


VOLUME ONE

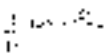
**Truth and
Reconciliation
Commission
of South Africa
Report**



The report of the Truth and Reconciliation Commission was presented to President Nelson Mandela on 29 October 1998.



Archbishop Desmond Tutu
Chairperson



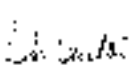
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
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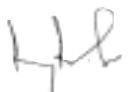
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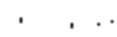


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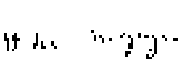
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Chief Executive Officer: Dr Biki Minyuku

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Foreword by Chairperson

THE MOST REVD D M TUTU ARCHBISHOP EMERITUS

- 1 All South Africans know that our recent history is littered with some horrendous occurrences - the Sharpsville and Langa killings, the Soweto uprising, the Church Street bombing, Magoo's Bar, the Amanzimtoti Wimpy Bar bombing, the St James' Church killings, Boipatong and Sebokeng. We also knew about the deaths in detention of people such as Steve Biko, Neil Aggett, and others; necklacings, and the so-called 'black on black' violence on the East Rand and in KwaZulu Natal which arose from the rivalries between IFP and first the UDF and later the ANC. Our country is soaked in the blood of her children of all races and of all political persuasions.

- 2 It is this contemporary history - which began in 1960 when the Sharpsville disaster took place and ended with the wonderful inauguration of Nelson Mandela as the first democratically-elected President of the Republic of South Africa - it is this history with which we have had to come to terms. We could not pretend it did not happen. Everyone agrees that South Africans must deal with that history and its legacy. It is how we do this that is in question - a bone of contention throughout the life of the Commission, right up to the time when this report was being written. And I imagine we can assume that this particular point will remain controversial for a long time to come.

■ **ON PREPARING THE REPORT OF THE TRUTH AND RECONCILIATION COMMISSION**

- 3 One of the unique features of the South African Commission has been its open and transparent nature. Similar commissions elsewhere in the world have met behind closed doors. Ours has operated in the full glare of publicity. This means that some of the information contained in this report is already in the public domain. Nonetheless, some significant and new insights are included in the pages that follow.

- 4 The work of the South African Commission has also been far more extensive than that of other commissions. The volume of material that passed through our hands

will fill many shelves in the National Archives. This material will be of great value to scholars, journalists and others researching our history for generations to come. From a research point of view, this may be the Commission's greatest legacy.

- 5 The report that follows tries to provide a window on this incredible resource, offering a road map to those who wish to travel into our past. It is not and cannot be the whole story; but it provides a perspective on the truth about a past that is more extensive and more complex than any one commission could, in two and a half years, have hoped to capture.
- 6 Others will inevitably critique this perspective - as indeed they must. We hope that many South Africans and friends of South Africa will become engaged in the process of helping our nation to come to terms with its past and, in so doing, reach out to a new future.
- 7 This report has been constrained by a number of factors - not least by the extent of the Commission's mandate and a number of legal provisions contained in the Act. It was, at the same time, driven by a dual responsibility. It had to provide the space within which victims could share the story of their trauma with the nation; and it had to recognise the importance of the due process of law that ensures the rights of alleged perpetrators. Several court rulings emphasised the importance of the latter. Obviously, the Commission respected these judgments. They did, however, sometimes make our efforts to obtain information about the past more difficult. This, in its turn, caused us to err on the side of caution in making our findings. Despite these difficulties, however, we can still claim, without fear of being contradicted, that we have contributed more to uncovering the truth about the past than all the court cases in the history of apartheid.
- 8 There are a number of important points I would like to make before moving to a discussion of this report.
- 9 First, because the Amnesty Committee has not completed its statutory responsibilities and will not have done so until it has considered every application for amnesty before it, this report cannot, strictly speaking, be considered to be final. Once the Amnesty Committee has completed its work, the Commission will be recalled to consider the implications of the hearings that have taken place and to add a codicil to the report. Only at that stage can the Commission's report be regarded as final.

- 10 The second point is to stress that, in preparing this report, we have followed procedures common to many other national and international commissions. It would have been totally impossible for seventeen commissioners to write a single report. We have thus leaned very heavily on our Research Department to produce drafts for consideration by commissioners. Further, we have used group methods and different commissioners have been given responsibilities in respect of different chapters. The product is thus a joint effort of staff and commissioners, but each section was formally adopted by the full Commission in plenary sessions. Thus, the ultimate responsibility for this report lies with the commissioners.
- 11 The third point I would like to make concerns lustration - the disqualification or removal from public office of people who have been implicated in violations of human rights. The Commission considered this question carefully and finally decided not to recommend that this step be pursued. It is suggested, however, that when making appointments and recommendations, political parties and the state should take into consideration the disclosures made in the course of the Commission's work.
- 12 Fourth, a few words need to be said about that great difficulty South Africans experience when describing their fellow compatriots. The former government defined every person according to a racial category or group. Over the years, these became the badges of privilege and of deprivation. For the purposes of the report, the significance of this racial branding is simply that these categories are reflected in statistics produced over the years and, in their own way, provide a guide to the inequities of the past.
- 13 From the late 1960s and 1970s, the Black Consciousness Movement campaigned for the use of the word black to describe all those defined as other than white. However, this was by no means universally accepted and many members of the so-called black group still prefer to be described as coloured, Indian and so on. Another debate arises around the term African. Does this or can this refer only to black Africans? The debate is not really capable of being resolved. Generally in this report, black Africans are referred to as Africans. Coloured people, people of Indian or Asian origin and white people are referred to as such. No disrespect is intended to any group or political perspective. It is simply impossible to write a history of South Africa without erring on one side or another of the argument.
- 14 Finally, every attempt has been made to check, recheck and check again the spelling of the names included in this report. If there are errors, please forgive us.

- 15 Ultimately, this report is no more than it claims to be. It is the report of a commission appointed by Parliament to complete an enormous task in a limited period. Everyone involved in producing this report would have loved to have had the time to capture the many nuances and unspoken truths encapsulated in the evidence that came before us. This, however, is a task which others must take up and pursue.
- 16 A Dutch visitor to the Commission observed that the Truth and Reconciliation Commission must fail. Its task is simply too demanding. Yet, she argued, “even as it fails, it has already succeeded beyond any rational expectations”. She quoted Emily Dickinson: “the truth must dazzle gradually ... or all the world would be blind”. However, the Commission has not been prepared to allow the present generation of South Africans to grow gently into the harsh realities of the past and, indeed, many of us have wept as we were confronted with its ugly truths. However painful the experience has been, we remain convinced that there can be no healing without truth. My appeal to South Africans as they read this report is not to use it to attack others, but to add to it, correct it and ultimately to share in the process that will lead to national unity through truth and reconciliation.
- 17 The past, it has been said, is another country. The way its stories are told and the way they are heard change as the years go by. The spotlight gyrates, exposing old lies and illuminating new truths. As a fuller picture emerges, a new piece of the jigsaw puzzle of our past settles into place.
- 18 Inevitably, evidence and information about our past will continue to emerge, as indeed they must. The report of the Commission will now take its place in the historical landscape of which future generations will try to make sense - searching for the clues that lead, endlessly, to a truth that will, in the very nature of things, never be fully revealed.
- 19 It has been the privilege of this Commission to explore a part of that landscape and to represent the truths that emerged in the process. And we have tried, in whatever way we could, to weave into this truth about our past some essential lessons for the future of the people of this country. Because the future, too, is another country. And we can do no more than lay at its feet the small wisdoms we have been able to garner out of our present experience.

■ TRANSITIONAL OPTIONS

- 20 We could not make the journey from a past marked by conflict, injustice, oppression, and exploitation to a new and democratic dispensation characterised by a culture of respect for human rights without coming face to face with our recent history. No one has disputed that. The differences of opinion have been about how we should deal with that past; how we should go about coming to terms with it.
- 21 There were those who believed that we should follow the post World War II example of putting those guilty of gross violations of human rights on trial as the allies did at Nuremberg. In South Africa, where we had a military stalemate, that was clearly an impossible option. Neither side in the struggle (the state nor the liberation movements) had defeated the other and hence nobody was in a position to enforce so-called victor's justice.
- 22 However, there were even more compelling reasons for avoiding the Nuremberg option. There is no doubt that members of the security establishment would have scuppered the negotiated settlement had they thought they were going to run the gauntlet of trials for their involvement in past violations. It is certain that we would not, in such circumstances, have experienced a reasonably peaceful transition from repression to democracy. We need to bear this in mind when we criticise the amnesty provisions in the Commission's founding Act. We have the luxury of being able to complain because we are now reaping the benefits of a stable and democratic dispensation. Had the miracle of the negotiated settlement not occurred, we would have been overwhelmed by the bloodbath that virtually everyone predicted as the inevitable ending for South Africa.
- 23 Another reason why Nuremberg was not a viable option was because our country simply could not afford the resources in time, money and personnel that we would have had to invest in such an operation. Judging from what happened in the De Kock and so-called Malan trials, the route of trials would have stretched an already hard-pressed judicial system beyond reasonable limits. It would also have been counterproductive to devote years to hearing about events that, by their nature, arouse very strong feelings. It would have rocked the boat massively and for too long.

- 24 The Malan trials and the Goniwe inquest have also shown us that, because such legal proceedings rely on proof beyond reasonable doubt, the criminal justice system is not the best way to arrive at the truth. There is no incentive for perpetrators to tell the truth and often the court must decide between the word of one victim against the evidence of many perpetrators. Such legal proceedings are also harrowing experiences for victims, who are invariably put through extensive cross-examination.
- 25 In his judgement in the case brought by AZAPO and others against the Truth and Reconciliation Commission, Judge Mahomed, then Deputy President of the Constitutional Court and now our Chief Justice, quoted Judge Marvin Frankel. In his book, *Out of the Shadows of the Night: The Struggle for International Human Rights*, Judge Frankel wrote:

The call to punish human rights criminals can present complex and agonising problems that have no single or simple solution. While the debate over the Nuremberg trials still goes on, that episode - trials of war criminals of a defeated nation - was simplicity itself as compared to the subtle and dangerous issues that can divide a country when it undertakes to punish its own violators.

A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living alongside everyone else, and they may be very powerful and dangerous. If the army and police have been the agencies of terror, the soldiers and the cops aren't going to turn overnight into paragons of respect for human rights. Their numbers and their expert management of deadly weapons remain significant facts of life.... The soldiers and police may be biding their time, waiting and conspiring to return to power. They may be seeking to keep or win sympathisers in the population at large. If they are treated too harshly - or if the net of punishment is cast too widely - there may be a backlash that plays into their hands. But their victims cannot simply forgive and forget.

These problems are not abstract generalities. They describe tough realities in more than a dozen countries. If, as we hope, more nations are freed from regimes of terror, similar problems will continue to arise.

Since the situations vary, the nature of the problems varies from place to place.

- 26 There were others who urged that the past should be forgotten - glibly declaring that we should 'let bygones be bygones'. This option was rightly rejected because such amnesia would have resulted in further victimisation of victims by denying their awful experiences. In Ariel Dorfmann's play, *Death and the Maiden*, a woman ties up the man who has injured her. She is ready to kill him when he repeats his lie that he did not rape or torture her. It is only when he admits his violations that she lets him go. His admission restores her dignity and her identity. Her experience is confirmed as real and not illusory and her sense of self is affirmed.
- 27 The other reason amnesia simply will not do is that the past refuses to lie down quietly. It has an uncanny habit of returning to haunt one. "Those who forget the past are doomed to repeat it" are the words emblazoned at the entrance to the museum in the former concentration camp of Dachau. They are words we would do well to keep ever in mind. However painful the experience, the wounds of the past must not be allowed to fester. They must be opened. They must be cleansed. And balm must be poured on them so they can heal. This is not to be obsessed with the past. It is to take care that the past is properly dealt with for the sake of the future.
- 28 In our case, dealing with the past means knowing what happened. Who ordered that this person should be killed? Why did this gross violation of human rights take place? We also need to know about the past so that we can renew our resolve and commitment that never again will such violations take place. We need to know about the past in order to establish a culture of respect for human rights. It is only by accounting for the past that we can become accountable for the future.
- 29 For all these reasons, our nation, through those who negotiated the transition from apartheid to democracy, chose the option of individual and not blanket amnesty. And we believe that this individual amnesty has demonstrated its value. One of the criteria to be satisfied before amnesty could be granted was full disclosure of the truth. Freedom was granted in exchange for truth. We have, through these means, been able to uncover much of what happened in the past. We know now what happened to Steve Biko, to the PEBCO Three, to the Cradock Four. We now know who ordered the Church Street bomb attack and who was responsible for the St James' Church massacre. We have been able to exhume the remains of about fifty activists who were abducted, killed and buried secretly.

- 30 I recall so vividly how at one of our hearings a mother cried out plaintively, "Please can't you bring back even just a bone of my child so that I can bury him." This is something we have been able to do for some families and thereby enabled them to experience closure.
- 31 The lies and deception that were at the heart of apartheid - which were indeed its very essence - were frequently laid bare. We know now who bombed Khotso House. We can recall how Mr Adriaan Vlok, a former Minister of Law and Order, lied publicly and brazenly about this; how he unashamedly caused Shirley Gunn to be detained with her infant son as the one responsible for this act. It must be said to his credit that Mr Vlok apologised handsomely to Ms Gunn during his amnesty application.
- 32 Thus, we have trodden the path urged on our people by the preamble to our founding Act, which called on "the need for understanding but not for vengeance, a need for reparation but not retaliation, a need for *ubuntu* but not for victimisation."

■ CRITICISMS AND CHALLENGES

- 33 It would have been odd in the extreme if something as radical as this Commission had met with universal approval and acceptance. It would have been even more odd had we been infallible and made no mistakes as we undertook the delicate task of seeking to help heal the wounds of a sorely divided people.
- 34 Some of the criticism levelled against the Commission has been legitimate. However, there has been much which was merely political point scoring, ignoring the facts in favour of taking up cudgels against us. There were those who decided from the outset, long even before the Commission had begun its work, to discredit us by trying to paint the Commission as a witch-hunt of, especially, Afrikaners; by claiming that we were biased in favour of the ANC, and as having failed in the end to advance the course of reconciliation. This latter kind of criticism was a clever ploy to seek pre-emptively to discredit the Commission and hence its report.
- 35 Those who have cared about the future of our country have been worried that the amnesty provision might, amongst other things, encourage impunity because it seemed to sacrifice justice. We believe this view to be incorrect. The amnesty applicant has to admit responsibility for the act for which amnesty is being sought,

thus dealing with the matter of impunity. Furthermore, apart from the most exceptional circumstances, the application is dealt with in a public hearing. The applicant must therefore make his admissions in the full glare of publicity. Let us imagine what this means. Often this is the first time that an applicant's family and community learn that an apparently decent man was, for instance, a callous torturer or a member of a ruthless death squad that assassinated many opponents of the previous regime. There is, therefore, a price to be paid. Public disclosure results in public shaming, and sometimes a marriage may be a sad casualty as well.

- 36 We have been concerned, too, that many consider only one aspect of justice. Certainly, amnesty cannot be viewed as justice if we think of justice only as retributive and punitive in nature. We believe, however, that there is another kind of justice - a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships – with healing, harmony and reconciliation. Such justice focuses on the experience of victims; hence the importance of reparation.
- 37 The Commission has also been harshly criticised for being loaded with so-called 'struggle'-types, people who were pro-ANC, SACP or PAC. We want to say categorically we did not choose ourselves, nor did we put our own names forward. We were nominated in a process open to anyone - whatever their political affiliation or lack of it. We were interviewed in public sessions by a panel on which all the political parties were represented. Moreover, when the President made his choice from a short list, it was in consultation with his Cabinet of National Unity, which included the ANC, the IFP and the National Party. No one, as far as we know, objected publicly at the time to those who were so appointed. Indeed, many of us were chosen precisely because of our role in opposing apartheid - which is how we established our credibility and demonstrated our integrity. I am myself, even today, not a card-carrying member of any political party. I believe, on the other hand, that some of my colleagues may have been chosen precisely because of their party affiliation, to ensure broad representivity.
- 38 Many here and overseas have criticised us sharply for having been so conciliatory and accommodating towards Mr PW Botha. We have been accused of handling him with kid gloves; of bending over backwards whilst he has responded with arrogant defiance and intransigence. It is not too difficult to imagine the reaction in certain quarters had Mr Botha been a member of the ANC.

- 39 We were told that we revealed our true colours when blanket amnesty was granted to thirty-seven ANC leaders. This accusation is understandable when it comes from those who are not familiar with the law that brought the Commission into being. At the insistence of the National Party, it was decided that the Amnesty Committee should be completely autonomous in all matters relating to the granting or refusal of amnesty. The Commission was thus prevented from interfering in any way in this process. The decision to grant amnesty to the thirty-seven ANC members was taken by three judges who could not be accused of being ANC lackeys.
- 40 Nevertheless, at our very first Commission meeting after this Amnesty Committee decision, we agreed unanimously to apply to the High Court for a judicial review of the Committee's decision, which was the only course open to us. We then tried to persuade the ANC to agree to a judgement by consent in order to save time and money. Despite this, a certain political party, fully aware that the matter was in hand, sought to derive political capital by rushing its own application. If we were biased in favour of the ANC, why did we take the action we did?
- 41 When the ANC suggested that its members would not apply for amnesty because they were involved in a just war, I threatened to resign from the Commission. Happily, the ANC changed its mind so I was not forced to do so. It should be noted that I have not taken such a position about the action of any other party. Can you imagine the outcry if the Commission had put a National Party member through the kind of nine-day gruelling hearing to which Ms Madikizela-Mandela was subjected?
- 42 We have been accused, too, of an ANC bias for refusing to hold public hearings over the gross violations that allegedly took place in the ANC camps in Angola. The fact is that a few people did come forward to testify at human rights violations hearings about what they say happened to them in Quatro. Indeed, one of these people testified when President Mandela was visiting the Commission to attend a hearing in Gauteng. He had to sit through a tirade against the ANC. Had we been ANC lackeys, is it not likely that I would have stopped this witness to spare the ANC President this embarrassment?
- 43 We held, in addition, a special hearing on prisons where evidence about conditions in Quatro was led. The ANC provided considerable information in the Stuart, Motsuenyane and Skweyiya Commissions, which it had itself appointed to investigate allegations of these abuses. There are likely to be amnesty hearings involving those involved in these violations.

- 44 It is thus mischievous to suggest that we have not wanted to investigate incidents that might prove embarrassing to the ANC. We would urge our over-enthusiastic critics to read our findings in this report relating to those abuses of which the ANC might be guilty.
- 45 These examples should surely be sufficient to establish that we are politically independent and not biased in favour of any particular political party or group.
- 46 Another frequent criticism has been that we have allowed people such as Ms Madikizela-Mandela, Mr PW Botha and Dr Wouter Basson, in a manner of speaking, to 'get away with murder'. In response to this, we have pointed out that we are not a court of law. Ms Mandela, for example, was cross-examined by a panel of lawyers and gave the answers she chose to give. We announced that we were not going to pronounce a verdict at the end of that sitting but would be making our finding (contained in this report) based on the evidence and our impression of the witness.
- 47 In both her case and that of Dr Basson, one almost has the impression that people would like us to squeeze satisfactory responses from the witnesses. However, short of putting them on a rack and torturing them, there is in fact nothing one can ultimately do in a constitutional democracy beyond making an appropriate finding. After all, even in a court of law there is nothing the prosecution can do to force witnesses to give satisfactory answers except to charge them with contempt. Even that will not necessarily elicit the facts.
- 48 Equally, in the case of Mr Botha, all we could do was to lay a criminal charge - which we did, however reluctantly. Even while the court case was in progress, we continued to seek an acceptable solution - both in the interests of reconciliation and because we did not want to see him humiliated. We offered to have an *in camera* hearing and to provide him in advance with the list of questions we wanted to ask him. Only a thoroughly biased person could accuse us of harassing a hapless old man. In the face of his obduracy, we were faced with no choice but to lay charges. The decision to prosecute was taken independently by the Attorney-General. But we did thereby demonstrate that nobody is above the law.
- 49 Others have taken us to task because they were unhappy when the Amnesty Committee gave amnesty to certain perpetrators - such as those responsible for the St James' Church killings or the murder of Amy Biehl. Clearly these people have

forgotten the *raison d'être* for amnesty. Amnesty is not meant for nice people. It is intended for perpetrators. There are strict criteria to be met and we believe that the Committee has used those criteria to determine whether or not amnesty should be granted. Amnesty is a heavy price to pay. It is, however, the price the negotiators believed our country would have to pay to avoid an "alternative too ghastly to contemplate". Sadly, in almost all cases, there was an outcry only when the victim was white and the perpetrator black. I wonder whether people have considered how the Trust Feed Farm community must have felt when Brian Mitchell got amnesty since it was his misinterpreted orders that led to the death of eleven persons in that community?

- 50 As a matter of fact, the Amnesty Committee has granted only about 150 amnesties out of 7 000 applications, with a further 2 000 still to be dealt with. This can hardly be described as an avalanche of reckless decisions.
- 51 I think some people have wrongly thought that we were targeting former security force members because there has been so much about them and their misdemeanours in the media. This, in very large measure, is because most of the violations of which the liberation movements are guilty were already in the public domain. Most of the perpetrators had been arrested; often they had been convicted and sometimes even executed - as for example in the case of the Magoo's Bar bombers, the Amanzimtoti Wimpy Bar bomber and those responsible for various necklacings. The South African Police used to preen itself about its successes in these operations. Concerning events such as the PEBCO Three, the Cradock Four and so on, the police engaged in elaborate and effective cover-ups. Now that their nefarious deeds are coming to light on their own admissions, the white community especially is appalled to discover that their 'boys' were not always the paragons of virtue they had presented themselves as. The disillusionment is shattering. But it is not the Commission that should be blamed for this. The truth has always been there. It had simply been hidden from the public gaze.
- 52 Some have criticised us because they believe we talk of some acts as morally justifiable and others not. Let us quickly state that the section of the Act relating to what constitutes a gross violation of human rights makes no moral distinction - it does not deal with morality. It deals with legality. A gross violation is a gross violation, whoever commits it and for whatever reason. There is thus legal equivalence between all perpetrators. Their political affiliation is irrelevant. If an

ANC member tortures someone, that is a gross violation of the victim's rights. If a National Party member or a police officer tortures a prisoner, then that is a gross violation of the prisoner's rights.

- 53 The supporters of the previous regime have been at great pains to insist that the reason they did many of the unsavoury things that have since come to light was largely because they were fighting against an evil and predatory Communism. This shows that they *do* accept that the use of force is subject to moral judgement and distinctions. When a woman kills a person who tries to rape her, she has committed homicide; yet, society and the law would argue that she was not criminally culpable. Society might even commend her. If a hijacker kills the driver of the car he was hijacking, he has committed a homicide. Society heaps condemnation and opprobrium on him and the law finds him guilty of culpable homicide.
- 54 Hence, the same kind of act attracts different moral judgements. A venerable tradition holds that those who use force to overthrow or even to oppose an unjust system occupy the moral high ground over those who use force to sustain that same system. That is when the criteria of the so-called 'just war' come into play - as discussed in *The Mandate* chapter in our report. This does not mean that those who hold the moral high ground have *carte blanche* as to the methods they use. Thus, to hold this particular view is not to be guilty of a bias. It is to assert that we move in a moral universe where right and wrong and justice and oppression matter.
- 55 It would be the height of stupidity as well as being self-defeating for the Commission to subvert its work by being anything less than fair and even-handed. This is, after all, required by the law that brought it into being. We want our work to be generally accepted. Unfair discrimination would be prejudicial to such acceptance. Some of us have been characterised by an independence that has led us to condemn wrong wherever it happened or whoever was the culprit, and have done so without fear or favour. We could not change this critical independence when so much hinged on it.
- 56 We have sought to carry out our work to the best of our ability, without bias. I cannot, however, be asked to be neutral about apartheid. It is an intrinsically evil system. But I *am* even-handed in that I will let an apartheid supporter tell me what he or she sincerely believed moved him or her, and what his or her insights and perspectives were; and I will take these seriously into account in making my finding. I do believe that there were those who supported apartheid

who genuinely believed that it offered the best solution to the complexities of a multiracial land with citizens at very different levels of economic, social and educational development. I do not doubt that many who supported apartheid believed that it was the best policy in the circumstances to preserve their identity, language and culture and those of other peoples as well. I do believe such people were not driven by malicious motives. Many believed God had given them a calling to help civilise benighted natives. I do not for a single moment question the sincerity of those who believed that they were defending their country and what they understood to be its Western Christian values against the atheistic Communist onslaught. No, I do not call their motives into question. I do, however, condemn the policy they applied.

- 57 A last word to those who have made it their obsessive business in life to discredit and vilify the Truth and Reconciliation Commission. It has been wonderful to see the high regard in which the Commission is held in the international community. Almost without exception, foreign heads of state visiting this country have insisted on paying a visit to the Commission. The royal couples of Norway, Sweden and Denmark have been among such visitors. Presidents of the German Republic, Portugal, France and most recently of the Swiss Confederation have met with the Chair of the Commission, as did the First Lady of the United States and the Secretary General of the United Nations, Mr Kofi Annan. The international community has supported our work financially, and through staff secondments and generous donations to the President's Fund.
- 58 Some of us have been awarded the highest decorations of some of these countries; others have received honorary doctorates, and some of my colleagues have gone on from the Commission to take up prestigious appointments. One, for example has been appointed vice-chancellor of the University of Durban-Westville; another as an acting Judge of Appeal. Others have been given fellowships to eminent universities.
- 59 Surely, if the institution were so thoroughly discredited, nobody respectable would want to touch us with a bargepole. The opposite is clearly the case. The world is waiting expectantly for this report because the world has marvelled at how we South Africans have gone about trying to deal with our past. Many are wondering whether they can learn from our experience. In December 1998, Switzerland will host a seminar to consider the contribution of truth and reconciliation commissions in other post-conflict situations in the world. We have been asked to contribute to this by sharing our unique experiences with other countries.

- 60 I have been at great pains to demonstrate the Commission's independence and lack of bias because we are concerned that its work and report should gain the widest possible acceptance. This could well prove to be a futile exercise if those who think that the best way of responding to a report they suspect is going to be less than favourable to them is to come out with all guns blazing to attack the Truth and Reconciliation Commission, and hope thereby to discredit it and its report.
- 61 This would be a shortsighted approach - what one might call the Esau option, seeking a short-term advantage at the cost of a longer-term but greater benefit. Thus, when the Commission declares apartheid a crime against humanity, its most ferocious critics will say: "What did we tell you; what did you expect from such a skewed Commission packed with 'struggle' types, hell bent on a witch-hunt against Afrikaners and so obviously biased in favour of the ANC?"
- 62 Mercifully the international community, and not just the Communist bloc, has already declared apartheid to be a crime against humanity. For the international community, indeed, this is no longer a point of debate. The world Christian community has declared that the theological justification of apartheid is a heresy. Closer to home, the Nederduitse Gereformeerde Kerk has said that apartheid is a sin. Some of the most senior judges in our country - who could not by any reasonable person be described as demagogues or lackeys of the ANC - have called apartheid a gross violation of human rights. Thus, the Truth and Reconciliation Commission is a latecomer in this area. The world would indeed be surprised if the Commission had not found apartheid to be a crime against humanity.
- 63 This means that we cannot hope properly to understand the history of the period under review unless we give apartheid and racism their rightful place as the defining features of that period. People would be surprised if anyone wanting to describe or understand the post World War II period were to ignore Soviet Communism or not give it a central, indeed pivotal, place in the geopolitics of that period. We know that nations defined themselves in terms of their relationship to Communism. That is what determined the politics, economics and foreign policies of the different protagonists at the time. It is what determined the nature of the Cold War period. The attitude towards Communism defined who one's allies and enemies were, what sort of defence budget was necessary and which surrogate states to support. The threat was seen as so serious that the world's greatest Western democracy saw nothing wrong with supporting some of the world's worst dictatorships - for example, Pinochet's Chile, other Latin American military dictatorships and

Marcos' Philippines - simply because these declared themselves to be anti-Communist. The USA was ready to subvert democratically-elected governments by supporting internal dissidents in their efforts to overthrow legitimate regimes - such as the Contras in Nicaragua and UNITA in Angola - because the elected governments were Communist-influenced or fellow-travellers. The West did not seem to care too much about the human rights records of their surrogates. What we are underlining is that, to understand this Cold War period, one has to acknowledge the key role of Soviet Communism.

- 64 I want to suggest that apartheid and racism played a similar defining role in the history of the period under review. The vast majority, if not all, of the gross violations of human rights that were perpetrated in this period happened at the hands either of those who sought to defend the unjust apartheid and racist dispensation or those who sought to resist and ultimately overthrow that system.
- 65 This is not the same as saying that racism was introduced into South Africa by those who brought apartheid into being. Racism came to South Africa in 1652; it has been part of the warp and woof of South African society since then. It was not the supporters of apartheid who gave this country the 1913 Land Act which ensured that the indigenous people of South Africa would effectively become hewers of wood and drawers of water for those with superior gun power from overseas. 1948 merely saw the beginning of a refinement and intensifying of repression, injustice and exploitation. It was not the upholders of apartheid who introduced gross violations of human rights in this land. We would argue that what happened when 20 000 women and children died in the concentration camps during the Anglo-Boer War is a huge blot on our copy book. Indeed, if the key concepts of confession, forgiveness and reconciliation are central to the message of this report, it would be wonderful if one day some representative of the British/English community said to the Afrikaners, "We wronged you grievously. Forgive us." And it would be wonderful too if someone representing the Afrikaner community responded, "Yes, we forgive you - if you will perhaps let us just tell our story, the story of our forebears and the pain that has sat for so long in the pit of our stomachs unacknowledged by you." As we have discovered, the telling has been an important part of the process of healing.
- 66 To lift up racism and apartheid is not to gloat over or to humiliate the Afrikaner or the white community. It is to try to speak the truth in love. It is to know the

real extent of the sickness that has afflicted our beloved motherland so long and, in making the right diagnosis, prescribe the correct medicine. We would not want to be castigated as the prophet Jeremiah condemned the priests and prophets of his day (Jeremiah 6:13-14):

*For from the least to the greatest of them,
every one is greedy for unjust gain;
and from prophet to priest,
everyone deals falsely.
They have healed the wound of my people lightly,
saying "Peace, peace,"
when there is no peace.*

- 67 It is to give substance to our cry from the heart that politicians should really stop playing ducks and drakes with our future - for the greatest sadness that we have encountered in the Commission has been the reluctance of white leaders to urge their followers to respond to the remarkable generosity of spirit shown by the victims. This reluctance, indeed this hostility, to the Commission has been like spitting in the face of the victims.

■ RECONCILIATION

- 68 Some have been upset by the suggestion that the work of the Truth and Reconciliation Commission could have resulted in making people angrier and race relations more difficult, as indicated by a recent survey. It would be naïve in the extreme to imagine that people would not be appalled by the ghastly revelations that the Commission has brought about. It would have been bizarre had this not happened. What is amazing is that the vast majority of the people of this land, those who form the bulk of the victims of the policies of the past, have said they believe reconciliation is possible.
- 69 The trouble is that there are erroneous notions of what reconciliation is all about. Reconciliation is not about being cosy; it is not about pretending that things were other than they were. Reconciliation based on falsehood, on not facing up to reality, is not true reconciliation and will not last.

- 70 We believe we have provided enough of the truth about our past for there to be a consensus about it. There is consensus that atrocious things were done on all sides. We know that the State used its considerable resources to wage a war against some of its citizens. We know that torture and deception and murder and death squads came to be the order of the day. We know that the liberation movements were not paragons of virtue and were often responsible for egging people on to behave in ways that were uncontrollable. We know that we may, in the present crime rate, be reaping the harvest of the campaigns to make the country ungovernable. We know that the immorality of apartheid has helped to create the climate where moral standards have fallen disastrously.
- 71 We should accept that truth has emerged even though it has initially alienated people from one another. The truth can be, and often is, divisive. However, it is only on the basis of truth that true reconciliation can take place. True reconciliation is not easy; it is not cheap. We have been amazed at some almost breathtaking examples of reconciliation that have happened through the Commission. Examples abound in the chapter on reconciliation. I want to make a heartfelt plea to my white fellow South Africans. On the whole we have been exhilarated by the magnanimity of those who should by rights be consumed by bitterness and a lust for revenge; who instead have time after time shown an astonishing magnanimity and willingness to forgive. It is not easy to forgive, but we have seen it happen. And some of those who have done so are white victims. Nevertheless, the bulk of victims have been black and I have been saddened by what has appeared to be a mean-spiritedness in some of the leadership in the white community. They should be saying: "How fortunate we are that these people do not want to treat us as we treated them. How fortunate that things have remained much the same for us except for the loss of some political power."
- 72 Can we imagine the anger that has been caused by the disclosures that the previous government had a Chemical and Biological Warfare Programme with projects that allegedly targeted only black people, and allegedly sought to to poison President Nelson Mandela and reduce the fertility of black women? Should our land not be overwhelmed by black fury leading to orgies of revenge, turning us into a Bosnia, a Northern Ireland or a Sri Lanka?
- 73 Dear fellow South Africans, please try to bring yourselves to respond with a like generosity and magnanimity. When one confesses, one confesses only one's own sins, not those of another. When a husband wants to make up with his wife, he does not say, "I'm sorry, please forgive me, but darling of course you

too have done so and so!" That is not the way to reach reconciliation. That is why I still hope that there will be a white leader who will say, "We had an evil system with awful consequences. Please forgive us." Without qualification. If that were to happen, we would all be amazed at the response.

■ APPRECIATION

- 74 It has been a distinct honour and privilege to have been asked to preside over and participate in the crucial process of attempting to heal a traumatised and deeply divided people. We want to say thank you to the President, Mr Nelson Mandela, for having appointed us to this noble task. He has been an outstanding example and inspiration for the work of reconciling our alienated and polarised people.
- 75 We owe a great debt of gratitude to the Minister of Justice, the Honourable Mr Dullah Omar, who has been readily accessible and wonderfully supportive of us all in the Truth and Reconciliation Commission. It has been a great pleasure to have worked under the auspices of his department. He and his staff have spared no efforts in assisting us.
- 76 The Department of Safety and Security and the South African Police Services (SAPS) have been efficient in providing security to our buildings and personnel as well as at our various hearings. They have proved friendly and efficient and a splendid example of the kind of transformation we would like to see. They have increasingly become friends of the people.
- 77 We also want to express our appreciation to various other government departments at national, provincial and local levels.
- 78 Our difficult work would have been even more so had it not been for the outstanding contributions of the various faith communities, non-governmental organisations (NGOs) and other organisations of civil society, so many of whom have facilitated our work at different levels and in all kinds of ways. We have benefited from the participation of many volunteers and we want them to know that we are deeply indebted to them for their invaluable contribution.
- 79 We have been fortunate that the media, both print and electronic, have helped to carry the Commission and its work into every corner of our own land and

other lands. We are particularly grateful for the work of SABC (South African Broadcasting Corporation) radio, which communicated in all our official languages to ensure that even the illiterate did not miss out. We want to mention, too, the special television programme that was broadcast on Sunday evenings - giving a summary of the previous week's events at the Commission and a preview of the coming week's events. No wonder these television and radio programmes won prestigious awards - on which we congratulate them. The media helped to ensure that the Commission's process was as inclusive and as non-elitist as possible.

- 80 I am honoured to express our gratitude to all those over 20 000 persons who came forward to tell us their stories - either at the public hearings of our Human Rights Violations Committee or in the statements recorded by our statement takers. They were generous in their readiness to make themselves vulnerable; to risk opening wounds that were perhaps in the process of healing, by sharing the often traumatic experiences of themselves or their loved ones as victims of gross violations of human rights. We are deeply in their debt and hope that coming to the Commission may have assisted in the rehabilitation of their human and civil dignity that was so callously trampled underfoot in the past. We pray that wounds that may have been re-opened in this process have been cleansed so that they will not fester; that some balm has been poured on them and that they will now heal.
- 81 We want to thank the various organisations, professional bodies and individuals who made written submissions as well as those who appeared before the Commission during the special institutional hearings. We are disappointed that certain bodies rejected our invitation to make submissions and are particularly distressed that judges refused to appear before the Commission, although a significant few did send written submissions. We have not been persuaded by the judges' arguments as to why they did not appear.
- 82 We are grateful, too, for the support we have received from the international community - in personnel as well as financial aid. Our work would have been severely hampered had it not been for the generosity of foreign donor nations. They provided us with experienced police officers and investigators who strengthened our Investigation Unit quite considerably. They gave us funds to help to pay for the live radio and television broadcasts that made the Commission so much a part of the South African landscape. We are equally grateful to them for the generous donations they have already made to the President's Fund from which reparations will be disbursed.

- 83 I want to pay a very warm tribute to all my colleagues, my fellow commissioners, our committee members and our dedicated staff. My fellow commissioners are gifted persons, frequently leaders in their particular fields. They have worked themselves to a frazzle, committed and conscientious to a fault.
- 84 None will take it amiss when I single out for special mention the vice-chairperson, Dr Alex Boraine. We were fortunate to have had him because frankly he performed nothing short of a miracle in getting the ball rolling, employing staff and procuring premises for the Commission in record time. Without his remarkable energy and competence, we would not have started as soon as we did. I would not want to wish such a project - starting up a massive undertaking such as this *de novo* - on my worst enemy. We made it very largely because of Dr Boraine. He has taken a lot of flak from those who have delighted in taking political pot shots at him. He is a man of unshakeable integrity and commitment. I want to assure those who might have thought of him as a political opponent from his parliamentary days that he is scrupulously fair.
- 85 We have been served by a team of outstanding individuals - starting from Dr Minyuku, our indefatigable chief executive officer, to the most junior staff member. They have had to gel quickly, despite knowing that this intense and gruelling task would last only two years or so. This knowledge could have been thoroughly debilitating, sapping morale and energy, but I have been amazed that almost all our staff members have been so dedicated and so conscientious. Most have gone well beyond the call of duty, working many overtime hours as proof of their dedication.
- 86 The Research Department led by Professor Charles Villa-Vicencio has played a major role in producing this report. Our thanks are due to them for their sterling work.
- 87 It has been a gruelling job of work that has taken a physical, mental and psychological toll. We have borne a heavy burden as we have taken onto ourselves the anguish, the awfulness, and the sheer evil of it all. The interpreters have, for instance, had the trauma of not just hearing or reading about the atrocities, but have had to speak in the first person as either a victim or the perpetrator,

They undressed me and opened a drawer and shoved my breast into the drawer which they then slammed shut on my nipple! [or] I drugged his coffee, then I shot him in the head. Then I burned his body. Whilst we were doing this, watching his body burn, we were enjoying a braai on the other side.

88 The chief of the section that typed the transcripts of the hearings told me:

As you type, you don't know you are crying until you feel and see the tears falling on your hands.

89 We have been given a great privilege. It has been a costly privilege but one that we would not want to exchange for anything in the world. Some of us have already experienced something of a post traumatic stress and have become more and more aware of just how deeply wounded we have all been; how wounded and broken we all are. Apartheid has affected us at a very deep level, more than we ever suspected. We in the Commission have been a microcosm of our society, reflecting its alienation, suspicions and lack of trust in one another. Our earlier Commission meetings were very difficult and filled with tension. God has been good in helping us to grow closer together. Perhaps we are a sign of hope that, if people from often hostile backgrounds could grow closer together as we have done, then there is hope for South Africa, that we can become united. We have been called to be wounded healers.

90 I pay a warm tribute to all my fellow wounded healers. You have done a splendid job of work. You have given it your best shot. It has been an immense privilege to captain such a superb team.

■ CONCLUSION

91 Ours is a remarkable country. Let us celebrate our diversity, our differences. God wants us as we are. South Africa wants and needs the Afrikaner, the English, the coloured, the Indian, the black. We are sisters and brothers in one family - God's family, the human family. Having looked the beast of the past in the eye, having asked and received forgiveness and having made amends, let us shut the door on the past - not in order to forget it but in order not to allow it to imprison us. Let us move into the glorious future of a new kind of society where people count, not because of biological irrelevancies or other extraneous attributes, but because they are persons of infinite worth created in the image of God. Let that society be a new society - more compassionate, more caring, more gentle, more given to sharing - because we have left "the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice" and are moving to 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."

92 Like our Constitution, the Commission has helped in laying-

the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

93 My appeal is ultimately directed to us all, black and white together, to close the chapter on our past and to strive together for this beautiful and blessed land as the rainbow people of God.

94 The Commission has done its share to promote national unity and reconciliation. Their achievement is up to each one of us.

95 I am honoured to commend this report to you.

Historical Context

■ GROSS HUMAN RIGHTS VIOLATIONS IN POLITICAL & HISTORICAL PERSPECTIVE

- 1 Chief Justice DP Mahomed has said:¹

For decades South African history has been dominated by a deep conflict between a minority which reserved for itself all control over the political instruments of the state and a majority who sought to resist that domination. Fundamental human rights became a major casualty of this conflict ... the legitimacy of the law itself was deeply wounded as the country haemorrhaged in the face of this tragic conflict ...

- 2 The Promotion of National Unity and Reconciliation Act (the Act) charged the Truth and Reconciliation Commission (the Commission) with investigating and documenting gross human rights violations committed within or outside South Africa in the period 1960-94. In doing so, it was to compile as complete a picture as possible of these events and violations. In its report, therefore, the Commission seeks to reflect fairly and fully the motives and perspectives of both the alleged perpetrators of gross human rights violations and of their victims.
- 3 Before starting on the long journey through these volumes, two major points or themes need to be developed in order to place their context in fuller political and historical perspective. The first of these relates to the fact that this report covers only a small fraction of time - although possibly the worst and certainly, in regard to the wider region, the bloodiest in the long and violent history of human rights abuse in this subcontinent. The second point to be made is that the report tells only a small part of a much larger story of human rights abuse in South and southern Africa.
- 4 In developing these two themes in this chapter, special attention will be given to the role and contribution of two phenomena or factors in the shaping of this country's history, namely violence and the law, and the relationship between them.

¹ Judgement, The Azanian Peoples Organisation, Ms NM Biko, Mr CH Mxenge and Mr C Ribeiro v the President of the Republic of South Africa, the Government of the Republic of South Africa, the Minister of Justice, the Minister of Safety and Security and the Chairperson of the Commission in the Constitutional Court, Case No 17/96.

■ THE LIMITED TIME FRAME OF THE COMMISSION

- 5 Reference was made in the opening paragraphs to the limited time frame imposed on the Commission. The purpose was to place in historical context what happened in Southern Africa in the period 1960-94. In a continental context, this represented the last great chapter in the struggle for African decolonisation. In a South Africa-specific context, it was the climactic phase of a conflict that dated back to the mid-seventeenth century, to the time when European settlers first sought to establish a permanent presence on the subcontinent.
- 6 Thus, it is evident that it was not the National Party government that introduced racially discriminatory practices to this part of the world. Nor is it likely that the National Party government was the first to perpetrate some or most of the types of gross violations of human rights recorded in this report. The probable exception is that category of abuse that falls under the general rubric of contra-mobilisation - exemplified by the deployment of surrogate forces such as the Caprivi-trained Inkatha supporters, the *Witdoeke*, the A-team and other politicised gangs, as well as those forces, such as UNITA, that were used to destabilise the region.
- 7 Hence, the types of atrocities committed during the period falling within the mandate of the Commission must be placed in the context of violations committed in the course of:
 - a The importation of slaves to the Cape and the brutal treatment they endured between 1652 (when the first slaves were imported) and 1834 (when slavery was abolished).
 - b The many wars of dispossession and colonial conquest dating from the first war against the Khoisan in 1659, through several so-called frontier conflicts as white settlers penetrated northwards, to the Bambatha uprising of 1906, the last attempt at armed defence by an indigenous grouping.
 - c The systematic hunting and elimination of indigenous nomadic peoples such as the San and Khoi-khoi by settler groups, both Boer and British, in the seventeenth and eighteenth centuries.
 - d The *Difaquane* or *Mfecane* where thousands died and tens of thousands were displaced in a Zulu-inspired process of state formation and dissolution.

- e The South African War of 1899-1902 during which British forces herded Boer women and children into concentration camps in which some 20 000 died - a gross human rights violation of shocking proportions.²
 - f The genocidal war in the early years of this century directed by the German colonial administration in South West Africa at the Herero people, which took them to the brink of extinction.
- 8 It is also important to remember that the 1960 Sharpsville massacre (with which the mandate of the Commission begins) was simply the latest in a long line of similar killings of civilian protesters in South African history. It was, for example, not a National Party administration but the South African Party government, made up primarily of English-speaking South Africans, that in July 1913 crushed a series of miners' strikes on the Reef - sending in the army and killing just over one hundred strikers and onlookers. Thrice in 1921 and 1922, this same governing party let loose its troops and planes: first, against a protesting religious sect, the Israelites at Bulhoek, killing 183 people; second, against striking white mineworkers on the Reef in 1922, resulting in the deaths of 214 people³; and third, when the Bondelswarts people, a landless hunting group of Nama origin in South West Africa, in rebellion against a punitive dog tax in 1922, were machine-gunned from the air. One hundred civilians, mostly women, were killed.
- 9 Thus, when the South African Defence Force (SADF) killed just over 600 men, women and children, combatant and non-combatant, at Kassinga in Angola in 1978, and when the South African Police (SAP) shot several hundred black protesters in the weeks following the June 16 events at Soweto, they were operating in terms of a well-established tradition of excessive or unjustifiable use of force against government opponents. This is not, of course, to exonerate them or the force they employed, but simply to put those events and actions in historical context.
- 10 Mention has been made of the social-engineering dimension of the policy of apartheid. Again, it needs to be made clear that the National Party was not the first political party or group to have been accused of social engineering on a vast scale in this part of the world. The post-South African War administration of Alfred Milner was, for example, similarly accused concerning its Anglicisation schemes.

2 In his evidence to a Commission workshop on reconciliation, Mr Ron Viney indicated that a similar number of black people was exhumed from British concentration camps. (Johannesburg, 18 – 20 February 1998).

3 Those killed included seventy-six strikers, seventy-eight members of the troops that took them on, thirty African non-strikers who were killed by the strikers, and thirty bystanders.

11 Indeed, one of most ambitious and far-reaching attempts at social engineering in twentieth century South African history was introduced by the first post-unification South African Party government in the form of the 1913 Land Act. No other piece of legislation in South African history more dramatically and drastically re-shaped the social map of this country. Not only did it lay the basis for the territorial separation of whites and Africans; it destroyed, at a stroke, a thriving African landowning and peasant agricultural sector. It did so by prohibiting African land ownership outside of the initial 7 per cent of land allocated to the so-called traditional reserves and ending sharecropping and non-tenancy arrangements on white-owned farms. The Land Act set in motion a massive forced removal of African people that led, amongst other things, to the deaths of many hundreds of people who found themselves suddenly landless.

12 An observer of the impact of the Act on the African people, Solomon Plaatje, commented:

For to crown all our calamities, South Africa has by law ceased to be the home of any of her native children whose skins are dyed with a hue that does not conform with the regulation hue ... Is it to be thought that God is using the South African Parliament to hound us out of our ancestral homes in order to quicken our pace heavenwards?⁴

13 Plaatje retells a story told to him which illustrates the tragic human impact of the implementation of the Act:

A squatter called Kgobadi got a message from his father-in-law in the Transvaal. His father-in-law asked Kgobadi to try to find a place for him to rent in the Orange 'Free' State.

But Kgobadi got this message only when he and his family were on their way to the Transvaal. Kgobadi was going to ask his father-in-law for a home for the family. Kgobadi had also been forced off the land by the Land Act.

The 'Baas' said that Kgobadi, his wife and his oxen had to work for R38 (18 pounds) a year. Before the Land Act, Kgobadi had been making R200 (100 pounds) a year selling crops. He told the 'Baas' that he did not want to work for such low wages. The 'Baas' told Kgobadi to go.

4 Solomon Plaatje, Native Life in South Africa, originally published in 1916 and republished by Ravan Press, 1981, pp 83-4.

So, both Kgobadi and his father-in-law had nowhere to go. They were wandering around on the roads in the cold winter with everything they owned. Kgobadi's goats gave birth. One by one they died in the cold and were left by the roadside for the jackals and vultures to eat.

Mrs Kgobadi's child was sick. She had to put her child in the ox-wagon which bumped along the road. Two days later, the child died.

Where could they bury the child? They had no rights to bury it on any land. Late that night, the poor young mother and father had to dig a grave when no-one could see them. They had to bury their child in a stolen grave.

- 14 Plaatje ended the story with the bitter words that even criminals who are hanged have the right to a proper grave. Yet, under the cruel workings of the Land Act, little children “whose only crime is that God did not make them white”, sometimes have no right to be buried in the country of their ancestors.⁵

- 15 TM Dambuzu described the Land Act in these words:

There is winter in the Natives' Land Act. In winter the trees are stripped and leafless.

- 16 But if this was an act of wholesale dispossession and discrimination, so too was the 1909 South Africa Act which was passed, not by a South African legislature, but by the British Parliament. In terms of the South Africa Act, Britain's four South African colonies were merged into one nation and granted juridical independence under a constitutional arrangement that transferred power in perpetuity to a minority of white voters. No firm provisions were made for the protection or improvement of the civil and political rights of the indigenous black majority.
- 17 Admittedly, the British government of the day was responding to pressure from the all-white South African constitutional convention, but Britain had a juridical responsibility to all, and not simply its white, subjects.
- 18 No less of a betrayal was the 1936 Representation of Natives Act, by which Cape African voters were disenfranchised or the 1956 Senate Act, by which the membership of that body was enlarged to enable the National Party to summon a two-thirds majority to strip Coloured males of the vote. This latter piece of constitutional chicanery was only the end of a process of black disenfranchisement begun by the British in 1909.

⁵ Solomon Plaatje, *Native Life in South Africa*, originally published in 1916 and republished by Ravan Press, 1981, pp 83-4.

■ THE LIMITED FOCUS OF THE MANDATE

- 19 As noted in the *Mandate* chapter later in this volume, the Commission's governing Act limited its investigation to gross violations of human rights defined as the "killing, abduction, torture or severe ill-treatment" and the "attempt, conspiracy, incitement, instigation, command or procurement to commit" such acts. In essence, therefore, the Commission was restricted to examining only a fraction of the totality of human rights violations that emanated from the policy of apartheid - namely, those that resulted in physical or mental harm or death and were incurred in the course of the political conflicts of the mandate period.
- 20 The Commission's focus was, therefore, a narrow or restricted one, representing what were perhaps some of the worst acts committed against the people of this country and region in the post-1960 period, but providing a picture that is by no means complete. For, simultaneous to the 'gross' abuses documented later in this report, millions of South Africans, and more particularly those who were not white, were subjected to racial and ethnic oppression and discrimination on a daily basis - in pursuit of a system which the *Mandate* chapter describes as "systemic, all-pervading and evil".
- 21 Furthermore, in applying this system and in seeking to perpetuate it, the government of South Africa let loose upon the wider region a reign of terror and destruction. It was for this reason that Parliament mandated the Commission to include within its scope gross human rights violations that occurred outside South Africa.
- 22 Conceptually, the policy of apartheid was itself a human rights violation. The determination of an individual's civil and political rights by a factor - skin colour - over which he or she has no control, constitutes an abuse of those rights. Of course, such discrimination existed before 1948 and had its roots far back in South Africa's colonial past. Nevertheless, the apartheid state that was constructed after 1948 had dimensions that made it different from the discriminatory orders that preceded it.
- 23 Thus, although many of its laws built on or updated a *de facto* pattern of segregationist legislation (for example, an industrial colour bar and limited African property and voting rights), the apartheid system was of a qualitatively different type. No longer content to tolerate a *de facto* pattern of segregation in which 'grey' areas of social mixing remained - such as in urban residential patterns

and inter-racial personal contacts and relationships, including marriage - from 1948, the new government set out to segregate every aspect of political, economic, cultural, sporting and social life, using established legal antecedents where they existed and creating them where they did not. Although making use of the forms of democracy (elections, proper legislative processes and so on), it constructed a totalitarian order that was far from democratic in substance.

