73 961
		24 853 873	16 241 934

B S V MINYUKU
Accounting Officer

Cape Town, 23/10/98

TRUTH AND RECONCILIATION COMMISSION

■ INCOME STATEMENT FOR THE YEAR ENDED 31 MARCH 1998

	Notes	**1997-98 R**	1996-1997 R
Income		**81 904 882**	74 042 034
State contributions		**65 716 000**	70 042 034
Donations		**13 662 552**	2 336 221
Other income	8	**2 526 330**	2 005 322
Expenditure		**(73 292 943)**	(61 900 205)
Salaries		**37 209 133**	31 746 636
Other operating expenditure	9	**35 698 511**	30 153 569
Discontinued operations	7	**385 299**	–
Retained income for the year		**8 611 939**	12 483 372
Retained income at the beginning of the year		**16 241 934**	3 758 562
Retained income at the end of the year		**24 853 873**	16 241 934

NOTES TO THE FINANCIAL STATEMENTS

1. Formation and primary objectives

1.1 The Truth and Reconciliation Commission was established in terms of section 2(1) of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995). The Commissioners were appointed by the President in terms of section 7(2)(a) of the Act on 15 December 1995.

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparation measures in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

2. Accounting policy

The annual financial statements have been prepared in accordance with generally accepted accounting practice. The principal accounting policy is as follows:

2.1 *Basis of presentation*
The annual financial statements are prepared on the historical cost basis.

2.2. *Fixed assets and depreciation*
Fixed assets are stated at cost price less accumulated depreciation. Leasehold improvements are written off over the expected life-span of the Commission. All other assets are depreciated over their useful lives on the straight line method.

2.3 *Income and expenditure*
Income and expenditure is recognised on the accrual basis.

2.4 *Donations*
Donations and interest earned on donations are recognised in full in the year in which the donations are authorised. However, unspent donor funds and interest earned thereon will be refunded to the donor at the end of the project. The refund of donor funds and interest will be accounted for in the year in which the transfer takes place.

NOTES *(Continued)*

3. Fixed Assets

	Computer equipment	Computer software & installation	Furniture & fittings	Office equipment	Motor vehicles	Leasehold improve-ments	Security equipment	Total
				1997-98				
	R	R	R	R	R	R	R	R
Beginning of year:								
Cost price	30 010 355	1 003 441	2 671 545	2 607 430	5 083 435	619 401	347 679	15 343 286
Accumulated depreciation	(811 115)	(1 003 441)	(514 136)	(379 353)	(861 644)	(251 709)	(48 603)	(3 870 001)
Carrying amount beginning of year	2 199 240	–	2 157 409	2 228 077	4 221 791	367 692	299 076	11 473 285
During the year:								
Additions	606 971	97 518	39 924	463 396	3 714	33 696	7 500	1 252 719
Disposals	(28 331)	–	–	(252 520)	(195 496)	–	(4 364)	(480 711)
Transfers	(51 242)	–	(213 692)	–	(103 519)	–	–	(368 453)
Depreciation	(1 153 183)	(97 518)	(538 803)	(531 133)	(980 035)	(313 502)	(69 703)	(3 683 877)
Carrying amount end of year	1 573 455	–	1 444 838	1 907 820	2 946 455	87 886	232 509	8 192 963
Cost price	3 444 665	1 100 959	2 360 762	2 773 242	4 676 357	653 097	349 679	15 358 761
Accumulated depreciation	(1 871 210)	(1 100 959)	(915 924)	(865 422)	(1 729 902)	(565 211)	(117 170)	(7 165 798)
	1 573 455	–	1 444 838	1 907 820	2 946 455	87 886	232 509	8 192 963

NOTES *(Continued)*

3. Fixed Assets *(continued)*

	Computer equipment	Computer software & installation	Furniture & fittings	Office equipment 1996-97	Motor vehicles	Leasehold improve-ments	Security equipment	Total
	R	R	R	R	R	R	R	R
Beginning of year:								
Cost price	310 549	–	1 733 691	163 345	2 358 852	195 534	–	4 761 971
Accumulated depreciation	(7 502)	–	(11 813)	(1 954)	(49 496)	(7 726)	–	(78 491)
Carrying amount beginning of year	303 047	–	1 721 878	161 391	2 309 356	187 808	–	4 683 480
During the year:								
Additions	2 748 312	1 003 441	937 854	2 461 118	2 882 401	423 867	347 679	10 804 671
Disposals	(40 413)	–	–	(15 184)	(141 694)	–	–	(197 290)
Transfers	–	–	–	–	–	–	–	–
Depreciation	(811 706)	(1 003 441)	(502 323)	(379 248)	(828 272)	(243 983)	(48 604)	(3 817 576)
Carrying amount end of year	**2 199 240**	**–**	**2 157 409**	**2 228 077**	**4 221 791**	**367 692**	**299 076**	**11 473 285**
Cost price	3 010 335	1 003 441	2 671 545	2 607 430	5 083 435	619 401	347 679	15 343 286
Accumulated depreciation	(811 115)	(1 003 441)	(514 136)	(379 353)	(861 644)	(251 709)	(48 603)	(3 870 001)
	2 199 240	**–**	**2 157 409**	**2 228 077**	**4 221 791**	**367 692**	**299 076**	**11 473 285**

NOTES *(continued)*

	1997-98 R	1996-1997 R
9. Other operating expenditure		
Audit fees	**320 588**	109 610
Bank costs	**51 060**	57 030
CMC levies	**180 855**	–
Communication	**4 323 800**	2 952 863
Conferences and workshops	**294 171**	275 724
Consulting fees	**925 900**	330 861
Consumables	**181 712**	313 201
Diginet lines	**127 192**	107 714
Depreciation	**3 683 878**	3 817 576
DST Programme	**395 699**	–
Entertainment, teas and refreshments	**160 249**	114 046
Exhumation costs	**155 030**	12 677
Hearing costs	**948 684**	939 322
Insurance	**693 583**	419 788
Interest paid	**11 431**	23 805
Legal costs	**280 917**	36 455
Legal aid	**511 858**	122 615
Maintenance:	**495 356**	154 765
Computers	**96 785**	3 802
Equipment	**36 736**	21 726
Premises	**62 131**	26 757
Motor vehicles	**299 704**	102 480
Postage	**59 556**	22 878
Printing	**398 544**	348 573
Publications and subscriptions	**100 352**	125 841
Relocation costs	**199 658**	179 363
Rentals:	**4 184 994**	3 597 814
Equipment	**11 199**	3 084
Offices	**4 173 795**	3 594 730
Staff recruitment	**101 603**	831 198
Stationery	**380 413**	402 437
Telephones:	**2 642 134**	2 175 609
Telkom and faxes	**1 676 735**	1 354 044
Cellular	**965 399**	821 565
Transport:	**886 000**	848 556
Freight	**146 804**	90 676
Motor vehicles expenses	**625 438**	538 859
Use of private motor vehicles	**113 758**	219 021
Training	**8 685**	17 728
Transcription costs	**347 594**	145 843
Translation costs	**3 333 793**	3 228 313
Travel and subsistence	**9 102 878**	7 985 643
Travel management costs	**57 834**	347 004
Witness protection programme	**152 510**	108 717
	35 698 511	**30 153 569**

TRUTH AND RECONCILIATION COMMISSION

CASH FLOW STATEMENT FOR THE YEAR ENDED 31 MARCH 1998

	Notes	**1997-98 R**	1996-1997 R
Cash flows from operating activities			
Cash generated from operations	A	**2 213 565**	26 354 785
Interest received		**2 514 571**	1 617 546
Interest paid		**(11 431)**	(23 805)
Net cash inflow from operations		**4 716 705**	27 948 526
Cash flows from investing activities			
Additions to fixed assets		**(1 252 719)**	(10 804 671)
Disposal of fixed assets		**492 469**	207 277
Net cash outflow from investing activities		**(760 250)**	(10 597 394)
Net increase in cash and cash equivalents		**3 956 455**	17 351 132
Cash and cash equivalents at the beginning of the year	B	**17 974 662**	623 530
Cash and cash equivalents at the end of the year	B	**21 931 117**	17 974 662

TRUTH AND RECONCILIATION COMMISSION

NOTES TO THE CASH FLOW STATEMENT

	Notes	**1997-98 R**	1996-1997 R
A. Reconciliation of net surplus to cash generated from operations			
Net surplus		**8 611 939**	12 483 372
Depreciation		**3 683 878**	3 817 576
Interest received		**(2 514 571)**	(1 617 546)
Interest expenses		**(11 431)**	23 805
Transfer of assets		**(368 453)**	–
Profit on disposal of assets		**(11 759)**	(9 988)
Operating profit before working capital changes		**10 149 371**	14 697 217
Working capital changes		**(7 935 806)**	(11 657 566)
Decrease/(increase) in debtors		**273 236**	(937 045)
Increase/(decrease) in creditors		**(8 209 042)**	12 594 611
Cash generated from operations		**2 213 565**	**26 354 785**
B. Cash and cash equivalents			
Cash and cash equivalents consist of cash on hand balances with banks.			
Cash and cash equivalents included in the cash flow statement comprises the following balance sheet amount:			
Cash on hand and balances with banks		**21 931 117**	**17 974 662**

APPENDIX 2

Annual Financial Statements

for the period 1 April 1998 to 31 March 1999

The Chief Executive Officer hereby presents his report and submits the annual financial statements for the period ended 31 March 1999.

■ GENERAL REVIEW

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. The extent of the work of the Commission could not be foreseen by the legislature and was influenced as a result of the extension granted by the President of the cut-off date of gross violations of human rights from 5 December 1993 to 10 May 1994. The closing date to submit amnesty applications was also extended from 11 May 1997 to 30 September 1997 which greatly influenced the work of the Commission.

It is against this background that the Chairperson of the Commission requested the Minister of Justice to extend the lifespan of the Commission. The result was that the Promotion of National Unity and Reconciliation Amendment Act, 1998 was approved in Parliament in June 1998. The amended Act makes inter alia provision that the Amnesty Committee shall continue with its functions until a date determined by the President.

The Committee on Human Rights Violations and the Committee on Reparation and Rehabilitation have more or less completed their work on 31 July 1998. However the assessment of reparation and rehabilitation forms as well as the possible appeals and/or challenges of human rights violations work continued in 1999. The work of the Amnesty Committee will however continue into 2000.

For the continuation for the work of the Amnesty committee with the necessary support services as well as some capacity for the assessment of reparation and rehabilitation forms as well as the possible appeals and/or challenges it is envisaged for work to continue until at least June 2000.
The results of these activities are clearly reflected in the attached financial statements and may be summarised as follows:

Retained income ..... R 4 401 646

Capital Expenditure ..... R 362 946
Retained income at the beginning of the financial year .. R 24 853 873

The Cash Flow Surplus mainly arises out of funds held on deposit for donor funds to be expended in the next financial year.

■ CHIEF EXECUTIVE OFFICER

In terms of S46(1) of the Promotion of National Unity and Reconciliation Act 34 of 1995 the following appointments has been made:

Chief Executive Officer ..... **Adv. Martin Coetzee**
Date of Appointment: 1 April 1999

■ FINANCIAL STATEMENTS

The Chief Executive Officer acknowledges his responsibility for the fair presentation in the financial statements of the financial position and results of operations in conformity with generally accepted accounting practice.

The Chief Executive Officer has approved the financial statements for the 1998/1999 financial year.

CHIEF EXECUTIVE OFFICER
16 November 1999

TRUTH AND RECONCILIATION COMMISSION

■ BALANCE SHEET AS AT 31 MARCH 1999

	Notes	**1998-99 R**	1997-1998 R
Capital employed			
Accumulated funds		**29 255 519**	24 853 873
Employment of capital			
Property, Plant and Equipment	3	**3 754 815**	8 192 963
Net current assets		**25 500 704**	16 660 910
Current assets		**29 578 491**	23 240 268
Debtors	4	**3 691 250**	1 309 151
Bank and cash balances		**25 887 241**	21 931 117
Current liabilities		**(4 077 787)**	(6 579 358)
Creditors	5	**3 902 787**	6 349 358
Provisions		**175 000**	230 000
		29 255 519	24 853 873

ADV. M COETZEE
Accounting Officer

Cape Town, 14/10/99

TRUTH AND RECONCILIATION COMMISSION

■ INCOME STATEMENT FOR THE YEAR ENDED 31 MARCH 1999

	Notes	**1998-99 R**	1997-1998 R
Income		**62 345 233**	81 904 882
State contributions		**54 083 096**	65 716 000
Donations		**3 324 725**	13 662 552
Other income	8	**4 937 412**	2 526 330
Expenditure		**(57 943 587)**	(73 292 943)
Salaries		**25 161 438**	37 209 133
Other operating expenditure	9	**28 786 877**	35 698 511
Discontinued operations	7	**3 995 272**	385 299
Retained income for the year		**4 401 646**	8 611 939
Retained income at the beginning of the year		**24 853 873**	16 241 934
Retained income at the end of the year		**29 255 519**	24 853 873

NOTES TO THE FINANCIAL STATEMENTS

1. Formation and primary objectives

1.1 The Truth and Reconciliation Commission was established in terms of section 2(1) of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995). The Commissioners were appointed by the President in terms of section 7(2)(a) of the Act on 15 December 1995.

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparation measures in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

2. Accounting policy

The annual financial statements have been prepared in accordance with generally accepted accounting practice. The principal accounting policy is as follows:

2.1 *Basis of presentation*
The annual financial statements are prepared on the historical cost basis.

2.2. *Fixed assets and depreciation*
Fixed assets are stated at cost price less accumulated depreciation. Leasehold improvements are written off over the expected life-span of the Commission. All other assets are depreciated over their useful lives on the straight line method.

2.3 *Income and expenditure*
Income and expenditure is recognised on the accrual basis.

2.4 *Donations*
Donations and interest earned on donations are recognised in full in the year in which the donations are authorised. However, unspent donor funds and interest earned thereon will be refunded to the donor at the end of the project. The refund of donor funds and interest will be accounted for in the year in which the transfer takes place.