- 24 Apartheid sought to maintain the *status quo* of white supremacy through the implementation of massive social change. It was thus an ideology, simultaneously of change and of non-change; or alternatively, perhaps, of reactionary change. To achieve its goals, Parliament:
- a transformed the *laissez-faire* pattern of pre-1948 segregation into a systematic pattern of legalised racial discrimination, and
 - b constructed a huge internal security apparatus and armed it with awesome legal powers to crush opposition generated by the first process.

Legislation

- 25 With regard to the first process, the key legislative enactments were:

Population Registration Act 1950

- 26 This Act formed the very bedrock of the apartheid state in that it provided for the classification of every South African into one of four racial categories. To achieve this end, it came up with definitions of racial groupings which were truly bizarre:

A White person is one who is in appearance obviously white - and not generally accepted as Coloured - or who is generally accepted as White - and is not obviously Non-White, provided that a person shall not be classified as a White person if one of his natural parents has been classified as a Coloured person or a Bantu ... A Bantu is a person who is, or is generally accepted as, a member of any aboriginal race or tribe of Africa ... a Coloured is a person who is not a white person or a Bantu.

- 27 Despite the crude and hopelessly imprecise wording of these definitions, the Act was imposed with vigour and determination.

28 President Nelson Mandela wrote:

Where was one was allowed to live and work could rest on such absurd distinctions as the curl of one's hair or the size of one's lips.⁶

29 The result, especially for the coloured people, was human devastation. As John Dugard put it in 1972:

No words can capture the misery and human suffering caused by this legislative scheme which sometimes results in divisions of families owing to the different racial classification of members of the same family⁷.

1950 Group Areas Act

30 In terms of the Group Areas Act, the entire country was demarcated into zones for exclusive occupation by designated racial groups. Implemented from 1954, the result was mass population transfers involving the uprooting of (almost exclusively) black citizens from their homes of generations, and the wholesale destruction of communities like Sophiatown, District Six, Cato Manor and South End in Port Elizabeth. Again, in human terms, the consequence was immense suffering and huge losses of property and income.

The 1949 Prohibition of Mixed Marriages Act and 1950 Immorality Amendment Act

31 According to this legislation, all future interracial marriages were prohibited, as were all forms of sexual contact across colour lines. Like the Population Registration Act, the Immorality Act was energetically implemented for some two to three decades, resulting in untold suffering in the form of harassment, public humiliation and the destruction of marriages and family bonds. Suicide by those caught in the web of the provisions of this Act was not unknown.

1950 Suppression of Communism Act

32 This Act provided not only for the banning of the Communist Party, but also for the legislative means to crush or curb all forms of dissent - communist, radical,

⁶ Nelson Mandela, *Long Walk to Freedom*, Macdonald Purnell: Randburg, 1994.

⁷ John Dugard, 'The Legal Framework of Apartheid' in N. J. Rhodie (ed.) *The Legal Framework of Apartheid*. Johannesburg: McGraw-Hill, 1972, p. 83.

liberal, radically religious and just plain annoying. It did this through the inclusion of a definition of communism that was absurd in its breadth and vagueness.

1953 *Separate Amenities Act*

- 33 This Act designated all public amenities and facilities (parks, libraries, zoos, beaches, sports grounds, and so on) for the exclusive use of specified racial groups. The allocation was made on a wholly unequal basis with the result that most facilities and amenities were closed to black people.

1953 *Bantu Education Act*

- 34 The Bantu Education Act laid the basis for a separate and inferior education system for African pupils. Based on a racist notion that blacks needed only to be educated, in the words of Dr Verwoerd, "in accordance with their opportunities in life", the Act transferred the control of African schools from the provinces to a central Bantu Education Department headed by Dr Verwoerd himself.
- 35 In addition, state subsidies to mission schools were first reduced and later stopped altogether. This meant that they were either forced into the state school system or had to close - which many (often the better) schools did. The result, in the short term, was the destruction of black mission education in South Africa - that sector of African education that had produced some of the country's finest minds and political leaders. It also stifled the development of a private African school sector by requiring that all non-state schools be registered with the then Native Affairs Department.
- 36 In the longer term, the consequence was exactly what had been intended: namely, the under-skilling of generations of African children and their graduation into an economy for which they were singularly under-equipped. The critical shortage of skills in the economy forty years later and the massive numbers of unemployed African people bear witness to the legacy of this legislation.
- 37 In the next decade - the 1960s - legislation brought coloured and Indian education under state control with similar, though not as severely deleterious, effects.

1959 Extension of University Education Act

- 38 This perversely named law, far from extending opportunities for tertiary education, actually had the opposite effect by denying black students the right to attend their university of choice. It imposed apartheid on the tertiary sector, making it illegal for the existing largely (in the case of the Afrikaans campuses exclusively) white universities to admit black students except with ministerial permission. It resulted in the creation of separate ethnic colleges for Indians, coloureds and Zulu, Sotho and Xhosa-speaking Africans.
- 39 This Act, which was first published in draft form in 1957, was significant in another sense. It signalled a shift in government thinking in relation to the challenge posed by the growing force of African nationalism of the time. Having laid out the framework for the racial compartmentalisation of, particularly, urban South Africa, the government's provision for African tertiary education along ethnic lines flagged an intention to engage in a further bout of racial and social engineering. This theme will be discussed later in this chapter.
- 40 These eight pieces of legislation laid the foundation of the new apartheid order in South Africa. However, other important pieces of legislation passed in the first decade of apartheid rule stripped coloured male voters of their common-roll franchise rights, further limited the rights of African workers to strike and bargain collectively and, by extending pass laws to African women, further restricted the rights of Africans to move from the reserves to the cities and to sell their labour to the highest bidder.⁸

The effects of apartheid legislation

- 41 Overall, what the National Party did in its first ten to twelve years of power amounted, in Leo Kuper's words⁹, to "a white counter-revolution" to forestall the perceived (although, as will be noted later, misinterpreted and exaggerated) growing threat to white supremacy from both local forces and the rising tide of African nationalist sentiment on the continent. This concern was often presented in the popular media as the 'Mau-Mau factor', reflecting a real fear of what African independence represented for the white minority.

⁸ See chapter on *Chronologies and Submissions*.

⁹ Leo Kuper, 'African Nationalism in South Africa', 1910-1964 in Leonard Thompson and Monica Wilson (Eds.) *Oxford History of South Africa: vol. ii, South Africa 1870-1966*. Oxford: Oxford University Press, 1971.

42 It was also a social engineering project of awesome dimensions through which, from about the mid-1950s and for the next thirty or so years, the inherited rural and urban social fabric of South Africa was torn asunder and recreated in the image of a series of racist utopias. In the process, as indicated earlier, millions of black people and a handful of mainly poor whites were shunted around like pawns on a chessboard. Forced to relocate to places that often existed only on the drawing boards of the architects of apartheid, entire communities were simply wiped out. These included urban suburbs and rural villages, traditional communities and homelands, schools, churches and above all people. Sometimes the demolition was total, as in Sophiatown; sometimes an isolated temple, mosque or church was left intact, as in District Six, South End and Cato Manor; sometimes simply the name remained, as in Diagonal Street.

43 Thus, it needs constantly to be borne in mind that, while the state and other operatives were committing the murders and abductions and other violations documented in this report, a much larger pattern of human rights violations was unfolding. These may not have been 'gross' as defined by the Act, but they were, nonetheless, an assault on the rights and dignity of millions of South Africans and they were, in large part, the product of the core legislation, and subsequent amendments, outlined above.

44 This point is eloquently developed in the *Mandate* chapter. For the vast majority of South Africans, human rights abuse was:

for nearly half a century ... the warp and weft of their experience ... defining their privilege and their disadvantage, their poverty and their wealth, their public and private lives and their very identity ... the system itself was evil, inhumane and degrading ... amongst its many crimes, perhaps its greatest was the power to humiliate, to denigrate and to remove the self-confidence, self-esteem and dignity of its millions of victims.

45 Thus, while only some 21 300 persons filed gross human rights violations petitions with the Commission, apartheid was a grim daily reality for every black South African. For at least 3.5 million black South Africans it meant collective expulsions, forced migration, bulldozing, gutting or seizure of homes, the mandatory carrying of passes, forced removals into rural ghettos and increased poverty and desperation. Dumped in the 'national states' without jobs, communities experienced powerlessness, vulnerability, fear and injustice.

46 Many of the killings and acts of torture documented in this report occurred precisely because of resistance to the day-to-day experience of life under apartheid. The sixty-nine people killed at Sharpsville were not armed Umkhonto weSizwe (MK) cadres or even human rights' activists. They were just ordinary men and women protesting against the hated *dompas*. Countless, nameless people had their rights trampled trying to save their homes from apartheid's bulldozers. Hundreds died doing no more than demanding a decent education or instruction in a language other than Afrikaans. One did not need to be a political activist to become a victim of apartheid; it was sufficient to be black, alive and seeking the basic necessities of life that whites took for granted and enjoyed by right.

■ THE LAW AND ETHNICITY

47 The legislation of the early apartheid years and the implementation of those laws were countered by considerable political activity and campaigning in the 1950s. This took the form of non-violent resistance campaigns in the cities, such as the Defiance Campaign of 1952/53, the Congress of the People in 1955, the 1956 bus boycotts, the anti-pass laws campaigns in 1959 and 1960 and so on. There were also sporadic and scattered but sustained rural uprisings in Zeerust, Witzieshoek, Sekhukuneland, Marico, Harding and Pondoland, which involved some levels of violence.

48 In the context of this domestic activity, together with growing international hostility and the fever of decolonisation then sweeping Africa, the government responded in two ways. The first was to introduce a battery of security laws; the second took the form of what might be described as its ethnic project.

Domestic opposition

49 Internal resistance forces at the end of the 1950s were weak. Despite the militant rhetoric contained in such policy documents as the 1949 Programme of Action, the 1955 Freedom Charter and the 1959 founding document of the Pan Africanist Congress, the nationalist movement lacked the capacity to translate its intentions into effective action. First, it was internally divided: the 1959 break-away of the Pan Africanist Congress (PAC) was the result of a decade of division within the African National Congress (ANC). Second, neither of these organisations had a mass base and their capacity outside of the cities was

small. Third, neither organisation had an effective strategic counter to the state's willingness to employ violence against black protesters. Time and again in the 1950s, non-violence as a vehicle of struggle was shown to be an impotent and ineffective counter to state action.

- 50 Even after the abandonment of non-violence and the adoption of various forms of armed struggle, the South African government had little difficulty containing opposition until well into the 1980s. The reasons for this need not be discussed extensively here, but they bear out the proposition of the American political scientist, Harry Eckstein, that :

*In the real world of phenomena, events occur not only because forces leading towards them are strong, but also because forces tending to inhibit, or obstruct, are weak or absent.*¹⁰

Politics in the region

- 51 One of the factors that inhibited or obstructed the liberation movements in their efforts to mount a serious armed threat was their inability to develop secure and permanent rear bases in the neighbouring states from which they were obliged to operate. Ironically, the explanation for this is to be found in the very circumstances the Pretoria government had viewed with such trepidation - the recent decolonisation of these states. Thus while, up until 1960, South Africa had, on the whole, enjoyed co-operative alliances with the British and Portuguese colonial administrations in the region, these latter would never have tolerated the cross-border violations undertaken by elements in the South African forces from the mid-1970s. However, the new national entities, politically weak and economically bonded to South Africa, were largely helpless in the face of South African aggression. Moreover, and perhaps to South Africa's surprise, it found that it had the covert support of at least some of the governments and/or their security establishments in parts of the region.
- 52 Given this situation, it is worth asking why it was that South Africa found it necessary from 1975 to wage what became a thirteen-year long full-scale war in Angola. The answer lies in two factors.

9 Harry Eckstein, 'On the Etiology of Internal Wars' in Claude Welch and Mavis Taintor Bunker (Eds.) Revolution and Political Change. New York: Duxbury Press 1972, p. 70.

The Namibian question

- 53 One of these factors related to the position of Namibia which, because of its contested status in international law, had become the Achilles heel of the South African government. Eventually, South Africa would have to surrender its control over the protectorate. Its ambition was, therefore, to thwart SWAPO (South West African Peoples Organisation) in its ambitions to win independence for a democratic Namibia. From the late 1970s, Angola became SWAPO's forward base.
- 54 The other factor was the spectre of the Cold War, which continued to haunt the global scene in the 1970s and 1980s. In this latter period of Cold War politics, the 'hot spot' or focus shifted from Europe to remote parts of the globe like Afghanistan, Nicaragua and Ethiopia. With British and American encouragement, the major powers came to see Angola as one of a number of regional arenas of Cold War confrontation.
- 55 Thus, largely as a consequence of a particular moment in the politics of the twentieth century, the way in which southern African was perceived underwent a change of perspective. From an arena of racial conflict, it became a scene of active Cold War confrontation. This perception was the result of a chance coalition of interests between the United States and Britain (and their so-called 'special alliance') and a government regarded almost everywhere else as a pariah. Hence, the coming to power in the United States and Britain of Ronald Reagan and Margaret Thatcher, whose political mindset on international issues represented a throwback to the 1950s and its obsession with Communism and the Soviet Union, presented the South African government with a window of opportunity which it adroitly exploited.
- 56 In essence, the struggle to maintain white minority privilege was 'repackaged' as an effort to maintain so-called western civilised values against the godless and evil forces of Communism. Thus it was that conscripts, when they turned up for basic training in the 1980s, could be expected to believe (as one witness related to the Commission): "this story that people tell you that there is a Communist behind every bush is nonsense. There are in fact two."
- 57 This is not to suggest that there were not some - even amongst top state and security officials - who genuinely believed in the threat and who saw themselves as anti-Communist crusaders. It is, however, the view of the Commission that, at heart, the struggle for South and southern Africa was a racial one, and that

notions of the 'red peril' were manipulated to justify the perpetration of the gross human rights violations this Commission was charged to investigate.

The 'Vorster' laws

- 58 Details of security legislation introduced in the 1960s are contained in a separate chapter. Suffice it to say here that they amounted to a sustained assault on the principles of the rule of law. The suspension of the principle of *habeas corpus*, limitations on the right to bail, the imposition by the legislature of minimum gaol sentences for a range of offences and limitations on the ability of the courts to protect detainees all contributed to a mounting exclusion of the authority of the courts from the administration of justice, thereby seriously eroding their independence.
- 59 Security legislation also introduced into the law a definition of sabotage so broad and all encompassing as to render virtually all forms of dissent illegal or dangerous. Peaceful protest and non-violent civil disobedience no longer seemed a viable option and, faced with the choice 'to submit or fight', as Umkhonto weSizwe (MK) expressed it in its launch statement, the resort to illegality and armed struggle was inevitable. With the benefit of hindsight, it is now possible to see how, in its efforts to crush all opposition in the early 1960s, the government sowed the seeds of its eventual destruction.

The 'ethnic project'

- 60 The second response of the government, as indicated earlier, was an attempt to counter the growing sense of racial or African nationalist identity, with its aspirations to replace white minority hegemony with majority rule. This it did by attempting to deflect these sentiments along particularistic (ethnic) lines and endeavouring to create avenues for political expression within ethnic categories.
- 61 This was the intention of the Promotion of Bantu Self-Government Act in 1959. This piece of legislation simultaneously abolished indirect political representation of Africans in Parliament and made provision for the transformation of the African reserves (or 'homelands' as they came to be called in the 1960s) through various stages of self-government to eventual fully-fledged independent status.

- 62 There was nothing particularly new or unique to this approach. In fact, it was a resort to long-established colonial practice in Africa. As Mamdani¹¹ has noted, other European colonisers had:

confronted the dilemma that the institutions of racial supremacy inevitably generated a racial identity not only amongst its beneficiaries, but also amongst its victims. Their solution was to link racial exclusion to ethnic inclusion: the majority that had been excluded on racial grounds would now appear as a series of ethnic minorities, each included in an ethnically-defined political process. The point was to render racial supremacy secure by eroding the racial identity of the oppressed, by fracturing it into so many ethnic identities.

- 63 While acknowledging that the National Party was “primarily concerned with maintaining our right to self-determination”, former President De Klerk¹² argued that the bantustan project “was not without idealism”:

We thought we could solve the complex problems that confronted us by giving each of the ten distinguishable black South African nations self-government and independence within the core areas they had traditionally occupied. In this way we would create a commonwealth of South African states - each independent but all co-operating on a confederal basis with one another within an economic common market

- 64 Beyond political idealism, Mr De Klerk articulated a development dimension, pointing to the construction of ten capital cities:

each with its own parliament, quite impressive government buildings ... several well-endowed universities ... By 1975 some 77 new towns had been established and 130 204 new houses had been built. Between 1952 and 1975 the number of hospital beds in the homelands increased from some 5 000 to 34 689. Decentralised industries were developed and hundreds of millions of rands were pumped into the traditional areas in a futile attempt to stem the flood of people to the supposedly ‘white’ cities.

11 Mahmood Mamdani, ‘Reconciliation without Justice’, *Southern Review of Books*, November/December 1996.

12 In his second submission to the Commission on behalf of the National Party, 23 March 1997.

- 65 Such intentions notwithstanding, as a political project it failed; though it could be argued that it bought the government some time. However, far from producing the hoped-for political nirvana for the African majority, the bantustans degenerated into what one commentator once described as a “constellation of casinos”. More seriously, they became riddled with corruption and, as the expenditure referred to by Mr De Klerk suggests, a never-ending drain on the central government’s treasury.
- 66 More significantly, the political idealism of an envisaged ethno-nationalist commonwealth was undermined by homeland leaders who displayed varying degrees of despotism. Far from becoming part of the government’s solution, therefore, the bantustans rapidly became part of the problem, acting as a spur and a means to mobilise for the alternative inclusive and non-racial nationalism of the ANC and its allies.
- 67 Despite this, the manipulation of ethnicity represented by the bantustans became a critical component of the government’s contra-mobilisation or counter-revolutionary warfare programme in the 1980s. It was a line of approach which spawned the Caprivi hit squads in KwaZulu and countrywide vigilante forces like the *Witdoeke*, as well as the surrogate armies or elements in the region, like UNITA, RENAMO, the Lesotho Liberation Army and Zimbabwean dissident groups.

■ THE LAW AND VIOLENCE IN SOUTH AFRICAN HISTORY

- 68 Violence has been the single most determining factor in South African political history. The reference, however, is not simply to physical or overt violence - the violence of the gun - but also to the violence of the law or what is often referred to as institutional or structural violence.
- 69 White dominance in South Africa in the period covered by the Commission’s mandate was founded on colonial conquest, a condition consequent upon more than 200 years of near-continuous interracial conflict which began with the first migration of white settlers in the mid-seventeenth century. Initial penetration was relatively simple as the first encounters of these new northward-moving migrants were with nomadic pastoralists with little or no military tradition.

- 70 Beyond them, however, were more formidable opponents. Originally southward-moving migrants themselves, these were now independent and, in some cases, powerful nations; state systems with hierarchic authority structures and deep-rooted military traditions. Like the northward-moving migrants, they farmed land, exploited natural resources and raised stock. Conflict was inevitable and, contrary to the myth propagated by some schools of local historiography, it did not take the form a series of one-sided victories and defeats.
- 71 The reality is that the conquest of the South African interior was achieved only in slow stages and was interspersed with setbacks and even defeats for the white intruders. Inevitably, however, the contest between firearms and assegais could have only one ending. By the twentieth century, the backbone of armed black resistance was broken and the independence of the people surrendered or ceded to 'protectorate status'.
- 72 Indigenous resistance did not, however, cease. It transformed itself into political and constitutional forms of struggle. But neither did the violence of the victors end. Subjugation by the gun gave way to legislative subjugation as one law after another sought to consolidate the gains of two centuries of overt violence. Stripped bare, the 1913 Land Act was an act of violence, a brutal separation of people from their essential means of sustenance. So too was much of the repressive legislation that followed down the years. Laws tore millions of workers from their families, forcing them to work in white areas and live in enclosed compounds to which their families had no access. Laws forced people to work for grossly insufficient remuneration and to endure the indignity of pay scales determined not by competence or experience, but by race. Laws forced people from their homes and communities and from their ancestral lands. Laws dictated with whom one might and might not have sex, marry or even drink. Laws allowed people to die rather than violate 'whites-only' hospital edicts, and then determined in which plot of ground they could be buried.
- 73 This preoccupation of the government with the law, with due constitutional process, with obtaining a legislative mandate for whatever acts (however heinous) it or its security forces committed, was frequently commented upon favourably by political analysts of the 1960s and 1970s. It was also often used to mount a defence of the system. The argument made was that it was at least a system of law, albeit bad law, and thus preferable to the military or political dictatorships to the north.

- 74 What these analysts failed to acknowledge was that the law was a veneer. Twentieth century law in South Africa, to paraphrase Hannah Arendt, made crime legal. Mamdani made a similar point to the Commission when he described apartheid law as “crime which was institutionalised as the law”.¹³
- 75 Thus, these laws arose not out of reverence for justice and due process, but out of a wish to legitimise the system. Beyond that even, the process of legitimation provided a means to self-justification for those whose task it was to pass, enforce and defend the law.
- 76 However, in the 1980s, when the state was in crisis, it became clear that the law had run its course; that it could no longer do the job. The law had become ineffective, an apparent obstruction to the restoration of what government leaders, seemingly oblivious to the irony, called ‘law and order’. At this stage, real rule-making power shifted from Parliament and the Cabinet to a non-elected administrative body, the State Security Council (SSC) which operated beyond public scrutiny. Nominally a sub-organ of the Cabinet, in reality the SSC eclipsed it as the key locus of power and authority in matters relating to security.
- 77 In his presentation to the Commission on the state’s counter-revolutionary warfare principles and strategy¹⁴, Craig Williamson provided an explanation of how this situation came about. He argued that, in the context of insurgency and counter-insurgency theory (particularly as developed by McKuen), a democratic state is often “limited by its laws, values and norms in the methods it can use to defeat an insurgent movement”. Its solution is to resort to “extra-legal counter-revolutionary acts, as long as they are done secretly”. The South African state, he argued, reached this stage in the 1980s:

The counter-insurgency elements of the police and military ... felt that a democratic state using democratic methods could never withstand a concerted Soviet-backed revolutionary effort. Their solution was to suspend democratic freedoms and to militarise South African society ...

¹³ Commission symposium, 1997.

¹⁴ Craig Williamson, ‘Aspects of State Counter-revolutionary Warfare Principles and Strategy: Republic of South Africa in the 1980s’, submission to the Commission, 9 October 1997.

78 The result was a:

drift ... more and more towards a militarily dominated state. This expressed itself in para-military action in support of the state, while ensuring that the state's sponsorship thereof was kept secret ... In this context results become more important than legality. The eleventh commandment was well known, especially to those in the covert/special force elements of the security forces. This was 'Thou shalt not be found out'

79 It was not Parliament therefore, but the State Security Council that stood at the apex of the secretive National Security Management System. Initially it targeted members of 'terrorist' groups operating outside of South Africa, as well as their supporters and hosts. Then, from the mid-1980s, it began focusing on its opponents inside South Africa. Of course, the word murder was never used but euphemisms like '*eliminatie*', '*verwyder*', '*neutraliseer*' and '*uitwis*' are to be found in some of the SSC policy documents adopted in the 1980s.

80 To many, notably those in the leadership in the government and security forces in the 1980s, the conclusion that the state sanctioned murder may and probably will be an unpalatable assertion. It is also probably not what the Commission expected to find when it started its work two years ago. It is, however, a 'truth' to which it has been drawn by the evidence.

Setting up the Commission

■ SETTING UP

- 1 The President appointed the following persons as commissioners of the Truth and Reconciliation Commission, and their names were published in the Government Gazette (No. 16885) on 15 December 1995. They were Archbishop Desmond Tutu (Chairperson), Dr Alex Boraine (Vice-Chairperson), Ms Mary Burton, Adv Chris de Jager, the Revd Bongani Finca, Ms Sisi Khampepe, Mr Richard Lyster, Mr Wynand Malan, the Revd Dr Khoza Mgojo, Ms Hlengiwe Mkhize, Mr Dumisa Ntsebeza, Dr Wendy Orr, Adv Denzil Potgieter, Dr Mapule F Ramashala, Dr Fazel Randera, Ms Yasmin Sooka and Ms Glenda Wildschut.
- 2 The Commission held its first meeting at Bishopscourt, the residence of the Archbishop of Cape Town, on the Day of Reconciliation, 16 December 1995. It was decided that the national office of the Commission would be in Cape Town, and commissioners were allocated the following committees:
 - a The Human Rights Violations Committee: Archbishop Desmond Tutu (Chairperson), Mr Wynand Malan (Vice-Chairperson), Ms Yasmin Sooka (Vice-Chairperson), Dr Alex Boraine, Ms Mary Burton, the Revd Bongani Finca, Mr Richard Lyster, and Dr Fazel Randera.
 - b The Amnesty Committee: Adv Chris de Jager, Ms Sisi Khampepe and Adv Denzil Potgieter.¹
 - c The Reparation and Rehabilitation Committee: Ms Hlengiwe Mkhize (Chairperson), Dr Wendy Orr (Vice-Chairperson), the Revd Dr Khoza Mgojo, Dr Mapule F Ramashala and Ms Glenda Wildschut.
 - d Mr Dumisa Ntsebeza was appointed as head of the Investigation Unit.²

¹ After taking legal advice to the effect that only two commissioners could serve on the Amnesty Committee, it was decided that Adv Potgieter should serve on the Human Rights Violations Committee. A number of changes were made to the composition of the Amnesty Committee later in the life of the Commission. See the administrative report of the Amnesty Committee in this volume.

² It was subsequently agreed that Mr Dumisa Ntsebeza should also serve on the Human Rights Violations Committee.

- 3 It was also agreed that the Department of Justice would assist in the process of establishing the offices and infrastructure of the Commission.
- 4 On 8 January 1996, the Human Rights Violations Committee held its first meeting at the Johannesburg International Airport. A work plan for the Committee was tabled and discussed. It was agreed that the Committee would need to function in a decentralised manner.
- 5 The full Commission held its second meeting on 22 - 26 January 1996 when a wide range of topics was discussed and decisions were made. After reviewing and discussing the Promotion of National Unity and Reconciliation Act (the Act), the Commission agreed that it would maintain regional offices in four centres, namely Cape Town, Johannesburg, Durban and East London. It agreed further that the headquarters of the Amnesty Committee would be in Cape Town, while the headquarters of both the Human Rights Violations Committee and the Reparation and Rehabilitation Committee would be in Johannesburg. There was a series of discussions on the role of the Investigation Unit, the management of information, the need for a sophisticated database, a media and communication strategy for the Commission, and the need for the safety and security of Commission staff and resources. An organisational plan outlining the staffing structure of the Commission was tabled and discussed, and the Commission agreed to advertise for staff without delay. Other matters discussed included the recording and transcription of meetings and hearings, and assistance offered by international donors.
- 6 The third full meeting of the Commission was held on the 13 and 14 February 1996. This meeting approved a full staffing plan together with job descriptions and the appointment of a finance manager, a head of research, a human resources manager and a human resources officer. The finance manager was mandated to draw up a budget without delay. Finally, the meeting agreed that the following commissioners would be responsible for the Commission's regional offices: Dr Wendy Orr (Cape Town), Dr Fazel Randera (Johannesburg), the Revd Bongani Finca (East London) and Mr Richard Lyster (Durban).

■ THE ESTABLISHMENT OF THE NATIONAL AND REGIONAL OFFICES

The national office and Cape Town regional office

- 7 At its second meeting in January 1996, the Commission agreed that the national office would be at 106 Adderley Street, Cape Town and, to save costs, the Cape Town regional office would be located in the same building.
- 8 The lease was signed to commence on 1 March 1996, and the offices were renovated and certain structural changes were made. They were ready for occupation shortly prior to that date. It took almost the entire month of March to equip and furnish the offices properly and to put proper administrative systems in place. The office was only fully functional from early April 1996.

The Johannesburg regional office

- 9 At its second meeting in January 1996, the Commission agreed that the Johannesburg regional office would be located in the Sanlam Building at the corner of Jeppe and Von Wielligh streets in Johannesburg.
- 10 Temporary office space was provided in the Sanlam Building from 15 January 1996. Floor plans for the Johannesburg office were complete by mid-February 1996, and the offices were constructed and ready for occupation by the third week of March 1996. Furniture and office equipment were installed at this time, and a few administrative and secretarial positions were filled in order to allow the office to begin to function. The office was fully staffed and functional by early May 1996.

The East London regional office

- 11 At its third meeting in February 1996, the Commission agreed that the East London regional office would be located in the NBS Building, 15 Terminus Street.
- 12 The first phase of occupation began on 1 March 1996 and entailed the provision of offices for one commissioner, two committee members and two secretaries. The second phase of occupation began on 5 March 1996, when the regional

manager was employed. From that time on, new office space and furniture were acquired as new staff members were employed. The core staff was in place by 25 March 1996.

- 13 A satellite office was opened in Port Elizabeth and staffed by personnel previously based in East London together with some new appointees.

The Durban regional office

- 14 At its third meeting in February 1996, the Commission agreed that the Durban regional office would be located in Metlife House, 391 Smith Street, Durban.
- 15 The offices were ready for occupation by 15 March 1996. Twelve staff members had been employed by 25 March 1996 and basic office equipment and furniture had been purchased. The majority of staff had been employed by 13 May 1996 at which stage the office was fully operational.
- 16 A satellite office was opened in Bloemfontein in May 1996, where staff was recruited quickly because of its relatively small size. The office became functional almost immediately.

■ CONCLUSION

- 17 The Commission moved relatively rapidly to establish itself. It was virtually inoperative during December 1995 and early January 1996, partly because this is traditionally a holiday period, and partly because certain commissioners had to terminate or arrange leaves of absence from their previous employment. It took an additional three to four months, with some regional variation, for the Commission to establish its infrastructure and to advertise and employ sufficient staff to begin functioning close to full capacity. The Commission was satisfied that the start-up phase was completed in a professional and efficient manner.

The Mandate

■ INTRODUCTION

I have the privilege and responsibility to introduce today a Bill which provides a pathway, a stepping stone, towards the historic bridge of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and commence the journey towards 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.

Its substance is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: ‘...for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights violations... and a legacy of hatred, fear, guilt and revenge.’

Dullah Omar, Minister of Justice introducing the Promotion of National Unity and Reconciliation Act in Parliament, 17 May 1995

- 1 The spirit and intention of the Postamble to the interim Constitution is captured in the Preamble of the Promotion of National Unity and Reconciliation Act No 34 of 1995 (the Act) and provides the framework within which the establishment and mandate of the Truth and Reconciliation Commission (the Commission) must be understood.
- 2 The Commission was conceived as part of the bridge-building process designed to help lead the nation away from a deeply divided past to a future founded on the recognition of human rights and democracy. Its purpose needs to be understood in the context of a number of other instruments aimed at the promotion of democracy, such as the Land Claims Court, the Constitutional Court and the Human Rights, Gender and Youth Commissions, all institutional ‘tools’ in the transformation of South African society.

- 3 One of the main tasks of the Commission was to uncover as much as possible of the truth about past gross violations of human rights - a difficult and often very unpleasant task. The Commission was founded, however, in the belief that this task was necessary for the promotion of reconciliation and national unity. In other words, the telling of the truth about past gross human rights violations, as viewed from different perspectives, facilitates the process of understanding our divided pasts, whilst the public acknowledgement of 'untold suffering and injustice' (Preamble to the Act) helps to restore the dignity of victims and afford perpetrators the opportunity to come to terms with their own past.¹
- 4 In the course of fulfilling its mandate, it became clear to the Commission that organs of civil society – such as faith communities, non-governmental organisations (NGOs), community-based organisations (CBOs) and ordinary citizens - all have a role to play in achieving the goal of national unity. South Africans will need to continue to work towards unity and reconciliation long after the closure of the Commission. In the words of a participant at a public meeting of the Commission, we need to ensure that "reconciliation is a way of life". Another acknowledged that the Commission could do no more than 'kick start' the process.
- 5 This chapter describes the specific contribution of the Commission to the bridge-building process in post-apartheid South Africa. It will provide a brief overview of the historical and legislative origins of the Commission and of the objectives and functions of the Commission as prescribed by the Act. It will also deal in some detail with the Commission's interpretation and implementation of its mandate. The difficult and often contested decisions taken by the Commission in this regard will be highlighted.

■ HISTORICAL AND LEGISLATIVE ORIGINS

- 6 The first call for a South African truth commission came from the African National Congress (ANC) before the first democratic elections in 1994. Professor Kader Asmal mooted the idea on his installation as Professor of Human Rights Law at the University of the Western Cape on 25 May 1992, saying:

We must take the past seriously as it holds the key to the future. The issues of structural violence, of unjust and inequitable economic social arrangements, of balanced development in the future cannot be properly dealt with unless there is a conscious understanding of the past.

¹ See chapter on *Concepts and Principles*.

- 7 Soon afterwards, Asmal's call became a firm proposal of the National Executive Committee of the ANC, following an investigation of accusations that the ANC-in-exile had perpetrated human rights violations in some of its camps. In response to the allegations, the ANC set up its own internal commissions of enquiry, the Stuart, Skweyiya and Motsuenyane commissions. The reports of these commissions confirmed that gross human rights violations had taken place in the camps. The National Executive Committee accepted the criticisms levelled at the organisation. It expressed the view, however, that the violations committed by the ANC should be seen against the background of the human rights violations that had taken place in South Africa over a much longer period. It proposed the appointment of a truth commission as a way of achieving this. This was perhaps the first time in history that a liberation movement or government-in-waiting had called for an independent investigation of this kind, aimed at enquiring into allegations of violations of human rights not only by the previous regime, but also by its own members.

- 8 In the meantime, the negotiations that would bring apartheid and political conflict to an end and herald the introduction of democracy in South Africa had begun. They took place within an international framework, which increasingly emphasised the importance of human rights and the need to deal with past human rights violations.

- 9 The negotiations process began seriously with the Groote Schuur Minute in early May 1990. In terms of the Minute, a working group was established to make recommendations, amongst other things, on a definition of political offences in the South African situation, and to advise on norms and mechanisms to deal with the release of political prisoners. On 21 May, the working group found that, while there was legislation allowing for the pardon or release of people who had already been sentenced or were awaiting appeals, new legislation would be required in respect of people who had not been charged. This resulted in the 1990 Indemnity Act.

- 10 The working group also produced findings concerning political offences. It recommended that, as there was no generally accepted definition of a political offence or political prisoners in international law, principles of extradition law should be used to develop guidelines. In terms of these principles, the working group concluded that cases should be dealt with on an individual basis; that certain offences (such as treason) were of a purely political nature, and that criminal acts of a serious nature ('even murder') might be regarded as political offences.

- 11 The working group also proposed that an adaptation of the Norgaard Principles² be used in making the relevant decisions. These took into account aspects such as motive, context, the nature of the political objective, the legal and factual nature of the offence (for example, rape could never be considered a political offence), the object of the offence and whether the act was committed in the execution of an order and with the approval of the organisation concerned.
- 12 The recommendations were accepted with some amendments in terms of the Pretoria Minute on 6 August 1990. However, in the Government Gazette, recording acceptance of the Pretoria Minute, published on 7 November, the words 'even murder' were inexplicably left out – an omission that caused significant problems subsequently.
- 13 It was agreed that the South African Constitution, the Prisons Act and the 1990 Indemnity Act would be used and that 'a group of wise men' would be appointed to deal with releases and the granting of indemnity. Although the group was supposed to consist of three government and three ANC-appointed judges, the three ANC nominees refused to participate because of a ruling that deliberations had to be held in secret and they felt they could be compromised if the Indemnity Board rejected a recommendation.
- 14 In early 1992, negotiations collapsed completely for a number of reasons, including the fact that some fifteen to twenty key ANC members were still in prison. Negotiations were finally resumed after the signing of the Record of Understanding, which signalled a commitment to begin talks again and contained an agreement to review the whole question of political prisoners. Critical to this was a review of the contentious category of 'murder', one of the causes of the dispute that brought negotiations to an end. The Record of Understanding contained the following sentence:

The two parties are agreed that all prisoners whose imprisonment is related to political conflict of the past and whose release could make a contribution to reconciliation should be released.

- 15 One hundred and forty-nine prisoners were released with immediate effect and without any formal process at all. However, when the third Indemnity Act of 1992 was passed, the category of 'murder' was still not included, despite the undertaking in the Record of Understanding to review the contentious issue of political prisoners.

² Professor Carl Aage Norgaard is former President of the European Commission on Human Rights. He developed criteria to help define politically-motivated offences in Namibia, which became known as the Norgaard Principles.

- 16 A day or so before the elections in 1994, President De Klerk, allegedly without consultation with the ANC and other political parties, authorised the release and indemnity of about eighty to one hundred people. However, by this stage, anyone who had committed a crime which, according to the terms of the Record of Understanding, involved some political motivation was up for possible release.
- 17 During the pre-election period, very few members of the security forces had applied for indemnity, possibly in the expectation of a general amnesty. However, only days before the election, when it became clear that there would be no general amnesty, a relatively large number of security force members applied for indemnity under the 1992 legislation. Their applications were unsuccessful because they failed to disclose details about acts for which they were seeking amnesty as required by the legislation.³
- 18 After the conclusion of the Record of Understanding, the focus shifted to the question of how a future democratic government would deal with amnesties for political offences and especially for the security forces. Two matters were settled relatively early. It was agreed, in the first place, that actions taken in terms of apartheid law would not merely for that reason be regarded as illegal and that there would be no Nuremberg-type trials for the many human rights violations legally committed in the course of implementing apartheid.
- 19 Furthermore, it was agreed that there would be some form of amnesty for politically-motivated offences committed in the past. The government insisted on a form of blanket amnesty, while most other parties demanded that amnesty should be linked to some form of truth commission process. A compromise was eventually reached only after the finalisation of the rest of the interim Constitution and was recorded in what became known as the 'Postamble'. This provided that there would be amnesty for politically-motivated offences, and that future legislation would provide the criteria and procedures to regulate the process.
- 20 A number of NGOs and others played a role in preparing the ground for a truth commission. There were one or two major conferences, attended by leading scholars and human rights practitioners, that stimulated wide debate in civil society and in Parliament.
- 21 The new government introduced the Promotion of National Unity and Reconciliation Bill in Parliament in November 1994. The Bill provided for

³ After the elections, the Minister of Justice set up what became known as the Currin committee to deal with some 1 000 outstanding applications, using previous releases as a yardstick. The majority of the recommendations made to President Mandela and his two deputy presidents were accepted.

amnesty as required by the interim Constitution. It stressed, too, the importance of victims to the proposed process, emphasising their right to tell their stories of suffering and struggle. This became an essential focus of the envisaged commission - what has been described as a 'victim-centred approach'. The legislation also required that, in order for amnesty to be granted, there should be full disclosure of the violations in respect of which it was sought. In this way, the 'stick' of prosecutions and civil claims was combined with the 'carrot' of amnesty to encourage perpetrators to testify about gross violations of human rights. This was a unique feature of the South African commission. National unity and reconciliation could be achieved only, it was argued, if the truth about past violations became publicly known.

- 22 It is important to note the uniquely open and transparent nature of the process that preceded the adoption of the Bill. Civil society played an influential role in the months of debate and compromise leading to its adoption. The parliamentary Portfolio Committee on Justice conducted extensive public hearings. As a direct result of these public hearings and the pressure exerted by civil society, the parliamentary Portfolio Committee made a significant change to the Bill, as follows.
- 23 One of the compromises reached between the ANC and the National Party (NP) when the Bill was discussed in Cabinet had been that amnesty hearings should be held behind closed doors. Human rights organisations and other NGOs successfully contested this and the principle of open hearings, except where it defeated the ends of justice, was won. The Bill was signed into law by the President on 19 July 1995⁴ and came into effect on 1 December 1995 after the Commissioners had been appointed. The appointment process was also open and transparent. Despite the fact that the legislation gave the President the authority to decide who would serve on the Commission, President Mandela decided to appoint a broadly representative committee to assist him in the process of identifying the commissioners. Organisations of civil society participated in the process by nominating prospective commissioners and monitoring the hearings which led to the appointments. The committee called for nominations and 299 names were received. After the public hearings, a list of twenty-five names was submitted to President Mandela. The President consulted with his Cabinet and with the heads of the political parties and appointed the required seventeen commissioners.

⁴ The Freedom Front voted against the adoption of the Bill because the cut-off date for amnesty was not advanced from 5 December 1993 to 10 May 1994 (leaving white right-wingers vulnerable to prosecution for politically motivated crimes committed during that period). There had been reluctance to extend the cut-off date as the previous date had been set in order to provide for a peaceful climate in which to prepare for and conduct elections. It was later agreed between the Commission and the President that the date should be extended for the sake of reconciliation. The Inkatha Freedom Party abstained on the grounds that it feared a lack of even-handedness.

■ WHY THE SOUTH AFRICAN COMMISSION IS DIFFERENT FROM OTHER COMMISSIONS

- 24 In order to appreciate the difficulties the Commission faced in implementing its mandate, it is helpful briefly to consider some of the unique features of the South African Commission and how it compares with other similar commissions created in recent years.
- 25 The most important difference between the South African Commission and others was that it was the first to be given the power to grant amnesty to individual perpetrators. No other state had combined this quasi-judicial power with the investigative tasks of a truth-seeking body. More typically, where amnesty was introduced to protect perpetrators from being prosecuted for the crimes of the past, the provision was broad and unconditional, with no requirement for individual application or confession of particular crimes. The South African format had the advantage that it elicited detailed accounts from perpetrators and institutions, unlike commissions elsewhere which have received very little co-operation from those responsible for past abuses.
- 26 Another significant difference can be found in the Commission's powers of *subpoena*, search and seizure, which are much stronger than those of other truth commissions. This has led to more thorough internal investigation and direct questioning of witnesses, including those who were implicated in violations and did not apply for amnesty. None of the Latin American commissions, for example, was granted the power to compel witnesses or perpetrators to come forward with evidence, and these commissions have had great difficulty in obtaining official written records from the government and the armed forces.
- 27 The very public process of the South African Commission also distinguishes it from other commissions. While a few have held public victim hearings (such as Uganda in the late 1980s), such hearings have been far fewer in number than in South Africa. The Latin American truth commissions heard testimony only in private, and information only emerged with the release of the final reports.
- 28 The South African hearings also included aspects of enquiry not seen elsewhere: for example, the institutional and special hearings. These allowed for direct contributions by NGOs and those who were involved in specific areas of activism, policy proposals and monitoring in the past. Few other commissions have included such interaction with 'non-victim' public actors.

- 29 The South African Commission was the first to create a witness protection programme. This strengthened its investigative powers and allowed witnesses to come forward with information they feared might put them at risk.
- 30 Finally, the South African Commission was several times larger in terms of staff and budget than any commission before it.⁵

■ OBJECTIVES AND FUNCTIONS AS PRESCRIBED IN THE ACT

- 31 The Act identified the following objectives and functions:

3. (1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by-

- a establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;*
- b facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;*
- c establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;*
- d compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.*

⁵ Based on an analysis by Priscilla Hayner. See also Kritz, N.(ed), 1995. Transitional Justice, Volumes 2 and 3. Washington: United States Institute of Peace.

(2) The provisions of subsection (1) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act.

4. The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall-

- a facilitate, and where necessary initiate or co-ordinate, inquiries into- (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse; (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations; (iii) the identity of all persons, authorities, institutions and organisations involved in such violations; (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 organisation, liberation movement or other group or individual; and (v) accountability, political or otherwise, for any such violation;*
- b facilitate, and initiate or co-ordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;*
- c facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty in the Gazette;*
- d determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;*
- e prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;*

- 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; (ii) measures which should be taken to grant urgent interim reparation to victims;*
- g make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of this Act;*
- h make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.*

32 Briefly stated, the Commission was given four major tasks in order to achieve the overall objectives of promoting national unity and reconciliation. These were:

- a analysing and describing the “causes, nature and extent” of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations;
- b making recommendations to the President on measures to prevent future violations of human rights;
- c the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;
- d granting amnesty to persons who made full disclosure of relevant facts relating to acts associated with a political objective.

■ INTERPRETING THE MANDATE

- 33 The interpretation of the mandate was the outcome of a long process of wrestling with how the Commission should deal with the above-mentioned objectives and functions.
- 34 It was recognised at the outset that the Commission could not carry out all the tasks required of it simultaneously. Thus, it first gave attention to the question of the restoration of the human and civil dignity of (individual) victims of past gross human rights violations. It did so by creating opportunities for victims “to relate their own accounts” of the violations they had suffered by giving testimony at public hearings across the length and breadth of South Africa between April 1996 and June 1997. These highly publicised hearings were coupled with an extensive statement-taking drive, investigations, research and so-called ‘section 29’ hearings (where witnesses and alleged perpetrators were *subpoenaed*) in order to “establish the fate or whereabouts of victims” and the identity of those responsible for human rights violations.
- 35 During the second half of the Commission’s life (from approximately the middle of 1997), the Commission shifted its focus from the stories of individual victims to an attempt to understand the individual and institutional motives and perspectives which gave rise to the gross violations of human rights under examination. It enquired into the contexts and causes of these violations and attempted to establish the political and moral accountability of individuals, organisations and institutions. The goal was to provide the grounds for making recommendations to prevent future human rights violations. Features of this phase were public submissions by, and questioning of, political parties, and a range of institutional, sectoral and special hearings that focused on the health and business sectors, the legal system, the media and faith communities, prisons, women, children and youth, biological and chemical warfare and compulsory national service. It was also during this period that the majority of amnesty hearings took place.
- 36 In the process of interpreting the mandate, a number of difficult and often highly contested decisions had to be taken.

■ TERMINOLOGY

Victims or survivors

- 37 From the outset, the commissioners expressed some discomfort with the use of the word 'victim'. Although the term is commonly enough used when talking about those who suffered under apartheid, it may also be seen to imply a negativity or passivity. Victims are acted upon rather than acting, suffering rather than surviving. The term might therefore be seen as insulting to those who consider that they have survived apartheid or emerged victorious. Unlike the word 'victim', the word 'survivor' has a positive connotation, implying an ability to overcome adversity and even to be strengthened by it. This does not, of course, mean that many (if not all) survivors were not still experiencing the effects of the trauma they had suffered. It also does not mean that all survived. There were, indeed, many who did not survive and on whose behalf others approached the Commission.
- 38 However, when dealing with gross human rights violations committed by perpetrators, the person against whom that violation is committed can only be described as a victim, regardless of whether he or she emerged a survivor. In this sense, the state of mind and survival of the person is irrelevant; it is the intention and action of the perpetrator that creates the condition of being a victim.
- 39 For the sake of consistency, the Commission ultimately decided, in keeping with the language of the Act, to use the word 'victim'. In doing so, however, it acknowledged that many described as victims might be better described and, indeed, might prefer to be described as 'survivors'. Many played so crucial a role in the struggle for democracy that even the term 'survivor' might seem an inadequate description.

Perpetrators

- 40 The use of the word 'perpetrator' to describe all persons found by the Commission to have committed gross violations of human rights was also the source of some discomfort as it made no distinction between the kinds of acts committed, the reasons why they were committed, their consequences or their context. It also does not distinguish between 'perpetrators' who committed one act and those whose entire operation and purpose was the commission of such acts.
- 41 Again, however, the Commission chose to adhere to the terminology of the Act, while recognising sharp differences in the nature and degree of the acts committed.

■ WHO WERE VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS?

42 The Act states that:

... 'gross violation of human rights' means 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 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 (section 1(1)(ix).

43 This definition is a reminder that the responsibility for building the bridge between a dehumanising past and a just and democratic future does not belong to the Commission alone. Furthermore, in making its own limited contribution, the Commission had to walk a tightrope between too wide and too narrow an interpretation of gross violations of human rights. The Commission would have neither the lifespan nor the resources to implement a broadly constituted interpretation. Too narrow an interpretation, on the other hand, might have added insult to the injuries and injustices experienced by the many victims who would have been excluded.

44 Segregation policies and practices have their roots far back in South Africa's colonial past. Building on an inherited social practice, apartheid imposed a legal form of oppression with devastating effects on the majority of South Africans. The NP government came to power in 1948 and, over almost half a century, apartheid became the warp and weft of the experience of all who lived in South Africa, defining their privilege and their disadvantage, their poverty and wealth, their public and private lives and their very identity.

45 Under apartheid, millions of people were deprived of the most basic rights. Through a huge body of laws, black people were shunted out of areas reserved for whites; evicted from their homes; forced out of the cities into shanties, homelands and what Father Cosmas Desmond has called, 'dumping grounds', where there was neither water, nor shelter nor a living to be made.

I have seen the bewilderment of simple rural people when they are told they must leave their homes where they have lived for generations and go to a strange place. I have heard their cry of hopelessness and resignation and their pleas for help. I have seen the sufferings of whole families living in a tent or a tiny tin hut. Of children sick with typhoid, or their bodies emaciated with malnutrition and even dying of plain starvation.⁶

- 46 Apartheid redrew the map of South Africa. The wealth, the cities, the mines, parks and the best beaches became part of white South Africa. A meagre thirteen per cent of largely barren land was parcelled out in a series of homelands in which African people were forced to live, while the able-bodied were driven to seek a living as migrant labourers in the cities. And, as legislation formalised the divide between African, Indian, coloured and white, so the apartheid government sought, too, to divide African people on the basis of ethnicity.
- 47 'Separate development' was the magic formula. All over South Africa, public buildings and amenities were divided and sometimes even duplicated according to race group, retaining the best for the white group. African, Indian and coloured children were thrown out of city parks. Beaches and benches, trains and buses, and other public facilities and spaces were allocated according to the racial divisions of apartheid. Separate meant far from equal and often resulted in no facilities at all for those who were not white. Private sector space was also subjected to rules: banks, restaurants, shops, places of worship, bottle stores, hotels and cinemas were all segregated, often by legislation and often by self-imposed segregation.
- 48 Private life too was dominated by apartheid. Who you knew, whom you consorted with, whom you worked with and how you conducted your relationships all depended on remaining within your group. Law prohibited marriages and sexual relationships across the colour line. Even entertainment between races was severely restricted by curfews and a prohibition on serving drink to African people.
- 49 One of the most iniquitous acts of apartheid was the separation of educational facilities and the creation of the infamous system of Bantu education. Mission schools which had provided some schooling to African people were closed down and generation after generation of African children were subjected to teaching that was deeply inferior in quality to that of their white counterparts.

⁶ Dumping Grounds, Christian Institute: Johannesburg, Second Edition, circa 1970.

Prime Minister Hendrik Verwoerd, the 'architect' of apartheid, said:

*The school must equip the Bantu to meet the demands which the economic life will impose on him ... What is the use of teaching a Bantu child mathematics when it cannot use it in practice? ... Education must train and teach people in accordance with their opportunities in life ...*⁷

50 Indian and coloured people were subjected to similar restrictions. The notorious Group Areas legislation moved people out of their homes and trading areas and onto the fringes of the cities. Separate education, separate amenities and other restrictions bounded their lives.

51 It is this systemic and all-pervading character of apartheid that provides the background for the present investigation. During the apartheid years, people did many evil things. Some of these are the gross violations of human rights with which this Commission had to deal. But it can never be forgotten that the system itself was evil, inhumane and degrading for the many millions who became its second and third class citizens. Amongst its many crimes, perhaps the greatest was its power to humiliate, to denigrate and to remove the self-confidence, self-esteem and dignity of its millions of victims. Mtutuzeli Matshoba expressed it thus:

*For neither am I a man in the eyes of the law,
Nor am I a man in the eyes of my fellow man.*⁸

52 In a submission to the Commission, Justice Pius Langa, currently the Deputy President of the Constitutional Court, wrote of his life under apartheid:

My first real encounter with the legal system was as a young workseeker in Durban ... in 1956. It was during that period that I experienced the frustration, indignity and humiliation of being subject to certain of the provisions of the Population Registration Act, no. 30 of 1950, the Natives (Urban Areas) Consolidation Act, no. 25 of 1945 as well as other discriminatory legislation of that time... The immediate impact on me was severe disillusionment at the unfairness and injustice of it all. I could never understand why race should have been the determinant of where I should live and where I could work. I was never able to understand why, whilst still a teenager, I was expected to live at a men's hostel and needed a permit to

7 Quoted in *Illustrated History of South Africa: the Real Story*, Readers Digest: Cape Town, 1988.

8 Mtutuzeli Matshoba, *Call Me Not a Man*, Ravan Press, 1979, page 18.

stay with my parents in the township... In that first flush of youth, I had thought I could do anything, aspire to anything and that nothing could stop me. I was wrong. My dreams came up against the harsh apartheid realities. The insensitive, demeaning and often hostile environment it had created around me proved to have been crafted too well; it was designed to discourage those who, like me, sought to improve their circumstances and those of their communities...

The pass laws and influx control regulations were, for me, the focal point of the comprehensive network of laws and regulations which dominated my early working life ... I was merely one of tens of thousands who peopled those seemingly interminable queues at the end of which, in general, bad tempered clerks and officials might reward one with some endorsement or other in the 'dompas'. The whole process of the influx control offices was painful and degrading and particular aspects of it inflicted deep humiliation on the tens of thousands who were on the receiving end of these regulations. As a 17 year-old, I remember having to avert my eyes from the nakedness of grown men in a futile attempt to salvage some dignity for them in those queues where we had to expose ourselves to facilitate the degrading examination. To anyone who failed to find work during the currency of their permits, loomed the very real threat of being declared "an idle and undesirable Bantu" by the Commissioner's court and being subject to be sent to a farm colony. Scores of people were processed through those courts and sentenced on charges such as failing to produce a reference book on demand. ...

It was one thing, however, having the overtly discriminatory and repressive laws on the statute book. Their ugliness was exacerbated to a large degree by the crude, cruel and unfeeling way in which many of the officials, black and white, put them into operation. There was a culture of hostility and intimidation against those who came to be processed or for assistance. The face presented by authority, in general, was of a war against people who were unenfranchised and human dignity was the main casualty.

- 53 A deep awareness of this systematic discrimination and dehumanisation made it very difficult for the Commission to concentrate only on those whose rights had been violated through acts of killing, torture, abduction and severe ill treatment.

- 54 For example, during the earlier information-gathering phase of the Commission's work, the category that required most attention was that of 'severe ill treatment'. The ordinary meaning of 'severe ill treatment' suggests that all those whose rights had been violated during the conflicts of the past were covered by this definition and fell, therefore, within the mandate of the Commission. This view was expressed in the submissions of a number of organisations and groups representing, for example, victims of forced removals and Bantu education.
- 55 While taking these submissions very seriously, the Commission resolved that its mandate was to give attention to human rights violations committed as specific acts, resulting in severe physical and/or mental injury, in the course of past political conflict. As such, the focus of its work was not on the effects of laws passed by the apartheid government, nor on general policies of that government or of other organisations, however morally offensive these may have been. This underlines the importance of understanding the Commission as but one of several instruments responsible for transformation and bridge-building in post-apartheid South Africa.
- 56 The mandate of the Commission was to focus on what might be termed 'bodily integrity rights', rights that are enshrined in the new South African Constitution and under international law. These include the right to life⁹, the right to be free from torture¹⁰, the right to be free from cruel, inhuman, or degrading treatment or punishment¹¹ and the right to freedom and security of the person, including freedom from abduction and arbitrary and prolonged detention¹².
- 57 But bodily integrity rights are not the only fundamental rights. When a person has no food to eat, or when someone is dying because of an illness that access to basic health care could have prevented - that is, when subsistence rights are violated - rights to political participation and freedom of speech become meaningless.
- 58 Thus, a strong argument can be made that the violations of human rights caused by 'separate development' – for example, by migrant labour, forced removals, bantustans, Bantu education and so on - had, and continue to have, the most negative possible impact on the lives of the majority of South Africans. The

9 [SA Constitution](#), section 11; [International Covenant on Civil and Political Rights \(ICCPR\)](#), article 6.

10 [SA Constitution](#), section 12(1)(d); [ICCPR](#), article 7.

11 [SA Constitution](#), section 12(1)(e); [ICCPR](#), article 7.

12 [SA Constitution](#), sections 12(1)(a)-(b) and 35(1)(d); [ICCPR](#), article 9.

consequences of these violations cannot be measured only in the human lives lost through deaths, detentions, dirty tricks and disappearances, but in the human lives withered away through enforced poverty and other kinds of deprivation.

- 59 Hence, the Commission fully recognised that large-scale human rights violations were committed through legislation designed to enforce apartheid, through security legislation designed to criminalise resistance to the state, and through similar legislation passed by governments in the homelands. Its task, however, was limited to examining those ‘gross violations of human rights’ as defined in the Act. This should not be taken to mean, however, that those ‘gross violations of human rights’ (killing, torture, abduction and severe ill treatment) were the only very serious human rights violations that occurred.

■ EVEN-HANDEDNESS

- 60 The Commission was obliged by statute to deal even-handedly with all victims. Its actions when dealing with individual victims were guided, amongst other things, by the principle that “victims shall be treated equally without discrimination of any kind”(section 11(b)). In so doing, it acknowledged the tragedy of human suffering wherever it occurred.
- 61 This does not mean, however, that moral judgement was suspended or that the Commission made no distinction between violations committed by those defending apartheid and those committed to its eradication.
- 62 In this regard, it is important to remember that other aspects of the Commission’s mandate required that it:
- a facilitate inquiries into the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives that led to such violations;
 - b establish organisational involvement and responsibility and identify all persons, authorities, institutions and organisations involved in gross violations of human rights;

- c determine whether gross violations of human rights were part of deliberate planning on the part of the state or an organisation;
 - d discuss whether gross violations of human rights were part of a systematic pattern of abuse;
 - e make recommendations on the creation of institutions conducive to a stable and fair society and on institutional, administrative and legislative measures to prevent the perpetration of human rights violations.
- 63 This part of the mandate, together with the overall objective of promoting reconciliation, clearly required that the Commission be sensitive to a wide range of different perspectives and beliefs concerning past conflicts. In its attempt to reflect accurately and to understand these perspectives, the Commission endeavoured to include people representing different positions in its public hearings. It also made repeated attempts to include those political groupings, such as the Inkatha Freedom Party (IFP), that chose not to participate in the activities of the Commission.

■ JUST ENDS, JUST MEANS AND CRIMES AGAINST HUMANITY

- 64 In making judgements in respect of the above requirements, the Commission was guided by criteria derived from just war theory (which was referred to in several submissions made to the Commission by political parties), international human rights principles and the democratic values inherent in the South African Constitution. By using these criteria, the Commission was able to take clear positions on the evils of apartheid, while also evaluating the actions of those who opposed it.
- 65 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 (*jus in bello*) and justice of war (*jus ad bellum*).
- 66 Justice of war evaluates the justifiability of the decision to go to war. The two basic criteria guiding this evaluation are: first, the justness of the cause (the

underlying principles for which a group is fighting), and second, whether the decision to take up arms was a matter of last resort.

- 67 The doctrine of justice in war states that there are limits to how much force may be used in a particular context and places restrictions on who or what may be targeted. Two principles dominate this body of law:
- a the use of force must be reasonably tailored to a legitimate military end;
 - b certain individuals are entitled to specific protections, making a fundamental distinction between combatants and non-combatants. Thus 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 soldier may not be harmed.
- 68 What implications did this have for the Commission? Can the acts of political violence by those who struggled against apartheid, on the one hand, and by the agents and defenders of the apartheid state, on the other, be morally equated?

Justice of war

- 69 As far as the question of the justice of the South African conflicts was concerned, the Commission was faced with competing claims of just causes from various parties to the conflicts of the past. In seeking to address these, the Commission took into consideration factors such as the Cold War and the international and regional contexts. These were raised by the NP and the Freedom Front (FF) in many amnesty applications and in the submission by Mr Craig Williamson. The Commission accepted that many people had clearly believed that they were fighting against Communism and anarchy and not, in the first place, for apartheid.¹³
- 70 At the same time, these acts of war were also ultimately undertaken in defence of the ruling white minority and the apartheid state. In international law, this system of enforced racial separation and discrimination was itself found to be a crime against humanity (see the appendix to this chapter). Thus, those who fought against the system of apartheid were clearly fighting for a just cause, and those who sought to uphold and sustain apartheid cannot be morally equated with those who sought to remove and oppose it.

¹³ See also report on *Compulsory Military Service (Conscription)*

- 71 The application of ‘the last resort’ criterion in just war theory obviously yields a less straightforward answer. Submissions to the Commission by the NP, FF and the IFP contested the necessity for the resort to armed resistance by the liberation movements. This matter will always be the subject of debate. However, any analysis of human rights violations which occurred during the conflicts of the past, and any attempt to prevent a recurrence of such violations, must take cognisance of the fact that, at the heart of the conflict, stood an illegal, oppressive and inhuman system imposed on the majority of South Africans without their consent. There had, over many decades, been numerous attempts by those opposed to this system to bring about change by non-violent means, before resorting to armed resistance.
- 72 The immorality and illegality of apartheid was acknowledged by most of the political party submissions and thus does not reflect the bias of any one perspective. Indeed, in his appearance before the Commission in May 1997, former State President de Klerk himself described apartheid as a system that caused great suffering to millions of people. This recognition was reflected in numerous other important submissions to the Commission, including:
- a five of the most senior judges, on behalf of the judiciary past and present, declared in a submission to the Commission that apartheid was, in itself, a gross violation of human rights;
 - b four former NP cabinet ministers, testifying in the Commission’s hearing on the State Security Council, acknowledged that apartheid had no moral basis;
 - c the Western Cape regional synod of the Dutch Reformed Church, in conformity with the position adopted by most major religious institutions, declared that apartheid as a system of enforced racial discrimination was wrong and sinful, not only in its effects and operations, but also in its fundamental nature.
- 73 The recognition of apartheid as an oppressive and inhuman system of social engineering is a crucial point of departure for the promotion and protection of human rights and the advancement of reconciliation in South Africa. It is thus a great sign of hope to the Commission and to the future of the South African nation that, during the 1980s, the early 1990s and during the life of the Commission, increasing numbers of those who formulated and implemented apartheid have recognised not only the political unsustainability but also the immorality of this system.

Justice in war

- 74 The Commission's confirmation of the fact that the apartheid system was a crime against humanity does not mean that all acts carried out in order to destroy apartheid were necessarily legal, moral and acceptable. The Commission concurred 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.
- 75 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 wrong of killing and injuring defenceless people, civilians and soldiers 'out of combat' required the Commission to conclude that not all acts in war could be regarded as morally or legally legitimate, even where the cause was just.
- 76 It is for this reason that the Commission considered the concept of crimes against humanity at both a systemic level and at the level of specific acts. Apartheid as a system was a crime against humanity, but it was also possible for acts carried out by any of the parties to the conflicts of the past to be classified as human rights violations.

State and non-state actors

- 77 Thus, the Commission adopted the view that human rights violations could be committed by any group or person inside or outside the state: by persons within the Pan Africanist Congress (PAC), the IFP, the South African Police (SAP), the South African Defence Force (SADF), the ANC or any other organisation.
- 78 It is important to note, however, that this wider application of human rights principles to non-state entities is a relatively recent international development. Traditionally, human rights focused on relations between state and citizens and on protecting the individual from the power of the state. Private non-state entities were not subject to the same restrictions and scrutiny. The traditional exceptions to this have been found in the area of war crimes and crimes against humanity which, even under the traditional definition of human rights, can be committed by any individual or entity.

- 79 The Act establishing the Commission adopted this more modern position. In other words, it did not make a finding of a gross violation of human rights conditional on a finding of state action. This extended view of human rights prohibitions reflects modern developments in international human rights law. It also contributes to national unity and reconciliation by treating individual victims with equal respect, regardless of whether the harm was caused by an official of the state or of the liberation movements.
- 80 At the same time, it must be said that those with the most power to abuse must carry the heaviest responsibility. It is a matter of the gravest concern when the state, which holds the monopoly on public force and is charged with protecting the rights of citizens, uses that force to violate those rights. The state has a whole range of powerful institutions at its disposal - the police, the judicial system, the mass media, parliament - with which it may denounce, investigate and punish human rights violations by private citizens or non-governmental groups. When this power is used to violate the rights of its citizens, as described in the report of the Chilean commission, their normal vulnerability is transformed into utter defencelessness.
- 81 This sensitivity to the unequal power relationships between state and non-state agents should be seen as an attempt to help lay the foundation for the rehabilitation of state institutions in order to hold present and future governments accountable for their use and abuse of power. It is thus central to the effort to prevent future violations of human rights.

■ DEFINING GROSS VIOLATIONS OF HUMAN RIGHTS

- 82 The Act did not provide clear guidelines for the interpretation of the definition of “gross violations of human rights”. In order to determine which acts constituted gross violations of human rights, it was important to interpret the definition and to consider whether there were any limitations excluding particular acts from this definition. The Act used neutral concepts or terms to describe the various acts that constituted a gross violation of human rights. For example, ‘killing’ and ‘abduction’ were used rather than murder or kidnapping. Clearly, the intention was to try to avoid introducing concepts with a particular content in terms of the applicable domestic criminal law. This was to avoid equating what

was essentially a commission of enquiry with a court of law. If the full array of legal technicalities and nuances had been introduced into the work and decision-making functions of the Commission, its task would have been rendered immensely complex and time-consuming. It would also have contradicted the clear intention that the Commission should fulfil its mandate as expeditiously as possible. It could also have opened the way for a repetition of past injustices, with victims of the political conflict being excluded by legal technicalities from claiming compensation for their losses. Thus, it was clear that the underlying objective of the legislators was to make it possible for the Commission to recognise and acknowledge as many people as possible as victims of the past political conflict. This objective, in its turn, was central to the Commission's overall task to promote national unity and reconciliation.

- 83 Two distinct enquiries were envisaged by the Act insofar as it concerned the question of gross violations of human rights:
- a Was a gross violation of human rights committed and what was the identity of the victim? (section 4(b))
 - b What was the identity of those involved in such violations and what was their accountability for such violations? (section 4(a)(iii), (v))
- 84 The first is a factual question about the conduct involved: in other words, does the violation suffered by the victim amount to one of the acts enumerated in the definition? This enquiry does not involve the issue of accountability. The question of whether or not the conduct of the perpetrator is justified is irrelevant. This was in accordance with the intention to allow as many potential victims as possible to benefit from the Commission's process.
- 85 The second enquiry is stricter and more circumscribed, involving technical questions like accountability. Findings emerging at this level of enquiry may have grave implications and impinge upon the fundamental rights of alleged perpetrators. This enquiry involves, therefore, both factual and legal questions.
- 86 Hence, the Commission could find that a gross human rights violation had been committed because there was a victim of that violation. It had, however, to apply a more stringent test in order to hold a perpetrator accountable for that violation.

- 87 It was in relation to this more rigorous test that issues such as justification were taken into account. A perpetrator could not be held accountable if the conduct in question was legally justified. Thus, for example, a person who killed in self defence could not be held accountable as a perpetrator of a gross violation of human rights. This raised the question of whether the notion of unlawfulness was implicit in the definition of gross violations of human rights in the Act. In other words, must a particular act be unlawful for it to amount to a violation of human rights in the sense of a crime or a delict? In order to answer this question, it is important to take into account the fact that the issue of justification (for example, self defence and necessity) does not affect the nature of conduct but excuses its consequences. A legitimate killing in self defence still amounts to the deprivation of life and a violation of the right to life, but the law does not hold the perpetrator liable for the consequence of this conduct. Thus, although justification does not affect the nature of the act, it does affect the issue of accountability.
- 88 As a consequence, the position adopted by the Commission was that any killing, abduction, torture or severe ill treatment which met the other requirements of the definition amounted to a gross violation of human rights, regardless of whether or not the perpetrator could be held accountable for the conduct.
- 89 It is important to note that the categories of victims and perpetrators are defined in terms of specific acts, such as killing. The categories are not, however, mutually exclusive. Thus, for example, a person who may, in one situation, be a victim of severe ill treatment by the police may, in another, become a perpetrator of a gross violation of human rights through his or her killing of a political opponent.
- 90 This position was applied to a large majority of violations which took place as a result of what might loosely be termed civilian conflict: for example, conflicts between IFP and ANC or United Democratic Front (UDF) supporters or between youth and the police in townships.

Armed conflict between combatants

- 91 The political conflicts of the past were not only of a 'civilian' nature. Several of the political groupings had an armed wing. The state used its armed forces to put down resistance and to engage in military actions in the southern African region. The Commission had particular difficulty in attempting to define and reach consensus on its mandate in this respect. Some argued that all killed and injured combatants should be included as victims of gross human rights violations. Others wanted to maintain a distinction between those defending the apartheid state and those seeking to bring it down. It was noted that members of the armed forces involved in these combat situations did not expect to be treated as victims of gross violations of human rights. This was illustrated in the submissions of political parties such as the NP and the ANC, which did not identify their members killed in combat as victims. In the end, the Commission decided to follow the guidelines provided by the body of norms and rules contained in international humanitarian law.
- 92 Armed conflicts between clearly identified combatants thus provided the only exception to the Commission's position that victims of gross violations of human rights should include all who were killed, tortured (and so on) through politically-motivated actions within the mandated period.
- 93 With regard to specific aspects of the armed conflicts referred to above, the Commission was guided by international humanitarian law, particularly as contained in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. Since the Commission was not a tribunal and therefore not required to pass legal judgements, only the basic concepts and principles underlying these laws were taken into consideration.
- 94 International humanitarian law attempts to provide as much protection as possible to those faced with the harsh realities of armed conflicts, irrespective of what caused them. It therefore places limits on the means and methods used in warfare, declaring certain acts impermissible, while other acts, even some of those involving killing, are not regarded as violations. To understand this distinction, the two essential concepts of 'combatant' and 'protected person' need to be clarified.
- 95 Article 43 (paragraphs 1 and 2) of Additional Protocol 1 of 1977 defines combatant as follows:

The armed forces of a Party to the conflict consist of all organised armed forces, groups, and units that are under a command responsible to that Party for the conduct of its subordinates...

Members of the armed forces of a Party to the conflict are combatants; that is to say, they have the right to participate directly in hostilities.

96 Protected persons include the following categories of persons:

wounded, sick and shipwrecked members of the armed forces and civilians¹⁴; prisoners of war¹⁵; civilians, including those interned and those on the territory of the enemy or in occupied territories.¹⁶

97 The basic principle is that combatants have the right to participate directly in hostilities. This does not mean that combatants have an unlimited right to kill. What it does mean is that the combatant is allowed to use (lethal) force against enemy combatants in the process of trying to subdue the enemy as quickly as possible. It remains preferable that these enemy combatants should be captured or wounded and not physically destroyed. But deaths do occur in war; that is its inherent evil. While the laws of war may not prohibit such deaths, they are a source of profound moral regret. Combatants who comply with the restrictions imposed by the laws of war are not, therefore, personally liable for the consequences of their acts. Thus, the laws regulating justness in war provide no prohibition on certain acts of violence committed by any party to an armed conflict, regardless of the justness of that party's cause.

98 However, when a combatant uses force in an armed conflict against a protected person – that is someone who does not or who can no longer use force and thus cannot defend him or herself – such acts break international humanitarian law and those responsible must be held accountable. The laws of war provide minimum protections that apply in all armed conflicts. These protections are found in Common Article 3 of the four 1949 Geneva Conventions, which reads:

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 [outside combat] by sickness, wounds, detention, or any other cause, shall in all

14 Geneva Convention I,II,IV, art 13

15 Geneva Convention III, art 4.

16 Geneva Convention IV, art 47; Protocol I, articles 48-50. At 32, 'Civilians' are those who are not 'combatants'.

circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria.

To this 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 the 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. (See also Protocol I, art 75).*

99 Historically, when such violations have occurred in an international, as opposed to internal, armed conflict they constitute 'grave breaches'¹⁷ which may be prosecuted by any state. This distinction between international and internal armed conflicts is less relevant today, as the laws of war have evolved to regulate more closely the use of force in all situations of armed conflict.

100 It is, furthermore, very important to note that the Geneva Conventions, both in their terms and as they have been interpreted, are inclusive in the protections they offer. In other words, if there is doubt about whether a particular person is entitled to certain protections provided by the Conventions, then it is presumed that such an individual should be protected. (See Protocol I, art 45.1, 50.1).

101 It must also be emphasised that the concepts of combatant and protected person are not necessarily opposites. When a combatant is wounded or surrenders, he or she becomes a protected person without losing combatant status. In other words, in order to decide whether someone was killed or injured as a combatant, two questions must be asked: first, was the person a member of an organised or regular armed force, and second, was the person in or out of combat?

¹⁷ Geneva Convention I, art 50; Protocol I, art 85. 'Grave breaches' include the following acts against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health.

102 The practice followed by the Commission was in accordance with these two considerations. The Commission also adopted the principle of giving the benefit of the doubt to those whose status as combatants or protected persons was unclear. These norms were applied as follows to the acts of killing, attempted killing and severe ill treatment falling within the Commission's mandate:

- a SADF soldiers or SAP members acting as soldiers (for example members of the Koevoet Unit) who were killed or seriously injured in combat (during, for example, the Namibian and Angolan 'border wars') and Umkhonto weSizwe (MK) or Azanian Peoples Liberation Army (APLA) soldiers killed or seriously injured in combat were not viewed as victims of gross violations of human rights as defined by the Act. This is consistent with the position taken in the submissions made to the Commission by the NP, FF, the South African National Defence Force (SANDF) and the ANC.
- b Those combatants who were killed or seriously injured while they were unarmed or out of combat, executed after they had been captured, or wounded when they clearly could have been arrested were held to be victims of gross violations of human rights, and those responsible were held accountable.
- c In cases where the Commission could not determine whether a combatant was out of combat, and therefore regarded as a protected person, it followed the precedent set by international humanitarian law. The Commission gave the benefit of the doubt to people killed or seriously injured in uncertain circumstances and found them to be victims of gross violations of human rights.
- d Conscripted soldiers in the SADF were defined as combatants, even where the system of conscription obliged them to perform military service against their will, threatening heavy penalties if they did not do so. Like all combatants, they may have qualified as victims of a gross violation of human rights in certain circumstances, such as being subjected to torture or killed when injured.

Victims of the armed conflict

103 Soldiers on either side of the political divide, whether they were permanent force soldiers, conscripts or volunteers, as well as their families and loved ones, were, of course, victims in a more general sense. They were victims of the

armed political conflict of the past and their deaths, injuries and losses should be remembered and mourned.

- 104 In a number of cases that came before the Commission, however, the decision was more complex.
- 105 In respect of the first consideration - namely, whether the person was a member of an "organised force ... under a command responsible to [a] Party to the conflict"¹⁸ - the Commission was faced with the problem of how to categorise members of a variety of more or less organised armed groupings. These ranged from relatively well to poorly organised self-defence units (SDUs), self-protection units (SPUs) and vigilante groupings, under varying degrees of control by the ANC, the IFP, the state or other political formations. Some units were well trained and ostensibly under military control, although at times they operated on their own initiative. Others were little more than bands of politically motivated youth, acting on example and exhortation. Many SDUs, for example, were 'acknowledged' by MK, and even given some weapons and training, but were far from its chain of command.
- 106 The Commission had great difficulty in dealing with these cases. In the end, given the lack of information on the degree of control and the nature of the combat situation, it decided to employ the narrow definition of combatants. This meant that, in general, cases involving members of the above organisations were treated in the same way as non-combatants (as described above). However, where clear evidence emerged, on a case-by-case basis, of direct military engagement by members of these groupings, they were regarded as combatants.
- 107 A second difficulty arose around the question of whether members of the SAP and of other armed forces (such as the SADF and homeland defence forces) were in or out of combat when called upon to perform policing duties in the townships (the word used to describe residential areas for people classified as black). Further, should those who killed or injured police in the townships be regarded as in or out of combat? In general, the Commission did not treat these as combat situations, although it remained open to treating specific cases as combat situations where there was sufficient evidence to do so.

¹⁸ *Additional Protocol 1*, Article 43, para 1.

108 Thus, the Commission made a conscious decision to err on the side of inclusivity – finding that most killings and serious injuries were gross violations of human rights rather than the result of the legitimate use of force. Where the evidence of a combat situation was clear, however, the traditional laws of war were applied.

■ MAKING FINDINGS OF GROSS VIOLATIONS OF HUMAN RIGHTS

109 As the Commission embarked on the road of seeking to restore the dignity of victims through extensive statement taking and public hearings, it was confronted with the sometimes difficult task of interpreting the categories of acts contained in the definition of gross violations of human rights, and of formulating criteria to determine the ‘political’ motivation of these acts of killing, torture, abduction and severe ill treatment.

Torture and abduction

110 ‘Torture’ and ‘abduction’ were relatively easy to define. The following internationally accepted definition of torture guided the Commission in its work:

The intentional infliction of severe pain and suffering, whether physical or mental, on a person for the purpose of (1) obtaining from that or another person information or a confession, or (2) punishing him for an act that he or a third person committed or is suspected of having committed, or (3) intimidating him or a third person, or (4) for any reason based on discrimination of any kind. Pain or suffering that arises only from, inherent in, or incidental to, a lawful sanction does not qualify as torture.¹⁹

111 ‘Abduction’ was defined as the forcible and illegal removal or capturing of a person. This definition did not include arrests and detentions that satisfied universally recognised international human rights standards, nor the capturing of an enemy soldier in a situation of armed conflict. It was a category applied in the majority of cases where people ‘disappeared’ after having last been seen in the custody of the police or of other persons who were using force.

19 Article 1(1), Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Killing

- 112 In defining the category of 'killing', some difficulties were presented by the killing of combatants. The Commission's position in this regard is discussed earlier in this chapter. Many killings reported to the Commission were of people described as innocent bystanders caught in the crossfire. These were found to be victims of gross violations of human rights if the other conditions were fulfilled.
- 113 The Commission considered the executions of activists or other persons for politically-motivated crimes both within the established legal system and in other settings (for example, in 'peoples' courts', or in tribunals or summary hearings conducted by the liberation movements). After considerable debate, the Commission agreed to consider all such executions, whether carried out by the state or the liberation movements, as gross violations of human rights. This decision was taken in the light of the need to promote a national and international human rights culture. It also took into account the lack of legitimacy of the legal system and the laws of the time, as well as the absence of minimal due process protections and proper forums of adjudication.

Severe ill treatment

- 114 'Severe ill treatment' is not a term that is recognised either in South African or in international law, although South African law recognises concepts such as grievous bodily harm and ill treatment. Both South African constitutional law and international law do, however, recognise cruel, inhuman, or degrading treatment or punishment, which is sometimes colloquially referred to as ill treatment.
- 115 Severe ill treatment can be broadly defined.²⁰ The legislators included this category to give the Commission some discretion or flexibility in determining the breadth of the mandate. In defining severe ill treatment, the Commission was mindful of the general principle of legal interpretation which holds that terms found in sequence are presumed to be similar in kind. In other words, the acts constituting 'severe ill treatment' were intended to be interpreted as similar in degree to other acts described (that is, killing, torture, and abduction). The

²⁰ Generally, human rights prohibitions are defined broadly rather than narrowly. See, for example, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', (G.A. res. 43/173, annex, 43 UN GAOR Supp (No. 49) at 298, UN Doc. A/43/49 (1988)). Principle 6 holds that the prohibition against cruel, inhuman, or degrading treatment or punishment should be interpreted "so as to extend to the widest possible protection of abuses."

Commission also examined similar concepts in South African and international law to provide contextual support for a working definition. The international prohibition against cruel, inhuman, or degrading treatment or punishment, for example, clearly encompasses a broader category of violations than that intended by severe ill treatment.²¹ The category of ill treatment found in South African law is also clearly broader in scope than severe ill treatment.²² The Commission's definition of severe ill treatment was thus designed to include the extreme acts of "cruel, inhuman, or degrading treatment" under international law, and ill treatment under South African law.

116 In the light of these considerations, the following definition of severe ill treatment was adopted:

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 act or omission and the nature of the victim.

117 Whether an act or omission constituted severe ill treatment was thus determined on a case-by-case basis²³. The Commission determined that, in order to qualify as severe ill treatment, an act should meet the general criteria that apply to all gross violations of human rights.²⁴

118 In addition, the following factors were to be taken into account in determining whether particular suffering or hardship was severe: first, duration (the longer the suffering or hardship lasted, the more easily it qualified as severe); second, physical or mental effects (the more serious and permanent the physical or mental effects, the more severe the treatment); third, the age, strength and state of health of the victim. The very young and the very old, the weak and the infirm required less suffering or hardship to meet the criteria of severe. These criteria

21 In a memorandum to the parliamentary Portfolio Committee on Justice, the Chief State Law Adviser defined severe ill treatment as 'extreme maltreatment or cruelty.' This narrowing of the scope of severe ill treatment is not inconsistent with the generally broad definition of human rights prohibitions. The Commission was not created to prevent or prohibit all contemporary violations of human rights on an ongoing basis, but to analyse and describe a particular subset of human rights abuses that occurred in the past.

22 In determining the scope of the prohibition against inhuman or degrading treatment, the European Court of Human Rights has noted that there are certain acts of violence that do not reach the minimum level of severity necessary to fall under the prohibition. Thus certain rough treatment of prisoners in custody, such as a few slaps or blows of the hand to the head or face would not be prohibited and do not qualify as severe ill treatment. (However, repeated blows to the head resulting in severe injury would clearly fall under the prohibition of both cruel, inhuman, or degrading treatment and severe ill treatment). See European Commission on Human Rights Appl. No. 5310/71; 1976 Yearbook, European Convention on Human Rights 512. See also Denmark, France, Norway, Sweden and Netherlands v Greece (1969) 12 Yearbook 501 (European Commission of Human Rights), and Ireland v United Kingdom, Opinions of 1976, at pp. 388-389 (Commission opinion of 25 January 1976).

23 This case-by-case approach with an emphasis on context is, in fact, the approach taken by South African courts with respect to 'illtreatment'. See *S v Lewis*, 1987 (3) SA 24 (C) (Brennan, J.) where it was argued that severe is a relative concept, meaning more severe than the circumstances warrant.

24 See above definition of gross violations of human rights.

were interdependent - the more one criterion was satisfied, the less relevant were the others. In other words, a severe beating of a sick, elderly person might have qualified as severe ill treatment even though the beating lasted less than a minute.

- 119 By applying the above criteria, the following acts were regarded as constituting severe ill treatment:
- a rape and punitive solitary confinement;
 - b sexual assault, abuse or harassment;
 - c physical beating resulting in serious injuries;
 - d people shot and injured during demonstrations;
 - e burnings (including those caused by fire, petrol, chemicals, and hot liquid);
 - f injury by poison, drugs or other chemicals;
 - g mutilation (including amputation of body parts, breaking of bones, pulling out of nails, hair, or teeth or scalping);
 - h detention without charge or trial;
 - i banning or banishment (a punishment inflicted without due process, consisting (a) of the restriction of a person by house arrest, prohibition from being in a group, prohibition from speaking in public or being quoted, or (b) of the enforced transfer of a person from one area to another without the right to leave it);
 - j deliberate withholding of food and water to someone in custody with deliberate disregard to the victim's health or well-being;
 - k deliberate failure to provide medical attention to ill or injured persons in custody;
 - l the destruction of a person's house through arson or other attacks which made it impossible for the person to live there again.

120 This list is illustrative and not exhaustive. It consists primarily of acts that have been generally recognised as prohibited under international law. While the above acts and omissions would normally qualify as severe ill treatment, individual cases may not, in fact, have met all the criteria of the definition above and thus may not have qualified as severe ill treatment.

■ POLITICAL CONTEXT AND MOTIVATION

121 To implement its mandate, the Commission had, furthermore, to determine the ‘political motive’ of the acts of torture, abduction, killing and severe ill treatment which “emanated from the conflicts of the past” (section 1(1)(x), the Act). Given the complexity of the conflicts that occurred in the past and the fact that the enforcement of apartheid legislation affected every sphere of society, the political nature of specific acts was hard to define.

122 In interpreting this part of the definition of gross human rights violations, the Commission was guided by the definition of an “act associated with a political objective” (section 20(2) and (3)). However, it also went further and employed the less restrictive notion of ‘political motive’ (section 1(1)(x)).

123 The framework applied in implementing the political requirement was that a violation of human rights within the prescribed period was found to constitute a gross violation of human rights if it was advised, planned, directed, commanded, ordered or committed by:

- a any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of that organisation or movement, in furtherance of a political struggle waged by that organisation or movement (section 20(2)(a)). This included not only membership of or support for political organisations like the PAC or the ANC, but also membership of youth and community-based organisations. Trade unions were also included in this description (given the suppression of purely political organisations and the resultant political role that unions played), as was general resistance to the previous state through, for example, rent boycotts.
- b any employee of the state (or any former state) or any member of the security forces of the state (or any former state) in the course and scope of his or her duties and directed against a publicly known political organisation or

liberation movement engaged in a political struggle against the state (or former state) or against any members or supporters of such organisation or movement or any person in furtherance of a political struggle. The act in question must have been committed with the objective of countering or otherwise resisting the said struggle (section 20(2)(b)).

124 Whether these violations “emanated from the conflicts of the past” was decided with reference to the following criteria:

- a the context in which the violation took place, and in particular whether it occurred in the course of or as part of a political uprising, disturbance or event, or in reaction thereto (section 20(3)(b)), for example, protests, ‘stay aways’, strikes and demonstrations;
- b the objective being pursued, and in particular whether the conduct was primarily directed at a political opponent or state property or personnel or against private property or individuals (section 20(3)(d));
- c whether it was the result of deliberate planning on the part of the state (or former state) or any of its organs, or on the part of any political organisation, liberation movement or other group or individual (section 4(a)(iv)).

125 In a number of cases that came before the Commission, it was difficult to apply this framework. These included cases of the following types:

Labour conflicts

126 In the case of gross violations of human rights primarily related to labour conflicts (and not to the more narrowly defined political conflicts of the past), it was possible to differentiate further between:

- a those which fell outside the Commission’s mandate because, on closer examination, there was no clear political context. Typical of this type were cases relating to the abuse of farm workers;
- b those that fell inside the mandate because a deeper probe revealed that the context was clearly political. For example, where a labour union linked to a specific political organisation was used to attack workers from a union linked

to another political organisation (as in the Durnacol coal mine conflicts in Northern KwaZulu-Natal in 1990), or where a labour-related conflict became the basis for clear political protest (as in Saldanha in 1987), or many actions in the course of trade union activity. The banning of political organisations often made trade unions the vehicles through which political struggles were waged.

Racism

- 127 There were cases in which people were victims of racist attack by individuals who were not involved with a publicly known political organisation and where the incident did not form part of a specific political conflict. Although racism was at the heart of the South African political order, and although such cases were clearly a violation of the victim's rights, such violations did not fall within the Commission's mandate.
- 128 Cases which were interpreted as falling inside the Commission's mandate included instances where racism was used to mobilise people through a political organisation as part of their commitment to a political struggle, or where racism was used by a political organisation to incite others to violence. Examples of these were instances when white 'settlers' or farmers were killed by supporters of the PAC or the ANC, or where black people were killed by supporters of white right-wing organisations.

Criminality

- 129 These included cases that appeared to be criminal but which had a strong political overlay. Classic examples were many of the violations committed by 'special constables'²⁵ while engaging in unlawful activities or off-duty harassment of local residents. It could be argued that these were criminal and not political acts and therefore fell outside the mandate. The Commission's response was to view these acts within their political context - the nature, purpose and function of this kind of police force had been to institute a permanent armed presence. Clearly, the violations and the patterns of violations that resulted from deploying these poorly trained, politicised and armed people in communities should have been foreseen by those who were behind this contra-mobilisation force. Unless acts committed were clearly aberrations - for example, shooting the owner of a *shebeen*, or raping someone in circumstances which indicated that it was a random crime - the Commission concluded that these acts were politically motivated.

²⁵ Nicknamed *kitskonstabels* (instant constables) because they were admitted to the police after a crash course.

- 130 These also included acts by so-called 'bad apples' within the security forces; in other words, it was claimed that certain acts had fallen outside the duties and orders given to, for example, security police based at Vlakplaas. In some cases, there were disputes between former state agents and former politicians about whether these acts were reasonable interpretations of deliberately vague, unwritten orders to 'deal firmly with the unrest', to 'do what has to be done' and so on. In such cases, the Commission gave the benefit of the doubt to victims and included them in its mandate where an interpretation of such an order was reasonable, taking into account all the facts and circumstances. Many of these acts were clearly criminal. However, the fact that they took place over a long period and that little or no action was taken against these employees of the state, gave the Commission grounds to regard them as political. By failing to act, the state condoned these 'private' acts, thus neglecting its duty to protect its citizens against crime.
- 131 These also included 'third force' related actions, for example, drive-by shootings, train violence, and some manifestations of the taxi violence and similar events. Even where it was not possible clearly to identify the perpetrator as acting for a 'third force', victims of such incidents were found to have suffered gross human rights violations if the circumstances of the cases warranted it. All such matters were considered on a case-by-case basis.

Convictions for politically motivated acts

- 132 One of the most difficult decisions related to whether conviction and sentencing (often to unusually long periods of imprisonment) for 'public violence', or for offences defined in terms of other legislation specific either to the apartheid period or state of emergency regulations, could be considered gross violations of human rights. Factors that had to be taken into consideration were whether such provisions would now be in contravention of the South African Constitution, whether the severity of the sentence was out of proportion to the offence and whether there had been abuses in relation to due process. It was clear that the Commission could not recreate a court situation and review a conviction. Nevertheless, the Commission decided that, in certain cases, people who had been convicted in such circumstances could be deemed to have suffered a gross violation of their human rights. Again, these were dealt with on a case-by-case basis. If there was clear and compelling new evidence, the matter might be referred to the authorities for a possible re-opening of the trial. As with capital punishment, the Commission's task was not to make a 'perpetrator finding' in relation to the court which had passed the sentence, but to decide whether or not there had been a gross violation of human rights.

■ CLOSED LIST OF VICTIMS

- 133 The decision to establish a finite list of victims was taken fairly late in the process of gathering information about violations. Initially, in keeping with the spirit of inclusivity that governed the work of the Commission, it was felt that all victims of gross violations of human rights that had been shown to have taken place should be considered.
- 134 As the work of taking statements and investigating allegations progressed, however, it became increasingly clear that there would be no value in simply handing the government a list which included a broad category of unidentified persons for consideration as victims deserving of reparations.
- 135 After a great deal of discussion, it was acknowledged that the Commission had the capacity to corroborate only those statements that it had actually received. There was, moreover, an inherent justice in dealing with the statements of those who had taken the trouble to approach the Commission to make a statement. After all, the Commission had made considerable efforts to reach all parts of the country and to disseminate information on how to make a statement. Those who had chosen not to do so should not, therefore, be included. It was recognised, however, that some had elected not to make statements as a matter of political choice, a position that was respected.
- 136 Furthermore, it would have been unrealistic to give the government what would, in effect, have been an open-ended list and, on this basis, to expect the state to make a commitment to paying reparations. The Commission resolved, therefore, to confine the number of victims eligible for reparations to three areas:
- a victims who personally made statements to the Commission;
 - b victims named in a statement made by a relative or other interested person (for example a colleague, friend or neighbour); in other words, statements made on behalf of and in the interests of specific persons.
 - c victims identified through the amnesty process.

■ WHO SHOULD BE HELD ACCOUNTABLE?

- 137 The Commission was obliged to identify all persons, authorities, institutions and organisations involved in gross violations of human rights. This meant that it had to go beyond the investigation of those that had actually committed gross violations of human rights and include those who had aided and abetted such acts. This is consistent with the definition of gross violations of human rights, which includes attempts, conspiracy, incitement, instigation, command or procurement to commit such acts.
- 138 The Commission based its conclusions on the evidence brought before it, firstly by people who made statements concerning gross violations of human rights, and secondly, by those who applied for amnesty. It also drew on the Investigation Unit's inspections of inquest records, court records, prison and police registers and on corroborative evidence produced by witnesses. Research into historical documentation produced additional information, and submissions to the Commission, especially from political parties, shed further light. The effort to apportion responsibility for planning, commanding, inciting and so on is discussed in a later chapter.
- 139 Individual responsibility could be laid at the door of specific perpetrators of abuses only once several factors had been taken into account. These included the question of self defence, of proportionality and, in several well-known cases, the doctrine of common purpose.

Accountability: legitimate self defence

- 140 A recent Constitutional Court judgement states that:

*Self-defence is recognised by all legal systems. Where a choice has to be made between the lives of two or more people, the life of the innocent is given preference over the life of the aggressor. To deny the innocent person the right to act in self-defence would deny to that individual his or her right to life.*²⁶

- 141 The right to act in self-defence means essentially that, while the use of force against another person is normally unlawful, it is justified in defence of persons, property or other legal interest against an imminent, unlawful attack, provided that the defence is directed against the attacker and is not excessive. Defence against an anticipated future attack or a completed attack is not justified.

²⁶ The State v T. Makwanyane, Case No. CCT/3/94

Defence cannot be a form of punishment or revenge.²⁷ This means that, in cases of legitimate self defence, the person who had no alternative but to kill or seriously injure a person posing an imminent threat to his or her life should not be held criminally responsible for his/her actions.

142 The legitimacy of self-defence is often difficult to establish. The task was even more difficult for the Commission, which had to deal with large numbers of cases in a limited period and, therefore, had limited information at its disposal on many specific cases.

143 Amongst the most difficult issues the Commission faced in this regard were cases involving SDUs and SPUs and conflicts between ANC- and IFP-aligned people in KwaZulu-Natal, where it was usually not clear who was 'innocent' (defending) and who was 'guilty' (attacking).

Accountability and law enforcement: exercise of police powers

144 States normally enjoy a monopoly over the legitimate use of force. Certain bodies and officials, primarily the police services, are empowered to use force to uphold the rule of law and to maintain public order. As in the case of armed conflict, however, the authority to use force to uphold domestic order is not unlimited. Generally, members of the police services are authorised to use a reasonable amount of force in proportion to the threat being addressed or the legitimate ends being pursued. Lethal force should be used only when someone's life is in imminent danger and there is no other reasonable way to control the situation.

145 These norms are captured in the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979 (Resolution 34/169). For the purposes of this part of the Commission's mandate, the most important articles are articles 1, 2, 3, 5 and 6 which state:

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

²⁷ The means must be reasonable under the circumstances; the defence must not cause more harm than that which is necessary to repel the attack. See LAWSA, vol. 6, par 38-46.

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.²⁸

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

- 146 These norms governing the use of legitimate state power are particularly difficult to apply to the period of South African history prescribed by the Commission's mandate. The large majority of people inside and outside the country increasingly rejected the legitimacy of the state, and activists fighting against apartheid were defined as criminals through the enforcement of harsh, unjust and discriminatory laws.
- 147 However, individual police officers saw it as their duty to enforce laws that many of them did not, at the time, believe to be unjust. Indeed, in the South African context, the police were given very wide powers to use lethal force through, for example, the Criminal Procedure Act. In the overwhelming majority of inquests involving allegations of excessive force, the police members involved were cleared of any misconduct. These included cases arising out of Sharpville, Soweto 1976 and the 'Trojan Horse' incidents in Athlone and Despatch, where local and international human rights organisations condemned the laws which made these acquittals possible and their uncritical application by the judiciary (see submissions on the judicial system).
- 148 Since the Commission had to decide whether specific acts by the SAP or homeland police forces constituted human rights violations and not necessarily whether they were legal or illegal in terms of the relevant domestic laws, it employed the internationally accepted principle of unnecessary or excessive force (described above). In the light of these international norms, the Commission found that, although the applicable South African laws at that time

²⁸ The Commentary on this Article states that "the use of firearms is considered an extreme measure. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender".

might not have been broken, fundamental human rights were often clearly violated. In a number of cases, the Commission was also presented with new and compelling evidence (for example corroborated statements by victims or witnesses) which strengthened the basis upon which it reached conclusions that differed from those reached at most inquests and criminal proceedings regarding police misconduct.

149 In determining whether excessive force was used, the Commission determined that it should be guided by the following considerations. First, as a body working to assist in the establishment of a culture of human rights, the Commission followed the inclusive approach to protection found in international humanitarian law. It thus interpreted human rights protections broadly to ensure maximum protection against violations. Second, since the primary duty of the police is to uphold law and order through the apprehension and arrest of those who break the law, the use of lethal force is justified only in extreme situations.

Non-state perpetrators of gross human rights violations

150 There were many cases where the Commission found that the use of force by the police was excessive and thus constituted a gross violation of human rights. There were also cases where the Commission found that violence against the police constituted a gross violation of human rights: for example, attempted killings (arson attacks when police were inside their homes) and killings of off-duty police. The latter cases were, however, fewer in number than those involving the police as perpetrators - an unsurprising result given the near monopoly of force exercised by those acting on behalf of a militarily powerful state.

151 Killings and severe ill treatment of people seen as informers or collaborators, attacks on people and places seen as part of the oppressive government and conflict between different political groupings, all formed part of the picture of gross human rights violations committed with a political motive.

Naming

152 The Act required the publication of the names of those who received amnesty in the Government Gazette. These individuals had already identified themselves as perpetrators by applying for amnesty. The Commission had therefore, to resolve which of the other perpetrators identified in the course of its work should be named in accordance with its mandate - to enquire into "the identity

of all persons, authorities, institutions and organisations” involved in gross human rights violations, as well as the “accountability, political or otherwise, for any such violation” (section 4(a)(iii), (v), the Act).

- 153 In fulfilling this part of its mandate, the Commission was again required to walk a tightrope. This time, it was faced with the tension between the public interest in the exposure of wrongdoing and the need to ensure fair treatment of individuals in what was not a court of law; between the rights of victims of gross violations of human rights to know who was responsible and the fundamentally important question of fairness to those who are accused of crimes or serious wrongdoing.
- 154 The risk of personal injury and hurt to those who are identified as perpetrators is inherent in any attempt to seek the truth through a public enquiry. This can be justified to some extent by:
- a acknowledging the public importance of the Commission’s truth-seeking role;
 - b the limited outcome of these findings (the Commission is not a court with the power to punish those identified; legal rights and obligations are not finally determined by the process);
 - c the adoption of a procedure which is fair within the context of an investigative process. (See chapters, *Legal Challenges* and *Methodology and Process*).
- 155 Given the investigative nature of the Commission’s process and the limited legal impact of naming, the Commission made findings on the identity of those involved in gross violations of human rights based on the balance of probability. This required a lower burden of proof than that required by the conventional criminal justice system. It meant that, when confronted with different versions of events, the Commission had to decide which version was the more probable, reasonable or likely, after taking all the available evidence into account.
- 156 The kinds of evidence which guided the Commission in identifying those responsible for gross violations of human rights on the basis of the balance of probability included:
- a Identification through court records, confessions, statements implicating people in police dockets, police inquests, and/or previous applications for indemnity.

- b Instances where the Commission's investigations (section 29 hearings or investigative and research work) produced a high degree of corroboration (for example, other witnesses present at the time who supported the victim's statement). An example of a 'high' level of corroboration would be a situation where a witness confirmed the identity of the actual person committing the gross violation of human rights; a 'low' level of corroboration would be where the witness confirmed the event but not the identity of the perpetrator.
- c Instances where names consistently recurred in the statements of people making allegations concerning gross violations of human rights (for example, vigilante groups). Even in such cases, perpetrators would not be named without first being sent a section 30 notice advising them that the Commission intended to name them and allowing them an opportunity to respond. This procedure applied to all instances where persons were at risk of being the subject of an adverse finding.

157 In view of the Commission's commitment to human rights, it approached the issue of naming perpetrators in a number of different ways:

- a No naming occurred where the identities of individuals and institutions involved were unclear.
- b In many cases, where the Commission had insufficient information to send out section 30 notices (see chapters on *Legal Challenges* and *Methodology and Process*) to persons allegedly implicated in gross violations of human rights, such alleged perpetrators were not named.
- c Institutions but not individuals were named where only the institution could be identified. In addition, only the institution was named where the identities of both individuals and institutions were clear, but where it was not possible to verify or clearly determine excessive force or illegitimate claims of self defence. In these situations, it was important to protect the accused individual against potentially unfair accusations.
- d Naming of both individual(s) and institution(s) occurred where sufficient evidence was available to make a finding on the balance of probability and after completion of the correct procedure. This was not a finding of (legal) guilt, but of responsibility for the commission of a gross violation of human rights.

■ CONCLUSION

- 158 This chapter has provided an overview of the historical and legislative origins, as well as the objectives and functions of the Commission. More importantly, it has outlined the Commission's interpretation of its mandate. This was, in many ways, a difficult and highly contested arena, and the resultant interpretation was the result of many hours of debate and careful consideration.
- 159 In subsequent volumes of this report, the mandate is applied to a range of individual cases of alleged gross violations of human rights.

■ APPENDIX: A CRIME AGAINST HUMANITY²⁹

- 1 It has been stated that the Commission - as part of the international human rights community - affirms its judgement that apartheid, as a system of enforced racial discrimination and separation, was a crime against humanity. The recognition of apartheid as a crime against humanity remains a fundamental starting point for reconciliation in South Africa. At the same time, the Commission acknowledges that there are those who sincerely believed differently and those, too, who were blinded by their fear of a Communist 'total onslaught'.
- 2 This sharing of the international community's basic moral and legal position on apartheid should not be understood as a call for international criminal prosecution of those who formulated and implemented apartheid policies. Indeed, such a course would militate against the very principles on which this Commission was established.³⁰
- 3 It is important to note that the definition of what constitutes a crime against humanity has evolved considerably since it was first applied after World War II during the Nuremberg trials. There is still some debate about certain technical aspects of this definition. However, there is almost total unanimity within the international community that apartheid as a form of systematic racial discrimination constituted a crime against humanity. Given the confusion in public debates in South Africa surrounding the definition of 'crimes against humanity', it is important to state that a finding of a crime against humanity does not necessarily or automatically involve a finding of genocide. The latter involves conduct "with intent to destroy, in whole or in part, an ethnic or racial group" as required by Article 1 of the Genocide Convention of 1948.³¹

29 The information contained in this appendix has been enhanced through comments by John Dugard, Professor of International Law, University of the Witwatersrand. See also [Memorandum of law in support of concluding that apartheid is a crime against humanity](#), submission to the Truth and Reconciliation Commission by Lowenstein International Human Rights Law Clinic of Yale Law School, Lawyers Committee for Human Rights and Catherine Admay, Abdullahi An-Na'im, Philip Alston, M. Cherif Bassiouni, Thomas Buergenthal, William S. Dodge, John Dugard, Richard Falk, Gregory H. Fox, Thomas M. Franch, Claudio Grossman, David J. Harris, Cynthia Crawford Lichenstein, Elliot Milstein, Steven R. Ratner, Anne-Marie Slaughter, Ronald C. Slye, Henry Steiner, Ralph G. Steinhardt, Johan D. van der Vyver and Richard J. Wilson.