NOTES *(Continued)*

3. Fixed Assets

	Computer equipment	Computer software & installation	Furniture & fittings	Office equipment	Motor vehicles	Leasehold improve-ments	Security equipment	Total
				1997-98				
	R	R	R	R	R	R	R	R
Beginning of year:								
Cost price	3 444 665	1 100 959	2 360 762	2 773 242	4 676 358	653 097	349 679	15 358 762
Accumulated depreciation	(1 871 211)	(1 100 959)	(915 924)	(865 422)	(1 729 902)	(565 211)	(117 171)	(7 165 799)
Carrying amount beginning of year	1 573 454	–	1 444 838	1 907 821	2 946 456	87 886	232 508	8 192 963
During the year:								
Additions	13 600	61 296	37 256	211 869	11 493	25 272	2 160	362 946
Disposals	(48 506)	–	–	(45 313)	–	(17 264)	–	(111 083)
Transfers	(181 914)	–	(396 483)	(82 810)	(1 181 533)	–	(30 951)	(1 873 691)
Depreciation	(954 898)	(61 296)	(373 963)	(523 378)	(766 542)	(73 649)	(62 594)	(2 816 320)
Carrying amount end of year	401 736	–	711 648	1 468 189	1 009 874	22 245	141 123	3 754 815
Cost price	2 842 523	1 132 065	1 693 749	2 725 014	2 287 214	227 612	301 439	11 209 616
Accumulated depreciation	(2 440 787)	(1 132 065)	(982 101)	(1 256 825)	(1 277 340)	(205 367)	(160 316)	(7 454 801)
	401 736	–	711 648	1 468 189	1 009 874	22 245	141 123	3 754 815

NOTES *(Continued)*

3. Fixed Assets *(continued)*

	Computer equipment	Computer software & installation	Furniture & fittings	Office equipment	Motor vehicles	Leasehold improve-ments	Security equipment	Total
				1997-98				
	R	R	R	R	R	R	R	R
Beginning of year:								
Cost price	3 010 355	1 003 441	2 671 545	2 607 430	5 083 435	619 401	347 679	15 343 286
Accumulated depreciation	(811 115)	(1 003 441)	(514 136)	(379 353)	(861 644)	(251 709)	(48 603)	(3 870 001)
Carrying amount beginning of year	2 199 240	–	2 157 409	2 228 077	4 221 791	367 692	299 076	11 473 285
During the year:								
Additions	606 971	97 518	39 924	463 396	3 714	33 696	7 500	1 252 719
Disposals	(28 331)	–	–	(252 520)	(195 496)	–	(4 364)	(480 711)
Transfers	(51 242)	–	(213 692)	–	(103 519)	–	–	(368 453)
Depreciation	(1 153 183)	(97 518)	(538 803)	(531 133)	(980 035)	(313 502)	(69 703)	(3 683 877)
Carrying amount end of year	1 573 455	–	1 444 838	1 907 820	2 946 455	87 886	232 509	8 192 963
Cost price	3 444 665	1 100 959	2 360 762	2 773 242	4 676 357	653 097	349 679	15 358 761
Accumulated depreciation	(1 871 210)	(1 100 959)	(915 924)	(865 422)	(1 729 902)	(565 211)	(117 170)	(7 165 798)
	1 573 455	–	1 444 838	1 907 820	2 946 455	87 886	232 509	8 192 963

NOTES *(continued)*

	1998-99	1997-1998
	R	R
4. Sundry debtors		
Income receivable	**427 648**	30 217
Interest receivable	**298 689**	135 291
Legal Aid Board advances	**491 958**	–
Prepaid expenses	**146 166**	104 779
Refundable deposits paid on leased premises	**11 553**	45 366
Salary advances	**2 016**	25 421
Value Added Tax (VAT) refund	**2 313 220**	968 077
	3 691 250	1 309 151
5. Creditors		
Accruals for accounts payable	**3 902 787**	6 349 358

6. Contingent liability

A claim of R12,5 million was lodged against the Commission by a former employee for damages allegedly caused by statements made against him in the media. Although the outcome of this legal action is not yet known, the Commission's Head Legal Advisor is of the opinion that this claim will not succeed.

7. Discontinued operations		
Assets transferred to Department of Justice	**1 873 691**	368 453
VAT on transfers to Department of Justice	**133 145**	–
Gratuities paid to Commissioners	**1 891 164**	–
Winding down costs	**97 272**	16 846
	3 995 272	385 299

The operation of the TRC presently only consists of the Amnesty Committee.

The Regional Offices were downgraded to Satellite Offices.

The staff complement decreased from 268 at the beginning of the year to 161 at the end of the year.

8. Other income		
Interest	**4 882 131**	2 514 571
Commission	**55 281**	–
Profit on assets written off	**–**	11 759
	4 937 412	2 526 330

NOTES *(continued)*

	1998-99 R	1997-1998 R
9. Other operating expenditure		
Audit fees	**252 450**	320 588
Bank costs	**48 103**	51 060
CMC levies	**64 671**	180 855
Communication	**1 570 504**	4 323 800
Conferences and workshops	**34 640**	294 171
Consulting fees	**436 036**	925 900
Consumables	**31 959**	181 712
Diginet lines	**26 886**	127 192
Depreciation	**2 816 320**	3 683 878
DST Programme	**862 481**	395 699
Entertainment, teas and refreshments	**155 704**	160 249
Exhumation costs	**146 848**	155 030
Hearing costs	**1 119 498**	948 684
Insurance	**802 819**	693 583
Interest paid	**10 400**	11 431
Legal costs	**717 002**	280 917
Legal aid	**523 927**	511 858
Loss on assets written off	**75 847**	–
Maintenance:	**534 723**	495 356
Computers	**145 390**	96 785
Equipment	**59 444**	36 736
Premises	**67 819**	62 131
Motor vechiles	**262 070**	299 704
Postage	**62 930**	59 556
Printing	**937 819**	398 544
Publications and subscriptions	**57 900**	100 352
Refund of donation to Netherlands Embassy	**45 424**	–
Refund of interest Danish Embassy	**55 983**	–
Relocation costs	**146 101**	199 658
Rentals:	**2 728 881**	4 184 994
Equipment	**2 771**	11 199
Offices	**2 726 110**	4 173 795
Staff recruitment	**29 786**	101 603
Stationery	**187 020**	380 413
Telephones:	**2 066 435**	2 642 134
Telkom and faxes	**1 151 807**	1 676 735
Cellular	**914 628**	965 399
Transport:	**855 864**	886 000
Freight	**311 586**	146 804
Motor vehicles expenses	**466 150**	625 438
Use of private motor vehicles	**78 128**	113 758
Traning	**–**	8 685
Transcription costs	**324 660**	347 594
Translation costs	**4 813 924**	3 333 793
Travel and subsistence	**6 089 514**	9 102 878
Travel management costs	**–**	57 834
Witness protection program	**153 818**	152 510
	28 786 877	35 698 511

10. Post Balance Sheet Event

After the Financial Year End a Donation to the amount of R1 722 750.00 was made available from USAID for expenditure incurred by the TRC during the 1998-1999 Financial Year.

CASH FLOW STATEMENT FOR THE YEAR ENDED 31 MARCH 1999

	Notes	**1998-99 R**	1997-1998 R
Cash flows from operating activities			
Cash generated from operations	A	**(702 775)**	2 213 565
Interest received		**4 882 131**	2 514 571
Interest paid		**(10 400)**	(11 431)
Net cash inflow from operations		**4 168 956**	4 716 705
Net cash outflow from investing activities		**(212 832)**	(760 249)
Additions to fixed assets		**(362 946)**	(1 252 719)
Disposal of fixed assets		**150 114**	492 469
Net increase in cash and cash equivalents		**3 956 124**	3 956 455
Cash and cash equivalents at the	B		
beginning of the year		**21 931 117**	17 974 662
Cash and cash equivalents at the end of the year	B	**25 887 241**	21 931 117

NOTES TO THE CASH FLOW STATEMENT

	1998-99 R	1997-1998 R
A. Reconciliation of net surplus to		
cash generated from operations		
Net surplus	**4 401 646**	8 611 939
Depreciation	**2 816 320**	3 683 878
Interest received	**(4 882 131)**	(2 514 571)
Interest expenses	**10 400**	11 431
Transfer of assets	**1 873 691**	368 453
(Profit)/Loss on disposal of fixed assets	**(39 031)**	(11 759)
Operating profit before working capital changes	**4 180 895**	10 149 371
Working capital changes	**(4 883 670)**	(7 935 806)
Decrease/(increase) in accounts receivable	**(2 382 099)**	273 236
Increase/(decrease) in accounts payable	**(2 501 571)**	(8 209 042
Cash generated from operations	**(702 775)**	2 213 565
B. Cash and cash equivalents		
Cash and cash equivalents consist of cash		
on hand and balances with banks.		
Cash and cash equivalents included in the cash flow		
statement comprises the following balance sheet amount:		
Cash on hand and balances with banks	**25 887 241**	21 931 117
Cash on hand and balances with banks	**21 931 117**	**17 974 662**

APPENDIX 3

Annual Financial Statements

for the period 1 April 1999 to 31 March 2000

The Chief Executive Officer hereby presents his report and submits the annual financial statements for the period ended 31 March 2000.