30 See chapter on *Concepts and Principles*. There was no call for trials by the international community during or after the peaceful transition from apartheid to democracy between 1990 and 1994. It was recognised that the National Party had become an active participant in this transition and that the South African situation was no longer a threat or a potential threat to international peace. At former State President De Klerk's second appearance before the Commission in May 1997, the Commission placed on record its recognition of the vital role Mr De Klerk had played in the dismantling of the apartheid system. See Dugard 1997:275-6. 'Retrospective Justice and the South African Model' in *Transitional Justice and the Rule of Law in New Democracies*, Ed by AJ McAdams, Notre Dame: University of Notre Dame Press.

31 See Dugard (1997) and submission by Professor Don Foster to the Commission, May 1997.

- 4 As indicated earlier, the definition of crimes against humanity can be applied at two levels. The first level of application, namely to apartheid as a system, flows from the Commission's obligation to enquire into the causes, nature and extent of gross violations of human rights, including the antecedents and context of such violations (section 3(a)). The Commission has concluded that the nature of the conflicts in general and the causes of the violations which occurred in the course of these conflicts cannot be understood without examining the system of apartheid within which they took place.
- 5 The Commission was also required, at a second level of application, to enquire which of the specific acts constituting gross violations of human rights "were part of a systematic pattern of abuse" (section 4(a)).

Organisations, instruments and judicial decisions that declared apartheid a crime against humanity

The United Nations

- 6 The General Assembly on numerous occasions labelled apartheid a crime against humanity³².
- 7 In 1976, the United Nations Security Council unanimously stated that "apartheid is a crime against the conscience and dignity of mankind."³³
- 8 Subsequent Security Council resolutions expressed agreement with the 1976 resolution.³⁴
- 9 On 13 December 1984, the Security Council passed Resolution 556, which, in Paragraph 1, declared that apartheid is a crime against humanity³⁵.

International conventions and other instruments

- 10 Article 1 of the International Convention on the Suppression and Punishment of the Crime of Apartheid adopted by the General Assembly in 1973 stated that apartheid was a crime against humanity.

32 GA Res. 2189; GA Res. 2202; GA Res. 39/72A; GA Res. 2074.

33 Para 3 of Security Council Resolution 392 (19 June 1976) and Security Council Resolution 473 (13 June 1980).

34 See Security Council Resolutions 418 (1977), 473 (1980) and 591 (1986).

35 The Security Council declared that apartheid is a crime against humanity on several other occasions: S.C Res. 282, Resolutions and Decisions of the Security Council, 25 UN SCOR at 12 (1970); S.C Res. 311, Resolutions and Decisions of the Security Council, 27 UN SCOR at 10 (1972); S.C Res. 392, Resolutions and Decisions of the Security Council, 31 UN SCOR at 11 (1976).

- 11 The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity³⁶ stipulated that “inhuman acts resulting from the policy of apartheid are condemned as crimes against humanity”.
- 12 The 1991 Draft Code of Crimes against the Peace and Security of Mankind³⁷ specifically lists apartheid,³⁸ together with other crimes such as genocide³⁹ and exceptionally serious war crimes,⁴⁰ as crimes against the peace and security of mankind.
- 13 Although the 1996 Draft Code of Crimes against the Peace and Security of Mankind⁴¹ no longer makes specific reference to apartheid as a separate crime, it does list a set of acts that specifically constitute crimes against humanity. Article 18(f) states:

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organisation or group: ... (f) institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population.

- 14 The Preamble to the African Charter on Human and Peoples’ Rights, to which South Africa became a party in 1996, affirms that African states have a duty to:

...achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertak[e] to eliminate colonialism, neo-colonialism, apartheid [and] Zionism...

- 15 The international community is presently engaged in the establishment of a permanent International Criminal Court which will be given competence to try persons responsible for crimes against humanity. The proposed definitions of crimes against humanity encompass acts of the kind included in the Draft Code of Crimes against the Peace and Security of Mankind (1991); that is the kind of acts

36 GA Res. 2391 (XXIII), 23 UN GAOR, Supp. No 18 at 40, UN Doc. A/7218 (1968).

37 Report of the International Law Commission on its Forty-third Session, UN GAOR, 46th Session, Supp. No. 10, at 198, UN Doc. A/46/10 (1991).

38 *Ibid.* Article 20.

39 *Ibid.* Article 19.

40 *Ibid.* Article 22.

41 Report of the International Law Commission on its Forty-eighth Session, UN Doc. A/CN.4/L.522 of 31 May 1996.

committed in execution of the policy of apartheid. The proposed permanent international criminal court will not have retrospective jurisdiction, with the result that those who have committed crimes of apartheid will not fall within its jurisdiction.

The International Law Commission (ILC).

16 In its Draft Articles on state responsibility, the ILC defines an international crime as a breach of an international obligation so essential for the protection of the fundamental interests of the international community that it is recognised as a crime by that community as a whole. Among such crimes, the ILC lists slavery, genocide and apartheid⁴².

International courts

The International Court of Justice (ICJ)

17 In 1971, the ICJ asserted that:

*Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on the grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.*⁴³

18 In the Barcelona Traction Judgement, the ICJ held that:

an essential distinction should be drawn between obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, and also from the principles and rules concerning the

⁴² Report of the International Law Commission, 28th Sess., UN GAOR, 31st Sess., Supp. No. 10, UN Doc. A/31/10 (1976).

⁴³ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 ICJ at 45.

*basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law; others are conferred by international instruments of a universal or quasi-universal character.*⁴⁴

- 19 The International Criminal Tribunal for the Former Yugoslavia has recently handed down its historic first judgement. The Tribunal found a Bosnian Serb guilty of, *inter alia*, 'crimes against humanity'. The significance of this judgement is evident from the first paragraph of the ruling:

*It is the first determination of individual guilt or innocence in connection with serious violations of international humanitarian law by a truly international tribunal, the International Tribunal being the first such tribunal to be established by the United Nations. The international military tribunals at Nürnberg and Tokyo, its predecessors, were multinational in nature, representing only part of the world community. The International Tribunal was established by the Security Council of the United Nations in 1993, pursuant to resolution 808 of 22 February 1993 and resolution 827 of 25 May 1993.*⁴⁵

- 20 The judgement confirms the view in international law that apartheid is a crime against humanity:

*The customary status of the Nürnberg Charter, and thus the attribution of individual criminal responsibility for the commission of crimes against humanity, was expressly noted by the Secretary-General. Additional codifications of international law have also confirmed the customary law status of the prohibition of crimes against humanity, as well as two of its most egregious manifestations: genocide and apartheid.*⁴⁶

Specific acts classified as crimes against humanity

- 21 The Commission chose to employ for its purposes the most recent definition adopted by the International Law Commission in its 1996 Draft Code of Crimes against the Peace and Security of Mankind⁴⁷. It was satisfied that this definition reflects and incorporates many of the legal developments that have occurred since Nuremberg. Article 18 of the 1996 Code defines crimes against humanity thus:

44 Barcelona Traction Light and Power Company, Ltd. (Second Phase, Belgium v Spain), ICJ Reports 1970, p. 32.

45 Judgement of Tadic case, 7 May 1997, para 1. <http://www.un.org/icty/970507it.htm>

46 Judgement of Tadic case, 7 May 1997, para 622. <http://www.un.org/icty/970507it.htm>

47 Report of the International Law Commission, 48th Sess. (6 May – 26 July 1996) U.N. GAOR, 51st Sess., Suppl. No. 10 (A/51/10).

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organisation or group: (a) murder; (b) extermination; (c) torture; (d) enslavement; (e) persecution on political, racial, religious or ethnic grounds; (f) institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; (g) arbitrary deportation or forcible transfer of population; (h) forced disappearance of persons; (i) rape, enforced prostitution and other forms of sexual abuse; (j) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

- 22 The following brief commentary on the meaning of certain aspects of the definition allows it to be applied with greater certainty.

Systematic violations or violations on a large scale

- 23 The requirement that crimes against humanity must be committed in a systematic manner or on a large scale excludes acts which, although they are serious violations of human rights, occur in an isolated or random manner. The requirement is framed disjunctively, clearly indicating that it is not necessary for both requirements to be simultaneously satisfied. Simply, acts which occur on a large scale must occur in large numbers, while acts which occur systematically must follow a similar pattern and occur at different times and different places.
- 24 A question recently raised before the International Criminal Tribunal for the Former Yugoslavia was whether it is possible for a single act to constitute a crime against humanity. In the Tadic judgement, the Tribunal quotes with approval an earlier decision which stated that:

Crimes against humanity are to be distinguished from war crimes against individuals. In particular, they must be widespread or demonstrate a systematic character. However, as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity. As such an individual committing a crime against a single victim or a limited number of victims, might be recognised as guilty of a crime against humanity if his acts were part of the specific context identified above.⁴⁸

- 25 The Commission was in agreement with this ruling.

⁴⁸ Judgement of Tadic case, 7 May 1997, para 649. <http://www.un.org/icty/970507it.htm>

Crimes committed by a government or by any organisation or group

- 26 Earlier definitions of crimes against humanity presumed that such crimes could only be committed by a government or those acting on behalf of a government. Implicit in this approach was an assumption that only an institution with the power and resources of a government would have the capacity to commit crimes on the scale necessary to qualify as crimes against humanity. Over the past fifty years, it has become clear that certain organisations or groups outside government are capable of committing crimes on a large scale or in a systematic manner. The Commission therefore endorsed the definition of crimes against humanity contained in the 1996 ILC Draft Code of Crimes against the Peace and Security of Mankind which includes acts committed by non-state actors.

Persecution

- 27 Clause (e) of the definition of the International Law Commission adopted by the Commission reads as follows:

persecution on political, racial, religious or ethnic grounds;

- 28 In the application of this clause, the following definition of 'persecution' has been adopted:

*Action or policy adopted by a government, organisation or group leading to the infliction upon an individual of harassment, torment, oppression, or discriminatory measures, designed to or likely to produce physical or mental suffering or economic harm, because of the victim's beliefs, views, or membership in a given identifiable group (religious, social, ethnic, linguistic, etc.) or simply because the perpetrator sought to single out a given category of victims for reasons peculiar to the perpetrator.*⁴⁹

Inhumane acts

- 29 Clause (j) of the proposed definition reads as follows:

other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

49 This definition has been articulated by Bassiouni, M. C. in *Crimes against Humanity* (1992) at 317. The definition has been slightly modified so as to include actions taken by non-state actors.

- 30 The Commission has chosen to interpret this clause in the same way in which it interpreted the term 'severe ill treatment'.

Crimes against humanity: supplementary definitions from recent cases

Barbie (1988) 78 International Law Report 136 at 137 (France)

- 31 The definition of 'crime against humanity' closely follows Article 6c of the Nuremberg Charter:

persecutions on political, racial or religious grounds ... performed in a systematic manner in the name of a State practising by those means a policy of ideological supremacy, not only against persons by reason of their membership of a racial or religious community, but also against the opponents of that policy, whatever the form of their opposition.

Touvier (1992) 100 International Law Reports 337 at 351 – 352 (France)

- 32 The definition of 'crime against humanity' has two elements, one substantive, and one of specific intent. The substantive element is guided by Article 6 of the Nuremberg Charter. To satisfy the intent element, however, more than simple criminal intent or general illegality is required. One must have the actual:

intention to take part in the execution of a common plan by committing in a systematic manner, inhuman acts or persecutions in the name of a State practising a policy of ideological supremacy.

- 33 The Touvier case also supports the notion that crimes against humanity are not synonymous with war crimes.

the elements constituting crimes against humanity within the meaning of Article 6c of the Charter of the International Military Tribunal of 8 August 1945 ... are not the same as the requisite elements for war crimes within the meaning of Article 80 of the Code of Military Justice and the crime of maintaining contact with the enemy laid down by Article 70 of the Criminal Code.⁵⁰

⁵⁰ See p. 348.

Regina v Finta (1989) 82 International Law Reports 424 at 431 (Canada)

- 34 The definition of crimes against humanity, as contained in section 6(1.96) of Canada's criminal code, means:

murder, extermination, enslavement, deportation, persecution, or any other inhumane act or omission that is committed against any civilian population or any identifiable group of persons, whether or not it constitutes a contravention of the law in force at the time and in the place of commission, and that, at that time and in that place, constitutes a contravention of customary international law or conventional international law or is criminal according to the general principles of law recognised by the community of nations.

- 35 This supports the notion that the apartheid system in South Africa was a crime against humanity, in spite of the fact that it was perfectly legal within that country, because it contravened international law.

Concepts and Principles

■ INTRODUCTION

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 generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and the legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for ubuntu but not 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...¹

- 1 The previous chapter emphasised the importance of viewing the Commission as part of the broader national process of ‘building a bridge’ between a deeply divided past of “untold suffering and injustice” and a future “founded on the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all”. This chapter seeks to clarify the concepts and principles underlying the Commission’s work. Judge Richard Goldstone highlighted the importance of these concepts and principles thus:

¹ Postamble to the Interim Constitution (Act no 200 of 1993), after section 251.

*On the one hand, there is the vital legal underpinning of the [Truth and Reconciliation Commission] without which such a commission could not succeed and would not exist. On the other hand, there are philosophical, religious and moral aspects without which the commission will be an empty legal vessel which would do a great deal of harm and achieve nothing*²

- 2 The Commission was founded in the belief that, in order to build the “historic bridge” of which the interim Constitution speaks, one must establish as “complete a picture as possible” of the injustices committed in the past. This must be coupled with a public, official acknowledgement of the “untold suffering” which resulted from those injustices. It is to these goals that the Commission must contribute.
- 3 The task assigned to the Commission proved to be riddled with tensions. For many, truth and reconciliation seemed separated by a gulf rather than a bridge. Moreover, in the process of implementing its obligation to consider amnesty for perpetrators (as required by the interim Constitution), the concept of justice also came under constant scrutiny. “We’ve heard the truth. There is even talk about reconciliation. But where’s the justice?” was a common refrain.
- 4 Before explaining how the Commission dealt with the overlapping and apparently contradictory goals of truth, reconciliation and justice, it is necessary to highlight two more general sources of tension.

The public nature of the Commission

- 5 A distinctive feature of the Commission was its openness to public participation and scrutiny. This enabled it to reach out on a daily basis to large numbers of people inside and outside South Africa, and to confront them with vivid images on their television screens or on the front pages of their newspapers. People saw, for example, a former security police officer demonstrating his torture techniques. They saw weeping men and women asking for the truth about their missing loved ones. The media also helped generate public debate on central aspects of South Africa’s past and to raise the level of historical awareness. The issues that emerged as a consequence helped the nation to focus on values central to a healthy democracy: transparency, public debate, public participation and criticism.

² Judge Richard Goldstone in *Healing of a Nation*, Eds. Alex Boraine and Janet Levy, Cape Town: Justice in Transition, 1995, p 120.

- 6 The sword wielded by the media is, however, double-edged. The fact that much of the Commission's work was transmitted by the media meant that public perceptions were formed by what people saw on television, heard on the radio or read in the newspapers. Thus, while the 'soundbites', headlines and photographs of what happened in the public domain contributed significantly to the work of the Commission, they also had the effect of making aspects of its work more vulnerable to criticism. For example, the Commission was accused of accepting untested allegations, primarily because the activities that led to its findings (investigation, research, enquiries in closed hearings and the actual decision-making process by commissioners) were less visible. Similarly, the first steps towards reconciliation, such as private encounters between victims and perpetrators or pre- and post-hearing community visits by commissioners, usually took place out of sight of the media. Although, clearly, the envisaged reconciliation could not be accomplished in the lifespan of the Commission, a number of serious initiatives were taken to promote it.

The Commission's three sub-committees

- 7 Many people found it difficult to understand how the work of the three separately functioning subcommittees, with apparently contradictory aims, could contribute to the overall goals of promoting national unity and reconciliation.
- 8 A major source of conflict in public debate concerned the question of amnesty. As already mentioned, the decision to grant amnesty was a feature of the negotiated political settlement and became a central responsibility of the Commission. Many participants, however, saw a contradiction between the work of the Human Rights Violations Committee, which devoted its time and resources to acknowledging the painful experiences of victims of gross violations of human rights, and the work of the Amnesty Committee, which freed many of the perpetrators of these violations from prosecution (and from prison) on the basis of full disclosure.
- 9 This tension was deepened by the fact that the Amnesty Committee was given powers of implementation, while the Reparation and Rehabilitation Committee could, by and large, only make recommendations. Perpetrators were granted immediate freedom. Victims were required to wait until Parliament had accepted or rejected the recommendations of the Commission.

■ PROMOTING NATIONAL UNITY AND RECONCILIATION

- 10 The overarching task assigned to the Commission by Parliament was the promotion of national unity and reconciliation. Debates within and outside the Commission demonstrated that the interpretation of this concept was highly contested.³ While there is no simple definition of reconciliation, the following essential elements emerged.

Reconciliation is both a goal and a process

- 11 When introducing the Promotion of National Unity and Reconciliation legislation to Parliament, the Minister of Justice said:

[This is] a Bill which provides a pathway, a stepping stone, towards the historic bridge of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and commence the journey towards 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.

Its substance is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: ‘...for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights violations...and a legacy of hatred, fear, guilt and revenge’.

- 12 The Minister of Justice made it clear that the ‘journey’ itself must be a conciliatory one. Thus, reconciliation is both a goal and a process.

Different levels of reconciliation

- 13 The work of the Commission highlighted the many different levels at which reconciliation needs to take place. Some of these levels, and the complex links between them, are illustrated in the chapter on *Reconciliation*. They include:

³ See, for example, the transcripts of the series of four public meetings organised by the Commission on the theme of reconciliation.

Coming to terms with painful truth

- 14 In some cases, especially where the remains of loved ones were exhumed and dignified reburials were made possible, the Commission's disclosure of truth helped people to reach 'closure', to make peace with what had happened. However, the reconciliation of victims with their own pain is a deeply personal, complex and unpredictable process. Knowing the complete picture of past gross human rights violations, or even the facts of each case, may not lead to reconciliation. Truth may, in fact, cause further alienation.
- 15 The Commission's work, in particular that of the Amnesty Committee, also illustrated the difficulties faced by perpetrators (with varying degrees of responsibility for past violations) in coming to terms with their guilt and shame.

Reconciliation between victims and perpetrators

- 16 The contribution of the Commission to reconciliation between specific victims and perpetrators was necessarily limited (by its time frame, mandate and resources). In some cases, however, the Commission assisted in laying the foundation for reconciliation. Although truth does not necessarily lead to healing, it is often a first step towards reconciliation. Father Michael Lapsley, who lost both arms and an eye in a near fatal security police parcel bomb attack in Harare in 1990, told the Commission: "I need to know who to forgive in order to endeavour to do so".

Reconciliation at a community level

- 17 The effects of human rights violations were multiple, inflicting lasting damage on social relations. At a national level, the main dimension of the conflict was between the oppressed black population and the former state. However, within and between communities, conflict played itself out in various, often insidious, ways. Internal divisions occurred between the young and the old, men and women, neighbours, as well as between different ethnic and racial groups. All these aspects required attention.
- 18 In some cases, the Commission was able to assist in the process of reconciliation at the micro-level. In others, local conflicts may have been additionally complicated by the different levels of recognition and priority brought into being by the Commission itself.

Promoting national unity and reconciliation

- 19 The experiences of the Commission illustrated the particular difficulty of understanding the meaning of unity and reconciliation at a national level. They also highlighted the potentially dangerous confusion between a religious, indeed Christian, understanding of reconciliation, more typically applied to interpersonal relationships, and the more limited, political notion of reconciliation applicable to a democratic society.
- 20 Many people within and outside the Commission warned against expecting too much, too soon from the reconciliation process at a national level. They were concerned about the imposition of a notion of reconciliation - associated with contrition, confession, forgiveness and restitution – on a diverse and divided society attempting to consolidate a fragile democracy. They argued that the most the Commission could and should hope for, at least in the short term, was peaceful coexistence. Thus, a healthy democracy does not require everyone to agree or become friends. However, a culture of human rights and democracy does require respect for our common human dignity and shared citizenship, as well as the peaceful handling of unavoidable conflicts.
- 21 Others cautioned against accepting too limited a notion of reconciliation. They argued that the Commission should not underestimate the vital importance of apologies - by individuals, representatives of institutions and political leaders - coupled with forgiveness by those who had been violated. They saw such gestures as important in the public life of a nation attempting to “transcend the divisions and strife of the past...leaving a legacy of hatred, fear, guilt and revenge”. In the chapter on *Reconciliation*, there are many extracts from testimonies which illustrate these different perspectives.
- 22 The following aspects of the Commission’s contribution to the promotion of national unity and reconciliation need to be noted:
- a The democratic, transparent, inclusive process of the Commission and the extensive public debates surrounding its work attempted to nurture and promote the central values of open debate and a democratic culture.
 - b The Commission made significant progress in establishing “as complete and reliable a picture as possible of past violations”.

- c The Commission facilitated the official, public acknowledgement of these violations. In so doing, it sought to restore the dignity of those who had suffered.
- d By holding accountable not only individuals, but also the state and other institutions, and by making recommendations aimed at preventing future violations, the Commission sought to help restore trust in these institutions. Such trust is necessary for the functioning of a healthy democratic system.
- 23 Reconciliation is needed, not only at an individual level, nor only between individuals, but also within and between communities and the nation as a whole. Another very important dimension of reconciliation was emphasised by an unidentified thirty-nine year old man from Bongolethu, Oudtshoorn:

What does reconciliation mean for you as a young person? Reconciliation means people forgiving each other and working together as one nation. It does not matter as to what one has done to another in the past. Well, at some stages it does matter...

What would be ideal reconciliation for you? That is that the many people who do not have education are reached. Reconciliation starts with building up these people who are uneducated. Employ those who are unemployed. Train those who are not trained. Develop those who are not developed.⁴

Reconciliation and redistribution

- 24 The broad challenge of reconciliation between those who benefited from the past and those who continue to be disadvantaged by past discrimination is central to the vision contained in the postamble to the interim Constitution.
- 25 Gross socio-economic inequalities are the visible legacy of the systematic, institutionalised denial of access to resources and development opportunities on grounds of colour, race and sex. But they are also the less tangible consequences of centuries of dehumanising devaluation of 'non-Europeans', 'non-whites' and 'non-males'. The *Mandate* chapter explains the limited focus of the work of the Commission in this broader context.
- 26 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

⁴ This is an extract of an interview that was read into the record of the post-hearing follow-up programme in Oudtshoorn, 19 February 1997.

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 of the spirit of *ubuntu* (see below). 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.

- 27 Given the magnitude of this exercise, the Commission's quest for truth should be viewed as a contribution to a much longer-term goal and vision. Its purpose in attempting to uncover the past had nothing to do with vengeance; it had to do, rather, with helping victims to become more visible and more valuable citizens through the public recognition and official acknowledgement of their experiences. In the words of Ms Thenjiwe Mtintso, former chairperson of the Commission on Gender Equality and currently Deputy Secretary General of the ANC, at the opening the Commission's hearing on women in Johannesburg, 29 July 1997:

[This hearing] is the beginning of giving the voiceless a chance to speak, giving the excluded a chance to be centred and giving the powerless an opportunity to empower themselves.

- 28 In addition, by bringing the darker side of the past to the fore, those responsible for violations of human rights could also be held accountable for their actions. In the process, they were given the opportunity to acknowledge their responsibility to contribute to the creation of a new South African society.

■ TRUTH

- 29 But what about truth – and whose truth? The complexity of this concept also emerged in the debates that took place before and during the life of the Commission, resulting in four notions of truth: factual or forensic truth; personal or narrative truth; social or 'dialogue' truth (see below) and healing and restorative truth.

Factual or forensic truth

- 30 The familiar legal or scientific notion of bringing to light factual, corroborated evidence, of obtaining accurate information through reliable (impartial, objective) procedures, featured prominently in the Commission's findings process (see chapter on *Methodology and Process*).
- 31 The Act required that the Commission "prepare a comprehensive report which sets out its activities and findings, *based on factual and objective information and evidence* collected or received by it or placed at its disposal" (emphasis added). In pursuing this factual truth, the Act required the examination of two essential areas.
- 32 The first of these related to findings on an individual level. The Commission was required to make findings on particular incidents and in respect of specific people. In other words, what happened to whom, where, when and how, and who was involved? In order to fulfil this aspect of its mandate, it adopted an extensive verification and corroboration policy to make sure that findings were based on accurate and factual information (see chapter on *Methodology and Process*).
- 33 The second area related to findings on the contexts, causes and patterns of violations. In this respect, the Commission was required to report on the broader patterns underlying gross violations of human rights and to explore the causes of such violations. To do this, it had to analyse, interpret and draw inferences from the information it received. In this regard, it became necessary for the Commission to adopt a social scientist's approach - making use of the information contained in its database and from a range of secondary sources. However, all truth commissions have their limitations. In the words of Michael Ignatieff:

All that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse. In Argentina, its work has made it impossible to claim, for example, that the military did not throw half-dead victims in the sea from helicopters. In Chile, it is no longer permissible to assert in public that the Pinochet regime did not dispatch thousands of entirely innocent people...⁵

- 34 Applying Ignatieff's notion of reducing the number of lies, one can say that the information in the hands of the Commission made it impossible to claim, for

5 From 'Articles of Faith', *Index on Censorship* (5) 1996, p 113.

example, that: the practice of torture by state security forces was not systematic and widespread; that only a few 'rotten eggs' or 'bad apples' committed gross violations of human rights; that the state was not directly and indirectly involved in 'black-on-black violence'; that the chemical and biological warfare programme was only of a defensive nature; that slogans by sections of the liberation movement did not contribute to killings of 'settlers' or farmers; and that the accounts of gross human rights violations in the African National Congress (ANC) camps were the consequence of state disinformation. Thus, disinformation about the past that had been accepted as truth by some members of society lost much of its credibility.

Personal and narrative truth

- 35 At a hearing of the Commission in Port Elizabeth on 21 May 1996, Archbishop Tutu said:

This Commission is said to listen to everyone. It is therefore important that everyone should be given a chance to say his or her truth as he or she sees it...

- 36 By telling their stories, both victims and perpetrators gave meaning to the multi-layered experiences of the South African story. These personal truths were communicated to the broader public by the media. In the (South) African context, where value continues to be attached to oral tradition, the process of story telling was particularly important. Indeed, this aspect is a distinctive and unique feature of the legislation governing the Commission, setting it apart from the mandates of truth commissions elsewhere. The Act explicitly recognised the healing potential of telling stories.⁶ The stories told to the Commission were not presented as arguments or claims in a court of law. Rather, they provided unique insights into the pain of South Africa's past, often touching the hearts of all that heard them.
- 37 By providing the environment in which victims could tell their own stories in their own languages, the Commission not only helped to uncover existing facts about past abuses, but also assisted in the creation of a 'narrative truth'. In so doing, it also sought to contribute to the process of reconciliation by ensuring that the truth about the past included the validation of the individual subjective experiences of people who had previously been silenced or voiceless. The Commission sought, too, to capture the widest possible record of people's perceptions, stories, myths and experiences. It chose, in the words of Antjie

⁶ This was highlighted in section 3 (c) of the Act, which stated that one of the objectives of the Commission was to "restore the human and civil dignity of victims by granting them an opportunity to relate *their own accounts* of the violations of which they are the victims" (emphasis added).

Krog, a South African writer and poet, “the road of... restoring memory and humanity”.⁷ It is what Oxford University historian, Timothy Garton Ash, sees as “the most promising” way – a way that offers “history lessons” as an alternative to political trials, uncovering what happened and identifying lessons for the future.⁸ As such, the Commission sought to recover parts of the national memory that had hitherto been officially ignored.

- 38 It is impossible to capture the detail and complexity of all of this in a report. The transcripts of the hearings, individual statements, a mountain of press clippings and video material are all part of an invaluable record which the Commission handed over to the National Archives for public access. This record will form a part of the national memory for generations yet to come. In this report, the Commission has tried, through a range of detailed ‘window cases’ and selections from the testimonies of many victims, to capture some part of the richness of the individual accounts heard before it.

Social truth

- 39 While narrative truth was central to the work of the Commission, especially to the hearings of the Human Rights Violations Committee, it was in its search for social truth that the closest connection between the Commission’s process and its goal was to be found.
- 40 Judge Albie Sachs, a prominent participant in the debates preceding the establishment of the Commission and now a Constitutional Court judge, made a useful distinction between what he called ‘microscope truth’ and ‘dialogue truth’. “The first”, he said, “is factual, verifiable and can be documented and proved. ‘Dialogue truth’, on the other hand, is *social truth, the truth of experience that is established through interaction, discussion and debate*”⁹ (emphasis added).
- 41 In recognising the importance of social or ‘dialogue’ truth, the Commission acknowledged the importance of participation and transparency. Its goal was to try to transcend the divisions of the past by listening carefully to the complex motives and perspectives of all those involved. It made a conscious effort to provide an environment in which all possible views could be considered and weighed, one against the other. People from all walks of life were invited to

7 Antjie Krog in *Healing of a Nation*, Eds. Alex Boraine and Janet Levy, Cape Town: Justice in Transition, 1995, 118

8 Timothy Garton Ash, ‘The Truth about Dictatorships’, *New York Review of Books*, 19 February 1998.

9 Albie Sachs in *Healing of a Nation*, Eds. Alex Boraine and Janet Levy, Cape Town: Justice in Transition, 1995, 105.

participate in the process, including faith communities, the South African National Defence Force (SANDF), non-governmental organisations (NGOs) and political parties. The public was engaged through open hearings and the media. The Commission itself was also subjected to constant public scrutiny and critique.

- 42 It is particularly important to emphasise that establishing the truth could not be divorced from the affirmation of the dignity of human beings. Thus, not only the actual outcome or findings of an investigation counted. The process whereby the truth was reached was itself important because it was through this process that the essential norms of social relations between people were reflected. It was, furthermore, through dialogue and respect that a means of promoting transparency, democracy and participation in society was suggested as a basis for affirming human dignity and integrity.

Healing and restorative truth

- 43 The preceding discussion rejects the popular assumption that there are only two options to be considered when talking about truth - namely factual, objective information or subjective opinions. There is also 'healing' truth, the kind of truth that places facts and what they mean within the context of human relationships - both amongst citizens and between the state and its citizens. This kind of truth was central to the Commission.
- 44 The Act required that the Commission look back to the past and forward to the future. In this sense, it was required to help establish a truth that would contribute to the reparation of the damage inflicted in the past and to the prevention of the recurrence of serious abuses in the future. It was not enough simply to determine what had happened. Truth as factual, objective information cannot be divorced from the way in which this information is acquired; nor can such information be separated from the purposes it is required to serve.
- 45 It is in this context that the role of 'acknowledgement' must be emphasised. Acknowledgement refers to placing information that is (or becomes) known on public, national record. It is not merely the actual knowledge about past human rights violations that counts; often the basic facts about what happened are already known, at least by those who were affected. What is critical is that these facts be fully and publicly acknowledged. Acknowledgement is an affirmation that a person's pain is real and worthy of attention. It is thus central to the restoration of the dignity of victims.

■ THE RELATIONSHIP BETWEEN TRUTH AND RECONCILIATION

- 46 It was frequently suggested that the Commission's quest for more truth and less falsehood would result in deepened divisions rather than in the promotion of national unity and reconciliation. This concern must be taken seriously, although some of the mistaken assumptions underlying (much of) this criticism must be noted.
- 47 There can be little doubt that gross violations of human rights and other similar abuses during the past few decades left indelible scars on the collective South African consciousness. These scars often concealed festering wounds that needed to be opened up to allow for the cleansing and eventual healing of the body politic. This does not mean, however, that it was sufficient simply to open old wounds and then sit back and wait for the light of exposure to do the cleansing. Nor could the Commission be expected to accomplish all the healing that was required. These basic underlying principles were expressed in the submission of Dr Leslie London, at the health sector hearing in Cape Town, 18 June 1997:

The [Health and Human Rights] Project operates with the premise that the health professions and society cannot afford to ignore the past, and that the costs of this selective amnesia, which we see so much of with regard to past human rights abuses, are enormous. It is very difficult to see how any trust within the health sector and also between the health professionals and the broader community can be achieved until the truth is disclosed.

We believe that only by fully acknowledging and understanding what took place in the professions under apartheid is it possible to achieve reconciliation in the health sector. Any apologies that are made without this understanding will fail to achieve meaningful progress in moving the health sector to a human rights culture.

And while the [Truth and Reconciliation Commission] has played an important role in stimulating this process, the real challenge that faces the health sector is for health professions to accept human rights as a fundamental responsibility. Real truth and reconciliation can only come from below, from within our institutions, and should be seen as part of a larger project to rehabilitate the health sector and build a culture of human rights within it.

- 48 Many people also saw reconciliation as an activity that could take place without tears: they felt threatened by the anger of victims. It is, however, unrealistic to expect forgiveness too quickly, without providing victims with the necessary space to air their grievances and give voice to previously denied feelings. "It would not have been even remotely decent for a non-Jewish person to have suggested to Jews that they ought to become reconciled to the Germans immediately after World War II", observed a Dutch visitor to the Commission. Relationships can only be healed over time and once feelings of hurt and anger have been acknowledged. The resistance and hostility of some victims, directed at times at the Commission itself, required understanding and respect.
- 49 At the same time, many of those who had suffered gross violations of their human rights showed a remarkable magnanimity and generosity of spirit, not only through their willingness to display their pain to the world, but also in their willingness to forgive. Such forgiveness should never be taken for granted, nor should it be confused with forgetting. The importance of respectful remembrance was clearly expressed by Mr Haroon Timol, testifying about the death in detention of Mr Ahmed Timol, at the Johannesburg hearing, 30 April 1996:

As a family what we would like to have, and I am sure many, many South Africans would like to have, is that their loved ones should never, ever be forgotten...in Ahmed's case a school in his name would be appropriate. But at the end of the day I believe that South Africans in future generations should never, ever forget those that were killed in the name of apartheid.

- 50 Many victims justifiably insisted that they were not prepared to forgive if this meant that they must 'close the book on the past', 'let bygones be bygones' or 'forget about the past and focus on the future'. Forgiveness is not about forgetting. It is about seeking to forego bitterness, renouncing resentment, moving past old hurt, and becoming a survivor rather than a passive victim.
- 51 The Commission sought to uncover the truth about past abuses. This was part of "the struggle of memory against forgetting" referred to by Milan Kundera.¹⁰ But it was, at the same time, part of the struggle to overcome the temptation to remember in a partisan, selective way; to recognise that narrow memories of past conflicts can too easily provide the basis for mobilisation towards further conflicts, as has been the case in the former Yugoslavia and elsewhere. An inclusive remembering of painful truths about the past is crucial to the creation of national unity and transcending the divisions of the past.

¹⁰ Kundera, Milan, *The Book of Laughter and Forgetting*, Penguin: Harmondsworth, 1983.

- 52 This means that one must guard against such simplistic platitudes as 'to forgive is to forget'. It is also crucial not to fall into the error of equating forgiveness with reconciliation. The road to reconciliation requires more than forgiveness and respectful remembrance. It is, in this respect, worth remembering the difficult history of reconciliation between Afrikaners and white English-speaking South Africans after the devastating Anglo-Boer/South African War (1899-1902). Despite coexistence and participation with English-speaking South Africans in the political system that followed the war, it took many decades to rebuild relationships and redistribute resources - a process that was additionally complicated by a range of urban/rural, class, and linguistic and other barriers. Reconciliation requires not only individual justice, but also social justice.

■ AMNESTY, TRUTH AND JUSTICE

- 53 The postamble of the interim Constitution states:

In order to advance such reconciliation and reconstruction [of society], amnesty shall be granted in respect of acts, omissions and offences with political objectives and committed in the course of the conflicts of the past.¹¹

- 54 The implementation of this amnesty agreement proved to be very difficult indeed:

[The granting of amnesty] is a difficult, sensitive, perhaps even agonising, balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and the need for reparations for the victims of that truth; between a correction in the old and the creation of the new. It is an exercise of immense difficulty interacting in a vast network of political, emotional, ethical and logistical considerations.¹²

- 55 Two particular tensions need to be noted:

- a First, if justice is seen merely as retribution, it becomes difficult to make the appropriate connections between amnesty and justice. While both the interim Constitution and the Commission expressed strong opposition to acts of revenge, it is necessary, nevertheless, to acknowledge that the desire for revenge is an understandable human response. Suppressed anger undermines reconciliation.

11 See also Preamble of Promotion of National Unity and Reconciliation Act, no 34 of 1995.

12 Mahomed J, AZAPO and others v the President of the RSA and others, 1996 (8) BCLR 1015 (CC) at par 21.

Nonetheless, the tendency to equate justice with retribution must be challenged and the concept of restorative justice considered as an alternative. This means that amnesty in return for public and full disclosure (as understood within the broader context of the Commission) suggests a restorative understanding of justice, focusing on the healing of victims and perpetrators and on communal restoration.

b Second, amnesty as an official act of pardon can all too easily be misinterpreted as ignoring responsibility and accountability. As such, amnesty can be seen to be encouraging a culture of impunity. Some victims felt that amnesty results in insufficient social repudiation and that, by refusing to punish those responsible and allowing perpetrators to walk free, it constitutes a failure to respect their suffering.

56 It is important, therefore, clearly to understand the various justifications for the concept of amnesty implemented by the Commission, with its unique focus on individual accountability. Similarly, the relationship between the Commission and the formal justice system merits attention:

The context of transition: accountable amnesty versus impunity

57 The negotiated agreement in South Africa averted the costly return to the politics of confrontation and mass mobilisation. It made the historic bridge provided for by the interim Constitution possible. It did not, however, allow for a choice between amnesty and justice in the sense of large-scale prosecutions and punishment. Indeed, Nuremberg-style tribunals were simply not a viable political option, given the balance of military and political forces that prevailed at the time.

58 The postamble of the interim Constitution thus placed an obligation on South Africa's first democratic government to make provision for the granting of amnesty, while giving it some discretion as to the circumstances in which amnesty could be granted. The choice was, essentially, between blanket amnesty and qualified amnesty.

59 Through extensive negotiations, which included broad-based public debate, the notion of a blanket amnesty for undisclosed deeds was rejected as an inadequate basis for laying the past to rest. A middle path was required, something that lay between a Nuremberg option and total amnesia. The choice, ultimately, was for amnesty with a considerable degree of accountability built into it.

- 60 Section 20 of the Act stipulated that amnesty could be granted on the following conditions:
- a Applicants were required to apply for amnesty for each offence committed.
 - b Applications had to be made within the time frame laid down in the legislation.
 - c Perpetrators were required to make full disclosure of their crimes in order to qualify for amnesty.
 - d Amnesty hearings involving gross violations of human rights were to take place in public, save in exceptional circumstances.
 - e Amnesty had to be granted on the basis of a set of objective criteria.
 - f Amnesty could not be automatic; it would not be granted for certain heinous crimes.
 - g The name of the persons to whom amnesty had been granted, together with information relating to the crimes for which they were granted amnesty, would be published in the Government Gazette and in the report of the Commission.
 - h The amnesty provisions in the Act required applicants to declare the nature of their offences – effectively acknowledging their culpability. In cases where amnesty applications were not made or were unsuccessful, the way was left open for conventional criminal trials, where the prosecuting authority decided that there were sufficient grounds for prosecution.
- 61 Most people do not, of course, wish crimes merely to be condemned. For many people, justice means that perpetrators must be punished in proportion to the gravity of their crimes. If one accepts, however, that punishment is not a necessary prerequisite for the acknowledgement of accountability, it is possible to see that qualified amnesty does contain certain of the essential elements required by justice. Thus, individual perpetrators were identified and, where possible, the circumstances that gave rise to the gross violations of human rights they had committed were explained.

62 Furthermore, while successful amnesty applicants could not be punished, the impact of public acknowledgement should not be underestimated. Perpetrators were not able to take refuge in anonymity or hide behind national amnesia. In the words of Anglican Bishop David Beetge at a post-hearing follow-up workshop, in Reiger Park, 19 April 1997:

The truth always goes hand in hand with justice. We do not tell our stories only to release the dammed up tears that have waited years to be shed. It is in order that truth should be uncovered and justice seen to be done. Even though it is not the work of the [Truth and Reconciliation Commission] to pass judgement or sentence on the oppressors, it has led many perpetrators of crimes to seek amnesty. That is good for them. The [Amnesty Committee] may speak sternly and, in some cases, refuse amnesty. That rightly demonstrates that truth can be tough. The refusal to grant amnesty is a sign that the [Truth and Reconciliation Commission] is not a body setting out simply to show leniency, but, more especially, that it requires justice before there can be reconciliation. Reconciliation is not taking the least line of resistance; reconciliation is profoundly costly.

63 The extension of the cut-off date for amnesty applications from 5 December 1993 (when the negotiation process was completed) to 10 May 1994 (when President Mandela was officially inaugurated) was a reminder of the transitional context in which this unique, accountable amnesty process needed to be understood. The extension of the date was due largely to pressure by, on the one hand, the white right-wing (the Afrikaner Weerstandsbeweging (AWB) and Afrikaner Volksfront) which opposed the elections by violent means and, on the other, black groups such as the Pan Africanist Congress (PAC) and Azanian Peoples Liberation Army (APLA), which had continued the 'armed struggle' during the negotiation process. It became clear to the Commission in the course of its work that such an extension would enhance the prospects of national unity and reconciliation, because it would allow these groupings to participate in the amnesty process.

The quest for truth

64 The amnesty process was also a key to the achievement of another objective, namely eliciting as much truth as possible about past atrocities. The primary sources of information were the perpetrators themselves who, without the option of applying for amnesty, would probably not have told their side of the story.

- 65 For many victims, the granting of amnesty was a high price to pay for the public exposure of perpetrators. It was made even more difficult by the fact that those who applied for amnesty did not always make full disclosure; perpetrators recounted versions of events that were sometimes different. The inability to reach a clear version of truth in respect of particular incidents led to confusion and anger on the part of victims' families and members of the public.
- 66 Yet, as many commentators noted, trials would probably have contributed far less than did the amnesty process towards revealing the truth about what had happened to many victims and their loved ones.
- 67 In helping reveal details of gross human rights violations and the systems, motives and perspectives that made such violations possible, the amnesty process assisted the Commission in compiling as "complete a picture as possible of the nature, causes and extent" of past gross violations of human rights. The information acquired also helped the Commission in formulating recommendations aimed at the prevention of future human rights violations. In this sense, the work of the Commission complemented the work of the broader judicial system in the following ways.

Preventing future violations

- 68 Disclosures made during the amnesty process, together with information emerging at hearings, in victim statements and during investigations, contributed significantly to the Commission's understanding of the broad pattern of events during the thirty-four year mandate period. They also assisted the Commission in its analysis of key perpetrator groupings and institutional responsibility, and in the making of findings on the root causes of gross violations of human rights committed during the conflicts of the past. These insights provided the basis on which recommendations could be made - aimed both at helping prevent future human rights violations and complementing the necessarily narrower focus of formal trials.
- 69 A further limitation of the formal justice system emerged in relation to the need to make recommendations to help prevent future human rights abuse. A functioning and effective justice system is, of course, crucially important in this regard - reinforcing the rule of law, vindicating victims and so on. However, even a justice system functioning at its optimum level cannot provide all the answers. Prosecution and punishment are responses to abuses that have already taken place. While they may act as a deterrent, other initiatives are required to prevent

abuses taking place. The Commission's recommendations on issues such as human rights training for the security forces and human rights education in schools and universities were crucial in this regard. For example, the implementation of the Commission's recommendations on the reform of the security forces may help to restore trust between the South African Police Services (SAPS) and the majority of South Africans. Such trust is essential if the security forces are to act as guarantors of human rights for all South Africans.

- 70 Thus, although the Commission did not offer retributive justice, placing the amnesty process within a broader framework is likely to contribute to formal justice in the long term. Instead of trading justice for truth, amnesty might, in the end, prove to have been a more profitable option than the stark choice between truth and trials. In societies in transition at least, truth must be viewed as an important element in restoring the rule of the law.

Constraints on the South African judicial system

- 71 Arguments against amnesty are based on the assumption that it is both preferable and possible to prosecute perpetrators. The response to the former – that it would be preferable to prosecute – has already been discussed. In a fragile, transitional context, there are strong arguments for the adoption of a truth commission rather than Nuremberg-type trials. But, even if the South African transition had occurred without any amnesty agreement, even if criminal prosecution had been politically feasible, the successful prosecution of more than a fraction of those responsible for gross violations of human rights would have been impossible in practice. The issue is not, therefore, a straight trade-off between amnesty and criminal or civil trials. What is at stake, rather, is a choice between more or less full disclosure; the option of hearing as many cases as possible against the possibility of a small number of trials revealing, at best, information only directly relevant to specific charges.¹³
- 72 The South African criminal justice system is already under severe pressure. Police have very limited capacity to investigate and arrest. Attorneys-general have limited capacity to prosecute. The courts and judges have limited capacity to convict and correctional services are limited in their capacity to accommodate prisoners. The prospects for successful prosecutions seem even gloomier when

¹³ See Michael Marrus, 'History and the Holocaust in the Courtroom', paper delivered at a conference, [Searching for Memory and Justice: the Holocaust and Apartheid](#), Yale University, 8-10 February 1998. He identifies a range of factors inherent to the due process of law, concluding that criminal trials are "far less effective vehicles than many people think for registering a historical account" of past atrocities. He contends that: "Knowing what happened in the past demands an alternative method of enquiry".

one considers the complexity of attempting to prosecute political crimes. Political crimes are committed by highly skilled operatives, trained in the art of concealing their crimes and destroying evidence. They are thus notoriously difficult to prosecute and to prove guilty beyond reasonable doubt. In the words of Chief Justice DP Mahomed:

Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof...Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible; witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law.¹⁴

73 Trials of this nature are extremely time-consuming and expensive and require large teams of skilled and highly competent investigators. It took over eighteen months to secure a single conviction in the 'de Kock' trial.¹⁵ A specialised investigative unit, consisting of over thirty detectives and six civilian analysts, spent more than nine months investigating and preparing the indictment in the 'Malan' trial.¹⁶ The trial itself lasted a further nine months. Furthermore, since the accused in many of these trials were former state employees, the state was obliged to pay for the costs of their legal defence. In the Malan trial, these costs exceeded R12 million; and in the de Kock trial, the taxpayer had to pay more than R5 million. These figures do not include the costs of the teams of investigators and prosecutors, nor do they reflect the costs of supporting large numbers of witnesses, some of them placed in expensive witness protection programmes. Despite this massive expenditure of time and money, the former General Malan was found not guilty, although numerous allegations continue to be made against him. The costly and time-consuming Goniwe inquest also failed to answer the numerous questions concerning the death of the 'Cradock Four'. Judicial enquiries into politically-sensitive matters rarely satisfy the need for truth and closure. As such, they should not necessarily be seen as superior alternatives to the Commission.

14 AZAPO and Others v The President of the RSA and Others, 1996 (8) BCLR 1015 (CC) at para 17.

15 S v Eugene Alexander de Kock , 1995-96, Transvaal Supreme Court, CC26/94.

16 S v Msane and nineteen others, 1996, Durban and Coast Local Division, CC1/96.

Amnesty and social justice

- 74 One of the consequences of granting amnesty is that the civil liability of both the perpetrator and the employer (often the state) is extinguished. While the wish to encourage individual perpetrators to tell the truth does not, in itself, justify indemnifying the state against civil liability, state indemnification may assist in meeting the fundamental objectives of reconciliation between the people of South Africa and the reconstruction of society. Two arguments support this.
- 75 First, by indemnifying the state in this way, prolonged litigation is avoided. Such litigation is likely to lead to a preoccupation with anguish and rancour about the iniquities of the past and may thus divert the energies of the nation from the long-term objectives of national reconciliation and the reconstruction of society.¹⁷ Second, the achievement of reconciliation and the reconstruction of society demands that the limited resources of the state be deployed in a way that brings relief and hope to as many South Africans as possible. Faced with competing demands between the formidable claims of victims of gross human rights violations and their families, and the desperate need to correct massive wrongs in the crucial areas of housing, education and health care, the framers of the interim Constitution favoured the reconstruction of society.
- 76 The immunity awarded to the state does not remove the burden of responsibility for state reparations. It does, however, give the new, democratic government discretion when making difficult choices about the distribution of scarce resources between the victims of gross human rights violations (who fall within the mandate of the Commission) and those many victims who fall outside of the Commission's mandate. The Minister of Justice has said:

We have a nation of victims, and if we are unable to provide complete justice on an individual basis - and we need to try and achieve maximum justice within the framework of reconciliation - it is possible for us...to ensure that there is historical and collective justice for the people of our country. If we achieve that, if we achieve social justice and move in that direction, then those who today feel aggrieved that individual justice has not been done will at least be able to say that our society has achieved what the victims fought for during their lifetimes. And that therefore at that level, one will be able to say that justice has been done (emphases added).¹⁸

17 Judgement by Didcott J. *AZAPO and Others v The President of the RSA and Others*, 1996 (8) BCLR 1015 (CC) at para 59.

18 Dullah Omar in Rwelamira, Medard and Gerhard Werle (eds), *Confronting Past Injustices*, Johannesburg: Butterworth, 1996, xii.

77 The basis for this transition towards social justice lies in the replacement of unjust, minority rule with a democratic state. The amnesty agreement and the way it was implemented were key factors in making the transition possible. It therefore makes at least an indirect contribution to social justice. By extension, it also contributes to the less visible, non-material dimensions of social justice. It will indeed, as Judge Mahomed has said:

take many years of strong commitment, sensitivity and labour to 'reconstruct our society'...developing for the benefit of the entire nation the latent human potential and resources of every person who has directly or indirectly been burdened with the heritage of the shame and the pain of our racist past.¹⁹

78 Through the Committee on Reparation and Rehabilitation, however, the Commission was mandated to focus on the immediate, visible need for subsistence of many victims (suffering, for example, from the loss of a breadwinner). Although no amount of reparations could ever make up for the losses suffered by individuals, families, and communities because of gross human rights violations, the nation has an obligation at least to try to transform abject poverty into modest security.

79 Other fundamental human needs needed to be addressed under the banner of reparation and rehabilitation. Victims and/or their families, dependants and friends needed to understand why gross violations of human rights took place. They needed to be free from the legacy of fear that prevented their full participation in the life of the community, stifled their creativity and undermined their dignity. Victims needed to know that, in the future, they would be protected from similar gross violations of human rights.

■ **UBUNTU: PROMOTING RESTORATIVE JUSTICE**

80 A principal task of the Commission was "restoring the human and civil dignity of victims". The work of the Commission as a whole, together with the specific contributions of its three committees, underlined the need to restore the dignity of all South Africans. In the process, the sons and daughters of South Africa would begin to feel truly 'at home'.