■ GENERAL REVIEW

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. The TRC was established to investigate the nature, causes and extent of gross violations of human rights during the period 1960 to 1994. To achieve this, Act 34 of 1995 required the establishment of the following committees:

(a) The Committee on Human Rights Violations (HRV Committee), to investigate gross human rights violations, which, inter alia, afforded victims an opportunity to relate their suffering;

(b) The Committee on Reparation and Rehabilitation (R&R Committee), which seeks to bring about the granting of reparations to victims, and to rehabilitate and restore their human and civil dignity; and

(c) The Amnesty Committee (AC) to consider applications for amnesty in respect of acts committed during the period stipulated.

The original deadline for completion of these tasks was July 1997. As the extent of the TRC's work became apparent, it became clear that it would not be able to meet this initial 18 month deadline. Subsequent extensions have been granted, the last of which allows the TRC, through the AC, to complete its work without setting a fixed deadline. Although the bulk of the work has been completed (as reported in the first five volumes of the TRC Report) the three committees still have important outstanding tasks.

Work still to be completed by the three committees:

The AC has finalised 6 377 matters, but still has approximately 736 matters to finalise. Of these 366 are hearable matters, many of which involve people in senior positions from both the liberation movements and former security forces. It is expected that these amnesty applications will in all probability be finalised by the end of July 2000, it is however extremely difficult to accurately assess the time required to complete such hearings. Circumstances beyond the control of the AC often result in postponement of hearings.

The R&R Committee has sent out almost out almost 19 000 Urgent Interim Reparations (UIR) forms. While to date more than half of these have already been forwarded to the President's Fund, the Committee still has to retrieve 3 467 forms and process another 2 602 applications in its possession.

The HRV Committee has completed the substantive part of its work. During 1999, it conducted an extensive audit of all negative findings and is now ready to send out negative finding letters, informing approximately 7 000 deponents that they cannot be declared victims. All three committees have to write the codicil to the first five volumes of the Final Report.

Time required to complete the outstanding work:

The work plan shows that the absolute minimum time to complete the outstanding tasks would be up till December 2000. This would include the preparation and organisation of the intellectual property gathered during the TRC process, prior to handing it over to the Department of Justice and National Archives. It will also include the writing of the codicil and its handover to the President.

While it is important that the TRC does not delay its own closure, it is equally important to deliver a completed product which will not place in jeopardy the work already done or lay a basis for potential legal challenges. Further, all those who have participated in the project or observed its progress recognise that the work of the TRC has assisted in laying the foundations for a culture of human rights in our country. The perceived failure of the TRC to complete its historic task would compromise such a view.

Moreover, all loose ends need to be tied sufficiently so that a government established structure might take over the continuing work with a minimum of disruption. To achieve all of these goals, the TRC considers it necessary to work within the confines of deadlines, which are realistic hence, the objective to complete its work in December 2000.

The results of these activities are clearly reflected in the attached financial statements and may be summarised as follows:

Retained income	R -21 510 408
Capital Expenditure	R 126 739
Retained income at the beginning of the financial year	R 29 255 519

The retained income shows a negative figure of R21 510 408 mainly because of the utilisation of the surplus in the bank.

■ STANDING COMMITTEE ON PUBLIC ACCOUNTS

The TRC appeared before the Standing Committee on Public Accounts on 12 April 2000 in connection with the Auditor-General's report for the 1998/99 financial year. After the briefing the Committee requested the TRC to furnish them with more information especially about the non compliance with State Tender Board regulations mentioned in the Auditor-General's reports for the previous two financial years. The additional information was submitted on 19 May 2000.

■ FINANCIAL STATEMENTS

The Chief Executive Officer acknowledges his responsibility for the fair presentation in the financial statements of the financial position and results of operations in conformity with generally accepted accounting practice.The Chief Executive Officer has approved the financial statements for the 1999/2000 financial year.

CHIEF EXECUTIVE OFFICER

26 June 2000

TRUTH AND RECONCILIATION COMMISSION

■ BALANCE SHEET AS AT 31 MARCH 2000

	Notes	**1999-2000 R**	1998-1999 R
Capital employed			
Accumulated funds		**3 909 374**	29 255 519
Employment of capital			
Property, plant and equipment	3	**1 891 931**	3 754 815
Net current assets		**2 017 443**	25 500 704
Current assets		**7 444 874**	29 578 491
Debtors	4	**1 667 217**	3 691 250
Bank and cash balances	11	**5 777 657**	25 887 241
Less: Current liabilities		**(5 427 431)**	(4 077 787)
Creditors	5	**(5 237 431)**	3 902 787
Provisions	12	**190 000**	175 000
		3 909 374	29 255 519

ADV. M COETZEE
Accounting Officer

Cape Town, 19/09/2000

TRUTH AND RECONCILIATION COMMISSION

■ INCOME STATEMENT FOR THE YEAR ENDED 31 MARCH 2000

	Notes	**1999-2000 R**	1998-1999 R
Income		**20 977 237**	62 345 233
State and other contributions		**14 617 000**	54 083 096
Donations		**3 872 791**	3 324 725
Other income	8	**2 487 446**	4 937 412
Expenditure		**(46 591 536)**	(57 943 587)
Salaries	10	**21 364 952**	25 161 438
Other operating expenditure	9	**25 216 388**	28 786 877
Discontinued operations	7	**10 196**	3 995 272
Retained income for the year		**(25 614 299)**	4 401 646
Retained income at the beginning of the year		**29 255 519**	24 853 873
Prior year adjustments	13	**268 154**	–
Retained income at the end of the year		**3 909 374**	29 255 519

NOTES TO THE FINANCIAL STATEMENTS

1. Formation and primary objectives

1.1 The Truth and Reconciliation Commission was established in terms of section 2(1) of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995). The Commissioners were appointed by the President in terms of section 7(2)(a) of the Act on 15 December 1995.

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparation measures in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

2. Accounting policy

The financial statements have been prepared in accordance with generally accepted accounting practice. The principal accounting policy is as follows:

2.1 *Basis of presentation*
The financial statements are prepared on the historical cost basis.

2.2. *Fixed assets and depreciation*
Fixed assets are stated at cost price less accumulated depreciation. Leasehold improvements are written off over the expected life-span of the Commission. All other assets are depreciated over their useful lives on the straight line method.

2.3 *Income and expenditure*
Income and expenditure is recognised on the accrual basis.

2.4 *Donations*
Donations and interest earned on donations are recognised in full in the year in which the donations are authorised. However, unspent donor funds and interest earned thereon will be refunded to the donor at the end of the project. The refund of donor funds and interest will be accounted for in the year in which the transfer takes place.

NOTES *(Continued)*

3. Property, plant and equipment

	Computer equipment	Computer software & installation	Furniture & fittings	Office equipment	Motor vehicles	Leasehold improve-ments	Security equipment	Total
				1999-2000				
Rate of depreciation:	33,3%	100%	20%	20%	20%	50%	20%	
Period (years)	3	*	5	5	5	2	5	
*Written off in year of purchase	R	R	R	R	R	R	R	R
Beginning of year:								
Cost price	2 842 523	1 132 065	1 693 749	2 725 014	2 287 214	227 612	301 439	11 209 616
Accumulated depreciation	(2 440 787)	(1 132 065)	(982 101)	(1 256 825)	(1 277 340)	(205 367)	(160 316)	(7 454 801)
Carrying amount beginning of year	401 736	–	711 648	1 468 189	1 009 874	22 245	141 123	3 754 815
During the year:								
Additions	49 202	21 677	5 043	12 724	2 764	35 329	–	126 739
Disposals	(628)	–	–	(291 330)	(22 533)	–	–	(314 491)
Transfers	–	–	–	–	–	–	–	–
Depreciation	(361 198)	(21 677)	(339 224)	(420 475)	(449 704)	(22 566)	(60 288)	(1 675 132)
Carrying amount end of year	89 112	–	337 467	769 108	540 401	35 008	80 835	1 891 931
Cost price	2 763 695	1 153 742	1 698 792	2 443 601	2 264 337	76 027	301 439	10 701 633
Accumulated depreciation	(2 674 583)	(1 153 742)	(1 321 325)	(1 674 493)	(1 723 936)	(41 019)	(220 604)	(8 809 702)
	89 112	–	377 467	769 108	540 401	35 008	80 835	1 891 931

NOTES *(Continued)*

3. Property, plant and equipment *(continued)*

	Computer equipment	Computer software & installation	Furniture & fittings	Office equipment	Motor vehicles	Leasehold improve-ments	Security equipment	Total
				1998-99				
	R	**R**	**R**	**R**	**R**	**R**	**R**	**R**
Beginning of year:								
Cost price	3 444 665	1 100 959	2 360 762	2 773 242	4 676 358	653 097	349 679	15 358 762
Accumulated depreciation	(1 871 211)	(1 100 959)	(915 924)	(865 421)	(1 729 902)	(565 211)	(117 171)	(7 165 799)
Carrying amount beginning of year	1 573 454	–	1 444 838	1 907 821	2 946 456	87 886	232 508	8 192 963
During the year:								
Additions	13 600	61 296	37 256	211 869	11 493	25 272	2 160	362 946
Disposals	(48 506)	–	–	(45 313)	–	(17 264)	–	(111 083)
Transfers	(181 914)	–	(396 483)	(82 810)	(1 181 533)	–	(30 951)	(1 873 691)
Depreciation	(954 898)	(61 296)	(373 963)	(523 378)	(766 542)	(73 649)	(62 594)	(2 816 320)
Carrying amount end of year	401 736	–	711 648	1 468 189	1 009 874	22 245	141 123	3 754 815
Cost price	2 842 523	1 132 065	1 693 749	2 725 014	2 287 214	227 612	301 439	11 209 616
Accumulated depreciation	(2 440 787)	(1 132 065)	(982 101)	(1 256 825)	(1 277 340)	(205 367)	(160 316)	(7 454 801)
	401 736	–	711 648	1 468 189	1 009 874	22 245	141 123	3 754 815

NOTES *(continued)*

	1999-2000 R	1998-1999 R
4. Debtors		
Income receivable	**1 193 575**	427 648
Interest receivable	**49 466**	28 689
Legal Aid Board advances	**–**	491 958
Prepaid expenses	**12 121**	146 166
Refundable deposits paid on leased premises	**2 192**	11 553
Salary advances	**10 303**	2 016
Value Added Tax (VAT) refund	**399 560**	2 313 220
	1 667 217	3 691 250
5. Creditors		
Personnel control	**2 402 968**	1 156 121
Accounts payable	**2 240 780**	2 496 127
Stannic Fleet Management	**–**	(4 266)
Diners Club	**455 485**	254 805
Rennies Travel	**138 109**	–
WPP budgets	**89**	–
	5 237 431	3 902 787

6. Contingent liability

A claim of R12,5 million was lodged against the Commission by a former employee for damages allegedly caused by statements made against him in the media. Although the outcome of this legal action is not yet known, the Commission's national legal officer is of the opinion that this claim will not succeed.

7. Discontinued operations		
Assets transferred to Department of Justice	**–**	1 873 691
VAT on transfers to Department of Justice	**–**	133 145
Gratuities paid to Commissioners	**–**	1 891 164
Winding-down costs	**10 196**	97 272
	10 196	3 995 272

The operation of the TRC presently only consists of the Amnesty Committee. The satellite offices are still operational. The staff complement decreased from 156 at beginning of the year to 142 at the end of the year.

NOTES *(continued)*

	1999-2000 R	1998-1999 R
8. Other income		
Interest	**2 339 991**	4 882 131
Commission	–	55 281
Profit on assets written off	**147 455**	–
	2 487 446	4 937 412
9. Other operating expenditure		
Audit fees	**190 000**	252 450
Bank costs	**51 588**	48 103
CMC levies	**51 654**	64 671
Communication	**1 076 865**	1 570 504
Conferences and workshops	**31 621**	34 640
Consulting fees	**37 705**	436 036
Consumables	**20 349**	31 959
Diginet lines	**16 152**	26 886
Depreciation	**1 675 132**	2 816 320
DST Programme	**–**	862 481
Entertainment, teas and refreshments	**104 806**	155 704
Exhumation costs	**15 351**	146 848
Hearing costs	**1 553 177**	1119 498
Insurance	**603 078**	802 819
Interest paid	**12 379**	10 400
Legal costs	**342 721**	717 002
Legal aid	**588 716**	523 927
Loss on assets written off	**–**	75 847
Maintenance:	**481 289**	534 723
Computers	**136 239**	145 390
Equipment	**38 939**	59 444
Premises	**62 518**	67 819
Motor vechiles	**243 593**	262 070
Postage	**22 282**	62 930
Printing	**154 632**	937 819
Publications and subscriptions	**23 055**	57 900
Refund of donation to Netherlands Embassy	**–**	45 424
Refund of interest Danish Embassy	**28 217**	55 983
Refund of interest Flemish Embassy	**194 211**	–
Refund of interest to SIDA	**6 454**	–
Refund of interest to European Union	**1 128 970**	–
Refund of interest and funds to Norwegian Embassy	**51 272**	–
Relocation costs	**15 726**	146 101
Rentals:	**2 074 142**	2 728 881
Equipment	**875**	2 771
Offices	**2 073 267**	2 726 110

NOTES *(continued)*

	1999-2000 R	1998-1999 R
9. Other operating expenditure (continued)		
Security	**25 143**	–
Staff recruitment	**–**	29 786
Stationery:	**88 506**	187 020
Telephones:	**1 739 575**	2 066 435
Telkom and faxes	**811 396**	1 151 807
Cellular	**928 179**	914 628
Transport:	**769 592**	855 864
Freight	**192 694**	311 586
Motor vehicles expenses	**467 930**	466 150
Use of private motor vehicles	**108 968**	78 128
Transcription costs	**302 220**	324 660
Translation costs	**4 868 863**	4 813 924
Travel and subsistence	**6 738 301**	6 089 514
Witness protection program	**132 644**	153 818
	25 216 388	28 786 877

10. Included in salaries is an amount of R1 062 200, being the under-collection of PAYE for the tax years 1997 to 1999 and R113 201 for the 2000 tax year. Also included in salaries is a provision of R622 304 for penalties and interest on the under-collection of tax for the 1997, 1998 and 1999 tax years.