19 AZAPO and Others v The President of the RSA and Others, 1996 (8) BCLR 1015 (CC) at 43.

81 Thus, the tensions and links between amnesty, truth and justice, and the relationship between the Commission and the criminal justice system in South Africa were meant to help prepare the way for the Commission's contribution to the restoration of civil and human dignity. This was particularly important in view of the many ways in which the previous legal order, and the socio-political system within which it operated, "traumatised the human spirit" and "trampled on the basic humanity of citizens".²⁰ In the words of Constitutional Court Judge O'Regan:

*... Apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution.*²¹

82 This was the background to the constitutional commitment to "a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation". It was a commitment that called for a respect for human life and dignity and for a revival of *ubuntu*; a commitment that included the strengthening of the restorative dimensions of justice. Restorative justice can be broadly defined as a process which:

- a 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 is based on reparation: it aims at 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 encourages victims, offenders and the community to be directly involved in resolving conflict, with the state and legal professionals acting as facilitators;
- d 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.²²

20 S v Makwanyane and another 1995 (3) SA 391, at para 310.

21 S v Makwanyane and another 1995 (3) SA 391, at para 329.

22 See South African Law Commission, Issue Paper 7, 'Sentencing Restorative Justice', page 6.

- 83 Restorative justice challenges South Africans to build on the humanitarian and caring ethos²³ of the South African Constitution and to emphasise the need for reparation rather than retaliation - despite growing anger and insecurity in the midst of high levels of crime in South Africa.
- 84 We are also required to look again at the restorative dimensions of various traditions in South Africa, such as the Judaeo-Christian tradition and African traditional values. Neither is monolithic in its approach; both contain strong sources of communal healing and restoration. As such, they are sources of inspiration to most South Africans.
- 85 As far as traditional African values are concerned, the fundamental importance of *ubuntu* must be highlighted. *Ubuntu*, generally translated as 'humaneness', expresses itself metaphorically in *umuntu ngumuntu ngabantu* – 'people are people through other people'. In the words of Constitutional Court Justice Makgoro: "Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation."²⁴ Constitutional Court Justice Langa has said:

*During violent conflicts and times when violent crime is rife, distraught members of society decry the loss of ubuntu. Thus, heinous crimes are the antithesis of ubuntu. Treatment that is cruel, inhuman or degrading is bereft of ubuntu.*²⁴

- 86 He goes on to observe that:

We have all been affected, in some way or other, by the 'strife, conflicts, untold suffering and injustice' of the recent past... But all this was violence on human beings by human beings. Life became cheap, almost worthless.

- 87 It is against this background, vividly illustrated by the Commission process, that "a spontaneous call has arisen among sections of the population for a return to *ubuntu*".
- 88 This call was supported by Ms Susan van der Merwe, whose husband disappeared in 1978 after allegedly being abducted and killed by an Umkhonto weSizwe (MK) unit. At the Human Rights Violation hearing in Klerksdorp, on 23 September 1996, she said:

23 Mahomed J. in *S v Makwanyane and another* 1995 (3) SA 391 at para 293.

24 *S v Makwanyane and another* 1995 (3) SA 391, at para 307-8. See also Chaskalson P, at para 130-1; Mahomed J, at para 263; Sachs J, at para 374-382.

25 *S v Makwanyane and another* 1995 (3) SA 391, at para 225-6.

The Tswanas have an idiom which I learned from my husband which goes 'a person is a person by other people, a person is only a person with other people'. We do have this duty to each other. The survival of our people in this country depends on our co-operation with each other. My plea to you is, help people throw their weapons away...No person's life is a waste. Every person's life is too precious.

Restorative justice: victims

- 89 One of the unique features of the Act was that it provided guiding principles on how the Commission should deal with victims. These principles constituted the essence of the Commission's commitment to restorative justice.²⁶ The Act required that the Commission help restore the human and civil dignity of victims "by granting them an opportunity to relate their own accounts of the violations of which they are the victim". Through the public unburdening of their grief - which would have been impossible within the context of an adversarial search for objective and corroborative evidence - those who were violated received public recognition that they had been wronged.
- 90 Many people who witnessed the accounts of victims were confronted, for the first time, with the human face of unknown or silenced victims from the conflicts of the past. The public victim hearings vividly portrayed the fact that not only were international or domestic laws broken, not only was there a disrespect of human rights in the abstract, but the very dignity and 'personhood' of individual human beings were centrally violated.
- 91 At the same time, it must be remembered that, without the amnesty process, many victims would never have discovered what had happened to their loved ones. For many victims, therefore, the amnesty process itself played a role in the reparation and rehabilitation process. Their greater understanding of events helped restore dignity and dispel the lies they were told about 'criminals', 'terrorists' or 'informers'. This challenges the popular perception that amnesty exists only for the sake of perpetrators.
- 92 The fact that the state has accepted responsibility for providing reparations to victims of gross human rights violations provides an important counterbalance to the denial of the right of victims to lay civil charges against perpetrators who were granted amnesty. At the same time, however, the limitations of both the

²⁶ See section 11 of the Act and the [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#). General Assembly resolution 40/34 of 29 November 1985.

Commission's mandate to recommend and the state's capacity to provide reparation measures must be recognised. The Commission itself only had the power to place before the State President and Parliament its proposals for the provision of reparations. It could not implement reparations, nor could it take the final decision as to the type of reparation measures to be implemented. This responsibility lies with government.

- 93 The plight of those who, through the legacy of apartheid, need assistance in the form of social spending (for housing, education, health care and so on) must also be remembered. The provision of reparations to the (relatively) few victims of gross human rights violations who appeared before the Commission cannot be allowed to prejudice apartheid's many other victims. The need to provide reparations for the former cannot be allowed to constitute so great a drain on the national fiscus that insufficient resources remain for essential social upliftment and reconstruction programmes.
- 94 Beyond these considerations, it must also be acknowledged that many victims of gross human rights violations would never have had the opportunity to seek redress through civil trials, given evidentiary constraints, proscription of civil claims, lack of information about the identity of perpetrators and the costs involved in pursuing claims. Overall, victims will have received far greater benefit from the Commission's processes than they would otherwise have done, although those few who had valid civil claims will have received less. In this sense, too, the Commission can be seen as having contributed to the promotion of restorative justice.
- 95 Recommendations on reparations are also wider in scope or more holistic than those customarily awarded as damages in successful civil claims. Such broad recommendations include the provision of symbolic reparations to victims, such as the continuing public, official acknowledgement through monuments, living memorials, days of remembrance and so on. In addition, as part of the Commission's general commitment to reparations, some interim reparations were provided in the course of its work. For example, in cases where (through the amnesty process) the bodies of activists killed and secretly buried by the security forces were discovered, the Commission assisted families with official and dignified reburials. These kinds of reparations emphasise the importance of placing individual reparations within a wider social and political context.

Restorative justice: perpetrators

- 96 The Commission not only condemned acts of killing, torture, abduction and severe ill treatment as violations of human rights. The concrete experiences of victims and the human impact of these violations were put before the nation. At the same time, the Commission sought to identify those responsible for such violations - seeking political accountability as well as moral responsibility.
- 97 The Act required the Commission to “promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past” by establishing, amongst other things, “the motives and perspectives of the persons responsible”. This obviously forms part of the search for as “complete a picture as possible”. This need for understanding must, however, be placed within the context of an attempt to promote restorative justice. Without seeing offender accountability as part of the quest for understanding, the uncovering of motives and perspectives can easily be misunderstood as excusing their violations.
- 98 The potential of an individualised, accountable amnesty process as a contribution to the rehabilitation of perpetrators and their reintegration into the new society should not be underestimated. Judge Mahomed has stressed that amnesty also exposed perpetrators to “opportunities to obtain relief from the burden of guilt or an anxiety they might have been living with for years”. Without this opportunity, many might remain “physically free but inhibited in their capacity to become active, full, and creative members of the new order”. Without this kind of amnesty:

both the victims and the culprits who walk on the ‘historic bridge’ described by the epilogue will hobble more than walk to the future with heavy and dragged steps delaying and impeding a rapid and enthusiastic transition to the new society at the end of the bridge.²⁷

- 99 By concentrating only on individual, or on a limited number of prominent human rights violators, as was the case in the Nuremberg and Tokyo war tribunals, many perpetrators and co-conspirators remained in obscurity. The structures of society and its most formative institutions remained unchallenged. Recognising the need for social and institutional reparations is an important part of restorative justice.

²⁷ Judgement, AZAPO and Others v The President of the RSA and Others, 1996 (8) BCLR 1015 (CC) at para 18.

100 Restorative justice demands that the accountability of perpetrators be extended to making a contribution to the restoration of the well-being of their victims. Although neither the interim Constitution nor the Act provide for this, this important consideration was highlighted by the Commission. The fact that people are given their freedom without taking responsibility for some form of restitution remains a major problem with the amnesty process. Only if the emerging truth unleashes a social dynamic that includes redressing the suffering of victims will it meet the ideal of restorative justice.

■ RESPONSIBILITY AND RECONCILIATION

101 The emergence of a responsible society, committed to the affirmation of human rights (and, therefore, to addressing the consequences of past violations), pre-supposes 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.

102 It is, therefore, not only the task of the members of the Security Forces to examine themselves and their deeds. It is for every member of the society they served to do so. South Africa's weapons, ammunition, uniforms, vehicles, radios and other equipment were all developed and provided by industry. South Africa's finances and banking were controlled by institutions that went so far as to provide covert credit cards for covert operations. South African chaplains prayed for 'victory' and South African schools and universities educated for war. The media carried propaganda and the enfranchised white community voted the former government back into power, time after time, with ever-increasing majorities.²⁸

103 This moral responsibility goes deeper than legal and political accountability. Such individual and shared moral responsibility cannot be adequately addressed by legislation or this Commission. What is required is that individuals and the community as a whole must recognise that the abdication of responsibility, the unquestioning obeying of commands (simply doing one's job), submitting to the 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 essential parts of the many-layered spiral of responsibility which makes large-scale, systematic human rights violations possible in modern states. Only this realisation can create the possibility for the emergence of something new in South

²⁸ See testimony by Craig M Williamson, at the Military Forces hearing, Cape Town, October 1997.

African society. In short, 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.

104 At the practical level, the vexed issue of apartheid as a crime against humanity impinges perhaps more directly on moral than on legal culpability. A simple focus on the criminal culpability of isolated individuals responsible for apartheid can ignore the broader responsibilities presently under discussion. It is not enough merely to identify a few high-profile 'criminals' as those responsible for the atrocities of the past – and thus give insufficient attention to a deeper analysis of the underlying nature, cause and extent of apartheid. The essential nature of a crime against humanity, suggests Professor Denys Schreiner, does not lie in the detail or nature of the actual deeds involved in a particular system that is judged to be a crime.²⁹ Rather, it relates to the political structures which result in sections of the society being seen as less than fully human. It condemns the identified group to suffering and violence as a matter of birth, over which the individual concerned has no influence, control or escape. It excludes a section of the population from the rights afforded to others. It denies that same group participation in the selection of government and in government itself. It facilitates the promotion of extra-legal actions by the dominant group further to suppress those judged to be the 'enemy' - whether Jews, slaves or blacks. Finally, it promotes moral decline within the dominant group and the loss of a sense of what is just and fair. Briefly stated, it involves systematic racial discrimination which, by definition, constitutes the basis of apartheid.

105 A pertinent question is the extent to which individual South Africans can be regarded as responsible for the premises and presuppositions which gave rise to apartheid. The kindest answer consists of a reminder that history suggests that most citizens are inclined to lemming-like behaviour - thoughtless submission rather than thoughtful accountability. This is a tendency that needs to be addressed in ensuring that the future is different from the past and serves as a reminder that the most penetrating enquiry into the past involves more than a witch-hunt. It involves, rather, laying a foundation against which the present and all future governments will be judged.

106 The need for political accountability by the leaders and voters of the nation, and the varying degrees of moral responsibility that should be adopted by all South Africans, have (both by design and default) not been given sufficient emphasis

²⁹ *Mail and Guardian*, 11 December 1995.

by the Commission. These issues must be addressed if South Africans are to seize the future with dedication and commitment.

- 107 One of the reasons for this failure of emphasis is the fact that the greater part of the Commission's focus has been on what could be regarded as the exceptional - on gross violations of human rights rather than the more mundane but nonetheless traumatising dimensions of apartheid life that affected every single black South African. The killers of Vlakplaas have horrified the nation. The stories of a chain of shallow graves across the country, containing the remains of abducted activists who were brutalised, tortured and ultimately killed, have left many South Africans deeply shocked. The media has understandably focused on these events - labelling Eugene de Kock, the Vlakplaas commander, 'Prime Evil'. The vast majority of victims who either made statements to the Commission or who appeared at public hearings of the Human Rights Violations Committee to tell their stories of suffering simply did not receive the same level of public attention. Indeed, victims of those violations of human rights that were not included in the Commission's mandate received no individual public attention at all.
- 108 This focus on the outrageous has drawn the nation's attention away from the more commonplace violations. The result is that ordinary South Africans do not see themselves as represented by those the Commission defines as perpetrators, failing to recognise the 'little perpetrator' in each one of us. To understand the source of evil is not to condone it. It is only by recognising the potential for evil in each one of us that we can take full responsibility for ensuring that such evil will never be repeated.
- 109 A second reason for the insufficient focus on moral responsibility beyond the narrow, direct responsibility of specific perpetrators of gross human rights violations was the widespread failure fully to grasp the significance of individual victims' testimony before the Commission. Each story of suffering provided a penetrating window into the past, thereby contributing to a more complete picture of gross violations of human rights in South Africa. The nation must use these stories to sharpen its moral conscience and to ensure that, never again, will it gradually atrophy to the point where personal responsibility is abdicated. The challenge is to develop public awareness, to keep the memories alive, not only of gross violations of human rights, but of everyday life under apartheid. Only in this way can South Africans ensure that they do not again become complicit in the banality that leads, step by step, to the kinds of outrageous deeds that have left many 'good' South Africans feeling that they can never be expected, even indirectly,

to accept responsibility for them. In the words of President Nelson Mandela:

*All of us, as a nation that has newly found itself, share in the shame at the capacity of human beings of any race or language group to be inhumane to other human beings. We should all share in the commitment to a South Africa in which that will never happen again.*³⁰

- 110 Thus, a key pillar of the bridge between a deeply divided past of “untold suffering and injustice” and a future “founded upon the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all” is a wide acceptance of direct and indirect, individual and shared responsibility for past human rights violations.
- 111 In this process of bridge building, those who have benefited and are still benefiting from a range of unearned privileges under apartheid have a crucial role to play. Although this was not part of the Commission’s mandate, it was recognised as a vital dimension of national reconciliation. This means that a great deal of attention must be given to an altered sense of responsibility; namely the duty or obligation of those who have benefited so much (through racially privileged education, unfair access to land, business opportunities and so on) to contribute to the present and future reconstruction of our society.³¹

30 Speech in National Assembly, 15 April 1997.

31 See chapters on *Reconciliation* and *Recommendations*.

Methodology and Process

■ INTRODUCTION

- 1 Section 4 of the Promotion of National Unity and Reconciliation Act (the Act) sets out the functions that the Truth and Reconciliation Commission (the Commission) is required to perform. It reads as follows:

Functions of Commission

The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall-

- a facilitate, and where necessary initiate or co-ordinate, inquiries into-*
- (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;*
 - (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;*
 - (iii) the identity of all persons, authorities, institutions and organisations involved in such violations;*
 - (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 organisation, liberation movement or other group or individual; and*
 - (v) accountability, political or otherwise, for any such violation;*
- b facilitate, and initiate or co-ordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;*

- c *facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the Gazette;*
- d *determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;*
- e *prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;*
- 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; (ii) measures which should be taken to grant urgent interim reparation to victims;*
- g *make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of this Act;*
- h *make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.*

2 Even a cursory examination of this section of the Act reveals that the task facing the Commission was both daunting and formidable. Not only was it required to perform the extensive activities listed in section 4, but it had to do so in an extremely difficult context.

3 The Commission was required to consider cases that had occurred over a thirty-four year period, stretching from 1 March 1960 to 10 May 1994. In so doing, it found itself responsible for the examination of over 50 000 cases of gross violations of human rights. As described in the *Mandate* chapter, these violations were narrowly defined in the Act. This means that numerous other violations of human rights – all heinous and, in their own way, ‘gross’, were not considered. It is in this context that this chapter will examine the ways in which the Commission chose to complete its work.

■ THE START UP

- 4 One of the greatest challenges the Commission faced was that the two-year period within which it was required to complete its work began on the day that the commissioners were formally appointed. The Act made no provision for a start-up period during which offices could be located and established, staff sought and appointed, and a *modus operandi* carefully developed. There was little time for reflection. The result was that the methodology of the Commission evolved and changed quite considerably throughout its term of operation.
- 5 In addition, although the Act listed a set of functions that the Commission was required to fulfil, it provided very little guidance on how these functions were to be performed. While this gave the Commission the freedom and flexibility to develop appropriate systems and staffing structures, it also posed a tremendous challenge. It was difficult to design, in a short period, systems that adequately addressed the extensive, at times competing, priorities of the Commission. This meant that many of the Commission's systems had to be adapted as priorities changed and new needs and challenges emerged.

■ DECENTRALISATION

- 6 One of the first decisions the Commission was required to take was whether it should operate from one central location or on a decentralised basis. Because of the sheer size of South Africa (1,2 million square kilometres) and the uneven and far-flung distribution of its population, the Commission decided to set up a head office (in Cape Town), four regional offices (in Cape Town, Johannesburg, Durban and East London) and a subregional office (in Bloemfontein). These regional operations were designed to help reduce logistic difficulties associated with holding hearings, taking statements and conducting investigations over an extremely large area. They also allowed the Commission to respond more effectively to the significant differences and characteristics of various regions. It needs to be recognised, however, that the regional offices themselves had jurisdiction over what were, in their own right, very large geographical areas with significant intra-regional differences.

- 7 One of the major challenges, therefore, was to find ways to ensure that people everywhere could access the Commission with relative ease. Despite the fact that the Commission made a conscious effort to communicate and interact proactively with communities throughout South Africa, the sheer size of the country made this an extremely difficult endeavour.

■ COMMITTEE MEMBERS

- 8 The Act allowed for the appointment of additional committee members, other than commissioners, to serve on the Human Rights Violations and Reparation and Rehabilitation Committees. The Commission decided to appoint such members, not only to assist in discharging the functions and responsibilities of these committees, but also to ensure that their membership was representative in terms of race, gender and geographical origin. The Commission felt that it was important that the membership of the committees reflected the life experiences of all South Africans - black and white, men and women, urban and rural.

■ THE PROTOCOLS

- 9 At the outset, the Commission decided that the primary means by which it would establish the identity of victims was by inviting them to make statements. In order to ensure that as much relevant information as possible was gathered from these statements, a protocol was developed which attempted to structure and systematise the evidence given by each victim. The protocol was also designed to promote uniformity and consistency in the way statements were taken from victims. The Commission appointed specially trained statement takers to ensure that information provided by victims was captured as accurately as possible.
- 10 Every effort was made to ensure that statement takers could speak the major languages of the region in which they worked to allow victims to tell their stories in their mother tongues. Statement takers were also trained to identify signs of emotional distress presented by those from whom they took statements. This allowed them to offer preliminary assistance to victims who found the process of making statements difficult or traumatic, and to refer those in need of professional assistance to appropriate mental health care facilities where these existed and were accessible.

- 11 As the early statements were received and analysed, it became clear that the initial protocol, developed before the Commission began its work, was inadequate. This may be attributed to two factors. First, the structuring of information gathered from long and complex narrative statements imposed some technical difficulties: narrative statements might contain information on gross violations of human rights which occurred on one or more occasions, at one or more places, to one or more victims and carried out by one or more perpetrators. As different kinds of evidence of varying degrees of detail and complexity were gathered, it became clear that there was a need to adjust and fine-tune the structure of the protocol in order to ensure that all necessary information was captured in a uniform manner.
- 12 Second, as the Human Rights Violations Committee and the Reparation and Rehabilitation Committee confronted various policy issues, it became clear that new and additional information would be required. For example, the Human Rights Violations Committee's policy on the corroboration of victim statements set out a range of 'corroborative pointers'¹ designed to assist in the process of finding whether or not a deponent was, in fact, a victim of a gross violation of human rights. The first draft of the protocol was not structured in a way that prompted victims to provide as many as these pointers as possible. As these new requirements were identified, the protocol evolved, with the result that the final version of the protocol, on which the majority of victim statements were captured, was the fifth version.
- 13 This demonstrates the point made at the beginning of the chapter: it is difficult to embark on work and simultaneously develop systems to manage it. Yet, despite the number of different protocols used to take statements, and some slight variations in the kind of information captured, the Commission was satisfied that neither the overall integrity of the information gathered nor the quality of the findings was affected.

1 'Corroborative pointers' were pieces of information or evidence concerning a particular act or event which might assist the Human Rights Violations Committee in establishing that the information provided by victims in their statements was true.

■ THE INFORMATION MANAGEMENT SYSTEM

- 14 The Commission decided to establish an information management system to ensure that all information gathered from victims was captured, processed and corroborated according to a uniform methodology. This was viewed as essential in ensuring that the findings of the Human Rights Violations Committee were as rigorous and defensible as possible. The information management system prescribed that each statement received should be processed according to certain specified and consecutive steps - resulting in what was described as the Commission's 'information flow'. Seven major steps were involved: statement taking, registration, data processing, data capture, corroboration, regional 'pre-findings' and national findings. Each is discussed in detail below.

Statement taking

- 15 The Commission employed trained statement takers and volunteers (called 'designated statement takers') from non-governmental organisations (NGOs), community-based organisations (CBOs), religious and civic organisations to take statements from deponents. The statement taking process served two different functions. First, it helped to ensure that information on gross violations of human rights was gathered from victims of these violations. Second, it served a therapeutic purpose in that it provided victims with an opportunity to speak about their suffering or that of their families to people who listened sympathetically and acknowledged their pain. The methodological difficulties of attempting to serve both functions in the statement taking process will be discussed in greater detail.
- 16 The Commission took statements in three different ways.
- a It took statements at its offices. In other words, trained statement takers, employed by the Commission, were available to take statements from victims who travelled to the Commission's offices in their region.
 - b It took statements in communities. In these instances, statement takers attended hearings held by the Commission in various communities throughout South Africa. Because these hearings generated interest and awareness, they usually had the result of prompting people to come forward and make statements. In other instances, the Commission generated awareness about its work, either by holding public meetings in various communities, or by implementing a communications strategy in specific areas. Thereafter statement takers made themselves available to take statements in these areas.

- c The third way in which the Commission solicited statements was through the designated statement taker programme.² This programme was launched by the Commission in order to extend its reach and to ensure that as many communities as possible were given the opportunity to make statements. The designated statement taker programme was funded by a foreign donor and involved training staff based in community organisations throughout the country to take statements on behalf of the Commission. The project increased the number of statements taken by the Commission by almost 50 per cent and allowed for a focus on victims in rural communities or those communities that had experienced a high incidence of human rights abuse. It also concentrated on communities in which the Commission did not hold hearings and in which, therefore, there may not have been knowledge about the Commission and its work. The local recruitment of statement takers meant, too, that victims could tell their stories in their mother tongue, often to people they knew, thereby enhancing the quality and reliability of the testimony and reassuring victims who felt apprehensive. Some, however, chose not to share intimate details with neighbours and others from their own communities – not least where differences between rival groups was a continuing factor.

Registration

- 17 The statements were brought back to the regional offices where they were registered on the Commission's database. They were then photocopied and the originals stored in strong rooms.

Data processing

- 18 Each regional office employed a team of data processors who read and analysed the statements in order to identify each discrete violation of human rights mentioned in them. A statement might, for example, identify one or more victims, each of whom may have suffered one or more different violations of their human rights at different times in different places. The violations suffered by the victims were then categorised into one of the four violations types defined in the Act. Data processors also generated a brief narrative summary of

² After the first six months of the Commission's operation, it became obvious that the existing statement-taking channels were inadequate. The Commission decided, therefore, to increase its reach by building working relationships with non-governmental and community-based organisations throughout the country. One community liaison officer per region was assigned the task of identifying partner organisations from the faith community, legal aid clinics, advice offices, paralegal organisations and others. Each organisation appointed staff to be trained as designated statement takers, each of which was responsible for completing twenty statements a month. On this basis, organisations were refunded their travel and infrastructural costs. Particular attention was paid to rural victims, thus helping to overcome the inevitable urban bias of the Commission's statement taking. In the three months during which the designated statement takers operated on a full time basis, they managed to gather almost 4 000 statements. This represented over 20 per cent of all statements taken by the Commission during its entire period of operation.

each statement in order to provide those working on corroboration and findings with a quick overview of the salient facts.

- 19 The data processors identified the nature of each violation, its date and place, its consequences for the victim and the political context in which it occurred. They also noted the organisational affiliations of the victims and alleged perpetrators. Each violation of human rights was captured on the Commission's database as a separate act. This provided the basis for a powerful and sophisticated analysis of the data gathered. It allowed, for example, for an analysis of the number and kinds of violations suffered by each victim over a period, as well as an assessment of the categories of victims who experienced the largest number of violations over certain periods in time. This analytic capacity greatly enhanced the quality of the final report.

Data capture

- 20 Once the statement had been perused, the details of each violation were entered onto the database. Because the database was connected to the regional offices by means of a wide-area network, data were shared between the four offices, helping to ensure that each data processing unit followed a standardised approach.

Corroboration

- 21 Once the statements had been entered onto the database, it was the task of a team of investigators to corroborate the basic facts of each matter according to a standard list of corroborative pointers (for example, by obtaining court records, inquest documents, death certificates, newspaper clippings and so on).
- 22 In addition, regional researchers conducted literature searches and field trips in order to produce briefing documents on the political conflicts that had taken place in areas where gross violations of human rights had occurred. This allowed them to generate valuable background material and information on the political context in which the violations took place. This corroborative material and background research provided the commissioners with the additional information they needed to make their findings – establishing whether the allegations in the statements were, on a balance of probability, true.
- 23 Corroborating the evidence gathered in more than 20 000 statements received in the two years between 14 December 1995 and 14 December 1997 proved one of the

greatest challenges faced by the Commission. Many of the statements consisted simply of a story told by a particular victim and contained no supporting documentation or evidence on the basis of which the Commission could make a defensible finding. The onus was, therefore, on the Commission itself to attempt to locate relevant evidence or documentation in order to corroborate each victim's statement. The following examples of types of incidents requiring corroboration illustrate the magnitude of this task:

- a incidents that had occurred more than 1 000 km away from the closest office;
 - b incidents that had occurred more than twenty, and in some cases thirty, years ago;
 - c incidents that had occurred at a police station at which either no records of the event existed or all records had been destroyed;
 - d incidents in which all victims had been killed, or were dead, and the whereabouts of the only eye-witness were unknown;
 - e incidents that had occurred in a neighbouring state or in Europe.
- 24 It is clear from the above that the corroboration of statements was an extremely difficult and time-consuming task. It was complicated by the large numbers of statements involved and because each statement, on average, referred to between two and three victims. The Human Rights Violations Committee was, as a result, faced with the task of corroborating over 50 000 individual cases. The enormity of this task cannot be overemphasised.

Regional pre-findings

- 25 The information taken from the statements, the corroborative material gathered by the investigators and the background research material provided by the researchers were presented on a regular basis to the Human Rights Violations Committee, which would then make 'pre-findings' at a regional level.
- 26 Making 'pre-findings' involved either rejecting statements of alleged violations as untrue or outside the mandate of the Act, or sending them back for further corroboration, or finding them true on a balance of probability. In instances where the 'pre-finding' process confirmed the truth of the statement, and that statement included the names of a perpetrator or perpetrators, those named were sent letters

(in terms of section 30 of the Act). The letters informed them that they had been adversely implicated in a statement upon which the Commission was contemplating making a finding, and informed them of their right to respond to the allegations.

- 27 The virtually insurmountable practical difficulties the Commission faced in attempting to corroborate each statement served to crystallise a profound dilemma at the heart of the findings process. On the one hand, the Commission was a legal institution with the responsibility of making defensible findings according to established legal principles. This was particularly important, both to safeguard the credibility of the Commission's final report and to ensure that those who received reparations were genuinely victims as defined in the Act. On the other hand, the Commission embodied a moral and therapeutic process that aimed at acknowledging suffering and giving victims an opportunity to tell their stories. This aspect of the work would have been greatly diminished had the findings process been approached in too technical a manner, focusing narrowly on rules of evidence and requirements of proof. The methodology of the Commission sought to reconcile these potentially conflicting objectives in various ways.
- 28 By holding public hearings or granting private interviews, the Commission attempted to diminish the legal, and at times adversarial, nature of its work and to focus on the restorative and therapeutic dimensions of its mandate. Witnesses were not cross-examined by the Commission and, unless there were glaring inconsistencies and falsehoods, their oral testimony was generally accepted. As a result, the interaction of the vast majority of victims with the Commission was a positive and affirming experience. This meant, however, that at times not all relevant information was obtained when the victim testified in public, placing an additional burden on those attempting to corroborate the statement at a later stage. In general, the Commission sought to be both therapeutic in its processes and rigorous in its findings, but sometimes the effort to satisfy one objective made it more difficult to attain the other.

National findings

- 29 After a 'pre-finding' had been made at a regional level, it was ratified at a national level and recorded on the database. The process of making national findings was greatly facilitated by the work of the National Findings Task Group. This group met regularly to discuss policy issues and to ensure that policy on findings was applied in a consistent manner in each region. The task group also appointed two commissioners to review a sample of each region's findings so as to ensure that the findings process conformed to agreed standards.

■ THE DATABASE³

- 30 Any organisation that deals with large quantities of data must ensure that they are accessible. It must also ensure that information gathered from a wide range of sources and locations is properly integrated to allow for meaningful analysis. The Commission decided to establish a state-of-the-art database system to allow it to administer and analyse all victim statements received. The database operated across a wide area network (WAN) which linked the four regional offices, giving each regional office immediate access to all information collected in the other offices. This helped to ensure that existing or new information regarding individual victims gathered in each office was stored in one location, thus assisting with the integration of information and helping prevent unnecessary duplication.
- 31 The database proved an invaluable analytic tool that allowed researchers in each of the regional offices to access all information in the possession of the Commission regarding particular themes or their specific research areas. The database also performed a crucial 'housekeeping' function by allowing the Commission to monitor developments constantly - such as the number of statements it had received and the rate of processing and corroborating statements.

■ HEARINGS

- 32 The Commission gathered an enormous amount of important information and evidence at the hearings held by the Human Rights Violations Committee. There were five types of hearings.

Victim hearings

- 33 At the victim hearings, some of the victims who had made statements to the Commission were given the opportunity to testify in public. Typically, these hearings lasted over three to five days and involved testimony from between twenty to sixty victims. In certain remote communities, the Commission held single-day hearings. In most instances, the Commission received more statements from victims in specific communities and areas than could be heard in the allotted time period. It was therefore necessary to make a careful selection of victims who would be invited to testify in public. In making this selection, the Commission was careful to stress that whether or not a person appeared in

³ For a theoretical discussion on the design of the database and design methodology for the information flow, see appendix 1.

public was irrelevant to the process of making a finding that he or she was a victim. In other words, the Commission made no distinction in respect of the findings process between those victims who appeared at a public hearing and those who did not. In selecting which persons should be afforded a public hearing, the Commission took the following considerations into account:

- a The nature of abuse in the community or area: the Commission attempted to select a group of victims whose experiences represented the various forms of human rights abuse that had occurred in the area.
 - b The various groups which had experienced abuse: the Commission attempted to select a group which included victims from all sides of the conflict so as to present a picture of abuse from as many perspectives as possible. In many instances, this required that the Commission proactively seek out victims from particular communities.
 - c Representivity in relation to gender, race, age and geographical location in the area where the hearing was to be held.
- 34 Before, during and after each hearing, the Commission tried to ensure that victims who testified and their families could access appropriate psychological support services. The Commission appointed several people with either formal or informal training in mental health care to act as 'briefers' in each of its regional offices. The decision to appoint briefers was an aspect of the Commission's commitment to a 'victim-centred' approach as required by its mandate. The task of the briefers was to ensure that victims were provided with appropriate support. In many instances, the Commission also held follow-up meetings in communities where hearings had been held. These meetings were designed to elicit feedback as to how the community had experienced the hearing and to explore the possibility of building co-operation and unity in areas where there had been conflict and division. However, they did not always succeed in this task. The Commission was often cautioned, not without good cause, for failing to ensure that follow-up counselling for those who testified before the Commission and others was being provided. In many instances, co-operation between the Commission and those who were able to provide counselling services at a local level was inadequate.
- 35 The Commission was determined that victims be allowed to testify in the language of their choice. It believed that the therapeutic effects of giving testimony about abuse, hardship and suffering would be greatly diminished if victims were required

to speak in languages in which they were not comfortable. As a result, the Commission retained the services of a company which provided simultaneous translation services. This allowed victims, members of the Commission and those attending hearings to speak in the language of their choice and to listen to a simultaneous translation of a language that they did not understand or in which they were not fully conversant.

- 36 In many respects, the victim hearings constituted the core of the Commission's work. While some victims chose, for a variety of reasons, not to appear before the Commission, the hearings gave victims an opportunity to testify publicly about the violations of their rights and served as a powerful medium of education for society at large. The hearings generated public discussion around a spectrum of fundamental issues, such as complicity in human rights abuse and what steps should be taken to ensure that such abuse does not recur in the future. They also exposed communities who did not know, or had not wanted to know, to the truth about human rights abuse to the reality of suffering which had occurred during the period under review.

Event hearings

- 37 In the event hearings, the Commission focused not on the individual experiences of victims, but on specific events in which gross violations of human rights occurred. These hearings explored the context in which a specific event occurred and typically involved testimony not only from victims but also from alleged perpetrators and experts with specific knowledge about the event or issues related to it. These hearings were selected as 'window cases' and aimed to provide detailed insights into particular incidents that were representative of broader patterns of abuse. Event hearings also provided affected communities and their representatives with the opportunity to speak about collective experiences of abuse, thus offering a more global perspective of human rights abuse. The following event hearings took place:

- a The 1976 Soweto student uprising.
- b The 1986 Alexandra six-day war that followed attacks on councillors.
- c The KwaNdebele/Moutse homeland incorporation conflict.
- d The killing of farmers in the former Transvaal.

- e The 1985 Trojan Horse ambush by the security forces in the Western Cape.
- f The 1986 killing of the 'Gugulethu Seven', following security force infiltration of African National Congress (ANC) structures in the Western Cape.
- g The 1990 Seven-Days War, resulting from IFP-ANC clashes in the Pietermaritzburg area.
- h The Caprivi Trainees, who were trained by the South African Defence Force (SADF) and deployed in KwaZulu-Natal as a covert paramilitary force in 1986.
- i The 1960 Pondoland Rebellion, in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands.
- j The 1992 Bisho Massacre, in response to an ANC national campaign for free political activity in the homelands.

Special hearings

- 38 Special hearings sought to identify patterns of abuse experienced by individuals and groups. An attempt was made to elicit the experiences of vulnerable persons who had suffered gross human rights violations. Specific attention was given to the prevention of future human rights violations and recommendations to promote reconciliation. Hearings were held on:
- a Children and youth
 - b Women
 - c Compulsory national service (conscription)

Institutional hearings

- 39 At the institutional hearings, the Commission sought to receive evidence from various professions, institutions and organisations about the role they had played in committing, resisting or facilitating human rights abuse. The purpose of these hearings was to enrich the Commission's analysis of human rights abuse by

exploring how various social institutions contributed to the conflicts of the past. The hearings often provoked considerable public debate about, for example, the role of the legal and medical professions during the Commission's mandate period. They also triggered or encouraged introspection and self-analysis by these professions and organisations. In addition, they helped the Commission to formulate some of the recommendations made to the President concerning legislative, institutional and administrative measures that should be taken to prevent future human rights abuse. Institutions were often criticised for failing to acknowledge adequately their complicity in gross human rights violations. In certain instances, however, institutional hearings served as a catalyst for professions and organisations themselves, triggering transformation from within.

40 The following institutional hearings were held:³

- a health sector hearings
- b legal hearings
- c media hearings
- d business hearings
- e prison hearings
- f faith communities hearing

Political party hearings

41 The Commission provided political parties with an opportunity to offer their perspectives on the causes and nature of the conflicts of the past, together with an account of their involvement in and/or responsibility for gross violations of human rights. The hearings examined as carefully as possible the question of accountability for gross violations of human rights. In most instances, these hearings consisted of two phases. In the first phase, the Commission allowed the political parties to make their submissions and asked questions only for purposes of clarification. In the second phase, the Commission put substantive questions to the various parties, based on a detailed study of their submissions and of evidence gathered through investigations and research.

³ See chapters on institutional hearings.

■ INVESTIGATIONS

- 42 Section 28 of the Act provided for the establishment of an investigation unit to be headed by a commissioner. The work of the Investigation Unit clearly illustrates the general comment made above: it is difficult to develop a clear *modus operandi* in a context where an institution is constantly changing and evolving in response to both internal and external developments. The structure and functioning of the Investigation Unit altered as the institutional priorities of the Commission changed.
- 43 The initial focus of the Commission's work was the holding of a large number of hearings in many locations throughout the country. At this stage, the task of the Investigation Unit was to assist in the verification of statements provided by victims who were to testify at hearings. The Unit also engaged in a range of logistic activities associated with the hearings, such as locating and transporting witnesses. In addition, it assisted in gathering evidence and preparing questions for event, institutional and political party hearings.
- 44 From the beginning of the hearings process, it was apparent that the number of victims who would give statements to the Commission would be far greater than the number of victims who would actually testify. There was, as has been mentioned, recognition by the Commission that all statements received from victims, regardless of whether or not they testified, would need to be corroborated in order for findings to be made. After the first year of operation, given the large number of statements being taken, the Investigation Unit's responsibilities became more focused on the task of verifying and corroborating statements.
- 45 Finally, in the last quarter of the Commission's life, it became evident that the Amnesty Committee would require considerable investigative support in order to deal with the large number of people who had applied for amnesty. Again, the Investigation Unit was required to shift resources to meet this institutional need. The shifting priorities of the Commission and their impact on its methodology are discussed in greater detail in the analysis section of this chapter.
- 46 In addition to assisting with hearings, undertaking corroborative work and supporting the work of the Amnesty Committee, the Investigation Unit had other functions to perform. One of these was to embark on proactive investigations into a range of strategic areas relating to the mandate of the Commission. These investigations focused on various themes, patterns and trends relating to human rights abuse

that occurred during the mandate period. The results of these investigations were the subject of ongoing discussions and interaction with the Research Department. A specialised 'analysis function' was established within the Investigation Unit in order to assist these strategic investigations.

47 A further function of the Investigation Unit was to convene and undertake the necessary preparatory work for enquiries held in terms of section 29 of the Act. The primary purpose of these hearings was to question persons who may have had information relevant to the investigations and work of the Commission. In addition to section 29 hearings involving a range of individuals, hearings also focused, *inter alia*, on the following enquiries:

- a Vlakplaas
- b Witdoek violence in KTC
- c Civil Co-operation Bureau (CCB)
- d Security Police in KwaZulu and Natal
- e Mandela United Football Club
- f Chemical and biological warfare

■ RESEARCH

- 48 The Commission established a research department in order to assist with the analysis and contextualisation of the enormous amount of data, evidence and information that it received. Although the department was principally concerned with primary data received from various sources, it also considered a range of secondary sources on issues relevant to the Commission's work. By continually evaluating the Commission's primary data in the light of material already written on the subject, the Research Department was able to enhance the evidence presented to the Commission.
- 49 The Research Department began its work by generating regional chronologies of human rights abuses that had occurred during the Commission's mandate period. These chronologies were used to isolate fifteen strategic research themes which helped to explain the causes and nature of various modalities of human rights abuse. These themes were constantly revised and updated as more information and evidence was placed before the Commission. The Research Department then analysed each statement received by the Commission and categorised it according to theme. This helped ensure that any explanation or analysis generated by the Commission would be based primarily on information gathered by the Commission itself.
- 50 The Research Department considered and analysed almost all of the information gathered and received by the Commission. This included submissions made by various institutions (political parties, state structures, non-governmental organisations and so on); evidence received at the various hearings of the Commission; evidence received in amnesty applications and hearings; archival material; transcriptions of section 29 enquiries; interviews conducted by experts or relevant persons, and secondary material.
- 51 This research and analysis on the nature and genesis of human rights abuse in various regions or according to various themes also assisted the Human Rights Violations Committee in making findings on the statements it received. Similarly, the work of the Research Department provided valuable background material which assisted the Amnesty Committee in its deliberations. The Research Department, guided by the work of the Commission as a whole, also facilitated the drafting of the various chapters of the Commission's final report and managed the editing and production process.

■ THE AMNESTY PROCESS

- 52 In terms of section 20(c) of the Act, one of the preconditions for the granting of amnesty was that the applicant made full disclosure of all relevant facts. The amnesty process was thus one of the most important sources of information regarding gross violations of human rights. In particular, the amnesty process provided vital insights into the motives and perspectives of perpetrators and offered important evidence regarding the authorisation of gross violations of human rights.
- 53 Information derived from the amnesty process took two forms. First, it was contained in the written applications submitted by those applying for amnesty. Second, it was derived from the testimony given at the amnesty hearings themselves. The latter information was usually considerably richer and more detailed than the former, and it must be noted that, at times, significant discrepancies emerged between information contained in applications and that adduced at hearings. This presented a difficulty in the drafting of the Commission's report, which is discussed below.
- 54 Members of the Research Department and Investigation Unit perused all amnesty application forms. These applications were classified based on the identity of the applicant according to a classification system developed by the Commission. Broadly speaking, the applicants were divided into three categories:
- a those working within the previous state system or in support of the *status quo*;
 - b those working to overthrow the state;
 - c the white right wing.
- 55 Once this classification was complete, each sub-category was further analysed in order to identify key themes common to each. These themes, together with a list of amnesty applications relevant to each of them, were made available to the Research Department and Investigation Unit to assist them in their work. This process allowed for the information contained in amnesty applications to be considered during the process of drafting relevant chapters of the final report. For example, researchers responsible for providing an account of the role played by the Azanian Peoples Liberation Army (APLA) in the commission of gross violations of human rights were able to refer to all amnesty applications

submitted by members of APLA or the Pan Africanist Congress (PAC). They were also able to scrutinise these applications according to certain themes, for example: attacks on 'soft targets' (urban); attacks on 'soft targets' (rural); attacks on the South African Police/South African Defence Force.

- 56 This allowed the evidence collected from sources such as victim statements and section 29 enquiries to be integrated with the information contained in amnesty applications. The result of this process of gathering information from a range of sources and representing a range of perspectives was a more nuanced and sophisticated analysis of the nature, causes and extent of gross violations of human rights.
- 57 A cause for concern, alluded to above, was the fact that the analysis of information derived from the amnesty process (reflected in various chapters of the report) was, in many instances, based on written amnesty applications and not on the proceedings before the Amnesty Committee. This is because not all amnesty applications had been heard prior to the submission of the report.

■ WITNESS PROTECTION

- 58 Persons who were offered protection by the Commission's witness protection programme provided a certain amount of information to the Commission. This information was generally recorded either by the witness protector or an investigator and forwarded to the Investigation Unit.

■ OVERVIEW OF THE COMMISSION'S WORK

- 59 The evolution of the Commission's work through three broad phases had a direct bearing on its methodology. Although the phases overlapped to a large extent, it is nevertheless useful to characterise them as distinct phases for the purpose of understanding the various ways in which the Commission's work changed during its term of operation. The phases can be defined as the hearings phase, the statements phase and the amnesty phase.

The hearings phase

- 60 The first hearing held by the Commission attracted both national and international attention. It created a tremendous demand from communities throughout the country to hold hearings in their areas. As a result, each of the Commission's regional offices developed a fairly extensive hearings schedule, aimed at ensuring that as many communities as possible were accessed and provided with an opportunity to testify. On numerous occasions, two and sometimes three regional offices held hearings on the same day in different parts of the country. This illustrates the extent to which the work of the Commission was driven by public hearings.
- 61 The prioritisation of hearings meant that a large proportion of the time, energy and resources of the Commission was devoted to this activity. Commissioners and committee members spent a significant percentage of their time preparing for hearings and presiding over them. Regional office staff provided the necessary logistic and administrative support for hearings. Researchers provided background briefs on the communities in which hearings were held, and the Investigation Unit allocated a large number of investigators to the task of locating victims and transporting them to and from hearings.
- 62 The holding of hearings throughout the country, and the public attention they attracted, resulted in a dramatic increase in awareness about the Commission and its work. This, in turn, resulted in a significant increase in the number of victims wishing to provide statements to the Commission. At the same time, the Commission initiated the designated statement taker programme (see above), which also resulted in a large increase in the numbers of statements made. This large influx of statements put considerable pressure on the staff and infrastructure of the Commission, which had, up until then, been oriented towards the holding of hearings and not the processing of large numbers of statements. It quickly became clear that staff and resources should be allocated towards the Commission's information management system and that functions associated with the holding of hearings should be scaled down.

The statements phase

- 63 As soon as it became evident that the information management system would not be able to cope with the large influx of statements, the Commission decided to

reduce the number of hearings and to increase the Commission's capacity to take and process statements. This involved increasing the number of staff members involved in the capture, processing and corroboration of statements and placing greater emphasis on the efficient and professional processing of statements. This shift in priorities required that the Commission devote greater attention to the legal and administrative dimensions of its work (the processing of statements and the making of findings) and less attention to the public and symbolic aspects of its activities (the holding of hearings). It also resulted in an inevitable reduction in emphasis on the therapeutic and restorative dimensions of statement taking and an increased bias towards the information-gathering and fact-finding nature of the exercise. Such institutional reorientation is not easily achieved and, although the Commission recognised the necessity for change, there was also considerable concern that it would become driven by technical rather than moral considerations. In developing priorities on how best to achieve its objectives, the Commission constantly grappled with the tension between attempting to acknowledge in a meaningful manner the suffering of each person who made a statement to the Commission and attempting to process and corroborate tens of thousands of statements.

- 64 In the final weeks before the 14 December 1997 cut-off date for submission of statements to the Commission, the Durban regional office received approximately 5 000 statements. This meant that over 40 per cent of all statements received in Durban were submitted in the last two weeks before the cut-off date. The Commission took a decision to enlarge the data processing and corroborative capacity of the Durban office to enable it to cope with this massive influx of statements.

The amnesty phase

- 65 The initial cut-off date for amnesty applications was 14 December 1996. This was, however, extended to 10 May 1997 in order to allow persons who had previously not been entitled to apply for amnesty to submit their applications⁴. By early 1997, it was already apparent that the Commission would receive thousands more amnesty applications than had been anticipated. It was also clear that each individual amnesty application would take far longer to settle than initially envisaged. Reasons for this included: the public nature of the proceedings; the right of victims

⁴ People who committed acts associated with political objectives as defined by the Act between 1 March 1960 and 5 December 1993 were entitled to apply for amnesty. This cut-off date was extended to 10 May 1994 after an appeal by the Commission to President Nelson Mandela.

and their legal representatives to be present, adduce evidence and ask questions, and the complex and contested nature of many of the applications. The Commission's projections indicated that, if amnesty hearings were to continue at the same pace, it would take many years to hear the cases of the thousands of people who had applied for amnesty. It was on this basis that the Commission approached Parliament with a request that it be allowed to enlarge substantially the capacity of the Amnesty Committee and that funds be made available to allow for the simultaneous holding of up to six hearings. This was agreed, and the Amnesty Committee appointed additional committee members, leaders of evidence, logistics officers, secretaries and investigators.

- 66 By 1998, the Commission devoted virtually all of its resources to ensuring that statements were properly processed and corroborated so that findings could be made, and that amnesty applications were dealt with as expeditiously as possible. By the end of its term of operation, the Commission had succeeded in making findings in respect of all statements submitted to it, but had been unable to hear and decide upon all amnesty applications.
- 67 Once the Amnesty Committee has completed its work, the Commission will file a codicil based on the amnesty hearings.

■ APPENDIX 1: METHODOLOGY AND THE INFORMATION MANAGEMENT SYSTEM

Terms of reference

- 1 In February 1996, the Commission's Database Development Group⁶ reviewed the Act to determine sources of information legally available to the Commission, and the kinds of reports and analysis that would be necessary to satisfy the functions defined by the Act as objectives of the Commission.
- 2 The group developed the specifications for an information management system aimed at providing a rigorous and consistent process through which raw information given to or collected by the Commission would meet the analytical and reporting objectives set out in the Act - particularly in section 4, 'Functions of the Commission'.
- 3 Requirements that the system had to satisfy were:
 - a In accordance with section 4(b), the Commission would receive human rights violations statements from tens of thousands of individual deponents and from thousands of amnesty applicants.
 - b Such a large volume of data required methodical and consistent treatment to ensure that each statement and amnesty application received a fair and equal evaluation of its content and balance of probabilities.⁷
 - c The information stored by the Commission had to be accessible to each of the four regional offices because each statement or amnesty application might have implications for hearings or investigations in any of the other offices.
- 4 The Commission adopted an eight-stage information flow to collect information, process it into standard internal formats, capture it in a computerised database and then analyse it using quantitative and qualitative techniques. This analysis fulfilled three requirements of the Act, in terms of which the Commission was obliged to:

⁶ The Database Development Group consisted of Commissioners Mapule F. Ramashala and Glenda Wildschut, Charles Villa-Vicencio (Director of Research), Paul van Zyl (Executive Secretary) and consultants Patrick Ball, Brandon Hamber, and Lydia Levin. Gerald O'Sullivan (Information Systems Manager) implemented the design.

⁷ See, in this context, Sections 11(b) and 11(c) of the Act.

- a identify those violations that constituted a “systematic pattern of abuse” (section 4(a)(i)). To achieve this, the Commission used quantitative analyses to show statistical regularity.
- b describe the “nature ... and extent” of gross human rights violations (4(a)(ii)).⁸ The ‘nature’ of violations means the types of violations that were committed and in what ways; the ‘extent’ of violations was interpreted to mean how many violations were committed.
- c produce a report on its “activities and findings” (Section 4(e)). Given the importance and magnitude of the Commission’s ‘activities’, it was considered necessary to include a statistical description of the population who gave statements to the Commission or applied for amnesty.

The structural complexity of human rights violations

- 5 Every effort was made to avoid errors in representation and analysis of the information collected by the Commission. A deponent who gives a statement presents a narrative account of great potential complexity.⁹ To avoid errors of representation and analysis, the Commission’s database was designed to address the following complexities:
- a **Many victims:** the deponent may speak about violations that happened to one or many victims. The deponent may or may not herself be a victim. She may discuss her own detention and subsequent torture in addition to her son’s killing or her husband’s disappearance.
 - b **Many violations:** each of the victims described in a particular statement may have suffered one or several gross violations. For example, the deponent’s son may have been detained and tortured on several separate occasions before he was killed. These violations may have been connected to other violations that occurred at the same time and place (for example, several different people detained and tortured together), or they may have been isolated incidents.
 - c **Many perpetrators:** each of the violations described in the statement may have been committed by one or many perpetrators. Furthermore, each of the identified perpetrators in the narrative may have been responsible for one or

⁸ Section 1(ix) of the Act defines a gross violation of human rights as killing, abduction, torture, or severe ill treatment.

⁹ See Patrick Ball, [Who Did What to Whom? Planning and Implementing a Large Scale Human Rights Data Project](#). Washington, DC: AAAS, 1996, especially chapter 2, for a detailed discussion of the biases introduced by oversimplifying assumptions in human rights information management systems.

more violations. For example, a deponent might identify Mr A as the man responsible both for her torture and for her daughter's killing.