11. Bank and cash balances		
Current account	**4 217 902**	20 040 377
TRC donation account	**1 552 503**	5 842 769
Plusplan account	**1 620**	–
Petty cash	**5 632**	4 095
	5 777 657	25 887 241
12. Provisions		
Audit fees	**190 000**	175 000
13. Prior year adjustments		
Audit fees – overprovision	**53 240**	–
Duplicate payment – Department of Justice	**(209 222)**	–
Legal Costs	**(62 063)**	–
Danish Embassy – interest refunded	**(40 057)**	–
Transcription costs	**(10 159)**	–
Rental – offices	**(300)**	–
Hearing costs	**(29 278)**	–
Travel	**(135 762)**	–
Printing – Final Report – never charged	**701 755**	–
	268 154	–

TRUTH AND RECONCILIATION COMMISSION

CASH FLOW STATEMENT FOR THE YEAR ENDED 31 MARCH 2000

	Notes	**1999-2000 R**	1998-1999 R
Cash flows from operating activities			
Cash utilised in operations	A	**(22 772 402)**	(702 775)
Interest received		**2 339 991**	4 882 131
Interest paid			(10 400)
Net cash inflow/(outflow) from operations		**(20 444 790)**	4 168 956
Net cash inflow/(outflow) from investing activities		**335 206**	(212 832)
Additions to fixed assets		**(126 739)**	(362 946)
Disposal of fixed assets		**461 945**	150 114
Net increase/(decrease) in cash and cash equivalents		**(20 109 584)**	3 956 124
Cash and cash equivalents at the beginning of the year	B	**25 887 241**	21 931 117
Cash and cash equivalents at the end of the year	B	**5 777 657**	25 887 241

TRUTH AND RECONCILIATION COMMISSION

NOTES TO THE CASH FLOW STATEMENT

	Notes	**1999-2000 R**	1998-1999 R
A. Reconciliation of net cash surplus generated from operations			
Cash utilised in operations	A	**(22 772 402)**	(702 775)
Net surplus		**(25 614 299)**	4 401 646
Depreciation		**1 675 132**	2 816 320
Interest received		**(2 339 991)**	(4 882 131)
Interest expended		**12 379**	10 400
Transfer of assets		**–**	1 873 691
Profit of disposal of fixed assets		**(147 454)**	(39 031)
Prior year adjustments		**268 154**	–
Operating profit/(loss) before working capital changes		**(26 146 079)**	4 180 895
Working capital changes		**3 373 677**	(4 883 670)
Decrease/(increase) in accounts receivable		**2 024 033**	2 382 099
Increase/(decrease) in accounts payable		**1 349 644**	(2 501 571)
Cash utilised in operations		**(22 772 402)**	(702 775)
B. Cash and cash equivalents			
Cash and cash equivalents consist of cash on hand balances with banks. Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amount:			
Cash on hand and balances with banks		**5 777 657**	25 887 241

(...p784)

ERRATA
to the Final Report of the Truth and Reconciliation Commission, October 1998

VOLUME ONE

Page 67
Add to footnote 13: 'Volume Four, Chapter Eight'.

Page 106
Add to footnote 3: 'Volume Five, Chapter Nine.'

Page 107
Paragraph 16: The reference to a 'security police parcel bomb' in line 6 should read 'security force parcel bomb'.

Page 108
Paragraph 21: The chapter on 'Reconciliation' referred to appears in Volume Five, Chapter Nine.

Page 149
Add to footnote 3: 'Volume Four, Chapters One to Seven.'

Page 201
Paragraph 2: Replace the last sentence as follows: 'Notable amongst those that could not be traced were the records of the National Security Management System (NSMS) diverse substructures.'

Page 202
Paragraph 6: Replace the last sentence as follows: 'The records and files were disposed of in terms of the Personnel and Financial plans by which the CCB was managed, aspects of which were included in the contracts of the CCB members on attestation.'

Page 208
Paragraph 27: 'Section 1 of the Archives Act' should read 'Section 3 of the Archives Act'.

Page 211
Footnote 11: 'Appendix A' should read 'Appendix 1'.

Page 218
Paragraph 56: Replace the last sentence as follows: 'From 1 January 1995, the National Intelligence Service (NIS) and the three remaining former homeland services were amalgamated, together with the intelligence structures of the liberation movements, to form the NIA and SASS.'

Page 220
Paragraph 62: 'appendices B and C' should read 'appendices 2 and 3'.

Page 292
Add to footnote 5: 'Volume Five, Chapters Nine and Ten'.

Page 373
Add to footnote 1: 'Volume Five, Chapter Eight'.

Page 430
Paragraph 36d: The name 'Maquina' should read 'Maqina'.

VOLUME TWO

Page 57
Paragraph 58: Delete the sentence 'This is certainly the view of former army and SADF chief, General Geldenhuys'. Replace the first part of the following sentence with 'Former army and SADF chief, General Geldenhuys said in his autobiography that:'

Page 70
Paragraph 102: Allegations of torture by SADF members at a camp at Osiri in Namibia are withdrawn in that the camp referred to in this paragraph (there were two places in Namibia called Osiri) was not under the authority of the SADF.

Page 102
Paragraph 226: The name 'Makau' should read 'Mmakau'.

Page 103
Paragraph 230: The name 'Lehlonohono' should read 'Lehlohonolo'.

Page 106
Paragraph 242: Replace 'Two passengers in the car' in line 4 with 'Two bodyguards who were standing next to the car'. The name 'Mr Thokozane Mkhize' should read 'Mr Mlungisi Thokozani Mthalane (MK name Magebhula)'.

Page 106
Paragraph 243: Replace 'for which they have applied for amnesty' in line 3 with 'for which Nofomela and Tshikilange have applied for amnesty'.

Page 107
Paragraph 245: Replace 'eight-year-old daughter, Katryn,' in line 4 with 'six-year-old daughter, Katryn'.

Page 108
Paragraph 254: Replace the name 'Mr Rogers Nkadimeng' in line 1 with 'Mr Vernon Nkadimeng (aka MK Rogers Mevi)'.

Page 109
Paragraph 257: Replace the fifth sentence (line 5) with 'Those killed were Lulamile Dantile (MK name Morris Seabelo), Vivian Stanley Mathee (MK name Trevor), Nomkhosi Mini (MK name Mary Thabethe), Joseph Monwabisi Mayoli (MK name Themba), and three Basotho citizens, Amelia Leseuyeho, Mankaelang Mohatle and Boemo Tau.'

Page 110
Paragraph 261: Replace the name 'Mr Philip Nwanematsu' in line 1 with 'Mr Philip Ngwana Makau Edward Khuto'; and the name 'Mr Busi 'Mzala' Majola' in line 2 with 'Ms Busi Majola'.

Page 113
Paragraph 276: Replace the last sentence with 'A Batswana woman, Ms Mmaditsebe Phetolo (33), her daughter Kgomotso (7), and her niece, Tshegofatso Mabeo (aged nine months) were killed. Amongst those injured were the infant's mother, Ms Seonyana Mabeo (20), Ms Phetolo's 12-year-old son, Philip, and a Zimbabwean citizen, Mr Taramuka Samson Mpofu (40).'

Page 112–3
Paragraphs 273–5 imply that security police agent, Keith McKenzie, was involved in the planning of an operation which resulted in the death of three Batswana citizens and serious injuries to seven others. In the amnesty hearing into this matter, it was revealed that Mr McKenzie was unaware that the vehicle he was driving had been fitted with an explosive device.