- 6 The Commission took great care to build a system that was sufficiently flexible to accept any combination of these complexities, without simplifying deponents' stories in ways that led to the distortion or systematic concealment of certain kinds of information. Accepting a reduced version of a complex story is a frequent cause of this kind of distortion.
- 7 The data was very carefully managed at every stage of the information management process, in order to maximise validity, reliability and precision of analysis from the information given to the Commission. This was done for the following reasons:
 - a The Act required that findings be "based on factual and objective information" (section 4(e)). For the information to be factual, it had to be collected and stored without introducing oversimplifying distortions. For the information to be objective, it had to be coded in standard forms and according to clear and consistent definitions.
 - b Respect for deponents and victims¹⁰ involved treating statements with integrity, and keeping them intact to the limits of the available technology. Integrity, in this sense, meant that deponents' narratives should not be fragmented; nor portions discarded through decisions of the Commission¹¹ or inadequate representation. There was a need for information to be maintained in a secure fashion and protected from theft or abuse, and the analysis needed accurately to reflect the information given in statements and qualified by findings.

Sources for the design

- 8 The Commission drew on a variety of prior human rights data projects in order to design its database. These included the experience of the Haitian National Commission for Truth and Justice and the United Nations Commission for Truth in El Salvador - at the time, the only two truth commissions to have undertaken quantitative analysis of human rights violation data on the scale proposed by the South African Commission. Consultants from the Investigative Task Unit (a special unit established by the Minister of Safety and Security to investigate alleged hit

¹⁰ Mandated in terms of section 11(a) of the Act.

¹¹ When the Commission makes negative findings about particular aspects of a statement, the information is not deleted from the system. Instead it is marked as not found or as unable to find, and thereby excluded from analysis. However, if one wanted to see what a statement actually said, the database maintains a record of all the material in that statement, including material that was confirmed and that which was not confirmed.

squad activities in KwaZulu-Natal) and non-government organisations (NGOs) that had participated in the Human Rights Documentation Project also made suggestions on the information flow.

- 9 The instrument most extensively used by the Commission's Database Development Group was developed by representatives of six human rights NGOs with experience in the design of human rights information systems.¹² Full evaluations of the Commission's information flow were conducted in September 1996 and April 1997¹³. In addition, numerous periodic office-specific or stage-specific evaluations were conducted.

Theoretical basis for the information flow

- 10 The Commission based its work on the assumption that objective¹⁴ knowledge about the social world in general, and about human rights violations in particular, is possible. Some analysts, in particular academic anthropologists, have questioned this assumption. Their criticism is directed primarily at the decontextualised nature of human rights reporting in anecdotal presentations or legal casework, but it is equally - possibly even more - relevant to quantitative analysis.
- 11 In brief, analysts such as Richard A Wilson are concerned that "violence, like any other social process, is expressed and interpreted according to sets of metaphors about the nature of power, gender relations, and human bodies."¹⁵ Any report of political violence must place the violence within the relevant web of social networks and contingent cultural meanings. However, Wilson does *not* conclude that objectified or universalised human rights analysis is somehow fundamentally meaningless; only that, on its own, legalistic or quantitative analysis is inadequate. He thus calls for a blend of methods at different levels to explain human rights violations.

12 Patrick Ball, Ricardo Cifuentes, Judith Dueck, Romilly Gregory, Daniel Salcedo, and Carlos Saldarriaga, 'A Definition of Database Design Standards for Human Rights Agencies,' American Association for the Advancement of Science/HURIDOCS. November 1994.

13 See Patrick Ball, 'Evaluation of Commission's Information Flow and Database, with Recommendations', Memorandum to the Commission, 9 September 1996, 34 pp; see also Ball, 'Statistical Analysis and Other Research Using the Commission Database: Notes for Analysts', Memorandum to the Commission, 11 April 1997.

14 Or at least knowledge that is inter-subjectively reliable, that is, knowledge on which the involved actors can agree is held in common between them. This is a weaker assumption than objective knowledge but it has the same practical effect.

15 Richard A. Wilson, 'Representing Human Rights Violations: Social Contexts and Subjectivities', pp. 134-160 in Human Rights, Culture, and Context, Richard A. Wilson, Ed. London: Pluto P. 1997: p. 148.

- 12 Wilson's call provides an anthropological parallel to the Act's legal requirements. The Act demands methodological pluralism. As argued above, it required that the Commission gather information and analyse it rigorously. Beyond rigour even, it requires an analysis of "systematic patterns" and of "context, motives and perspectives which led to such violations" (4(a), sections (i) and (ii)). The first level implies a quantitative treatment, and the second necessitates historical or ethnographic reflection.
- 13 In short, the Act echoes classical sociologist Max Weber's definition of the sociological method, whereby "historical and social uniqueness results from specific combinations of general factors, which when isolated are quantifiable."¹⁶ Like the Commission, Weber is concerned that social analysis should be sufficient to draw general conclusions, but that it simultaneously preserve and reflect on individual case details. Weber recommends that analysts identify general factors in the universe of examples by applying ideal types - "controlled and unambiguous conceptions" - which illuminate particular phenomena of study. However, the general factors must be understood in terms of the particularities of individual cases. This definition of a set of 'ideal types' is then applied to a universe of narrative (or semi-structured) statements taken in interviews with deponents.
- 14 At the Commission, the data processing teams implemented these 'ideal types', using a controlled vocabulary and a coding frame. The teams coded deponents' statements in standard forms before capturing the information on the database.
- 15 Weber was careful to note that this method is most useful as a comparative device. That is, the aggregation of examples of a particular ideal type with one set of characteristics provides a basis for evaluation of a second aggregation of examples of a similar but distinct ideal type with a different set of characteristics.¹⁷ The comparison of patterns of violations - among regions, across time, between types of victims, and among groups of perpetrators - is the basis for the quantitative analysis presented in the report.¹⁸

16 Hans Gerth and C. Wright Mills, 'Methods of Social Science', in From Max Weber: Essays in Sociology. Oxford UP. 1946: p. 59. This paragraph and the following one follow Gerth and Mills' description of Weber's methodology.

17 See Gerth and Mills, pp. 59-60.

18 See Richard Claude and Thomas Jabine, 'Exploring Human Rights Issues with Statistics', pp 5-34; Robert Goldstein, 'The Limitations of Using Quantitative Data in Studying Human Rights Abuses', pp 35-61; George Lopez and Michael Stohl, 'Problems of Concept Measurement in the Study of Human Rights', pp 216-234 in Human Rights and Statistics: Getting the Record Straight, edited by Thomas Jabine and Richard Claude, University of Pennsylvania, 1992. See also the pioneering work of Judith Dueck and Aida Maria Noval, HURIDOCS Standard Formats Supporting Documents, Geneva: HURIDOCS, 1993 and Ball, 1996.

Statistical limitations and sampling

- 16 Section 4(b) of the Act required that the Commission accept statements from all South Africans who wished to make them. Hence, the Commission did not carry out a 'survey' of violations in the sense of drawing a probabilistic sample of victims.¹⁹ Those who chose to come forward defined the universe of people from whom the Commission received information.
- 17 Human rights data are almost never taken from probabilistic samples. Instead, people decide for themselves if they will make statements. This 'self-selection' of the sample introduces a number of factors that must be taken into account when interpreting findings:²⁰
- a people who live in areas very far from where the data are being collected have less chance of being in the sample than those closer to the offices in which statements are taken, because of transport difficulties, for example, or the relative inaccessibility of rural areas;
 - b people who are energetic are more likely to give statements than those who are ill, injured, elderly, traumatised, or suffering profound depression;
 - c deponents who died before the Commission began work cannot give statements; hence events that took place in the past are under-reported;
 - d people with no access to the media (radio, newspapers or television) are less likely to approach the Commission;
 - e people from constituencies that are hostile to the Commission are less likely to make statements.
- 18 Since the Commission's sample was not a probabilistic sample, it was not possible to use the data to calculate how many violations, in total, took place in South Africa. Without knowing what proportion of all potential victims actually came to the Commission, the overall total cannot be estimated. What is known is that there were *at least* 21 000 gross violations of human rights.

¹⁹ Statistical projection of findings and analysis from a sample to the society at large can only be made if a probabilistic sample is used - one that is drawn randomly from the population so that every member of the population has an equal or fixed chance of being included in the sample.

²⁰ See, for example, Ignacio Cano, 'Evaluating Human Rights Violations', pp 221-233 in *Evaluation for the 21st Century*. Edited by Eleanor Chelinsky and William Standish. Beverly Hills, CA: Sage Press 1997.

- 19 However, the data gathered from the human rights violations statements do permit the kinds of analyses to which they are subjected in the various chapters of this report. It is important to note that the Commission's data were based on corroborated findings. This means that, at a minimum, these violations (if not many more) definitely happened in these places at these times. Furthermore, none of the conclusions in the Commission report are based on quantitative data alone; in each case, the quantitative data is linked to the accounts of contemporary journalists, histories of the various regions, and analyses of reported situations by NGO human rights groups.

- 20 The quantitative results on which arguments in this report are made are not subtle. Only where there are great differences in relative rates, or very distinctive patterns that are stable across regions, does the report interpret the statistics as findings.

- 21 The Commission's database represents an unequalled collection of data on a set of events that took place during a unique period of South Africa's history. It may only have scratched the surface, but that surface has been scratched in unprecedented detail.

■ APPENDIX 2: WHO CAME TO THE COMMISSION?

Introduction

- 1 In order to establish as complete a picture as possible of the conflicts of the past, the Human Rights Violations Committee focused the bulk of its energy and resources on gathering and processing statements from deponents²¹. The corroborated allegations of gross violations of human rights contained in these 21 000 statements form the basis for the Human Rights Violations Committee's conclusions about the nature of the conflict.
- 2 The purpose in describing *who* came to the Commission and *what* they talked about is to allay fears that these conclusions are flawed because, for example, the constituency that approached the Commission was in some way partisan, or because the Commission itself did not reach out to a sufficiently broad cross-section of people.
- 3 The methodology of the statement-taking process was such that deponents came to the Commission of their own volition. The Commission did not carry out a survey of human rights violations in the sense of a conventional 'market research' approach using a stratified random sample, nor did it carry out a census of violations. The information gathered came from those who wished to tell the Commission about the gross violations of human rights they had experienced. In other words, the sample was self-selecting²².
- 4 This section of the report looks at the cross-section of people who came to the Commission, in terms of their broad demographics and what they spoke about, in order to build up a picture of this constituency.

²¹ The term 'deponent' is used to describe those who made a statement to the Human Rights Violation Committee of the Commission. They may or may not be victims of a gross violation of human rights themselves.

²² See Appendix 1 to this chapter: *Methodology and the Information Management System*.

Geographical coverage

- 5 The Commission's four regional offices gathered statements in all nine provinces²³. The table below shows the number of statements taken in each of the provinces, starting with the provinces that took the largest number. For purposes of comparison, it also shows the total population of each province and the average number of statements taken per 1 000 people in the province.

PROVINCE	OFFICE RESPONSIBLE	NUMBER OF STATEMENTS TAKEN IN EACH PROVINCE	STATEMENTS FROM EACH PROVINCE %	TOTAL POPULATION IN EACH PROVINCE, IN 1,000's ²⁴	AVERAGE NO. OF STATEMENTS TAKEN PER 1,000 PEOPLE
KWAZULU-NATAL	Durban	9,506	44.6	7,672	1.24
GAUTENG	Johannesburg	3,511	16.5	7,171	0.49
EASTERN CAPE	East London	2,847	13.4	5,865	0.49
WESTERN CAPE	Cape Town	1,320	6.2	4,118	0.32
MPUMALANGA	Johannesburg	1,112	5.2	2,646	0.42
NORTH WEST PROVINCE	Johannesburg	861	4.0	2,470	0.35
FREE STATE	Durban	862	4.0	3,043	0.28
NORTHERN PROVINCE	Johannesburg	723	3.4	4,128	0.18
NORTHERN CAPE	Cape Town	450	2.1	,746	0.60
OTHER		106	0.5		
Total		21,298	100.0	37,859	0.56

- 6 The Durban office gathered the largest number of statements. Thus nearly half of all statements made to the Commission came from KwaZulu-Natal, and almost three times as many statements as were taken in the next most populous province, Gauteng.
- 7 In general, as might be expected, the more populous the province, the larger the number of statements taken. However, certain provinces had experienced greater political instability than others, resulting in more violations of human rights and a consequently larger number of deponents.

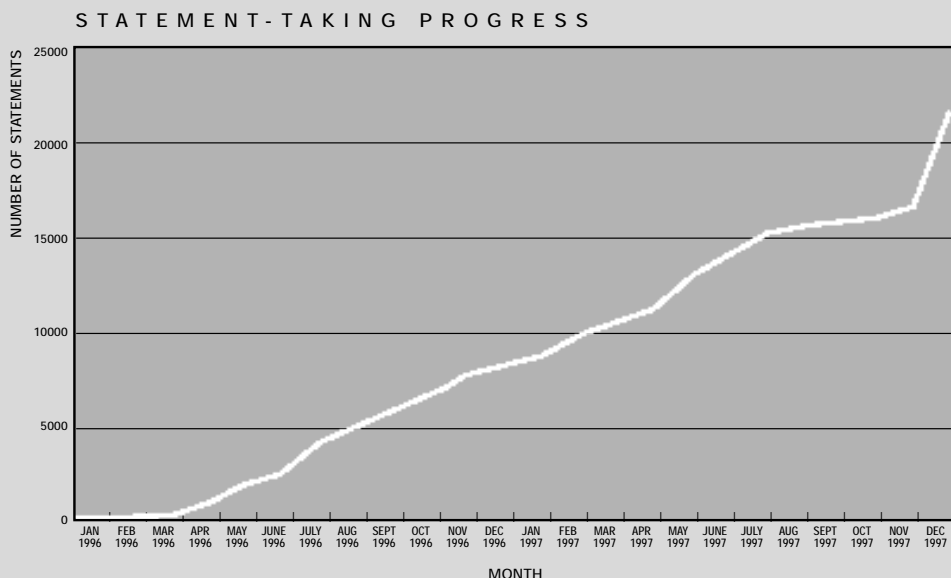
²³ Note that the post-1994 provinces are used here, because we are considering the whereabouts of deponents in 1996/1997.

²⁴ Census 96 - Preliminary estimates of the size of the population of South Africa, Central Statistics Services, June 1997.

- 8 The number of statements taken per 1 000 provincial residents²⁵ illustrates this. Had the political conflict affected all regions equally, the average number of statements per 1 000 residents would have been the same for each province; but it is not.
- 9 The average number of statements per 1 000 people for KwaZulu-Natal, where levels of violence were very high, was more than double that of the national average. This was especially surprising since the climate of hostility to the Commission from many areas in that province discouraged many people from making statements. Had the Commission received a more positive response from these constituencies, the figure would almost certainly have been even higher.
- 10 The rate of statement taking in each province was also affected by the ability of the Commission to reach deponents. The very high rate of statements taken in the Northern Cape was the result of intensive statement taking in an under-populated province, rather than an above-average number of people who suffered gross violations of human rights.

Statement taking

- 11 Statements were taken from deponents over a period of two years - from the moment the Commission began work until the cut-off date for human rights violations statements in December 1997. The graph below shows the progress made by the Commission in taking statements.



²⁵ For ease of analysis, the total provincial population is used, rather than that of the adult population. The age-pyramids across the provinces are sufficiently similar that the point remains the same.

12 Statement taking was carried out steadily throughout the two-year period. There was a lull towards the end of 1997, followed by intensive activity in the very last month as deponents rushed to meet the deadline.

Population groups²⁶

13 The apartheid state was fundamentally based on racial and ethnic groupings and this is still one of most important explanatory variables in any sociological and historical analysis of contemporary South Africa. Moreover, the conflicts of the past affected ethnic groups in very different ways, as did the consequences of the violations. Therefore, statement-takers asked deponents to which population group they had been allocated in terms of apartheid terminology. The responses are listed below, together with the national breakdown, for comparison²⁷:

POPULATION GROUP	NUMBER OF STATEMENTS	% STATEMENTS FROM EACH GROUP	% TOTAL POPULATION IN EACH GROUP ²⁸
African	19,144	89.9	76.1
Coloured	354	1.7	8.5
Asian	45	0.2	2.6
White	231	1.1	12.8
Total statements	21,297	100.0	100.0

14 If the conflicts of the past had affected the population groups equally, one would expect that the numbers of deponents in each category would be proportionate to the national population. However, the table shows that the number of deponents who described themselves as African is much higher than would be expected from the population statistics. It was, indeed, overwhelmingly Africans who came to tell the Commission about gross violations of human rights.

15 The low number of white deponents is not wholly a consequence of hostility towards the Commission by large sections of the white community. Indeed, the Commission made a concerted effort to reach *all* sections of the community.

26 The apartheid state classified people into one of four population groups, namely African, Coloured, Asian and White. Since the Commission's focus is on violations in the political context of apartheid, this terminology is retained.

27 There are 1 523 statements from deponents whose population group is unknown. Since it is likely that the cross-section of these deponents is the same as those whose population group is known, the results are not likely to be significantly affected.

28 Sidiropoulos, E., et al, South Africa Survey 1995/1996, Race Relations.

Special appeals for whites to come forward were made through the media and the Commission held several sectoral hearings focusing on issues of interest to the white community. The reality is that the conflicts of the past affected very few whites in comparison to the rest of the population, so very few came forward to make statements.

Men and women

16 The breakdown of deponents by gender and population group is as follows:

POPULATION GROUP	FEMALES		MALES		TOTAL STATEMENTS ²⁹
	NUMBER	%	NUMBER	%	
African	10,571	55.9	8,329	44.1	18,900
Coloured	134	38.0	219	62.0	353
Asian	9	20.5	35	79.5	44
White	91	40.1	136	59.9	227
Total	10,805	55.3	8,719	44.7	19,524

17 In total, more women came to the Commission than men, because many more African women came to the Commission than any other category. Men dominate the white, Coloured and Asian deponents.

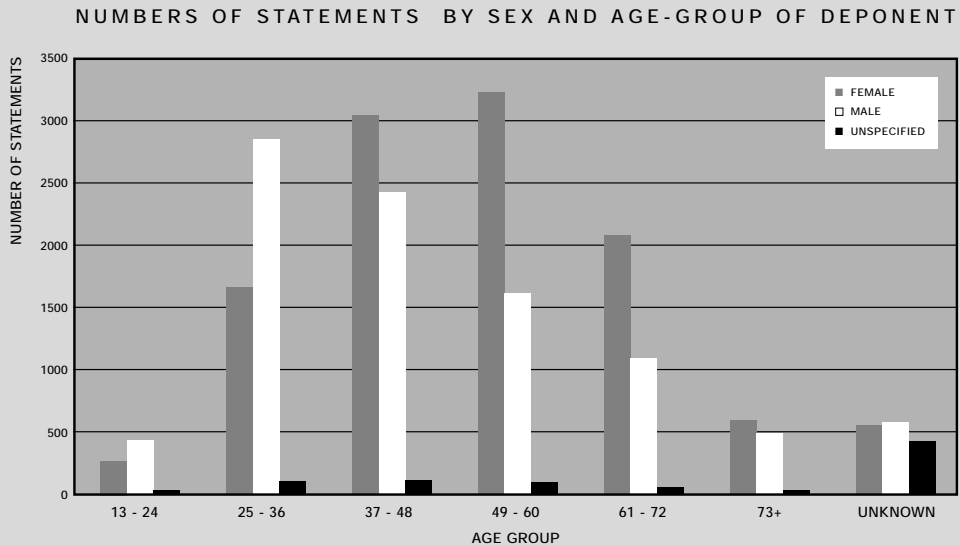
18 Nationally, the proportion of women to men is 54: 52³⁰, so the higher number of African women is not simply a demographic consequence. As will be shown, the violence of the past resulted in the deaths mainly of men.

²⁹ There are 716 statements from deponents whose sex was not recorded. Since it is likely that the proportion of females to males of these statements is the same as those where the sex is known, the results are not likely to be significantly affected.

³⁰ Census 96, *ibid.*

Age groups

- 19 The Commission took statements from deponents of all age groups, except children³¹.



- 20 The chart below shows the number of statements made by women and men in each age group. Most statements were made by those aged thirty-seven and above, with men dominating the younger age groups (youths and young adults), and women in the majority in the middle-aged to elderly age groups. The reason for this pattern is explained by looking at who the victims were and when the violations took place.

What did they talk about?

- 21 Deponents came to the Commission to tell about gross violations of human rights that had been experienced, either by themselves or by someone close to them. In total, the 21 000 statements made to the Commission contained nearly 38 000 allegations of gross violations of human rights³², of which nearly 10 000 were killings.

³¹ i.e. those below the legal age of majority.

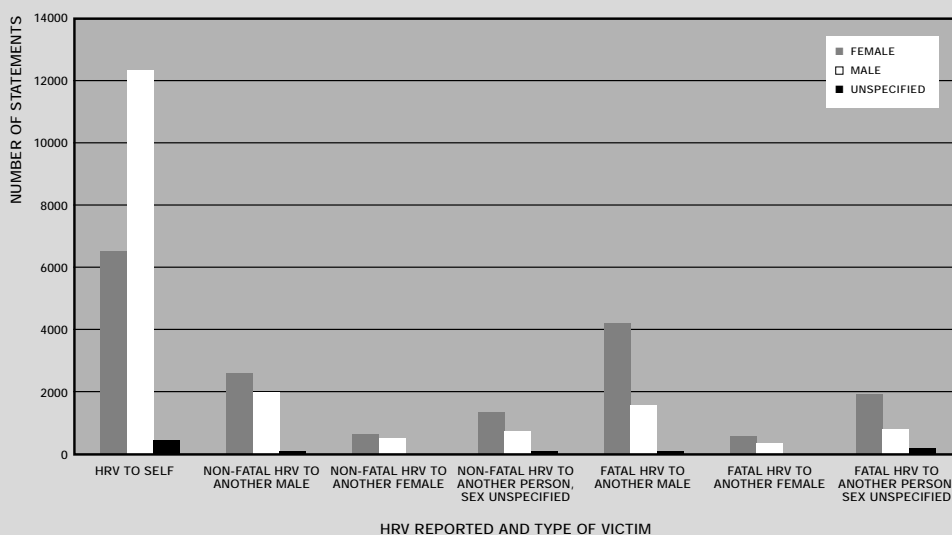
³² The total number of violations reported is a count of all gross violations reported, whether the Commission found the violation to be a gross violation in terms of the Act or not. We are only considering deponents' testimony here, not the final decisions of the commission. In addition to gross violations, deponents also described several thousand 'associated' violations that do not fall into the categories specified by the Act. These have been excluded from this analysis.

22 The table below shows the number of violations, fatal and non-fatal³³, reported by deponents and who suffered from the violation:

VICTIMS AND TYPE OF VIOLATION	NUMBER OF VIOLATIONS REPORTED
Non-fatal HRV to men	17,050
Non-fatal HRV to women	7,880
Non-fatal HRV to victims of unspecified sex	2,762
Fatal HRV to men	5,980
Fatal HRV to women	1,031
Fatal HRV to victims of unspecified sex	2,969
Total reported violations	37,672

23 Men were the most common victims of violations. Six times as many men died as women and twice as many survivors of violations were men³⁴. Hence, although most people who told the Commission about violations were women, most of the testimony was about men. The graph below shows clearly how the testimony of women deponents differed from that of men:

VIOLATIONS AND VICTIMS REPORTED, BY SEX OF DEPONENT



33 Non-fatal human rights violations include attempted killings, torture, severe ill treatment and abductions.

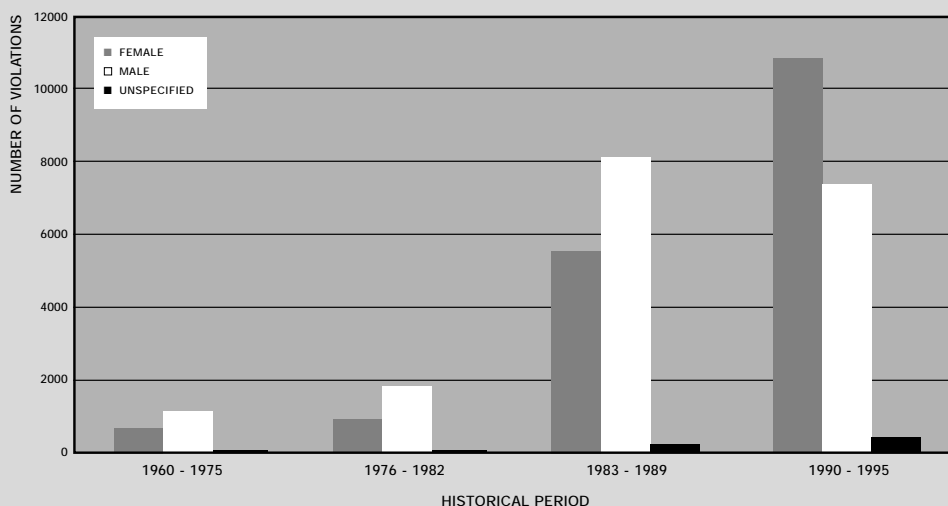
34 The large numbers of victims of unspecified sex are a consequence of the time-pressures on Commission staff to load the data onto the computer systems. With more time and resources, this data can be improved. However, it is very likely that the proportion of men to women victims amongst those of unspecified sex is the same as that where the sex is known, so the overall results are not likely to be significantly affected by the unknowns.

24 Most men who came to the Commission reported violations they had experienced, whereas women tended to talk about violations experienced by others. This is not to say that women did not suffer violations themselves - they certainly did suffer - but the focus of women's testimony was more often about someone other than themselves and those victims tended to be men.³⁵

Historical periods

25 The Commission's mandate period covered four major historical periods, from 1960 to 1994. The graph below shows that most violations reported by deponents took place in the period after the unbanning of political parties (1990-1994) followed closely by the years in which states of emergency were in force (1983-1989).

VIOLATIONS IN EACH HISTORICAL PERIOD, REPORTED BY MALE AND FEMALE DEPONENTS



26 The lower number of reported violations in early periods is partly a consequence of the different political climate during those years, but is also partly due to the fact that people from that time were either too old to come to the Commission, or had passed away.

³⁵ In order to ensure that the voices of women speaking on their own behalf were heard, the Commission held hearings specifically for this purpose. These are reported on in a later chapter.

- 27 A significant point is that violations reported to have taken place in the period after the unbannings were more commonly reported by women. This is because the nature of the violence changed dramatically in that period, during which whole communities were indiscriminately affected.

Concluding remarks

- 28 The Commission did not try to carry out a census of violations of human rights. It had neither the time nor the resources to do so. Consequently, we will never know exactly how many people suffered during the mandate period.
- 29 Instead, the Commission appealed to South Africans to come forward to tell the Human Rights Violation Committee what had happened to them. By the end of the Commission's lifespan, 21 000 people had come forward, women and men, old and young, and told the Commission about nearly 38 000 gross violations of human rights. In the process, the broad outlines of the past emerged with undeniable clarity. Ninety percent of those who came forward were black. Most of them were women. The greatest number of these approached the Commission on behalf of dead men to whom they were related.

Legal Challenges

■ INTRODUCTION

- 1 In the two and a half year period of the Truth and Reconciliation Commission's existence, it faced a number of legal challenges. At a macro level, the application filed on behalf of the Azanian Peoples Organisation (AZAPO), the Biko, Mxenge and Ribeiro families against the Government of South Africa, challenging the constitutionality of the amnesty provisions, struck at the heart of the Amnesty Committee's very existence. The Constitutional Court judgement upholding the amnesty provisions allowed the Amnesty Committee to begin its task, secure in the knowledge that there could be no further legal challenge to its existence.
- 2 Once the public hearings of the Commission commenced, a series of applications were launched by Brigadier Du Preez and Major General Van Rensburg against the Commission in the Cape High Court regarding the provisions of section 30 of the founding Act. These culminated in a judgement by the Appellate Division. This judgement had a profound effect on shaping the policy and procedures of the Commission.
- 3 From then onwards, the Commission faced a barrage of litigation, including an application from the National Party (NP) seeking the censure of the chairperson of the Commission and the removal from office of the vice-chairperson. A further application from the NP in the Cape High Court sought an order that amnesty decisions handed down by the Amnesty Committee in respect of thirty-seven African National Congress (ANC) members be declared void. Another political party, the Inkatha Freedom Party (IFP) filed a complaint with the Public Protector about its perceived treatment by the Commission. A group of South African Defence Force (SADF) generals also filed a complaint with the Public Protector complaining of bias by the Commission.
- 4 The Commission also faced challenges from perpetrators in respect of amnesty decisions.
- 5 One of the interesting legal challenges arose in the Chemical and Biological Hearing when Dr Wouter Bassoon, the project leader, who had been *subpoenaed*

to give evidence, launched an application in the Cape High Court contending that his rights in terms of section 35 of the interim Constitution would be infringed if he was compelled to testify. The High Court ruled that he should testify.

- 6 During its lifetime, the Commission was so often involved in litigation that one could be forgiven for thinking that it was under siege. All of these matters are dealt with in detail in this chapter.

■ CHALLENGING THE CONSTITUTIONALITY OF THE ACT

The Azanian Peoples Organisation, Ms NM Biko, Mr CH Mxenge and Mr C Ribeiro v the President of the Republic of South Africa, the Government of the Republic of South Africa, the Minister of Justice, the Minister of Safety and Security, and the Chairperson of the Commission, in the Constitutional Court¹.

- 7 The case was significant for a number of reasons. The applicants applied for direct access to the Constitutional Court and for an order declaring section 20(7) of the Promotion of National Unity and Reconciliation Act (the Act) unconstitutional. The effect of section 20(7), read with other sections of the Act, is to permit the Amnesty Committee to grant amnesty to a perpetrator of an act associated with a political objective and committed before 6 December 1993 (later changed to 10 May 1994). A perpetrator cannot be criminally or civilly liable for an act or acts for which he or she has received amnesty. Similarly, neither the state nor any other body, organisation nor person that would ordinarily have been vicariously liable for such act can be liable in law.
- 8 In a judgement delivered by the Deputy President of the Constitutional Court, Judge Mahomed, the court unanimously upheld the constitutionality of the section. In doing so, it acknowledged that the section limited the applicants' right in terms of section 22 of the interim Constitution to "have justiciable disputes settled by a court of law, or ... other independent or impartial forum". However, it held that, in terms of section 33(2) of the interim Constitution, violations of rights are permitted either if they are sanctioned by the interim Constitution itself or if they are justified in terms of subsection 1 of the limitations clause (section 33(1)).

¹ Case No CCT 17/96.

9 The Court held that the postamble, which was part of the interim Constitution², sanctioned the limitation on the right of access to court. Amnesty for criminal liability was permitted by the postamble because, without it, there would be no incentive for offenders to disclose the truth about past atrocities.

10 Judge Mahomed said that he understood why the applicants wished to:

insist that wrongdoers who abused their authority and wrongfully murdered and maimed or tortured very much loved members of their families who had, in their view, been engaged in a noble struggle to confront the inhumanity of apartheid, should vigorously be prosecuted and effectively be punished for their callous and inhuman conduct in violation of the criminal law (para 16).

11 However, he argued that there was good reason to believe that the granting of amnesty might assist in uncovering the truth about the past, thus assisting in the process of reconciliation and reconstruction.

Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof. Loved ones have disappeared, sometimes mysteriously, and most of them no longer survive to tell their tales. Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible; witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law.

The Act seeks to address this massive problem by encouraging these survivors and the dependants of the tortured and the wounded, the maimed and the dead, to unburden their grief publicly; to receive the collective recognition of a new nation that they were wronged and, crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible (para 1).

That truth, which the victims of repression seek so desperately to know is, in the circumstances, much more likely to be forthcoming if those responsible

2 Part of the wording of the postamble provides thus: "amnesty shall be granted in respect of acts, omissions and offences 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 mechanisms, criteria and procedures, including tribunals, if any though which amnesty shall be dealt with at any time after the law has been passed".

for such monstrous misdeeds are encouraged to disclose the whole truth with the incentive that they will not receive the punishment which they undoubtedly deserve if they do (para 17).

- 12 Thus, he noted, the alternative to granting immunity could well have the effect of keeping relatives of victims ignorant of what happened, thereby perpetuating:

their legitimate sense of resentment and grief and correspondingly [allowing] the culprits of such deeds to remain perhaps physically free but inhibited in their capacity to become active, full and creative members of the new order (para 18).

- 13 Judge Mahomed noted that amnesty was a crucial component of the negotiated settlement itself, without which the interim Constitution would not have come into being. If the court kept alive the prospect of continuous retaliation and revenge, the agreement of those threatened by its implementation would never have been forthcoming (para 19). The Court held that amnesty for civil liability was also permitted by the postamble (para 2), again because the absence of such an amnesty would constitute a disincentive for the disclosure of the truth.

- 14 The court held that the postamble permitted the granting of an amnesty for any civil liability to the state, entitling Parliament to adopt a wide concept of reparations. This would allow the state to decide on proper reparations for victims of past abuses, having regard to competing demands on the limited resources of the state. Further, Parliament was authorised to provide for individualised and nuanced reparations that took into account the claims of all victims, rather than preserving state liability for provable and unprescribed delictual claims only. In this regard, Judge Mahomed noted, the families of those whose fundamental human rights were invaded by torture and abuse were not the only victims who have endured “untold suffering and injustice in consequence of the crass inhumanity of apartheid which so many have had to endure for so long”. Indeed:

Generations of children born and yet to be born will suffer the consequences of poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on the life and living for so many (para 43).

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 suffering" of individuals and families whose fundamental human rights had been invaded during the conflict of the past (para 45).

- 15 The negotiators of the interim Constitution and the leaders of the nation were thus compelled to make hard choices and "were entitled to permit a different choice to be made between competing demands inherent in the problem".
- 16 The Court held, therefore, that the postamble authorised the granting of amnesty to bodies, organisations or other persons who would otherwise have been vicariously liable for acts committed in the past. Without the granting of amnesty, the truth might not be told. Indeed, the interim Constitution itself might not have been negotiated had amnesty not been provided for.
- 17 The application was dismissed by the Constitutional Court on the 25 July 1996.

Application for an interdict to restrain the Commission from granting amnesty

- 18 Before the delivery of the above judgement, the applicants - namely AZAPO, Ms Biko, Mr Mxenge and Mr Ribeiro - brought a further application seeking an urgent order from the Court directing that the respondents be interdicted and restrained from granting amnesty to any person pending the outcome of the Constitutional Court decision.
- 19 On 25 April 1996, the Commission gave an undertaking that it would not grant any amnesties pending the finalisation of the application. However, the other functions and processes of the Amnesty Committee would continue in the interim.
- 20 On 9 May 1996, the court dismissed the application. It found that there was sufficient indication that the word 'amnesty' intended in the Postamble of the interim Constitution included the conferring of immunity in respect of civil liability in addition to criminal liability. It found, further, that the applicants had established neither a clear right nor a *prima facie* (face value) right to an interdict.

■ APPLICATION OF THE PROVISION OF SECTION 30

- 21 From the inception of its work, the Commission sought to interpret the provisions of section 30. Section 30 reads as follows:

Procedure to be followed at investigations and hearings of Commission, committees and subcommittees

- (1) The Commission and any committee or subcommittee shall in any investigation or hearing follow the prescribed procedure or, if no procedure has been prescribed, the procedure determined by the Commission, or, in the absence of such a determination, in the case of a committee or subcommittee, as the case may be.*
- (2) If during any investigation by or any hearing before the Commission -*
- (a) any person is implicated in a manner which may be to his detriment;*
 - (b) the Commission contemplates making a decision which may be to the detriment of a person who has been so implicated;*
 - (c) it appears that any person may have suffered harm as a result of a gross violation of human rights, the Commission shall, if such person is available, afford him or her an opportunity to submit representations to the Commission within a specified time with regard to the matter under consideration or to give evidence at a hearing of the Commission.*

- 22 The Commission took statements from witnesses (potential victims) about gross human rights violations. In the event that a statement contained allegations implicating persons to their detriment, the Act envisaged that the Commission should give the implicated person an opportunity to address it on the issue, either in writing or orally.
- 23 In particular, where a witness was to testify at a public hearing and an alleged perpetrator was to be implicated, the Commission was required to inform the alleged perpetrator, in writing, of the substance of the allegations against him or her. In these circumstances too, the Commission was required to give the alleged perpetrator an opportunity to make representations to it either in writing or orally.

- 24 In endeavouring to ensure compliance with its legal obligations in terms of the Act, the Commission ran into problems with its East London office. The result was a series of actions and counter actions concerning a number of crucial questions:
- a Could alleged perpetrators be named publicly without having been given proper and/or sufficient notice?
 - b Could alleged perpetrators appear and make oral representations at the hearing at which a witness was testifying?
 - c Was an alleged perpetrator entitled to all the documentation pertaining to him or herself, including the witness's statement?
 - d Was an alleged perpetrator entitled to cross-examine the witness?
- 25 One of the first cases in this respect was that of Brigadier Du Preez and Major General Van Rensburg who sought to prevent the mother of Mr Sipiwe Mthimkulu from testifying about them.

Brigadier Du Preez and Major General Van Rensburg: first application

- 26 The application was brought by Brigadier Du Preez and Major General Van Rensburg³ in the Cape of Good Hope Division of the Supreme Court.

Background to the case

- 27 The testimony in dispute involved the case of Mr Sipiwe Mthimkulu whose mother was scheduled to testify to the Commission about the death of her son.
- 28 Sipiwe Mthimkulu was a political activist in the Eastern Cape. He was detained on a number of occasions and subjected to severe forms of torture. He was shot in the arm and faced constant police harassment. In 1981, after his release from yet another arrest, his health deteriorated rapidly and he was diagnosed as having been poisoned with thallium. His body swelled, his hair fell out, he could not urinate and he was confined to a wheel chair. Despite the poisoning, he fought to recover and began slowly regaining his health. In 1982, he left his home for a check up at the Livingstone Hospital. He was never seen again.

³ Case No 3334/96. Reported as Truth and Reconciliation Commission v Du Preez and Another 1996 (3) SA 997.

- 29 On 30 April 1990, Captain Dirk Coetzee alleged that, after the poison had failed to kill Sipiwe Mthimkulu, he was killed by Brigadier Jan du Preez and Colonel Nick van Rensburg. This circumstance was reported in the press and was to be the subject of Ms Mthimkulu's testimony.
- 30 Consequently, on 13 April 1996, the Commission sent notices to Brigadier Du Preez and Major General Van Rensburg (addressed to the Commissioner of the SAPS). The notices were issued in terms of section 30 of the Act and informed Brigadier Du Preez and Major General Van Rensburg that: "an unnamed witness would testify that they were involved in, or had knowledge about, the poisoning and disappearance of a person, also unnamed" in Port Elizabeth in 1981 or 1982. They were informed that the hearing would take place in East London between 15 - 18 April 1996. Because Commission representatives in East London were concerned that the witness would be in danger if her identity became known, the notices were cautiously and vaguely worded.
- 31 The respondents objected to the notices on the basis that they were "vague in the extreme"; that they were unable to investigate the allegations and would not be able to do so before the 15 April 1996. They also said that the procedure proposed by the Commission contravened section 24 of the Constitution of the Republic of South Africa Act, 200 of 1993 (the interim Constitution).
- 32 On the 15 April 1996, Brigadier Du Preez and Major General Van Rensburg launched an urgent interim application. The applicants sought to interdict the Commission from hearing evidence or permitting the presentation of evidence by any person before they had been given "proper, reasonable and timeous notice" of the Commission's intention to receive evidence that would implicate them; and before they had been provided with "such relevant facts and information as might be reasonably necessary" to enable them to exercise and protect what were said to be their rights in terms of section 30 of the Act.
- 33 During the application hearing, the Commission conceded that "insufficient notice and insufficient particularity had been given to the applicants". However, it reserved its position "that the applicants are not entitled to notice of the date of the proposed hearing" and that the Commission was "entitled to hold the hearings without prior notice or the prior furnishing of witness statements". In effect, the applicants were seeking a prior right of rebuttal.

The decision of the court

- 34 On the 30 April 1996, Mr Justice King issued an order restraining the Commission from receiving or allowing evidence during its hearings “which would affect” the applicants. He ruled that the Commission had to give the applicants proper, reasonable and timeous notice of its intention to hear evidence presented by any person which might detrimentally implicate or prejudicially affect the applicants, and of the time and place of the proposed hearings.
- 35 He also ruled that the Commission had to furnish Brigadier Du Preez and Major General Van Rensburg with sufficient facts and information as they would reasonably need to identify the events, incidents and persons concerning which it was proposed to present evidence that might detrimentally implicate them. This would enable them properly to exercise their rights in terms of Section 30.
- 36 The Commission requested leave to appeal against Judge King’s decision.

Brigadier Du Preez and Major General Van Rensburg: second application

- 37 Brigadier Du Preez and Major General Van Rensburg brought a second application in the Supreme Court, Cape of Good Hope Division⁴ in which they alleged that the Commission had acted in contravention of the judgement of Mr Justice King.

Appeal to the full bench of the Cape Provincial Division: first appeal

- 38 The Commission requested that Judge King recuse himself from the appeal hearing. Following the recusal, the Judge President directed that the appeal be heard by a full bench on 20 of June 1996.⁵
- 39 The court held that, in the context of its objectives, functions, powers and the limited time frame within which it had to complete its work, the Commission was not obliged to give prior notice to any person who might be implicated in a human rights violation hearing. However, if and when the Commission contemplated making a decision that might be detrimental to an implicated person after a hearing, that person should be granted an opportunity to submit representations or give evidence to the Commission. Moreover, at that time, the Commission should

⁴ Case No 6250/96.

⁵ Case No 444/96 in the Cape Provincial Division

give the person involved whatever information it had at its disposal in order to enable him or her to answer the allegations.

- 40 Brigadier Du Preez and Major General Van Rensburg petitioned the Appellate Division in Bloemfontein for leave to appeal against the judgement.

Brigadier Du Preez and Major General Van Rensburg: appeal to the Appellate Division⁶

- 41 The appeal was heard before five judges of the Appellate Division, with Chief Justice Corbett presiding.
- 42 The Commission argued that Brigadier Du Preez and Major General Van Rensburg had ignored the fact that the hearing was an investigative procedure and not a judicial matter. It noted, however, that even where a witness may be implicated in impending legal proceedings, he or she has no right to prior notice or an opportunity to be heard at the hearing. The appropriate remedy where adverse publicity might result is afforded by a defamation action.
- 43 In support of this argument, the Commission's counsel submitted a paper by Sir Richard Scott who argues that the fundamental and significant differences between litigation and enquiries make comparisons unsafe.⁷ Counsel also cited an earlier article by Sir Louis Blom-Cooper QC⁸ who rejects the adversarial procedure adopted in the legal system as wholly inappropriate to an enquiry.

The decision of the court

- 44 Judge Corbett stated that the solution to the issues could be found in the common law which requires persons and bodies (statutory and other) to observe the rules of natural justice by acting in a fair manner. He held that the application of the *audi alteram partem* (hearing the other side) principle was applicable, irrespective of whether the body was quasi judicial or administrative. He supported the view that the principle comes into play whenever a statute empowers a public official or body to give a decision that could prejudicially affect an individual. He stated further that the *audi* principle would be enforced unless Parliament expressly or by necessary implication enacted that it would not apply, or if there were exceptional circumstances justifying the court in not giving effect to it. He held

6 Case No 4443/96

7 Scott (1995) 'Procedures at Inquiries - The Duty to be Fair', Law Quarterly Review 596

8 Blom-Cooper (1993) 46 CLP 204

that there was nothing in the Act that expressly or by implication restricted or negated the duty to give reasonable and timeous notice; nor did he consider that there were exceptional circumstances in the present case.

It seems to me that in a case such as this, procedural fairness demands not only that a person implicated be given reasonable and timeous notice of the hearing, but also that he or she is at the same time informed of the substance of the allegations against him or her, with sufficient detail to know what the case is all about. What is sufficient information would depend upon the facts of each individual case (page 41).

- 45 In answering the question, therefore, as to what the duty to act fairly demands of a public body, Judge Corbett held that, in the present case, this meant reasonable and timeous notice of such a hearing, so as to enable the persons or their legal representatives to be present to hear the evidence, to see the demeanour of the witness(es) and to provide the implicated person with an opportunity to rebut the evidence. In these circumstances, he said that the Commission might well be under a duty to hear the rebutting evidence or permit immediate cross-examination.
- 46 Judge Corbett held further that such granting of reasonable and timeous notice would not inconvenience the Commission, save in circumstances where a witness implicates a third party for the first time in *viva voce* (oral) evidence.
- 47 Judge Corbett allowed the appeal with costs and reinstated the order of Judge King with the addition of a new paragraph that stated that nothing in the order should be construed as necessarily obliging the Commission to disclose the identity of any witness.
- 48 The implications of the court's decision were that the Commission was now compelled to give prior notice to alleged perpetrators of human rights violations before evidence was heard publicly, and to provide them with sufficient information about the allegations against them to enable them to make representations.

Follow up by the Commission

- 49 On the 9 May 1996, the Commission provided Brigadier Du Preez and Major General van Rensburg with relevant extracts from the statement implicating them. On 15 May, at their request, a full copy of the witness's statement was issued to

them. The hearing was set for the 23 May. In an attempt to accommodate Brigadier Du Preez and Major General Van Rensburg, the Commission undertook that the witness, Ms Mthimkulu, would not mention either applicant by name at the hearing.

Implications for the work of the Commission

- 50 Following the court ruling, the Commission adopted the procedure of sending section 30(2) notices to alleged perpetrators twenty-one clear calendar days in advance of the hearings. Notices were accompanied by all documentation necessary to provide the alleged perpetrator with sufficient detail of the substance of the allegations against him or her. The procedures applied to notices for human rights violations hearings, section 29 investigative hearings and amnesty hearings.
- 51 The Commission expressed concern about the impact of the court ruling on public opinion, feeling that the Commission was coming to be seen as too 'perpetrator-friendly'. There were also concerns that the environment of the hearings would become too legalistic and formal, hampering the already painful and emotional process of giving public testimony and risking secondary trauma. Indeed, at the hearing where the Mthimkulu family was due to testify on the death of Sphiwe Mthimkulu, the audience became visibly upset when it was informed that the Commission could not permit members of the family to testify as the applicants had interdicted them from giving evidence.
- 52 The judgement raised further questions about the rights of victims: namely their right to legal representation and cross-examination of perpetrators.
- 53 The judgement imposed an administrative and logistic burden on the Commission, requiring it to employ further staff and allocate further resources to identify and trace implicated persons. In many instances, the alleged perpetrators were no longer in the same employment as previously and their addresses were not easily available.
- 54 In addition, the Commission had to contend with perpetrators demanding to be heard at the same hearings as victims and requesting that they be allowed to cross-examine witnesses. This had a traumatising effect on many victims who had finally found the courage to testify.

Impact on the report

- 55 However, once the public hearings had been completed, the full impact of the judgement became clear. Where the Commission contemplated making a finding against a person to their detriment in the report, the person would need to be notified of the decision contemplated as well as afforded the opportunity to make written representations to the Commission.
- 56 This meant that the Commission had to trace the alleged perpetrator and furnish him or her with the contemplated decision together with the supporting documentation. In essence, the Commission found itself in a position in which it was obliged to give alleged perpetrators a prior view of its report - a highly unusual circumstance for a report on a commission of enquiry.
- 57 The Commission also received correspondence from lawyers seeking to prevent publication of their clients' names in the report.
- 58 Despite these concerns, the Commission complied with the ruling of the Appellate Division to the best of its ability.

Gideon Nieuwoudt v the Truth and Reconciliation Commission⁹

Background

- 59 Mr Gideon Nieuwoudt, a member of the Security Branch in the Eastern Cape brought an application requesting that the Commission be interdicted from allowing evidence which would affect and/or implicate him, until and unless he had been given proper, reasonable and timeous notice of any evidence presented and until he had been provided with copies of all relevant documentation.

The decision of the court

- 60 In delivering judgement, Judge Buchanan commented on the first ground for argument by the applicant, that is, the judgement of King (above):

With the greatest respect to the learned judge in that matter, I am not at all convinced that the provisions of the Act or of the Constitution necessarily require the form of prior notice and disclosure envisaged in the order granted in that matter and also sought in this application....

⁹ Case No 1136/96 in the South Eastern Cape Local Division

It seems to me that Section 30(2) of the Act does not, on a proper construction thereof, require prior notice to any person who may be implicated during the course of a hearing by a witness, even should the Commission itself have prior notice of such implication. Section 30 (2), in my view, merely requires that if a person is so implicated such person shall be afforded a proper and appropriate opportunity to submit representations to the Commission to answer and deal with any such implications.

Furthermore, it does not seem to me that the Constitutional right to procedurally fair administrative action entitles the Applicant to the relief sought in this application. It seems to me that it is inappropriate to equate the hearings of the Commission's Committee on Human Rights Violations with an administrative or quasi-judicial hearing. The Act envisages rather a procedure which is unique and which, in the national interest, is designed to investigate and establish as complete a picture as possible of the nature causes and extent of gross violations of human rights committed during the relevant period.

- 61 Judge Buchanan went on to state that it would be undesirable, except where absolutely necessary, to place procedural obstacles before witnesses wishing to make full disclosure:

Whilst this may cause prejudice to a person who may be implicated is unfortunate... Such prejudice, however, should in my view, nevertheless be weighed against the laudable and important objects which the Act seeks to achieve. In addition, the prejudice which may be caused to persons should, at least to an extent, be offset by the opportunity for reply and answer entrenched in the Act itself.

- 62 Commenting on the second ground relied upon by the Applicant (the written and unequivocal undertaking), Judge Buchanan noted that, in terms of section 30 (1), the Act provided for the Commission to establish a prescribed procedure. Although it appeared that the Commission had determined no specific procedure in respect of the Committee on Human Rights Violations, in this particular case the letter of the Commission dated 6 May 1996 indicated that the Commission had bound itself to a procedure in respect of the applicant.

The agreement

- 63 The matter was settled by agreement between the parties on 5 June 1996 on the basis that no evidence would be received or allowed to be presented during the Commission's hearing, until and unless:
- a the respondent had been given proper, reasonable and timeous notice of its intention to hear evidence which might detrimentally implicate or prejudicially affect him, and
 - b the Commission had furnished the applicant with such facts and information necessary to enable him to identify the events, incidents and persons concerning which or whom it proposed to present or allow evidence that could detrimentally implicate him. In other words, such notice and facts as were sufficient and adequate to enable the applicant properly to exercise his rights in term of section 30 of the Act.
 - c in the event of any person testifying before the Commission, who had not furnished a statement affecting or implicating the applicant, the Commission would ascertain beforehand whether the person testifying would mention the applicant. If so, the witness's evidence would be postponed and stand over until the above provisions had been complied with; and
 - d where, in the course of testimony, a witness attempted to implicate the applicant, the Commission would immediately prevent the giving or receiving of such evidence and would take reasonable steps to prevent a recurrence of this - provided that such testimony could be admitted once the aforementioned provisions had been complied with.
- 64 The agreement was made an order of the court.