Page 113
Paragraph 278: Replace the name 'Mr Tutu Nkwanyane' in line 3 with 'Mr Thulani Vincent 'Tutu' Nkwanayama' and the name 'Mr Shezi Msimang' in line 4 with 'Mr Shezi Msimanga'.

Page 113
Paragraph 279: Replace the name 'Mr Cassius Make' in line 1 with 'Mr Job Tabana (aka Cassius Make)'; and the name 'Mr Paul Dikaledi' in line 2 with 'Mr Peter Sello Motau (aka Paul Dikaledi)'.

Page 114
Paragraph 281: The name 'Pantsu Smith' in line 5 should read 'Pansu Smith'.

Page 114
Paragraph 283: The name 'Tsizini' in line 8 should read 'Tsinini'.

Page 121
Paragraph 317: The dates in the first sentence '7 April and 13 October 1988' should read '7 April and 13 October 1987'.

Page 122
Paragraph 321: The first sentence 'In March/April 1989…' should read 'On 11 December 1988…'

Page 122
Paragraph 322: Replace the first sentence with 'The house was blown up in the attack and, according to the amnesty applicants, two persons were killed, namely, MK operative Ronald Mosebetsi Mapuoa (aka Sidwell Mbele) and a 15-year-old Batswana teenager, Rapula Thika.'

Page 128
Paragraph 351: Replace the name 'Mr Leonard Loghudu Mngomezulu' in line 3 with 'Ms Lokutu Mngomezulu'.

Page 133
Paragraph 373: Replace the name 'Ms Nokhuthula Aurelia Dlamini' in line 1 with 'Ms Nokhuthula Aurelia Simelane'.

Page 133
Paragraph 374: Replace the name 'Derrick Mahobane (aka Mpho Mashoeng)' in line 2 with 'Mpho Mashoeng (aka Derrick Mashobane)'.

Page 145
Paragraph 424: Replace this paragraph with the following: 'Twenty lives were lost in this raid, in which three houses were attacked and largely destroyed. They included Mr José Ramos, a Portuguese citizen killed at a roadblock, three of the attackers – Sergeants Robert Hutchinson and Ian Suttil and Lieutenant Corporal JK Park, all Rhodesians. The Commission can confirm the identities of thirteen of the sixteen South Africans killed in this raid killed, namely: Mr Thabang Moses Bookholane, Mr Mduduzi Guma, Mr Lancelot Mfanafuthi Hadebe, Mr William Khanyile, Mr Bhekumuzi Lawrence Magubane, Mr Levinson Mandisi Manakaza, Mr Dumisani Matandela, Mr Motso Aubrey Mokgabudi, Mr Daniel Molebatsi, Mr Nelson Ndunamvula, Mr Stephen Ngcobo, Mr Krishna Rabilal, Mr Sizinzo Skweyiya. Two occupants of the houses were injured in the attack but survived. They were Ms Naledi Eugenia Dongwe and Mr Themba Dimba while two were abducted and forcibly returned to South Africa where they were pressured to become *askaris*. One of these, Mr Vuyani Mavuso, refused to co-operate with the police and was subsequently killed on the orders of the head of C section of the Security Branch.'

Page 145–6
Paragraph 426: Replace 'two of his teenage children, Mzukisi and Thandisw'' in line 8 with 'two of his children, his son Mzukisi (17) and his daughter Thandiswa (32)'.

Page 151
Paragraph 449: Replace 'a prominent local footballer, Mr Jabulani Masila' in line 3 with 'a Ministry of Agriculture employee, Mr Gilbert Masilila'. Replace the second and third sentences with the following 'Amongst the injured were two local footballers, Mr Alexander Koka and Mr Galolame Makobu, while the fourth victim was an unidentified member of the Botswana Defence Force. Masilila was another case of mistaken identity'.

Page 152
Paragraph 457: Replace the name 'Mr Patrick Sandile Vundla (aka Godfrey Mokoena and Charles Naledi)' in line 3 with 'Mr Patrick Sandile Mvundla (aka Naledi Sehume or Charles Mokoena)'.

Page 171
Paragraph 28: Replace the last part of the fifth sentence (line 6) with 'killing eleven security force personnel and ten civilians'.

Page 212
Paragraph 186: The date '9 or 10 June 1998' in the first sentence should read '9 or 10 June 1988'.

Page 241
Paragraph 310 and 311, the name 'Kkhubeka' should read 'Khubeka' .

Page 242
Subheading between paragraphs 316 and 317, the name 'Vilikazi' should read 'Vilakazi'.

Page 245
Paragraph 326: The date '1982' in line 4 should read '1981'.

Page 249
Paragraph 347: The date '12 June 1988' in line 6 should read '8 June 1988'. The name 'Mr Surendra Makhosi Nyoka' in line 8 should read 'Ms Surenda Nyoka'. The name 'Mr Lenny Naidu' in line 9 should read 'Mr Lenny Naidoo'.

Page 250
Paragraph 348: The name 'Mr Nkosi Thenjekwayo' in line 2 should read 'Mr Nkosinathi Thenjwayo'.

Page 258
Move subheading 'COSAS students Hoseo Lengosane, Joseph Mazibuko …' to paragraph 387 on page 259.

Page 269
Replace subheading 'Skorpion' with 'Oupa Ronald Madondo (aka MK Scorpion or MK Skorpion)'.

Page 278
Paragraphs 466 and 467: Delete the words 'emphasis added' from the end of each quotation.

Page 284
Paragraph 492: The date '14 and 18 May' in line 2 should read '14 and 18 May 1987'.

Page 296
Paragraph 546: 'Ipelgeng' in line 1 should read 'Ipeleng'.

Page 560
Paragraph 27: The year '1979' in line 3 should read '1989'.

Page 567
Paragraph 52: The date '29 December 1989' in line 3 should read '20 December 1988'.

Page 592
Paragraphs 44: Replace the first sentence with the following: 'On 22 April 1990, five members of the Chand family, Samsodien, Hajira and their children Amina (25) Ridwan (26), and Emraan (16), were killed in an attack on their home in Botswana. A Batswana citizen, Mr Pule Matheakwena (60), who was a security guard, was also killed in the attack.'

Page 595
Paragraph 59: The name ‘Kopper’ in line 6 should read ‘Klopper’.

Page 604
Paragraph 96: The first part of the first sentence should read ‘After the Boipatong massacre …’.

Page 646
Paragraph 278: The Commission withdraws the assertion that Colonel Jan Breytenbach was at some time commander of the ‘Volksle_r’.

Paragraph 280: The Commission withdraws the assertion that General Constand Viljoen was leader of the Afrikaner Volksfront (line 4). General Viljoen was, however, on its Directorate of Generals.

Page 658
Paragraph 340: Mr Gabriel Shabangu and three others are reported as being killed at a roadblock mounted by AWB members. This is incorrect. Mr Shabangu survived while the other three died.

VOLUME THREE

Page 34
Paragraph 1: Replace ‘6 665 million people’ in line 5 with ‘6.65 million people’.

Page 87
Paragraph 181: The first part of the first sentence should read ‘Until August 1985…’

Page 92
Paragraph 202: The finding pertaining to the SADF is withdrawn.

Page 98
Paragraph 229: The phrase in the first sentence ‘at the funeral of the Cradock Four’ should be deleted.

Page 117
Paragraph 298: The name ‘Ms Johan Martin ‘Sakkie’ van Zyl’ in line 6 should read ‘Mr Johan Martin ‘Sakkie’ van Zyl’.

Page 143
Paragraph 399: The date ‘2 September 1992’ in the first line of the Commission’s finding should read ‘7 September 1992’.