Gideon Nieuwoudt v the Truth and Reconciliation Commission: second application

- 65 On 22 May 1996, the applicant brought contempt of court proceedings against the Commission in terms of the order obtained on 20 May 1996.¹⁰
- 66 Nieuwoudt alleged that, at the human rights violations hearing held in New Brighton on 21 May, the Commission had allowed evidence to be given by Mr Mlandile

¹⁰ Case No 1152/96 South Eastern Cape Local Division

Quntu, who alleged that Nieuwoudt had harassed and intimidated him in 1984. He also alleged that, in giving evidence, a Mr Dennis Neer had mentioned Nieuwoudt's name and had implied that Nieuwoudt had threatened to kill him.

67 The matter was settled and the settlement was made an order of court.

Gideon Nieuwoudt v the Truth and Reconciliation Commission: third application

68 On 6 June 1996, Nieuwoudt brought a further application alleging contempt of court against the Commission, the chairperson of the Commission, Archbishop Desmond Tutu, the vice-chairperson Dr Alex Boraine, the Reverend Bongani Finca and three others¹¹.

69 Nieuwoudt argued that, whilst witnesses were told not to mention his name, they were allowed to refer to him as "the man whose name they shouldn't mention" or "Mr X", making it clear to all that he was the person being referred to. He also stated that this received wide media coverage and constituted a violation of paragraphs 2(i-iii) of the order of 22 May 1996.

70 Nieuwoudt alleged that he had been given no notice of such evidence being led and that the Commission had failed to comply with its undertaking to prevent the giving of evidence which clearly affected, implicated and caused prejudice to him.

71 The following settlement was reached between the two parties and made an order of the court:

- a Nieuwoudt would have the opportunity to submit representations or give evidence, either immediately or at a mutually convenient time.
- b The Commission would take all reasonable steps in good faith to furnish Nieuwoudt with any witness statement in its possession which might implicate him in the violation of human rights prior to any such evidence being led, together with information about when and where such evidence was to be heard.
- c The Commission undertook to pay Nieuwoudt's costs in respect of the application.

72 This agreement substituted the agreement of 22 May 1996.

¹¹ Case 1253/96

Implications for the work of the Commission

- 73 Following the terms of the settlement, the Commission formally adopted procedures to comply with the provisions of section 30.
- 74 There were now two judgements that substantially supported each other: that of the Full Bench of the Cape High Court and that of Judge Buchanan. These were in conflict with the earlier decision of Judge King.
- 75 The Commission awaited the decision of the Appellate Decision in order to deal conclusively with the issues.

Postscript

- 76 It is important to note that Gideon Nieuwoudt (a member of the Port Elizabeth Security Branch between 1977 and 1989) applied for amnesty for the following: the kidnapping and killing of Siphwe Mthimkulu and Topsy Madaka in April 1982; the kidnapping and death of the 'Pebco Three' in May 1985; the Motherwell incident in which four people were killed in December 1989; the assault on Peter Jones and Steve Biko in September 1977 and the assault on Mkhuseleli Jack in August 1985.

■ CHALLENGES TO THE IMPARTIALITY OF THE COMMISSION

The National Party v Desmond Mpilo Tutu and Others

- 77 The case was brought by the National Party of South Africa against Desmond Mpilo Tutu, Alexander Lionel Boraine, the Truth and Reconciliation Commission, the President of the Republic of South Africa and the Minister of Justice.

Background

- 78 At a press conference on 15 May 1997, members of the Commission expressed certain views concerning the testimony presented to the Commission by former State President, Mr FW de Klerk on 14 May 1997.

- 79 Following the press conference, on 2 June 1997, attorneys acting on behalf of the NP wrote to the Commission alleging that the conduct of both the chairperson and the vice-chairperson of the Commission had contravened certain provisions of the Act, in particular sections 36(5)(a) and 36(6)(a). The letter demanded an unconditional apology and an undertaking that the said members of the Commission would comply with the provisions of the Act. It also threatened urgent legal action in the event of a failure to comply with these demands.
- 80 The gravamen of the relief sought by the NP amounted to a censure of the chairperson and the removal from office of the vice-chairperson of the Commission.
- 81 After an exchange of various letters and unsuccessful attempts on the part of the Commission to arrange a meeting with the NP to discuss and settle the matter, the NP launched an urgent application in the Cape Provincial Division of the High Court.
- 82 The matter eventually came before the court on 5 September 1997, when further inconclusive steps were taken to settle the matter. The matter was eventually postponed after the presiding judge urged the parties to take serious steps to settle. In view of the fact that the chairperson of the Commission was abroad at the time, it was decided that the matter should stand over pending his return, whereafter the parties would meet with a view to effecting a settlement.

Settlement

- 83 At a meeting on 19 September 1997, both the chairperson and vice-chairperson of the Commission issued personal apologies for criticising the evidence presented by Mr FW De Klerk on behalf of the NP.
- 84 It was further agreed that the issue of co-operation between the NP and the Commission would be pursued in further discussion between the parties.
- 85 Consequently, the NP withdrew its application and it was agreed that each party should pay its own legal costs.

■ CHALLENGES TO AMNESTY DECISIONS

Leonard Veenendal v Minister of Justice, the Truth and Reconciliation Commission and the Government of Namibia¹² and DG Stopforth v Minister of Justice, the Truth and Reconciliation Commission and the Government of Namibia and Minister of Safety and Security¹³

- 86 The applicants were members of the organisation known as Orde Boere Volk and were both involved in attempts to disrupt the elections in Namibia. They committed various criminal acts in Namibia, including an attack upon an election office during which a security guard was killed. They afterwards fled to South Africa where they were arrested during September 1989 and were returned to Namibia. In December 1989, they managed to escape from custody and returned to South Africa where they were again arrested. The Namibian authorities applied for their extradition to face criminal charges in Namibia.
- 87 Both applicants applied for amnesty and launched high court applications in the Transvaal Provincial Division (citing the Commission as one of the respondents) to have the application for extradition suspended pending the outcome of their amnesty applications.
- 88 The Court found that the acts forming the subject matter of the applicants' amnesty applications did not fall within the ambit of acts associated with a political objective in terms of section 20 of the Act and that they would not, therefore, qualify for amnesty.
- 89 The applications were accordingly dismissed with costs.

Gerber v Amnesty Committee, Truth and Reconciliation Commission¹⁴ and Van Wyk v Amnesty Committee, Truth and Reconciliation Commission¹⁵

- 90 Gerber and Van Wyk brought separate applications to the Transvaal Provincial Division to have the decisions of the Amnesty Committee refusing their applications for amnesty set aside, or alternatively referred back to the Amnesty Committee for reconsideration. The applications were based on the allegation that the Amnesty Committee discriminated against them. They claimed that their applications

12 Case No 24709/96

13 Case No 25042/96

14 Case No 21544/96

15 Case No 16602/97

were identical to another application heard by the Committee where amnesty was granted.

- 91 The Commission argued that the applicants had failed to satisfy the criteria of the Act, particularly the requirement that the offences be associated with a political objective.

Background

- 92 Cornelius Johannes Van Wyk, one of four members of the Nasionale Sosialiste Partisane (NSP), faced twelve charges: for motor vehicle theft, three counts of murder, attempted robbery with aggravating circumstances, two charges of contravening the Weapons and Ammunition Act, housebreaking, two counts of robbery, housebreaking and illegal possession of weapons. He applied for amnesty in respect of the above charges on the basis that he committed them in pursuance of the political objectives of the NSP. He was refused amnesty on the 6 December 1996.
- 93 Gerber was employed by Fidelity Security Guards. He tortured, burnt and killed a co-worker whom he suspected of working for the Pan Africanist Congress.
- 94 The Court found that the Committee had approached the applications properly and that the decisions were not reviewable. The cases were dismissed with costs.

Truth and Reconciliation Commission v Coleman and 36 Others¹⁶ and the National Party and Another v the Chairperson, Committee on Amnesty and Others¹⁷

- 95 On 28 November 1997, the Amnesty Committee considered and granted the amnesty applications by thirty seven members - in some instances high profile leaders - of the ANC. The applications were considered in chambers and granted without hearing any evidence. The Committee's order indicated that amnesty was granted "for all offences associated with a political objective as defined by the Act and which fall within the ambit of the Act, committed or authorised" by the applicants. The applications were largely identical. They were based on the fact that, as members of the leadership at the time, they assumed responsibility for all acts committed by members of the ANC in execution of the policy decisions of the organisation.

¹⁶ Case No. 3729/98

¹⁷ Cape of Good Hope Provincial Division, case no. 3626/98.

- 96 No specific acts or omissions were specified in the applications. In fact, the applicants indicated that they were not aware what acts had been committed by their followers and said that they had not themselves committed any specific acts.
- 97 On 13 January 1998, the Commission issued a public statement giving notice of its intention to have the decision of the Amnesty Committee reviewed.
- 98 Other political parties also indicated an interest in attacking the decision of the Amnesty Committee and, indeed, the NP launched an application a few days before the Commission had issued court papers. The result was that two separate applications were placed before the Court in respect of the same matter.
- 99 The Commission's application was launched on 13 March 1998, seeking an order declaring the decision of the Amnesty Committee void. Alternatively, it sought an order reviewing and setting aside the decision and directing the Amnesty Committee to consider the applications for amnesty afresh.
- 100 In his founding affidavit, the chairperson of the Commission noted that the amnesty decisions were invalid by virtue of at least four irregularities:
- a The Amnesty Committee failed to grant amnesty in respect of identified acts, omissions or offences and failed to identify specific offences for which amnesty was granted.
 - b The Amnesty Committee failed to consider whether each offence for which amnesty was granted was a political offence as required by the Act.
 - c The Amnesty Committee did not satisfy itself that full disclosure had been made in respect of the acts for which amnesty was granted.
 - d The Amnesty Committee could not have satisfied itself that there was no need for a hearing, since it did not enquire whether these offences involved gross violations of human rights as specified by the Act.
- 101 The court granted the application by the Commission and set aside the amnesties. The matter was referred back to the Amnesty Committee for reconsideration.

■ REQUESTS FOR INFORMATION

The State v Dirk Johannes Coetzee and four others¹⁸

- 102 Dirk Johannes Coetzee issued a *subpoena* to the head of the Investigation Unit of the Commission, calling on him to produce the transcript of evidence given to the Commission by Joseph Tshepo Mamasela.
- 103 The Commission responded that it was not required to produce the information as the Act entitles the Commission to refuse disclosure (Section 29(5)); that it would not be in the public interest, and that it would defeat the object of the Act. It responded further that the videotape requested was not compellable in terms of section 179 of the Criminal Procedure Act 51 of 1977.
- 104 The accused argued that there was no absolute privilege and that large portions of the evidence had already been made public.

The decision of the court

- 105 The Court held that the accused was entitled to the evidence sought on the basis that:
- a there was no absolute privilege;
 - b Coetzee had a right in common law to a fair trial, including the right to adduce and challenge evidence;
 - c the Commission had not established that Mamasela's evidence was so sensitive and important that it outweighed the rights of the accused to a fair and proper trial;
 - d no grounds had been set out as to why the court should restrict the information sought; and
 - e the video *subpoenaed* was issued in terms of the rule 54(5) of Uniform Rules of the Court and not the Criminal Procedure Act and was therefore compellable.

¹⁸ Durban and Coast Local Division, CC137/96

■ COMPLAINTS TO THE PUBLIC PROTECTOR

Inkatha Freedom Party (IFP)

- 106 On 9 October 1997, the Commission was notified by the Office of the Public Protector (the Public Protector) of a complaint received from Mr Baldwin Siphon Ngubane, national chairperson of the IFP, on behalf of his party. The complaint related to the treatment of the IFP at the hands of the Commission.
- 107 The complaint stated that, in conducting its affairs and functions, the Commission had acted in a biased manner against the IFP and thereby:
- a violated the IFP's constitutional rights;
 - b impaired its dignity and prerogatives in terms of the constitutional system;
 - c acted in contravention of its own statutory objectives to promote national unity and reconciliation in a spirit of understanding which transcends the conflict and divisions of the past.
- 108 It claimed further that certain actions of the Commission had hindered rather than assisted in the achievement of its statutory objective to promote national unity and reconciliation. The IFP cited a number of specific incidents, decisions of the Amnesty Committee and examples of what it described as the Commission's partisan approach.
- 109 The Public Protector requested that the Commission respond to the IFP's complaints. The request was complied with.

Former SADF members

- 110 On 29 January 1998, the Public Protector received a complaint from Generals JJ Geldenhuys and Liebenberg based on a mandate received from 350 members of different ranks of the former South African Defence Force (SADF) during a symposium held on 30 August 1997 to the following effect :

The [Truth and Reconciliation Commission] and some of its members have displayed continuous prejudice, bias and lack of impartiality towards the former South African Defence Force and its members. This attitude and these actions

by the [Truth and Reconciliation Commission] are also considered to be probably in violation of the constitutionally-guaranteed human rights of the SADF members concerned as described in chapter 2 sections 9 and 23 of Act 108 of 1996. The disregard which resultantly (sic) developed in the minds of members of the former SADF undermines the overall mission of the [Truth and Reconciliation Commission] to promote reconciliation and national unity.

111 The symposium registered a number of specific complaints.

Further complaint by former SADF members

112 On 6 February 1998, the Commission received a document from Generals Malan, Viljoen, Geldenhuys and Liebenberg, Major General Marais and Warrant Officer Holliday. This contained an assessment of the treatment of the former SADF by the Commission with the view "to making constructive suggestions with the aim of promoting national reconciliation".

113 The document raised concerns reflected in the previous complaint and made a number of suggestions to the Commission.

■ MR PW BOTHA'S REFUSAL TO APPEAR BEFORE THE COMMISSION

114 On 5 December 1997, the Commission issued a section 29 notice to former State President Mr PW Botha, asking him to appear before the Commission to answer questions about the State Security Council. The notice was issued in terms of section 29 of the Act.

115 Mr Botha failed to appear and a criminal charge was brought. He was prosecuted at the magistrate's court in George on 1 - 5 June 1998, with Mr Victor Lugaju presiding.¹⁹ Amongst the witnesses for the state were Archbishop Tutu and other members of the Commission. Mr Eugene de Kock also gave evidence.

116 On 21 August 1998, Mr Botha was found guilty of failing to attend at the time and place specified in the *subpoena*. He was sentenced to a fine of R10 000 or twelve months imprisonment, and twelve months imprisonment suspended for five years.

¹⁹ Case No GSM 15/98

■ DR WOUTER BASSON AND THE CHEMICAL AND BIOLOGICAL WARFARE PROGRAMME

Wouter Basson v the Truth and Reconciliation Commission: application to the Commission

Background

117 The Commission conducted a public hearing into the Chemical and Biological Warfare programme (CBW) of the former apartheid government (8 and 12 June 1998). A number of witnesses involved in the CBW programme were *subpoenaed* to testify, amongst them a Dr Philip Mijburgh and Dr Wouter Basson, the project leader.

Application

118 During the course of the hearing, an application was lodged by lawyers for the two witnesses, Drs Basson and Mijburgh, requesting that the taking of their evidence be held over, or alternatively that the proceedings be stayed pending the finalisation of their criminal trials.

119 At the time of the hearing, only Dr Wouter Basson had been formally charged for offences that ranged from murder and fraud to the manufacture of dependence-producing substances. The Attorney-General also indicated that the charge sheet was still provisional.

120 In the case of Dr Mijburgh, no charges had been preferred and there was only a possibility that he too, would be charged.

121 Their application was premised on a submission that compelling the witness to testify would amount, amongst other things, to a breach of the witnesses' right to remain silent as well as a right against self-incrimination as entrenched in section 35 of the South African Constitution. Both witnesses had been *subpoenaed* to appear and give evidence in terms of section 29 of the Act.

122 The application was opposed by the Commission's Legal Adviser, Mr Hanif Vally, who contended that:

- a the testimony of the two witnesses was critical as it concerned matters of grave importance to the nation which vitally affected the mandate and obligations of the Commission;

b although the provision of section 35 of the South African Constitution applied to this matter, the obligation of the two witnesses to testify did not amount to a breach of their fundamental right to remain silent and their right against self-incrimination.

123 He submitted further that section 31(3) of the Act provided sufficient immunity and safeguards and stated that, if there was a breach of the witnesses' rights in terms of section 35, this was permissible given the overriding social and other objectives pursued by the Commission and the discreet and narrowly tailored interference with the witnesses' right crafted by section 31(3).

Decision

124 The Commission, through Adv Potgieter SC, ruled that the proceedings would not be stayed; nor would the testimony of the witnesses be held over. The Commission ruled that the witnesses were compelled to testify.

125 In considering the matter, the Commission took the following facts into account:

a Any potential prejudice that the witnesses would suffer by disclosing elements of their case prior to the criminal trial was sufficiently accentuated by the provisions of section 31(3);

b The importance of the testimony of the witnesses for the Commission and issues relating to its mandate.

c The fact that the testimony of the witnesses would not be available to the Commission if they did not testify at this time, as there was uncertainty in regard to the finalisation of the prospective criminal trial. In view of the termination of the Commission's mandate to conduct hearings from 31 July 1998, it would be precluded from establishing the fullest possible picture of the CBW programme in accordance with its mandate.

Application to the Cape High Court by Dr Wouter Basson²⁰

126 On the 25 June 1998, Dr Wouter Basson launched an application in the Cape High Court reviewing the decision of the Commission of 12 June 1998 and requesting that the High Court set it aside.

²⁰ Case No 9073/98

Basis

- 127 Dr Wouter Basson contended that he would be prejudiced in his pending criminal case should he be compelled to testify before the Commission before his criminal matter was dealt with. He also contended that he had a right, amongst other things, to enforce his right to remain silent and his right against self-incrimination in terms of section 35 of the South African Constitution.
- 128 Dr Basson also claimed that the Commission's ruling of 12 June 1998 was a violation of his rights in terms of section 35 of the Constitution and in direct conflict with the South African Constitution.

Counter application by the Commission

- 129 The Commission opposed Dr Basson's application and filed a counter application, asking that the matters in the two applications be urgently dealt with.
- 130 The Commission sought a further order compelling Dr Basson to appear before the Commission's Human Rights Violations Committee on Wednesday, 29 July 1998, and to answer all questions lawfully put to him.
- 131 Dr Basson's application had been set down by way of normal motion court rules. If the Commission had not asked that the matter be dealt with as a matter of urgency, it would have been heard after the date of expiry of the Commission's Human Rights Violations Committee, the Committee competent to hear the evidence.
- 132 The Commission sought a further order that the filing of an application for leave to appeal by Dr Basson in respect of any of the prayers in the Commission's Notice of Motion should not suspend the operation or execution of the court's order.

Order

- 133 On the 25 July 1998, Judge Hlope of the Cape High Court dismissed Dr Basson's application with costs and granted the Commission's counter application. Judge Hlope ordered Dr Basson to appear before the Human Rights Violations Committee on 29 July 1998 and to answer all questions lawfully put to him.

The Destruction of Records

■ INTRODUCTION

- 1 The story of apartheid is, amongst other things, the story of the systematic elimination of thousands of voices that should have been part of the nation's memory. The elimination of memory took place through censorship, confiscation of materials, bannings, incarceration, assassination and a range of related actions. Any attempt to reconstruct the past must involve the recovery of this memory – much of it contained in countless documentary records. The tragedy is that the former government deliberately and systematically destroyed a huge body of state records and documentation in an attempt to remove incriminating evidence and thereby sanitise the history of oppressive rule. As this chapter will demonstrate, the urge to destroy gained momentum in the 1980s and widened into a co-ordinated endeavour, sanctioned by the Cabinet and designed to deny the new democratic government access to the secrets of the former state.

■ CONTEXT OF THE ENQUIRY

- 2 The focus of the Commission's enquiry into the destruction of records must be considered within the framework of its need to access documents pertaining to gross human rights violations in the period under review. While an enormous number of records was destroyed, not least as South Africa moved towards democratic rule, many crucial documents survived. These included Cabinet minutes and minutes of the State Security Council. Notable amongst those that could not be traced were the records of the National Security Management System (NSMS), a substructure of the State Security Council.
- 3 The story of the Commission's quest to locate these records cannot be fully told in the pages that follow. The correspondence between the Commission's investigators, researchers and others on the one hand, and nodal points in the various departments of government and security structures on the other, provides a limited insight into some of the difficulties involved in the retrieval process.

This correspondence is now in archival custody along with the remainder of the correspondence attached to the retrieval exercise.

- 4 Extensive requests were made for records in the keeping, especially, of the South African National Defence Force (SANDF), the South African Police Services (SAPS) and the National Intelligence Agency (NIA). These ranged from requests for the personnel files and financial records of the Civil Co-operation Bureau (CCB) and Teen Rewolutionere Inligtings Taakspan (TREWITS) to requests for information on military and police operations inside and outside the country and a range of other activities. There were, for example, investigations into: the East Rand uprisings; train violence; necklace murders; vigilante groups in the Western Cape; the *Ama-Afrika* movement in Uitenhage and Port Elizabeth; the conflict between the United Democratic Front (UDF) and the Azanian People's Organisation (AZAPO) or the Azanian Youth Union (AZANYU) in the Eastern Cape; the A-team in Chesterville; the Midlands war, and the conflicts between the African National Congress (ANC) and the Inkatha Freedom Party (IFP) in KwaZulu-Natal and the ANC and the Pan Africanist Congress (PAC) in exile.
- 5 While some of this documentation was located and made available, many specific documents were not found. Sometimes this was because the reference numbers of documents identified by Commission staff did not correspond to the index numbers in the inventories of records made available by the SAPS, SANDF, NIA and the South African Secret Service (SASS). In some cases, documents were traced to the inventories of other departments of government although, even where individual files were located, either in hard copy or in electronic form, there were often large gaps. At times, the files contained no more than a single document. Sometimes they were completely empty.
- 6 The Commission was frequently informed, both by local police station commanders and regional military personnel as well as by nodal (liaison) points in the SANDF and SAPS, that specific documents or whole series of files had been destroyed. At a higher level, for example, General George Meiring is on record as stating that, after the completion of the work of the Kahn Commission of Enquiry into Special Secret Projects, files relating to a number of covert operations were destroyed – providing that no auditing irregularities had been involved. He also said that all files that impacted on the safety of individual persons (which would have included intelligence sources) were destroyed in terms of a 1993 State Security Council (SSC) decision. General Meiring added that Justice van der Walt, who was appointed arbitrator between members of

the SANDF and CCB, authorised the disposal of the CCB's personnel and financial plans.¹

- 7 Although, initially, the quest for files related to particular incidents, it became clear that a more systematic scrutiny of SANDF, SAPS, NIA and SASS files was necessary for purposes of general research and investigation. It also became apparent that the nature and extent of the destruction of documentation for purposes of concealing violations of human rights required further investigation. The Harms and Goldstone commissions of enquiry and the Goniwe inquest had already revealed substantial evidence of this phenomenon and the Currin court case, discussed later in this chapter, indicated that there had been ongoing destruction of documentation. An investigation into the destruction of documents was, in any case, required in terms of the Act.
- 8 It was initially extremely difficult to obtain access to files in the possession of the SANDF for purposes of systematic research and investigation, due to a number of perceived legal restrictions governing files in the possession of Military Intelligence and other structures within the SANDF. This had a serious impact on the research and investigative work of the Commission which, in turn, significantly affected the outcome of aspects of the findings of the Commission. The Commission also experienced difficulties in initiating an enquiry into the destruction of documentation by the former SADF.
- 9 The intervention of the chairperson and the vice-chairperson of the Commission, and that of the Minister and Deputy Minister of Defence eventually resulted in some progress. However, the difficulties were only adequately overcome in the later part of 1997, very late in the life of the Commission. This limited the extent to which military documentation could be scrutinised and restricted the enquiry into the destruction of documents by the military, while indicating that there were significant archives which were not adequately examined.
- 10 On the other hand, the co-operation of the Minister of Safety and Security, the secretariat of the SAPS, the Commissioner of Police and other ranking officials in police structures allowed for a more extensive investigation into records management by the SAPS. Co-operation was also received from the Deputy Minister for Intelligence and the structures of the civilian intelligence services, as well as those who facilitated the enquiry into the records of Correctional Services and the Department of Justice. This ensured a very adequate, though

¹ In a letter dated 16 June 1997 in response to an enquiry over the signature of the Deputy Chairperson of the Commission.

due to time and logistic constraints, necessarily selective enquiry into the record keeping of these departments.

- 11 The Act specifically required that the Commission “determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective” (section 4(d)). Sections 29 and 32 of the Act gave the Commission wide-ranging powers (to secure, examine and copy articles; to gain entrance to, inspect and search premises; and to seize and remove articles) of vital importance to fulfilling this mandate.
- 12 This task was both complex and extensive in scope, posing a number of inter-related questions:
 - a How to determine the motive behind an individual's destruction of a particular document, especially when the content of the document was unknown and related documents had not been located?
 - b How could the Commission even determine the existence of a particular record when it had been destroyed, together with all documentation that pointed to its existence?
 - c How was the Commission to investigate, comprehensively and impartially, the record-keeping practices of private individuals, businesses, non-governmental organisations (NGOs), trade unions, liberation movements, other structures of civil society, political parties, three levels of government and other state structures over more than three decades?
- 13 Given the constraints imposed by time and resources, such a task was not feasible and more narrowly defined parameters had to be identified. Therefore, the investigation was limited to the destruction of *state* records for a number of reasons. First, their status as public records accords them a high level of public interest. Second, statutory regulation of record keeping by state structures provides a comprehensive measure against which to judge the management of records, including their authorised and unauthorised destruction. Third, state records constitute by far the largest coherently defined aggregate of records. Fourth, scrutiny of state records offers a high level of insight into the system that gave rise to so many of the gross human rights violations under the spotlight of the Commission. And finally, the destruction of state documentation probably did more to undermine the investigative work of the Commission than any other single factor.

- 14 Given the complexity and extent of the former state, however, adequate coverage even of *all* state structures and records systems proved impossible. It was therefore decided to limit the investigation to the records of government structures that were governed by national archival legislation². This excluded parastatals, statutory bodies that had not voluntarily submitted to the operation of the Archives Act, 'privatised' bodies and 'homeland' structures.
- 15 Homelands were responsible for the management of their own records, sometimes governed by their own archival legislation. While some state documentation originating in the homelands has been incorporated in the record systems of the post-apartheid state, the Commission could not reasonably undertake a systematic enquiry into record keeping or destruction of documents by the homelands.
- 16 There was one exception to the decision to focus on state records. The Commission decided to investigate the destruction of huge volumes of non-public records confiscated by the state from individuals and organisations opposed to the system.
- 17 It is, of course, true that the state destroyed many other non-public records in the course of its raids and bombings of the structures and premises of liberation movements both inside and outside the country. This, however, is a story that remains to be told elsewhere. Also of significance was the impact of apartheid on the record-keeping practices of anti-apartheid organisations, many of which were reluctant to commit certain kinds of information to paper. Many also destroyed records rather than allow them to fall into the hands of state operatives.
- 18 During the conceptualisation of the investigation, the possibility of addressing the record-keeping practices of the liberation movements was considered. However, given the dispersal of these movements across many countries, and the distortions imposed on their record keeping (alluded to above), this task was clearly beyond the capacity of the Commission. Its inclusion would also have severely undermined the investigation's rationale as outlined in the preceding paragraphs - not least because these holdings were not subject to national archival legislation. In the light of this decision, the records of other political groupings and parties were also not investigated.
- 19 In the initial stages of the investigation, Commission researchers studied relevant legislation, state record-keeping procedures, professional literature

² The Archives Act of 1953, No. 22 of 1953, and the Archives Act of 1962, No. 6 of 1962. See in particular the definition of 'government office' in section one of the latter.

and media reports. They also engaged intensively with the State Archives Service (SAS) – the body responsible for the proper management of state records, including the authorisation for their destruction and the investigation of unauthorised destruction. Numerous meetings were held with SAS officials, and SAS documentation of the destruction processes was carefully studied.

- 20 Through this process, researchers were able to identify ‘hot spots’: that is, structures that had attracted a number of allegations that they had destroyed records without authorisation from the SAS. These ‘hot spots’, all within the security establishment, were thoroughly researched and subjected to the scrutiny of joint investigative teams, composed of representatives of the structure under investigation, the Commission, the Human Rights Commission and the National Archives³. The destruction of records by the following bodies was investigated:
- a the Security Branch of the South African Police (SAP);
 - b government civilian intelligence bodies (including the internal and external divisions of the National Intelligence Service (NIS), intelligence services of the former homelands governments, the State Security Council, and other structures of the National Security Management System under the control of the NIS);
 - c the South African Defence Force (SADF), particularly Military Intelligence;
 - d the Department of Prison Services;
 - e the Security Legislation Directorate of the Department of Justice.
- 21 Even within the parameters defined for the investigation, and despite using all the investigative procedures provided for in sections 29 and 32 of the Act, it remained beyond the capacity of the Commission to gain more than a broad outline of the process of state records management. Some of the general investigations, however, resulted in more detailed case studies.
- 22 Owing to constraints of time and resources, all possible deceptions relating to records-management could not be explored. The joint investigative teams simply had to rely on the integrity of those appointed by the management structures of the SAPS, the SANDF, the Department of Correctional Services, the civilian

³ The State Archives Service was converted into the National Archives on 1 January 1997 in terms of the National Archives Act, No. 43 of 1996.

intelligence services and the Department of Justice to guide and assist them in their work. At the same time, the teams did all they could to verify the information and insights provided by those appointed to assist them.

- 23 This chapter begins with the legal framework and its manipulation by those who were intent on destroying state records. This is followed by an account of specific investigations into the various structures of the security establishment, conclusions and the findings of the Commission on the destruction of state records. The chapter ends with recommendations on how a democratic South Africa can, on the one hand, guard against the sanitising of official memory in the future and, on the other, redress the imbalances imposed on that memory by the actions that have been recounted.

■ THE LEGAL FRAMEWORK AND ITS MANIPULATION

Apartheid and official secrecy

- 24 Perhaps all governments are, to a greater or lesser extent, uncomfortable with the notion of transparency, preferring to operate beyond the glare of public scrutiny. In apartheid South Africa, government secrecy was a way of life. The fundamental guideline governing public access to state records was provided in section 9(6) of the 1962 Archives Act. This established that access was a privilege to be granted by bureaucrats, except where specific legislation recognised the right of access to specific categories of records. The number of record categories covered by such legislation was limited to, for instance, records older than thirty years in the custody of SAS and deceased estate files in the custody of Masters of the Supreme Court.
- 25 The discretionary power enjoyed by bureaucrats was, in turn, severely circumscribed by a range of laws containing secrecy clauses. These included, amongst others, the Official Secrets Act, the Protection of Information Act, the Statistics Act, the Nuclear Energy Act, the Petroleum Products Act, the Criminal Procedure Act, the Disclosure of Foreign Funding Act, the Inquests Act and the Internal Security Act. Thus, information on business, foreign trade and sanctions, capital punishment, conscientious objection to military service, corruption and fraud, detention without trial, liberation movements, mental health institutions,

military action (particularly beyond South Africa's borders), nuclear power and weapons, oil supplies and reserves, police involvement in repression, prisons, the territorial 'consolidation' of homelands and weapons procurement and development was, in varying degrees, circumscribed.

- 26 A range of tools served the obsessive secrecy of the state across the legislative, judicial and executive functions. The Commission's probe into record keeping by the security establishment (recounted later in this chapter) revealed an almost claustrophobic culture of secrecy whose transformation requires concerted action. But the most effective tool, ultimately, was the *selective* destruction of memory, and it is in this context that the destruction of state records must be considered.

Destruction of state records: parameters and processes

- 27 Section 1 of the Archives Act of 1962 charged the Director of Archives (the chief executive official of SAS) "with the custody, care and control of archives..."⁴. 'Archives' were defined as:

[A]ny documents or records received or created in a government office or an office of a local authority during the conduct of affairs in such office and which are from their nature or in terms of any other Act not required then to be dealt with otherwise than in accordance with or in terms of the provisions of this Act.

- 28 The Archives Act provided the SAS with wide-ranging powers over the management of state records from the moment of their creation or acquisition. Other provisions of the Archives Act elaborated on specific aspects of records management: the physical care of records; their classification according to an approved system; their conversion into microform, and their accessibility, inspection and ultimate disposal.⁵ In comparison with the archival legislation of other countries, the effective powers enjoyed by the SAS over the active records of the state were amongst the most extensive of any national archive service in the world.
- 29 The legal disposal of state records involved either their transfer into the custody of an SAS repository or their destruction in terms of a disposal authority. Until 1979, it was the responsibility of the Archives Commission, a statutory body

4 Section 3(2)(a). This Act remained in force until 31 December 1996, and was amended in 1964, 1969, 1977 and 1979.

5 See sections 3 and 9(6) of the Act.

appointed by the government minister responsible, to authorise the destruction of state records. While this authority had been vested in the Archives Commission since 1926, by the 1960s it appears to have become a 'rubber-stamp' for recommendations made by the Director of Archives. A 1979 amendment to the Archives Act recognised the *de facto* situation by empowering the Director of Archives to authorise the destruction of documents. Section 12 of the Act made it a criminal offence to damage a state record wilfully, or to remove or destroy such a record otherwise than in terms of the Archives Act or any other law.

Challenging the ambit of the Archives Act

- 30 The authority of the Archives Act over specific categories of state records was regularly challenged by state structures. These challenges are crucial to understanding what constituted 'unauthorised destruction', and some of them defined the terrain on which the mass destruction described later in this chapter took place.
- 31 As soon as the Archives Act had been passed, it was challenged from several quarters. In 1962, there were four challenges, two of which were to prove highly significant. In that year, the Department of Justice argued that 'non-prescribed' records kept by magistrates were 'from their nature' not subject to the operation of the Archives Act. In the same year, a public service inspector argued that active or current records in government offices were similarly excluded 'from their nature'. State legal opinions rejected these arguments and confirmed the applicability of the Act to state records from the moment of their creation or acquisition.
- 32 Although unsuccessful, these challenges exposed the vulnerability of the Archives Act to divergent interpretations of the words 'from their nature'. It is not clear what the Act's drafters intended to exclude by these words although, in a speech to the Senate on 31 January 1962, the Minister of Education, Arts and Science indicated that the words were designed to accommodate the management of secret records.⁶ It was a loophole that would later be ruthlessly exploited by state bodies seeking to avoid the strictures imposed by the Archives Act.
- 33 In 1978, all government departments received guidelines, signed by the Prime Minister, for the protection of classified information (EM9-12). The guidelines empowered department heads to authorise destruction outside the ambit of the

⁶ Debates of the Senate, 1962.

Archives Act. The guidelines did not explicitly challenge the authority of the Archives Act; they simply authorised destruction without mentioning the Archives Act at all.⁷ The NIS updated the guidelines in 1984⁸ under the State President's signature.

- 34 It is not clear how widespread or stringent the application of the guidelines was but, certainly within the security establishment, they were implemented rigorously. SAS, however, only became aware of their existence in 1991. This is confirmed in letters addressed to the Commission by four former directors of the SAS. The SADF had implemented similar guidelines from at least 1971. Like its civilian counterpart, the SADF Archives appear not to have been aware of the existence of the guidelines in question.
- 35 The more recent debate on the destruction of records was thrust on the nation with the widely publicised disclosure in 1991 that the NIS had destroyed the sound recording of the meeting between Nelson Mandela and PW Botha held in 1989. SAS challenged the legality of the destruction on the grounds that the Director of Archives had not authorised it. On 10 December 1991, the State President's Office secured a state legal opinion⁹ indicating that 'sensitive' documents – those requiring secrecy – were in their nature not 'archives' and therefore not subject to the Archives Act. Subsequently NIS also acquired a state legal opinion¹⁰, which not only confirmed the previous one but also argued that sound recordings, because they are not 'written' documents, are not in their nature 'archives'. These opinions had alarming implications: any state record regarded as 'sensitive' could be destroyed by the body holding it without even consulting with the Director of Archives.
- 36 A crucial development in the systematic destruction of 'sensitive' records occurred on 3 July 1992. Following the enquiry of the Kahn Commission into Special Secret Projects, the then Minister of Justice and National Intelligence, Mr Kobie Coetsee, authorised the destruction by the NIS of financial and related records outside of parameters laid down by Treasury.

7 Paragraphs 31 and 32, pp.20/1

8 SP 2/8/1

9 299/1991

10 308/1991, 17 December 1991

- 37 According to guidelines for the disposal of 'state sensitive' records approved by Cabinet on 2 June 1993, all ministers were empowered to authorise similar destruction.¹¹ These guidelines had their origin in meetings of NIS top management in 1990 and 1991, where it was decided that the NIS's own destruction guidelines would be used as a point of departure for the preparation of government-wide guidelines. The proposal was taken to the State Security Council which subsequently secured Cabinet approval for the guidelines. In addition to the provision for financial records, the guidelines authorised departmental heads to destroy all categories of 'state sensitive' records that met certain loosely defined criteria.
- 38 It is difficult to assess the impact of these guidelines outside the security establishment. The evidence suggests that implementation was extremely uneven and was directly shaped by the relationship of individual offices with the coercive aspects of the previous administration.
- 39 In July 1993, all government departments were advised by the Security Secretariat to destroy classified records received by them from other sources, with the exception of those constituting authorisation for financial expenditure or 'other action'. Special mention was made of the need to destroy documentation related to the NSMS that had been developed in the 1980s.

[It] is recommended that state departments should take care that all classified documents that were not created by the department concerned be destroyed as soon as possible except in cases where the relevant document serves as authorisation for financial expenditure or other action ... This applies, inter alia, to copies of documentation made available by the then security management system. (Head: Security Secretariat, July 1993)

- 40 This step had explicit Cabinet approval. The primary intention seems to have been to erase from government offices all documentary traces of the NSMS that had not been erased by the NIS disposal exercise of 1991 (discussed later in this chapter). The impact of the July 1993 communication was immediate and severe. Government officials across the country destroyed classified records in a sustained and systematic manner. Mr Johan Mostert, head of the Security Secretariat, sent a circular to all government departments recommending the destruction of all classified records they had received from *other* sources, with the exception of those

¹¹ The guidelines are reproduced as Appendix A and are discussed in a later section of this chapter. They offer no definition of 'state sensitive documentation'. However, they implicitly equate the term with classified records. A 'classified record' is one classified as top secret, secret or confidential. When the State Security Council adopted the guidelines in May 1993 it instructed the NIS to investigate comparative practice internationally. There is, however, no evidence that the NIS complied with the instruction.

constituting authorisation for financial expenditure or 'other action'. Special mention was made of the need to destroy documentation related to the NSMS.

- 41 SAS disputed the legal validity of the circular, but its attempts proved futile. However, when the resultant mass destruction of records was reported in the media, Mr Brian Currin, national director of Lawyers for Human Rights, challenged the circular's validity in the Supreme Court. He identified the respondents as the State President, the Minister of National Education, the Director of Archives and the Director-General of NIS. In his application, Currin argued that state legal opinions 299/1991 and 308/1991 were "wrong", and that the nature of 'sensitive' records, including classified material, did not exclude them from the operation of the Archives Act. On 27 September 1993, all the parties reached an agreement that, in future, no state records would be dealt with otherwise than in terms of the Act, "simply by virtue of the fact that they are classified, or they are classified into a category denoting some degree of confidentiality".¹²
- 42 The settlement had not, however, incorporated Currin's broader arguments, and the state quickly showed its intention to find reasons (other than the fact of classification) to exclude 'sensitive' records from the ambit of the Archives Act. An inter-departmental working group prepared a draft circular to government departments providing advice on which records fell outside the ambit of the Act. Through the Director-General of National Education, the SAS sought a state legal opinion on the validity of the circular. This opinion¹³ did not refer to the Currin settlement and reaffirmed the findings of opinion 299/91, thus reviving the option of destroying 'state sensitive' records without reference to the Archives Act. The opinion did, however, contain the assertion that decisions on destruction should not be left to individual department heads and recommended that an advice mechanism ('*adviesmeganisme*') be created. This was never done. As late as November 1994, the NIS issued Guidelines for the Protection of Classified Information to government offices. These guidelines empowered the heads of offices to destroy classified records because they were classified, without authorisation from the Director of Archives. This was a direct violation of the Currin settlement. The Director of Archives challenged the NIS and the Guidelines were revised and re-released in February 1995. These were, *de facto*, an updated version of the earlier guidelines distributed in 1978 and again in 1984, both authorised by the head of state. It could be argued that the failure by the NIS explicitly to withdraw the 1984 guidelines in the wake of the Currin settlement also constituted a violation of the settlement.

¹² Case No. 19304/93, Supreme Court of South Africa, Transvaal Provincial Division.

¹³ 220/93, 2 November 1993

43 With the April 1994 general election looming, and despite the destruction of records which had been taking place, the government of the day clearly became anxious about which state records the new government would inherit. Late in 1993, the President's office requested an opinion from the Chief State Law Advisor as to whether representatives of his government could retain custody of certain records after April 1994. A draft memorandum preceding the formal request indicated that one of the motivations was to "keep this information out of the hands of future co-governors".¹⁴ The records referred to were '*gebruiksdokumentasie*' (documents in use), including cabinet minutes, and the minutes of cabinet committees, ministers' committees and the State Security Council. At the time, none of these records had been transferred into the custody of the SAS, on the grounds that their 'sensitive nature' excluded them from the operation of the Archives Act. The Chief State Law Adviser indicated (207/1993 of 22 December 1993) that such records could not be removed from the state's custody after the election in April 1994. Also in December 1993, President De Klerk referred the same question to Advocate SA Cilliers for an opinion. Advocate Cilliers responded on 13 January 1994¹⁵, confirming the Chief State Law Adviser's opinion. Indeed, he went further, disagreeing with opinion 299/91 and its affirmation of the legality of the destruction of 'state sensitive' records on the authorisation of department heads. Subsequently cabinet and cabinet committee records were transferred to the SAS, albeit with a cabinet-imposed ten-year embargo on access.¹⁶ In March/April 1995, some State Security Council and related records were also transferred to SAS from offices of the former NIS. And, in December 1997, Mr Johan Mostert, general manager of the National Intelligence Co-ordinating Committee (NICOC), transferred additional material to the National Archives.

Moratoria on record destruction

44 It was the ANC Commission on Museums, Monuments and Heraldry that first mooted a moratorium on the destruction of state records in March 1992. The idea was subsequently elaborated by the ANC Commission's Archives Subcommittee, the ANC's Conference on Culture and Development (1993) and the Arts and Culture Task Group (1995). In June 1995, NICOC introduced a moratorium on the destruction of all 'intelligence documents'. On 29 November 1995, Cabinet imposed a moratorium on the destruction of all records of the state - irrespective of their age and of whether or not the Director of Archives had

14 Among documentation made available to the Commission by Mr Marius Ackermann through the joint investigative team enquiry into records management by the civilian intelligence services.

15 Advocate Cilliers' opinion is dated 13 January 1993, but this is clearly a dating error, as the opinion was only requested in December 1993.

16 The embargo was ignored, with access being managed in terms of access provisions contained in the Archives Act.

authorised their destruction. Initially the moratorium was intended to remain in place until the passing of the National Archives of South Africa Act. When the Act was passed in October 1996, however, Cabinet extended the moratorium until the completion of the Truth and Reconciliation Commission's work.

- 45 It was against this background that the Commission initiated its enquiries into the records management systems and destruction of documents within the security establishment.

■ CHALLENGING THE AMBIT OF THE ARCHIVES ACT: A CHRONOLOGY

1962:

Department of Justice argues for exclusion of 'non-prescribed' records.
Rejected.

1962:

A public service inspector argues that current records are excluded.
Rejected.

1978:

The Prime Minister authorises government-wide guidelines for the routine destruction of classified records.

1984:

Guidelines for the routine destruction of classified records are updated with the approval of the State President.

1991:

It is revealed that the NIS has destroyed a tape recording of the meeting between Nelson Mandela and PW Botha. This leads to state legal opinions 299/1991 and 308/1991, which argue that 'sensitive' records fall outside the ambit of the Archives Act.

1992:

The Minister of Justice and National Intelligence authorises the destruction of financial and related NIS documents.

2 June 1993:

Cabinet approves guidelines for government offices to destroy 'state sensitive' records.

July 1993:

The Security Secretariat advises government offices to destroy certain categories of classified records.

27 September 1993:

Mr Brian Currin challenges the Security Secretariat advice, which leads to a settlement whereby all parties agree that classified records are not excluded from the operation of the Archives Act simply because they are classified.

2 November 1993:

State legal opinion 220/93 confirms the view that 'state sensitive' records fall outside the ambit of the Archives Act.

December 1993:

State President's office attempts unsuccessfully to secure legal sanction for certain categories of state record to be withheld from a new government.

November 1994:

The NIS reissues its Guidelines for the Protection of Classified Information which authorise the destruction of classified records without any reference to the Currin settlement.

February 1995:

The NIS revises and again reissues its Guidelines after the Director of Archives challenges these.

■ ENQUIRIES INTO THE DESTRUCTION OF RECORDS BY THE SECURITY ESTABLISHMENT

- 46 In order to enquire into the destruction of records, the Commission appointed a series of joint investigative teams to conduct probes into the various structures. In order to ensure optimum professionalism and impartiality, the Commission proposed in each case that, in addition to its own staff, personnel from the Human Rights Commission, the National Archives and representatives of the

body under consideration should form part of the investigative team. This arrangement was agreed to in all cases by all parties.¹⁷ The scope and duration of the investigations varied according to specific circumstances, but each probe included on-site inspections of records and records management facilities. Throughout this complex process, the Commission received outstanding support and assistance from the National Archives.

Security Branch of the South African Police

- 47 The joint investigative team enquiring into the SAP decided to focus its investigation on two categories of Security Branch records. The first category consisted of operational files, especially those documenting the surveillance of individuals and organisations, Security Branch investigations, and the detention of individuals; the second consisted of records confiscated from individuals and organisations. In addition, the investigation focused on Security Branch operations in six areas: Pretoria/national, Johannesburg, Pietersburg, Port Elizabeth/Cradock, Durban and Cape Town. The SAPS supplied twelve investigators (two for each area) to conduct on-site investigations on behalf of the team. These were appointed after consultation and a selection process that involved the joint team. Subsequently, all areas in which the Security Branch had operations were drawn into the ambit of the investigation on the written instructions of the National Commissioner of the SAPS. Established in March 1997, the team completed its work in November 1997¹⁸. Subsequently, a smaller joint team made up of Commission and Safety and Security Secretariat members conducted an exhaustive examination of the records located during the investigation. This was finalised in February 1998.
- 48 Throughout the period covered by the mandate of the Commission, SAS had been of the view that all Security Branch records were fully subject to the Archives Act. With the approval of the Director of Archives, the Security Branch managed their records in terms of records classification systems approved by the director for use throughout the SAP, but in physically separate record sets classified as secret or confidential. Standing SAP instructions indicated that no secret or confidential records could be destroyed without written authorisation from the Director of Archives. In the period 1960 – 1994, no such authorisations were given.

17 The composition of each investigative team was unique. However, Professor Charles Villa-Vicencio (Commission) and Mr Verne Harris (National Archives) served on all the teams. Jody Kollapen (Human Rights Commission) and Mr Arthur Fraser (Commission) also served on several investigative teams. Additional members of the Commission's research department, as well as outside consultants to the research department, all of whom underwent the normal 'top secret' security clearance, were on several occasions brought in to assist in the scrutiny of records.

18 The investigations conducted both by the teams in the areas mentioned, as well as in the more wide-ranging initiative by the National Commissioner of the SAPS, uncovered a number of files that had not been destroyed. These files are described later in this report.

- 49 It emerged, however that, throughout this period, Security Branch records were routinely destroyed in accordance with internal arrangements for retention or disposal. In the main, this seems to have applied to support functions rather than operational records. Huge volumes of operational records were generated at head office, regional and local levels. To cope more effectively with them, a microfilming project was initiated in the 1970s. Originals of microfilmed records were apparently destroyed, but not on a systematic basis. From 1983, a computerised database of operational records was implemented. Again, it appears as if certain original documents were destroyed after the core data had been captured on the database.
- 50 In March 1992, an instruction emanating from head office ordered the destruction of all operational records, including records confiscated from individuals and organisations. The Commission was unable to determine either the precise source of this instruction or its exact content. The evidence suggests that a verbal instruction was received at both regional and local levels, following receipt by the SAP from the NIS of the December 1991 state legal opinions exempting 'state sensitive' records from the operation of the Archives Act. The instruction embraced paper-based originals, microfilms and the computerised database, and required the destruction not only of records but also of all documentation relating to the records.
- 51 The investigation revealed that, in the months following the issuing of the instruction, massive and systematic destruction of records took place. In some cases, records were removed to head office for destruction. In other cases, destruction took place on-site. In other instances, the facilities of private companies like Nampak and Sappi were utilised.
- 52 It would appear that Security Branch offices implemented the instruction to destroy records to the letter. In fact, some offices destroyed most, if not all, support function as well as operational records. But there were exceptions. Certain operational records were not destroyed in the Ficksburg, Kimberley, Pietermaritzburg, Pietersburg, Port Elizabeth, Potchefstroom, Rooigrond, Thaba Nchu, Thoyandou, Tzaneen and Welkom offices. The Ministry of Safety and Security secured these to the satisfaction of the joint investigative team. Several thousand files also survived in the SAPS head office, although most of them post-date 1990. Eleven back-up tapes of the head office computerised database were located. With the assistance of the SAPS Data Technological Services, the readability of seven of these tapes was confirmed and the tapes immediately

secured. Contrary to the March 1992 instruction, the Port Elizabeth, Empangeni and Cape Town offices also kept lists of files forwarded to head office for destruction in terms of the instruction. These lists were also secured.

- 53 Security Branch records located by the investigation fell into three categories:
- a General files, all post-dating 1990
 - b Computer data tapes containing data on anti-apartheid organisations.
It appears that these data were captured in the 1980s
 - c Individual case records in eight sub-categories: contraventions of emergency regulations; dockets; detainees under security legislation; surveillance of individuals (both anti-apartheid and right wing); surveillance of right wing organisations; security incidents (post-dating 1990); applications for indemnity; and returning exiles.
- 54 Inventories of these records were made available. The Commission scrutinised the records and obtained copies of such documentation as was relevant to ongoing research and investigation. To facilitate this process, a significant number of files were transferred to the SAPS offices in Port Elizabeth at the request of the Commission's researchers.

Government civilian intelligence bodies

- 55 The joint investigative team responsible for this investigation worked from August 1997 to March 1998. Excellent support was received from the NIA and the SASS.
- 56 The Bureau of State Security (BOSS) was established in 1968. Its functions were taken over by the Department of National Security in 1978 and by the NIS in 1980. Three of the former 'homelands' - Transkei, Venda and Bophuthatswana - established civilian intelligence services. As explained later in this chapter, the KwaZulu Intelligence Service was a NIS project that was terminated in 1991. From 1 January 1995, the four remaining services were amalgamated, together with the intelligence structures of the liberation movements, to form the NIA and the SASS.
- 57 For obvious reasons, the management of records in the NIS was tightly controlled. Comprehensive directives covered paper-based, microfilm and electronic systems, as well as the management responsibilities of head office and regional structures.

NIS top management assumed that the records and records systems fell outside the ambit of the Archives Act. The first formal contact between NIS and SAS took place only in 1991 at the time of the controversy surrounding the destruction of the sound recording of the meeting between Nelson Mandela and PW Botha. Thereafter top management explicitly adopted the position that NIS records were exempt from the Act's operation. This position was defined by the two 1991 state legal opinions discussed earlier in this chapter.