Page 221
Paragraph 182: The reference as to when Inkatha hit-squad activities were formulated, in the second paragraph of the Commission’s finding, is withdrawn. The Commission erred in its original finding that the intention to form hit squads for Inkatha was formulated only months into Operation Marion. The intention to establish hit squads was evident from documented deliberations made at the very start of the operation between the SADF, the State Security Council and Inkatha.

Page 229
Paragraph 193: The first part of the sentence beginning on line 22 should read ‘Mr Johan Smit, whose son Cornelius died in the explosion …’
Page 284
‘The Killing of Claire Stewart’. Replace ‘a British citizen’ in line 2 with ‘a South African national’.

Page 294
The Commission’s finding in paragraph 348 is incorrect and is withdrawn. The Commission erred in conflating two events, namely the killing of 23 IFP supporters by ANC supporters at Richmond, Natal, on 29 March 1991, and the killing of 14 ANC supporters by IFP supporters at Ndaleni, near Richmond between 21 and 23 June 1991.

Page 432
Paragraph 153: The date ‘3 March 1986’ in line 9 should read ‘12 March 1986’.

Page 436
Paragraph 168: Replace ‘police’ in line 1 with ‘members of the Railway Police’.

Page 437
Paragraph 174: Replace this paragraph with the following paragraph:
‘During the night of 25 March 1986, Mr Lennox Thabang Maphalane (CT00706) and Mr Goodman Bongani Dastile were killed when security forces concealed in a truck opened fire on people near Crossroads. The following day, Mr Eric Heynes and two others were killed when police concealed in a house opened fire on protestors near Crossroads.’

Page 451
‘The Gugulethu Seven’: The name ‘Mr Zola Swelani’ in line 4 should read ‘Mr Zola Selani’.

Page 466
Paragraph 257: Mr Roelf Meyer was not present at the SSC meeting on 14 April 1986 and was not at the time a member of the Cabinet. He became Deputy Minister only on 1 December 1986. Mr Meyer’s name is duly withdrawn from the first sentence.

Page 657
Paragraph 477: The name ‘Gous’ in line 6 should read ‘Gouws’.

Page 696
The Commission’s finding in paragraph 618 is incorrect and is withdrawn. The Commission erred in failing to attribute responsibility for the killing of five IFP supporters in a hand grenade attack at the Jabulani stadium on 8 September 1991, and in attributing responsibility to the IFP for deaths of thirteen (rather than eight) persons in a retaliatory attack that followed this event.

VOLUME FOUR

None

VOLUME FIVE

Page 133
Paragraph 39: the name ‘Mr Mike Wilsner’ should read ‘Mr Mike Worsnip’. (...p787)

ACRONYMS AND ABBREVIATIONS

ADM	African Democratic Movement
ANC	African National Congress
ANCYL	ANC Youth League
APLA	Azanian People's Liberation Army
AVF	Afrikaner Volksfront
Avstig	Afrikaner Vryheidstigting
AVU	Afrikaner Volksunie ('Afrikaner People's Union')
AWB	Afrikaner Weerstandsbeweging ('Afrikaner Resistance Movement')
AZAPO	Azanian People's Organisation
BBB	Blanke Bevrydingsbeweging ('White Liberation Movement.')
BCM	Black Consciousness Movement
BNF	British National Front
BRL	Boere Republikeinse Leër ('Boer Republican Army')
BSA	Business Software Alliance
BWB	Boereweerstandsbeweging
BWB	Boereweerstandsbeweging ('Boer Resistance Movement')
CALS	Centre for Applied Legal Studies
CASE	Community Agency for Social Enquiry
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBOs	Community-based organisations
CCB	Civil Co-operation Bureau
CD-ROM	Compact disc: read-only memory
CEO	Chief executive officer
Commission	Truth and Reconciliation Commission
Committee	Amnesty Committee
COSAG	Concerned South Africans Group
COSAS	Congress of South African Students
COSATU	Congress of South African Trade Unions
CP	Conservative Party
DCC	Directorate of Covert Collection
DLB	'Dead letter box', or arms cache
DM	Deutsche Mark
DRST	Designated reparation statement taker
EAAF	Argentine Forensic Anthropology Team
ECC	End Conscription Campaign
FA	Freedom Alliance
FF	Freedom Front
FNLA	National Front for the Liberation of Angola
GDR	German Democratic Republic
HNP	Herstigte Nasionale Party ('Re-established National Party')
HOD	Head of Department
HRC	Human Rights Commission
HRV	Human rights violations
HRVC	Committee on Human Rights Violations (or Human Rights Violations Committee)
IACHR	Inter-American Commission on Human Rights
IBIIR	Independent Board of Inquiry into Informal Repression
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IEC	Independent Electoral Commission
IFP	Inkatha Freedom Party – known as Inkatha prior to July 1990
IJ	Intelligence Johannesburg
ILO	International Labour Organisation
IMF	International Monetary Fund
ISU	Internal Stability Unit
IT	Information Technology
IU	Investigation Unit
JMC	Joint Management Centre
KLA	KwaZulu Legislative Assembly
KZP	KwaZulu Police
LAN	Local area network

MASA	Medical Association of South Africa
MHQ	Military Headquarters
MK	Umkhonto we Sizwe
NAT	ANC's Security Department
NEC	National Executive Committee
NEC	National Executive Council
NGO	Non-governmental organisation
NIS	National Intelligence Service
NLA	Natal Liberation Army
NP	National Party
NSMS	National Security Management System
NSP	Nasional Sosialiste Partisane
NUM	National Union of Mineworkers
OAU	Organisation of African Unity
OB	Orde Boerevolk
PAC	Pan Africanist Congress
PASO	Pan Africanist Student Organisation
PEBCO	Port Elizabeth Black Civic Organisation.
POTWA	Post and Telegraphic Workers' Association
POW	Prisoner of war
PWV	Pretoria–Witwatersrand–Vereeniging region
RPMC	Swaziland Regional Politico-Military Council
RRC	Committee on Reparation and Rehabilitation (or Reparation and Rehabilitation Committee)
SABC	South African Broadcasting Corporation
SACP	South African Communist Party
SADF	South African Defence Force
SADTU	South African Democratic Teachers Union
SANDF	South African National Defence Force
SANSCO	South African National Student Congress
SAP	South African Police
SAPA	South African Press Agency
SAPS	South African Police Services
SASRIA	SA Special Risks Association (Fund)
SDU	Self-defence unit
SIU	Soweto Intelligence Unit
SOYCO	Soweto Youth Congress
SPU	Self-protection unit
SSC	State Security Council
SWA	South West Africa (now Namibia)
TEC	Transitional Executive Council
TG	Toekomsgesprek ('Discussion of the Future')
TRC	Truth and Reconciliation Commission
TSK	*Tak Strategiese Kommunikasie* Strategic Communications Branch)
UDF	United Democratic Front
UIR	Urgent interim reparation
UK	United Kingdom
ULFE	Unit for Language Facilitation and Empowerment
UN	United Nations
UNHCHR	United Nations High Commission on Human Rights
UNISA	University of South Africa
UNITRA	University of Transkei
UNTAG	United Nations Transitional Action Group
US, USA	United States
USAID	United States Agency for International Development
WAB	Wêreld Aparthied Beweging ('World Apartheid Movement', aka 'World Preservatist Movement')
WAM	World Apartheid Movement
WAN	Wide area network
WK	Wenkommando ('Winning commando')
WPB	World Preservatist Movement
ZAPU	Zimbabwe African People's Union
ZCC	Zion Christian Church

(....indexpage)