- 58 Acting independently of the Archives Act, the regular, routine destruction of NIS records began at least as early as 1982.¹⁹ On 1 December 1982, top management adopted a set of guidelines (Directive 0/01) which authorised divisional heads and regional representatives to destroy records no longer of security relevance on an annual basis. However, in 1990 it was decided to replace this system with a far more rigorous re-evaluation process to be managed by an inter-divisional Standing Re-evaluation Committee. Guidelines were given to the Committee in October 1991. These required the destruction of paper-based records unless there were very good reasons for their retention. 'Security relevant' records were to be kept on microfilm or in electronic form, where they were most secure and easier to destroy or erase quickly. Continued retention was to be reviewed on an annual basis. In addition, documentation of covert operations was to be categorised according to sensitivity and security relevance criteria, with references to the most sensitive documentation to be removed from the electronic information retrieval system. None of this documentation was to be kept for longer than six years.
- 59 The new records management policy outlined above had not taken into account Treasury requirements for the management of financial records. In 1992, after conferring with the Auditor-General and the Director of Archives, the NIS Director-General requested ministerial approval for the destruction of financial authorisations, vouchers and related documentation. As indicated earlier, the Minister of Justice and National Intelligence, Mr Kobie Coetsee gave his approval on 3 July 1992.
- 60 Implementation of the policy gained momentum in 1992, but reached its most intense levels in 1993. At this time mass destruction of records took place, embracing all media and all structures. In a six to eight month period in 1993, NIS headquarters alone destroyed approximately forty four tons of paper-based and microfilm records, utilising the Pretoria Iscor furnace and the Kliprivier facility outside Johannesburg. The evidence suggests that many operatives took the opportunity to 'clean up' their offices, irrespective of the guidelines. Systematic destruction exercises

¹⁹ It has been impossible to determine record disposal procedures in the BOSS era. However, it is assumed that NIS procedures were applied to any records which survived from that era.

continued until late in 1994. Many of the surviving minutes of chief directorate, directorate and divisional meetings and most administrative records covering the period 1989 - 1994 were destroyed at this late stage. It is unclear whether a position, adopted by the Heads of Civilian Services (HOCS)²⁰ in about September 1994, that all record destruction should cease, was fully complied with. What is clear, however, is that, throughout the phase of systematic destruction, NIS's own requirements for the preparation of destruction certificates were seldom complied with.

- 61 The result of the destruction was a massive purging of the NIS's corporate memory. This was supplemented by the unauthorised *ad hoc* removal of documents by individuals for their own purposes. Any attempt to quantify this phenomenon was beyond the resources of the joint investigative team. Very little pre-1990 material survives in the paper-based, microfilm and electronic systems. The one seemingly intact series of records are the minutes of senior management meetings for the period 1980 - 1994. Other documentation from the period 1990 - 1994 was substantially sanitised.
- 62 It is clear that the main purpose of purging the records of the NIS was to deny a new government access to records documenting state action against the opponents of apartheid. Subsidiary aims, outlined in NIS top management elaborative outlines issued in 1992, included the protection of sources and the sanitisation of the image of both government and the NIS in a new political environment (see appendices B and C).
- 63 Crucial to a complete picture of record destruction is the fact that, in addition to its own records, the NIS was the custodian of documentation generated by the NSMS, including the State Security Council and its numerous sub-structures. On 29 November 1991, when the system was being dismantled, a circular was sent to all government departments requiring them to transfer all State Security Council Secretariat records in their custody to the NIS. The stated purpose of the exercise was to enable the Security Secretariat to assemble a complete set of all such records. Interviewed in the course of the investigation into the civilian intelligence bodies, Mr Johan Mostert, who was head of the Security Secretariat in 1993, reiterated the position he took in the public debate at the time, insisting that a full set of such documentation had been kept by the NIS. Indeed, he subsequently provided the Commission with a sworn affidavit to this effect. When the extant records were transferred from the former NIS offices into the custody of SAS in March and April 1995, however, it became clear that this was not the case. The transferred records covered the period 1979 - 1989, but contained numerous and

²⁰ HOCS consisted of heads of component services, and was responsible for managing the transition from the old intelligence dispensation to the new.

substantial gaps²¹. According to Mr AP Stemmet, who was a senior official in the State Security Council Secretariat and responsible for the management of these records between 1980 and 1990, the gaps were primarily the result of routine destruction exercises undertaken throughout the 1980s. The suspicion remains, however, that the 1991 exercise was designed to secure not the preservation but the destruction of certain records.²² Supplementary documentation transferred to the National Archives by Mr Mostert in December 1997 (covering the period 1990-1994) contained similar gaps.

64 During 1995, the remaining former 'homelands' intelligence services were integrated into the new civilian intelligence services. It seems that, before then, very little records destruction had taken place. However, between April and October 1995, a NIA Chief Directorate Research and Analysis Co-ordinating Committee subjected some of the records inherited from these services to a thorough re-evaluation process. Working both on-site and with records that had been transferred to NIA headquarters, the Committee was mandated to identify for preservation records of value to the NIA, from both an operational and an historical perspective. Committee members estimated that about 5 per cent of the records evaluated were identified for preservation. On-site inspection by the joint investigative team suggests that a far smaller percentage was preserved, with almost nothing pre-dating 1990, and that in practice the sole criterion for preservation seems to have been security relevance. The remaining documents were subsequently destroyed: the last destruction exercise took place as late as November 1996. These destruction exercises defied the moratoria on the destruction of state records introduced in 1995 by both NICOC and Cabinet. However, after completion of the re-evaluation process, large volumes of additional records from the offices of all three former services were secured at NIA headquarters. The periods covered by these records are as follows: Bophuthatswana Intelligence Service (1973 - 1995), Bophuthatswana National Security Council (1987 - 1994), Transkei Intelligence Service (1969 - 1994) and Venda Intelligence Service (1979 - 1994).

65 The KwaZulu Intelligence Service (KWAZINT) was unique in that it was a NIS special project (code named *Aalbessie*) fully funded by the NIS. KWAZINT existed between 1986 and 1991, when NIS terminated it. It included the NIS and KwaZulu government officials and all project records were either sent to or managed by

21 A NIS official involved in the 1991 exercise, Mr Kallie Pretorius, while unable to comment on its purpose, claimed that the exercise was a complete failure - according to him, other government offices transferred no records to NIS. (Interview, 10 February 1998.) This is strongly refuted by members of the ex-SADF, who insist that the SADF transferred substantial quantities of NSMS records to the NIS in response to the circular. See section on the SADF above.

22 The National Archives is attempting to fill these gaps by identifying accumulations of NSMS records still in government offices. Up to now they have identified substantial accumulations in the SANDF Archives and the Department of Foreign Affairs.

the NIS. As far as the joint investigative team could determine, none of these records has survived. For this account of KWAZINT's existence, the joint team relied on the testimony (both written and verbal) of ex-KWAZINT operatives.

South African Defence Force

66 In June 1997, the Commission began trying to set up the joint investigative team. It was hoped, at that stage, to conduct a broad investigation of record destruction by SADF structures. However, the team was only finally constituted in December 1997, after several unsuccessful attempts by the Commission to initiate the enquiry. As indicated earlier, by the time the SANDF finally offered its co-operation, much time had been lost and it became necessary to adopt objectives that were more modest. These included:

- a the securing of an overview of SADF records management practice; and
- b focused probes into record keeping by Military Intelligence and other particularly sensitive structures and operations.

67 The investigation was completed in March 1998 and received good support from the SANDF personnel involved.

68 Throughout the period under review (1960 - 1994), the SADF was fully subject to both the Archives Act and the professional supervision of SAS. However, the SADF enjoyed a special status within this framework. It managed its own archival repository (the SADF Archives) and, from the late 1960s, provided its own records management service (through the SADF Archives) to SADF structures. Both functions were supervised by SAS. Standing orders required that records be destroyed only in terms of authorisations signed by the Director of Archives, and that destruction certificates be submitted to the SADF Archives.

69 However, from at least 1971, conflicting standing orders authorised the routine destruction of classified records without reference to the SADF Archives, the Director of Archives or the Archives Act. The evidence provided by extant internal destruction certificates suggests that substantial volumes of records were destroyed in this way without any archival intervention. Neither the SADF Archives nor the Director of Archives appears to have been aware of the existence of these orders.

70 In November 1991, the SADF received the instruction from the NIS, referred to earlier, requiring it to collect and transfer to that body all records in its custody

related to the State Security Council Secretariat. The instruction was interpreted to embrace all NSMS records, which were systematically secured and prepared for transfer to NIS. While the joint investigative team could find no documentary evidence of the transfer, an executive plan was identified which, according to strong verbal evidence, had been put into effect by 1993.

- 71 In 1992 Lieutenant-General Steyn, the then SADF Chief of Staff, was appointed to investigate SADF intelligence activities. On 23 November 1992, all SADF structures were informed that from then on records were only to be destroyed with the express approval of Steyn.
- 72 However, in mid-1993, the Cabinet-approved guidelines for the disposal of 'state sensitive documentation' were received. The Chief of the SADF ordered their immediate implementation, thus effectively repealing General Steyn's instruction. Two joint teams, consisting of inspector general and counter intelligence personnel, were appointed to visit all units and to identify records for destruction. A country-wide destruction exercise followed. This exercise failed, by and large, to produce the required destruction certificates, making analysis of its impact extremely difficult.
- 73 Several processes sustained the disposal of SADF records outside the ambit of archival legislation. Not mentioned above, and impossible to quantify, were the unauthorised *ad hoc* removals and destruction undertaken by individuals. Assessing the overall impact of these processes was beyond the joint investigative team's capacity. However, several probes sought to arrive at a general sense of their impact.
 - a Although subjected to close scrutiny during the 1993 destruction exercise, a large volume of Military Intelligence files survived. The joint investigative team identified three discrete file groups at the SANDF Archives: group number 14, comprising 299 boxes of files covering the period 1977 - 1987; group number 21, comprising 254 files covering the period 1975 - 1987; and group number 30, comprising 529 boxes of files covering the period 1976 - 1996. However, significant gaps were identified. For instance, no record accumulations of the Directorate Special Tasks or the Directorate Covert Collection could be found, and only a small accumulation of Contra-mobilisation Projects (COMOPS).
 - b No record accumulation relating to the CCB could be found.
 - c Spot checks revealed that not all personnel files could be made available, raising the question as to whether or not such files had been destroyed.

- d Spot checks suggested that substantial documentation of cross border operations in neighbouring countries had survived.
- e Very little NSMS documentation managed by the SADF had survived. The only significant accumulation comprised fifty-four boxes of files (now in the SANDF Archives), generated in the Eastern Cape and preserved for use in the Goniwe Inquest. However, some other NSMS documentation was identified in each of the three military intelligence file groups described above.

74 The joint team also conducted two supplementary probes:

- a A task group authorised by the Chief of the SANDF in June 1994 managed the acquisition by the SANDF Archives of all extant records of the former defence forces of Transkei, Bophuthatswana, Venda and Ciskei. These forces had been amalgamated with the SADF and non-statutory forces to form the SANDF in April 1994. Apart from the 1 544 boxes of files secured from the former Bophuthatswana Defence Force, relatively insignificant documentary traces were secured: eighty boxes of files from the Transkei, 115 from the Ciskei and 331 from Venda. Personnel files have been excluded from these figures, as they were integrated with the SANDF's personnel file series.
- b The records of the South West Africa Territory Force were subjected to systematic appraisal in an exercise initiated in December 1988. Decisions about which records were to be destroyed were authorised by the commanding officer. There was no consultation with the civilian archives repository in Windhoek, the SADF Archives, or the State Archives Service. Records that survived this exercise were placed in the custody of the SADF Archives.

Department of Prison Services

75 The joint investigative team responsible for this investigation conducted its work between November and December 1997. It received excellent support from the Department of Correctional Services.

76 In terms of records management policy and practice, the Department of Prison Services was in most respects a model governmental body. From the early 1960s, it secured SAS approval for its records classification systems, regularly reported revisions to them, and was diligent in securing disposal authorisation from the Director of Archives for all records categories. Records were destroyed in terms of these authorities, and the requisite destruction certificates were forwarded to the

Director of Archives. SAS documentation demonstrates that the Department was also diligent in reporting cases of records lost or destroyed other than in terms of the authorities. These cases were all investigated by the SAS, and no evidence of sinister motives was uncovered.

- 77 However, from at least 1985 the Department routinely destroyed classified records in terms of the NIS Guidelines for the Protection of Classified Information. This was done without any consultation with the SAS. Moreover, the 1993 Cabinet-approved guidelines for the disposal of 'state sensitive' records and the circular received by all government offices from the Security Secretariat in July 1993 recommending the destruction of certain categories of classified records were both acted upon. The circular was understood to constitute an instruction from a higher authority than the SAS, and was implemented to the letter. A substantial volume of classified records was destroyed. Appropriate destruction certificates were prepared.
- 78 In probing the Department's records management practice, the joint investigative team focused on records documenting security and political prisoners or detainees, and prisoners sentenced to death. The findings were as follows:
- a The files of each security and political prisoner were transferred to Pretoria on the prisoner's release. These files were investigated by the team and found to be intact, in excellent condition and under the careful management of the Department's Directorate of Security. The historical value of this documentation is extremely significant.
 - b A separate visit to the strongroom containing the files of the ANC Rivonia trialists and several other ANC leaders showed these files to be in a similar state of excellent preservation. The files are those of President Mandela and Messrs Harry Gwala, Ahmed Kathrada, Govan Mbeki, Raymond Mhlaba, Wilton Mkwayi, Andrew Mlangeni, Elias Motsoaledi and Walter Sisulu. There was a total of 208 personal files as well as a number of registers, *dagboeke* and additional documents. Again, the historical value of these records demands the utmost care and protection.
 - c The Department kept no record of security and political detainees. The latter were under the direct control of the Security Branch of the SAP, which managed the relevant documentation.
 - d Documentation of prisoners sentenced to death had been preserved, and was under the control of Correctional Services' Regional Commissioner for Gauteng.

The Department of Justice's Security Legislation Directorate

- 79 This investigation was conducted by representatives of the Commission and the National Archives with the excellent co-operation of the Ministry of Justice. Because of the small size of the Department of Justice's Security Legislation Directorate, and the concentration of all its records into a single Ministry of Justice strong room, it was possible to complete the investigation without any logistic problems within one week during December 1997.
- 80 The Directorate was established in 1982 and endured until 1991. Its predecessor was the Internal Security Division and, before that, the function was performed (beginning in 1949) by various individuals in the Department. Its function was to make recommendations to the Ministers of Justice and Law and Order concerning the administration of security legislation. For example, whether an individual or organisation should be banned; whether an individual should be restricted; whether a gathering should be allowed, and so on. Legislation falling within its ambit included the Suppression of Communism Act, the Internal Security Act, the Affected Organisations Act, the Terrorism Act, the Unlawful Organisations Act and the Public Safety Act. It is worth noting that its involvement with Section 29 detainees was terminated in 1987, and that it played no role concerning state of emergency regulations. Its recommendations were made on the basis of investigations initiated by the Security Branch of the SAP. These recommendations were supported by information gathered on its behalf by the Security Branch, the NIS and Military Intelligence. It had no information-gathering capacity of its own.
- 81 The evidence suggests that the Directorate's records management practice was impeccable. Records were kept in accordance with SAS and departmental directives, and disposal was performed in terms of disposal authorities issued by the Archives Commission and the Director of Archives. While the Directorate did routinely destroy classified documents received from other government offices in terms of NIS guidelines, it ignored the 1993 Cabinet-approved disposal guidelines and the 1993 Security Secretariat circular advising the destruction of certain classified records.
- 82 The Directorate's extant records constitute a comprehensive and extremely valuable collection. Kept in excellent condition by the Ministry of Justice, it comprises the following:
- a a series of case files for individuals, spanning the period 1949-1991;

- b series of case files for organisations and for publications. It should be noted that the series for organisations includes files inherited by the Directorate dating back to the 1920s;
- c policy, administrative and other subject-based correspondence files.

83 The Ministry of Justice readily made this documentation available to the Commission.

■ CONCLUSIONS

Destruction in terms of the Archives Act

- 84 No state has the resources to preserve permanently all the records generated by it. The information 'explosion' of the second half of the twentieth century has made it essential that rigorous selection policies be applied to records which have served their shorter term functional and accountability purposes. In the United States, for example, between 1950 and 1985, the authorised destruction of 120 million cubic metres of federal records took place.²³ The selection policies of some countries' national archives secure for archival preservation as little as 1 per cent of all state records²⁴; the SAS estimates that the policies implemented in South Africa between 1960 and 1994 secured the preservation of approximately 15 per cent of state records.
- 85 In this period, huge volumes of state records were destroyed with the authorisation of either the Archives Commission (until 1979) or SAS (under the signature of the Director of Archives). While there is evidence that SAS attempted to secure a degree of professional autonomy, it is highly improbable that apartheid imperatives did not mould selection decisions. Indeed, numerous instances of this can be cited: for instance, in 1968 Military Intelligence was given authorisation (SV-35) to destroy classified records on a 'read and destroy' basis; it took the post-February 1990 winds of change to stimulate a review of an earlier decision not to preserve even a sample of Group Areas Act case files; and, as is recounted earlier in this chapter, the Director of Archives colluded with NIS in 1992 in securing authorisation for the quick destruction of financial and related records.
- 86 Clearly, a comprehensive account of state record destruction requires a thorough analysis of archival selection policies and practices. However, the over 4 000 record disposal authorities issued to state offices in the period under review

23 R. Sink, "Appraisal: The Process of Choice", *The American Archivist* 53, 3 (1990), p. 453.

24 Verne Harris, "Public Access to Official Records and the Record Management Function of the South African State Archives Service", *Innovation* 4 (1992), p.14.

placed such an analysis beyond the capacity of the Commission. This is another important story that remains to be told elsewhere.

Destruction outside the operation of the Archives Act

- 87 In the period 1960 - 1989, the SAS investigated numerous cases of alleged or actual destruction of state records, which had occurred without archival authorisation. Most cases of such destruction involved disasters such as fires and flooding, or resulted from negligence in the management of records. In not a single instance was the SAS able to identify sinister motivation – for example, the deliberate destruction of documentary evidence. This does not mean, of course, that such destruction never took place.
- 88 The evidence recounted earlier in this chapter demonstrates that the security establishment did, in fact, routinely destroy documentation without archival authorisation in the pre-1990 era. With the exception of the Department of Prison Services and the SADF, the SAS chose to avoid exercising its managerial responsibility in relation to these bodies' records systems. There is, indeed, no evidence of pre-1990 professional liaison between the SAS and other components of the security establishment. The reasons for this abrogation of responsibility are not clear. What is clear is that the State Archives Service was not in a position to detect the unauthorised destruction that was taking place.
- 89 It is also of significant interest that, when the Department of Justice transferred the Rivonia Treason Trial records into the custody of the SAS in 1995, it was discovered that most of the records were *missing* – although, again there is no evidence which suggests these records were in fact *destroyed*. An intensive investigation by the SAS failed to reveal what had happened to them.²⁵
- 90 After February 1990, security establishment structures became increasingly apprehensive about certain state records passing out of their control at some future date. This resulted in a marked shift towards a more systematic and vigorous attempt to destroy state records. The NIS began a systematic destruction programme in 1991, the Security Branch of the SAP in 1992 and the SADF in 1993. At the same time operatives apparently began removing state records as 'insurance policies' for the future. This was done, for instance, by several CCB operatives. The Harms Commission of Enquiry revealed that the remaining CCB records had been systematically destroyed.²⁶

25 While the investigation was under way, Mr Percy Yuttar, chief state prosecutor in the trial, sold his trial records to the Brenthurst Library. The SAS maintained that the records were state property and subject to the operation of the Archives Act. Subsequently Brenthurst and the National Archives reached an agreement in terms of which the latter would receive a full set of copies.

- 91 In the course of its routine work in 1997, the NIA discovered several trunks of classified documents on South Africa's Chemical and Biological Warfare (CBW) programme and apparent hit-squad activities. These had been placed in the premises of a former colleague by Brigadier Wouter Basson, previously head of the SADF's CBW programme. This documentation, which had been removed from the custody of the state, highlights the extent to which 'state sensitive' employees of the state appropriated documentation for their own purposes. In this instance, the documentation was returned to and scrutinised by the NIA as well as Commission personnel as a basis for their enquiry into the nature and extent of the CBW programme.
- 92 In November 1991, the NIS instructed all government departments to collect documentation of the State Security Council Secretariat in their custody and to transfer it to the NIS. As argued earlier, the purpose of the exercise appears to have been the systematic selective destruction of such documentation. In 1993, it was revealed that all Koevoet records had disappeared while in transit between Windhoek and Pretoria.²⁷
- 93 By May 1994, a massive deletion of state documentary memory within the security establishment had been achieved. To what extent the systematic destruction was co-ordinated, and the question of whether or not it was sanctioned by Cabinet in its preliminary phase, is unclear. However, as recounted earlier, by 1993 Cabinet was both aware of the phenomenon and had authorised its expansion to involve all state offices. The motivation for this purging of official memory was clearly to prevent certain categories of record falling into the hands of the incoming government. The apartheid state was determined in this way to sanitise its image and protect its intelligence sources. It was also apparently intent on eliminating evidence of gross human rights violations. In this regard, the security establishment had most cause to destroy records.

²⁶ Christopher Merrett, *A Culture of Censorship: Secrecy and Intellectual Repression in South Africa* (David Philip and University of Natal Press, Cape Town, 1994), p.106.

²⁷ *Ibid.* p. 193 (footnote 263).

■ THE PURGING OF OFFICIAL MEMORY : A CHRONOLOGY

From at least the 1970s:

Government offices, particularly within the security establishment, routinely destroy 'sensitive' records.

1978:

The Prime Minister authorises government-wide guidelines for the routine destruction of classified records. These are updated, with the State President's approval, in 1984.

1988:

Records of the South West Africa Territory Force are appraised and large volumes destroyed.

1991:

NIS begins a systematic destruction programme which continues until late in 1994. The guidelines are channelled to the State Security Council as a basis for government-wide guidelines.

November 1991:

NIS attempts to collect all NSMS records, apparently to implement selective destruction.

1992:

The Security Branch of the SAP begins a systematic destruction programme, which continues into 1993.

3 July 1992:

Minister of Justice and National Intelligence authorises the destruction of NIS financial and related records outside parameters laid down by Treasury requirements.

2 June 1993:

Cabinet approves government-wide guidelines for the destruction of 'state sensitive' records. The guidelines are submitted to Cabinet by the State Security Council and incorporated the principles of the 3 July 1992 authorisation referred to above. Immediately, the SADF and other government structures begin systematic destruction programmes.

July 1993:

The Security Secretariat advises government offices to destroy certain categories of classified record. Widespread implementation follows.

From 1991:

All the above processes provide a cover for widespread *ad hoc* removals and destruction of records by individuals.

1995:

In June, NICOC introduces a moratorium on the destruction of 'intelligence documents'. In November, Cabinet imposes a moratorium on the destruction of all categories of state record.

April 1995 – November 1996:

NIA systematically appraises and destroys certain records inherited from the intelligence services of the former homelands.

The issue of legality

- 94 The selective destruction of state records beyond the parameters of the Archives Act was concentrated largely within the security establishment in the period 1960 to 1990. This reflected the former state's tendency to operate in a highly secretive manner and the fact that 'sensitive' records were not subject to the operation of the Archives Act. This assumption was sanctioned by the 1978 and 1984 NIS Guidelines for the Protection of Classified Information, which had been authorised by the head of state. Between 1990 and 1994 selective destruction became a systematic endeavour authorised by Cabinet and reaching into all sectors of the state. It is clear that the former state wished to prevent the new government from access to many documents. At the time and subsequently, those responsible maintained that their motive was simply to protect intelligence sources and the legitimate security interests of the state. The evidence demonstrates that the destruction went far beyond this. Those responsible also maintain that the endeavour was entirely legal. They point to the state legal opinions secured by the State President's Office, the NIS and the Director-General of National Education in 1991 and 1993 which argued that 'state sensitive' records fell outside the definition of records which were subject to the Archives Act. However, the following factors need to be taken into account :

- a The SAS disagreed with these legal opinions.
 - b The basis of Mr Brian Currin's legal intervention in 1993 was a rejection of the two 1991 opinions.
 - c In the wake of the Currin settlement, the Minister of Justice issued a media statement to the effect that that "Cabinet is of the view that state documentation should be dealt with in terms of the Archives Act."²⁸ However, the destruction of 'state sensitive' records beyond the operation of the Act continued. And, as recounted earlier, within months of the media statement Cabinet attempted to secure legal sanction for the removal from state custody of Cabinet minutes and other 'sensitive' records outside the operation of the Act.
 - d The state used the legal opinions selectively. For instance, the 1993 opinion's recommendation that an advisory mechanism on records destruction be created was simply ignored.
 - e Cabinet's approval of the destruction of financial records outside the parameters laid down by the Treasury requirements was of dubious legal validity.
 - f The legal opinions begged the question, 'in terms of what law are 'state sensitive' records to be destroyed?' Several officials involved in such destruction pointed to the Protection of Information Act, but this Act makes no reference to the destruction of documents.
- 95 Ultimately the question of legality is perhaps largely a non-issue. On the one hand, the former government created rules and performed actions, which were perfectly legal but lacked legitimacy and often bore little or no relation to the rule of law. On the other, it is clear that the sanitisation of official memory would probably have taken place irrespective of legal constraints. As Mr Brian Currin said of the 1993 settlement, the only way to enforce it would have been to "tie up their [government's] hands and confiscate all the relevant machinery they can use to destroy documents."

The role of the State Archives Service

- 96 Given its legislative mandate, the SAS was the principal state agent responsible for acting against destruction without the required archival authorisation. While it investigated numerous cases of alleged or actual illegal destruction, lack of

²⁸ The statement was issued in Afrikaans on 29 September 1993. This is a translation of the original text.

resources and an abrogation of responsibility led to its failure even to detect the routine destruction of classified records by the security establishment in the pre-1990 period. In the 1990-1994 period of mass destruction, SAS intervention achieved little. It followed up every case of alleged illegal destruction, engaged the security establishment in debate around the issue, registered its disagreement with the two 1991 legal opinions, and forced revision of the NIS's 1994 Guidelines for the Protection of Classified Information. However, it was hamstrung by the government's disregard for accountability, by its junior status within government, and by a leadership that was apparently intimidated by the security establishment. The evidence suggests that, while junior staff was pushing for decisive action, the leadership chose not to act. For instance :

- a In June 1992, the Department of Foreign Affairs requested authority to destroy certain special projects files. When the Director of Archives indicated that they should be transferred into the custody of the SAS, Foreign Affairs withdrew its application and claimed that the files were in fact merely empty file covers. The Director refused calls by SAS junior staff for an investigation.
- b When SAS staff became aware of the Security Secretariat's 1993 circular concerning the destruction of classified records, and secured evidence of its implementation in government offices, they pushed for an urgent intervention. When the Director of Archives failed to do so, one of these staff members is reported to have leaked the circular first to the press and then to Mr Brian Currin of Lawyers for Human Rights.²⁹
- c On no occasion in the period 1990 - 1994 did the Director of Archives authorise an investigative inspection of an office suspected of destroying records. Not once was the Archives Act used to institute an investigation of possible criminal charges in terms of the Act.

The role of the liberation movements

- 97 As is recounted elsewhere in this chapter, from 1992 ANC structures began calling for a moratorium on the destruction of state records. Already there was a strong suspicion that the state was planning, or had already embarked upon, a process of systematic destruction. In September 1993, the ANC's Department of Information and Publicity issued a media release in support of Currin's attempt to stop the destruction of classified records. However, the ANC leadership

²⁹ Interviews with Mr Brian Currin and Mr Verne Harris.

failed to put the issue on the table during the multi-party negotiation process, and the liberation movements further failed to ensure that it was addressed in the Transitional Executive Council Act (No. 151 of 1993). Moreover, the Transitional Executive Council failed to act in the wake of the Currin settlement - the Council was, in the words of Currin, "just paralysed and didn't respond". When the moratoria were introduced in 1995, they came too late. It is also not clear how effectively the moratoria were communicated to and enforced within security establishment structures. Certainly, the NIA continued systematically destroying records of the ex-homelands intelligence services after the introduction of the moratoria, until as late as November 1996. Of course, it could be argued that more decisive intervention by the ANC and the other liberation movements would not have prevented the mass destruction. Nevertheless, this was a lever that, sadly, was never utilised.

■ FINDINGS

98 A clear distinction has been made in this chapter between the routine destruction of state records outside the parameters of the Archives Act which took place before 1990, and the systematic destruction that took place between 1990 - 1994. The same distinction is made in the following analysis.

The Commission finds that:

99 Before 1990, 'sensitive' records were routinely destroyed by state bodies, particularly those within the security establishment. This was based on an assumption that such records fell outside the ambit of the Archives Act, an assumption that was not tested by a state legal opinion until 1991. The assumption was sanctioned by NIS guidelines authorised by the head of state. The protection of state security was the stated objective of these destruction processes, but they went further in ensuring that certain aspects of the inner workings of the apartheid state remained hidden forever.

100 Accountability rests ultimately with the heads of state at the time, although the NIS carries a heavy burden of responsibility for the key role it played in formulating and disseminating the guidelines mentioned above. The SAS is accountable for having failed to uncover the destruction processes.

101 The massive destruction that took place in the period 1990 - 1994 is a different matter. Here the intention, irrespective of legal considerations, was to deny a new government access to apartheid secrets through a systematic purging of official memory. Evidence assembled in this chapter demonstrates that, from at least 1993, this endeavour bore the explicit sanction of Cabinet. To this extent, Cabinet is culpable. However, a number of other parties must share culpability:

- a Both the NIS and the SAP Security Branch began purging exercises long before formal Cabinet sanction was secured in 1993.
- b The Cabinet-approved destruction guidelines of 1993 were first passed by the State Security Council and originated with the NIS's internal destruction guidelines.
- c In failing to revise its Guidelines for the Protection of Classified Information in the wake of the Currin settlement, the NIS clearly defied the terms of the settlement.
- d As custodian of the NSMS records, the NIS failed to take appropriate steps to ensure that a complete set of such records was preserved. In fact, evidence suggests that the NIS played a key role in ensuring that the records were also purged.
- e Numerous individual state officials used the cloak provided by the destruction endeavour to destroy or remove documents without authorisation.

102 Other parties must, in turn, be held accountable for their role:

- a In 1993, and again in his appearance before the joint investigative team enquiry into the record management of the civilian intelligence service, Mr Johan Mostert maintained that a full set of original NSMS documentation had been preserved. This documentation had, however, been purged in over ten years of routine destruction. Mr Mostert, who appeared in his capacity as former head of the Security Secretariat, said that he recommended the destruction of certain categories of state records. In his sworn affidavit to the Commission, to which reference has already been made, he acknowledged "sole responsibility for the content of the letter" which was sent to all director-generals in the public service.

- b SAS must be held accountable for the indecisive and ineffective steps it took to halt the destruction endeavour.
 - c The liberation movements failed to exercise all the leverage at their disposal in acting against the endeavour.
- 103 Although these activities fall outside the Commission's mandate period, the NIA was still destroying records systematically as late as November 1996, in defiance of two government moratoria on the destruction of state records. Culpability rests with the officials directly responsible, but the Agency's top management must be held accountable.
- 104 The mass destruction of records outlined above has had a severe impact on South Africa's social memory. Swathes of official documentary memory, particularly around the inner workings of the apartheid state's security apparatus, have been obliterated.
- 105 Moreover, the apparent complete destruction of all records confiscated from individuals and organisations by the Security Branch of the SAP has removed from our heritage what may arguably have been the country's richest accumulation of records documenting the struggle against apartheid.
- 106 Clearly, the work of the Commission suffered as a result. Numerous investigations of gross human rights violations were hampered by the absence of documentation. Ultimately, of course, *all* South Africans have suffered the consequences - all are victims of the apartheid state's attempted imposition of a selective amnesia.

■ APPENDIX 1

DISPOSAL OF STATE SENSITIVE DOCUMENTATION

1 Introduction

1.1 The vast volume of classified material in the state set-up and the relevance thereof in changing circumstances in the country have raised practical questions about disposing of such documentation.

1.2 The intelligence security subcommittee of CIC has approached the subject in the light of the following principles in consultation with a working group appointed by cabinet:

- There is a need for a simplified, orderly system which will entail fewer prescriptions but will nevertheless provide greater protection in cases where it will really be necessary;
- it is about state sensitive documentation or information that is worthy of protection from a state point of view, and not about shielding against mere political embarrassment;
- no disposal will be aimed at the obstruction of justice.

2. Legal requirements

2.1 The Archives Act, 1962 applies in brief to all documents that are created or received in state offices and that cannot be dealt with in another way as a result of the nature thereof or the relevance of other legal requirements.

2.2 Section 9 of the Act gives the public the right to have access to all “archives” or documentation older than thirty years, except in those cases where the Minister of National Education refuses or regulates access on the basis of “public policy”. By the same token, the Minister may also allow access to archives younger than 30 years.

- 2.3 In the case of state sensitive documentation, the Archives Act does not apply as a result of the confidential nature of the material and/or the provisions of the Protection of Information Act, 1982. In these circumstances, the relevant head of department has complete power of disposal, including destruction. (See Guidelines for protection of classified information SP 2/8/1 Chapter 4, paragraph 12).
- 2.4 In another context, an opinion was sought from state legal advisers with regard to the claim of outgoing political office bearers over state documentation. According to the legal advisers the state documentation remains the property of the state and these office bearers have no claim to it. The State Archive has a filing system that is meant to maintain the difficult distinction between a political office bearer's political and state activities. This is made available to the personal staff of office bearers when they assume office.

3 Administrative Requirements

- 3.1 Each head of department has the power to dispose of documents of a classified nature in his department within the provisions of the Guidelines for Protection of Classified Information - SP 2/8/1, Chapter 4, Paragraph 12 (taking into account existing legislation) by way of his own departmental procedural prescription. This includes destruction.
- 3.2 Where the destruction of authorisations, evidentiary material and other financial records of state sensitive projects is concerned, the normal disposal periods can be deviated from after sufficient motivation and subject to the following conditions:
- 3.2.1 Destruction may only take place after the Auditor-General (AG)'s auditing cycle had expired. This implies that destruction may only take place once the discussion of the AG's report on Secret Funds by the Joint Committee over Public Accounts has taken place and after all outstanding auditing queries with regard to a specific financial year have been dealt with. A certificate similar to that prescribed in Treasury Instruction M 1.3.2 Annexure 1, must still be provided.
- 3.2.2 However, where circumstances dictate that some documents have to be destroyed immediately after the audit, the relevant minister must decide on this in the light of a full oral or written motivation.

3.2.3 Documentation dealing with expenditure that does not yet form a final debit against a special account and/or budget post, for instance in the case of outstanding advances, may not be destroyed. It is also necessary to preserve documents/evidentiary material relating to the following aspects:

- Assets that have not been finally disposed of
- Shareholdings in institutions outside the State set-up like companies and close corporations
- Outstanding loans or debits
- Incomplete projects that cover more than one financial year and for which permission for final closure has not yet been obtained.

3.2.4 There are also some documents that may only be destroyed in certain limited circumstances. The following are examples:

- In all cases (except the SADF) the relevant minister can personally authorise directives for destruction. Such authorisation can however not be obtained once off for all sensitive projects and each project has to be approached separately. The recommendation is however that approval, in principle, should also be obtainable in advance from the Department of State Expenditure.
- The Defence Force's Special Defence Account falls under the Treasury Act and provisions for destruction are clearly contained in the Financial Guide to the Treasury, Chapter M. Authorisations in these cases must be given by both the Ministers of Defence and of State Expenditure.

3.2.5 In summary: The matter of the destruction of authorisations and documentation with regard to sensitive projects must be cleared by each department with the responsible minister(s).

4 Problem

4.1 Inadequate procedural provisions have the result that a significant number of documents may be destroyed because they have become irrelevant and redundant.

Destruction of documents in order to get rid of the information contained therein, also arises. If a responsible person is currently in possession of documents, the publication of which could endanger human lives, sour international relationships and derail the negotiation and transition process, he cannot be expected to speculate about the identity and responsibility of future co-rulers. The interests that are endangered, are far too weighty.

- 4.2 The injudicious destruction of documentation can harm relations in a transitional government. Gaps in records will raise questions that will be based on negative deductions. These suspicions etc. can be more prejudicial than the documentation destroyed in the destruction process.
- 4.3 It must be accepted that copies of some of the documentation, the destruction of which is now being contemplated, already exist and are kept in private ownership with ulterior motives. The destruction of this documentation can, in the case of malicious publication of copies, lend a sinister hue to something that can be explained reasonably. An original document would also be necessary to expose a falsification thereof.
- 4.4 Special care must be taken not to destroy documentation that can be used to allay untrue allegations/charges.
- 4.5 Apart from the above, it is possible that original documentation may be necessary to enforce contractual obligations in some instances.
- 4.6 The rationalising of tasks and departments in the broader state set-up has resulted in the dividing up of relevant documentation as well. It is difficult, if not impossible, to provide a full record of such documentation. Regard is had specifically to the disbanding of the Department of Development Assistance.
- 4.7 The Department of Administration (House of Assembly) has already handed a portion of its documentation over to the central archive and the SADF has transferred a large portion of its documentation to its own archives.
- 4.8 With the disbanding of the Special Services Divisions in state departments, many of the officials are no longer in service of the relevant departments either. This results in certain people who may not have the necessary background and knowledge, handling the expertise about the handling and disposal of certain documents and information.

5. Recommendations

- 5.1 Subject to any central directives there may be, each head of department is in the best position to dispose of documentation (specifically state sensitive documentation) in his department. The head of department may obviously ask his political head for a political decision.
- 5.2 The Sub-committee for Information Security of the Co-ordinating Intelligence Committee can advise heads of department on matters such as the applicability of the Archives Act and the considerations mentioned in par 5.7.
- 5.3 The following state sensitive documents may not be destroyed under any circumstances, but must be held in safekeeping by the Cabinet Secretariat:
- The signed minutes of cabinet meetings and meetings of cabinet and ministers' committees (except SSC and CCSS);
 - one set of agendas and memoranda that were tabled at the aforementioned meetings.
- 5.4 State President's minutes and actions and accompanying memoranda must obviously not be destroyed and are currently dealt with in accordance with the Archives Act anyway.
- 5.5 The Secretariat of the SSC and the WVVS (Security Secretariat) must keep one copy of agendas and minutes of the SSC, CCVS and the WVVS and obtain proof of destruction from all other institutions that were in possession of copies of those documents.
- 5.6 Where documentation was obtained from another department or state institution, it should, after oral consultation, be returned or satisfactory proof of destruction should be provided to that department. Such consultation must be formulated briefly for later reference.
- 5.7 In considering the question whether state sensitive documentation should be destroyed for the sake of protection of information, the head of department must consider weighty factors such as the following:

- the protection of human lives;
- the protection of legitimate individual, corporate and state interests (including inter-state interests);
- the proper course of the normal legal process; and
- the need for continuing good government.

■ APPENDIX 2

TOP MANAGEMENT GUIDELINES WITH REFERENCE TO CATEGORY A INFORMATION

- 1 Category A, or sensitive information, must include the following and must be either destroyed or kept under circumstances where it can be destroyed quickly.
 - 1.1 That which can compromise sources and co-workers;
 - 1.2 Cooperation with liaison service with regard to operations or projects, especially those against any party currently taking part in negotiations. Intelligence Conferences and the exchange of information are naturally not included in this category;
 - 1.3 Projects where funds are/were involved. Documentary evidence exceeding 18 months must be destroyed. (Especially note private corporations).
 - 1.4 Information that can cause embarrassment to the Service, the Government or a public figure or cause harm to the political negotiation process.
 - 1.5 All copies of source reports (covert reports) after having been processed as NIS products because these could be compromising. As microfilms could also potentially compromise, this medium must only be used in extreme circumstances.

■ APPENDIX 3

NORMS FOR DETERMINING SENSITIVITY

1. With regard to the norms for determining sensitivity, the principal point of departure is not what security relevant information is or is not, or the security classification of a document, but rather what the norms are that determine what is sensitive and specifically politically sensitive. To determine general valid norms, the following can be considered:
 - 1.1 All information, when compromised, that can lead to the endangering of human lives. This includes Service members/Agents/Sources and Co-workers.
 - 1.2 All information, when compromised, that can seriously damage RSA foreign relations on all terrains or embarrass the RSA.
 - 1.3 All information, when compromised, that could harm the current Government's bona fides as an honest and open negotiating party/participating party to the political processes of the land.
 - 1.4 All information, when compromised, that would/could damage the image of the Service and the bona fides that its employees are politically impartial, objective, professional and committed to the law and values of the total strategy. Any information that could show that the Service breached the values and norms that exist in a free and democratic community or violated the rights and freedom of individuals, could be considered sensitive. This implies that specific information (especially covert) on the internal political terrain carries a high level of sensitivity.
 - 1.5 Information, when compromised, disclosed or accidentally made known can put unnecessary suspicion on individual Service members' loyalty, honesty and trustworthiness in a new political dispensation as well as continued employment within the intelligence service/community.

Report of the Chief Executive Officer and Chief Accounting Officer

■ STATUTORY IMPERATIVES

- 1 The Promotion of National Unity and Reconciliation Act (the Act) provided for the appointment of a chief executive officer and outlined the obligations, roles, responsibilities and reporting relationships of this function. These included the obligation of the chief executive officer to act as the chief accounting officer of the Truth and Reconciliation Commission (the Commission) for the purposes of section 15 of the Exchequer Act (no 66 of 1975).
- 2 Section 36 (1) of the Act set out the clear intention that the Commission should be independent, stating that:

the Commission, its Commissioners and every member of its staff shall function without political or other bias or interference and shall be independent and separate from any party, government, administration or any other functionary or body directly or indirectly representing the interests of any such entity.

- 3 The Act also provided for the establishment, development and nurturing of co-operative relationships between the Commission and, in particular, the Ministry of Justice and Ministry of Finance to help facilitate and/or expedite all legal and financial matters aimed at achieving the statutory objectives of the Commission.
- 4 The Chief Executive Officer was appointed to fulfil the above objectives and to provide leadership in managing the Commission.

■ ORGANISATIONAL CHALLENGES

- 5 In order to ensure that work began as soon as possible after the appointment of the Commission, certain essential steps were undertaken. Through its vice-chairperson Dr Alex Boraine and two consultants, the Commission:
 - a contracted out some aspects of work and services to selected vendors without prior tenders or bids;
 - b developed a simple, 'flat' organisational structure;
 - c compiled job descriptions for staff that were immediately required;
 - d put together the rudiments of a staff salary structure based on the median salaries for public servants, the Public Service Commission's graded salary structure and the Patterson Job Evaluation Grades;
 - e procured the Commission's national and regional offices.

■ MANAGEMENT CHALLENGES, OPERATIONAL DYNAMICS AND PRIORITIES

- 6 The organisation consisted of national and regional structures with complex reporting and accounting relationships. This required the appointment of dedicated and professional staff, drawn from a variety of political persuasions and backgrounds.
- 7 Because of the unique and critical nature of its work, the Commission was under continuous public scrutiny and pressure to ensure efficiency and effective management. In order to sustain its impact, it was also required to be transparent and accountable to the public.
- 8 On his appointment to the Commission on 1 March 1996, the chief executive officer defined the immediate, medium and long-term goals and objectives.

Action research and action learning

- 9 Given the short time span within which the Commission was required to complete its work, the chief executive officer adopted the strategies of research and action learning. Action research assisted with the analysis and synthesis of work, with a view to solving managerial challenges and problems. It also provided valuable lessons in transformation, development, principled leadership and participation.

Co-ordination and management

- 10 The co-ordination and management of strategic day-to-day operational activities were conducted through the standing committees of the Commission, its executive secretaries, portfolio heads and regional managers.
- 11 The management style focused on the delegation of work to competent professionals who reported to the chief executive officer on a regular basis. However, in the closing months, a more hands-on management style became necessary.
- 12 Overall, the focus was people-centred and aimed at meeting the needs and aspirations of staff within the context of the Commission's goals and objectives. Inevitably, however, the driving needs of the Commission took precedence.

Consolidation, streamlining and effective co-ordination of national and regional offices

- 13 By establishing a national and four strategically located regional offices, the Commission adopted a conscious strategy of diversification. Policies, operational procedures and programmes were developed at national office level, while implementation and refinement took place in the regional offices. Within this framework, it was necessary to maintain operational uniformity and integrity.
- 14 National and regional activities were co-ordinated through the portfolio heads, regional commissioners, convenors and managers.

Co-operative relationships

- 15 Through its regional offices, the Commission also entered into co-operative relationships and working partnerships with human rights non-governmental organisations (NGOs), faith communities and related grassroots and community-

based organisations. International donors assisted in this process, principally by providing funding support for statement taking and the delivery of interim urgent reparations.

- 16 As mentioned above, the Act also provided for co-operative relationships between the Ministries of Justice and Finance to help facilitate and expedite legal and financial matters.
- 17 The spirit of co-operation within and beyond the Commission was expressed by the chairperson, Archbishop Tutu, whose example and counsel went a long way towards unifying the Commission and enabling it to relate to society.

Financial accountability

- 18 The chief executive officer was responsible for ensuring that the Commission was adequately resourced and that its obligations with respect to financial practices and reporting procedures were met. In order to ensure sound fiscal management, a director of finance and support services was given responsibility for refining the Commission's salary structure, preparing the Commission's revenue and expenditure forecasts and estimates, budgeting for funding proposals and preparing annual budgets for each year of the Commission's operation. In addition, monthly financial statements were prepared and presented at the meetings of the Finance Committee and the Commission.
- 19 The director of finance and support services was also delegated the tasks of preparing financial statements for the auditor and procuring the Commission's physical and movable assets.
- 20 Together with the chief executive officer, the financial director took responsibility for negotiating fiscal arrangements with the Audit Commission and the Ministry of Justice, in consultation with Ministry of Finance.
- 21 The Commission's statutory financial accountability remained, however, with the chief executive officer as chief accounting officer of the Commission.
- 22 Human resources were delegated to the human resources director.

Developing an integrated plan of action

- 23 In order to meet the statutory goals and objectives of the Commission within limited time and financial resources, controls were necessary. In order to identify its critical strategic activities, therefore, the Commission prepared an integrated action plan. Its purpose was to ensure that the Commission anticipated rather than reacted to the demands of its mandate.
- 24 This careful planning manifested itself in streamlined processes, programmes and activities, strategies, agendas and schedules of formal meetings and hearings, as well as in the Commission's ultimate staff roll out and close down plans.
- 25 The action plan also included methods whereby the Commission could communicate its ideas and strategies to portfolio heads and, through them, to staff members and stakeholders. However, when these strategies proved inadequate, a system of decision advisories was introduced.
- 26 The structure of the Commission was unique in that it incorporated and integrated the features of centralised, decentralised and organic types of organisations of differing sizes and complexities. In this context, the Commission, its standing committees and management system represented the structure of a learning organisation that allowed for the continuous devolution of power to middle management. Individual managers were empowered to make decisions and account for their respective portfolios, and they were able to evaluate, rationalise, streamline, classify and promote smooth functional relationships and reporting lines within a climate of mutual trust and respect.
- 27 The structure also aimed to ensure broad consultation and co-ordination across the spectrum of the Commission. This served to facilitate the team approach and helped in the resolution of issues and problems facing management. Such a structure was, by definition, task-orientated and highly interactive. It respected consultation as a means to accommodating creative and constructive tensions. According to this system, the team (and not the individual) was the source of power. Hence effective systems, learning organisations, national projects and policy planning processes could be redesigned by individuals according to their different functions.
- 28 Beyond the field of direct control there are, of course, other relationships that need to be taken into account – characterised by influence, power and the

transactional environment. These matters required the constant attention of the chief executive officer.

Helping prepare agendas of Commission meetings

- 29 In order to keep and maintain proper records of the various processes, policies, decisions, programme activities and strategies of the Commission, it became necessary to request items, appropriate reports and documentation (on a monthly basis) in order to put together formal agendas for the Commission's business meetings.

Developing and streamlining the Commission's operational policies and procedures

- 30 Operational policies and procedures (such as financial controls, human resources policies and procedures) were developed and adopted in order to enhance the Commission's decision-making process and to ensure that such processes and activities were rationalised, anchored and undertaken within reasonable and clear guidelines. This allowed for better co-ordination of efforts to achieve the Commission's statutory objectives.

Ensuring that the Commission enjoyed maximum publicity

- 31 To achieve this objective effectively, the Commission developed and adopted a media and communications strategy whereby it:
- a developed strategic working partnerships with human rights and other community-based organisations;
 - b developed and distributed information booklets on the work and activities of the Commission's committees;
 - c developed an advertising campaign aimed at informing the public on the location of the Commission's national and regional offices. The campaign ran in various national and community-based newspapers with a view to reaching out to and communicating with a wider range of South African communities, readers and supporters.

d used the professional services of the media and communications departments to take advantage of the South African print, broadcast and electronic media and communicate its message through newspaper, television and radio.

- 32 The Commission also made use of its outreach activities (such as statement-taking workshops, think-tanks, planned and scheduled public hearings) to profile itself and its activities. The hearings became the public face of the Commission.

Safety and security

- 33 The goal was to ensure that the Commission's processes, activities and assets (human, intellectual and physical) were safe and secured.
- 34 This was achieved through the assistance and guidance of the Commission's national safety and security co-ordinators and the Safety and Security Functional Committee who together developed and implemented a safety and security plan on a national scale.
- 35 An assets register was created and periodically updated in preparation for the handover of the Commission's assets. As the Commission's programme ended, it created and adopted a second assets register to record its intellectual assets – also required to be handed over in terms of the guidelines and regulations and the amendment of the founding Act.

■ THE COMMISSION'S ADOPTED STRATEGIES

- 36 The chief executive officer took ultimate managerial responsibility for the execution of the work of the Commission's statutory committees. This included:
- a Statement taking.
 - b Amnesty applications.
 - c Section 29 investigative enquiries.
 - d Submissions to the Commission.

- e Research reports.
 - f Hearings.
 - g Meetings (of the Commission, its executives, its standing management and functional committees).
 - h Think-tanks.
 - i Seminars, workshops and conferences.
 - j Designated statement takers.
- 37 The chief executive officer designated responsibility for the following areas of work, while taking overall responsibility for its execution:
- a Research (the Research Department).
 - b Investigations (the Investigation Unit).
 - c Audits (both operational and financial).
- 38 The Commission also procured and trained data processors, information analysts, researchers, investigators and corroborators in data coding, capturing and analysis with a view to translating its collected data into usable information.
- 39 This information was used to refine its policies and procedures and to make appropriate decisions and findings.

■ AN OVERVIEW OF THE COMMISSION'S MANAGEMENT ACTIVITIES

- 40 The Commission's activities were guided by commissioners who were allocated to statutory standing and management functional committees.
- 41 At the tactical and administrative level, the Commission's activities were driven by the executive secretaries of the statutory standing committees and the portfolio heads, including four regional commissioners, convenors and managers, who accounted and reported directly and/or indirectly to the chief executive officer.

Operations and support services

- 42 Some critical aspects of the Commission's operations and support services included:
- a Research activities, including a coding framework, background and political context, special projects and a summary of themes.
 - b Investigative work, including corroboration, human rights violations-related work, amnesty applications-related work, special investigations, disappearances and exhumations.
 - c Deponent statements received by the Commission.
 - d Amnesty applications received and dealt with to date.
 - e The number of witnesses in the Commission's witness protection programme.
 - f Hearings, think-tanks and workshops held by the Commission.
 - g Records of the Commission's transcription services.
 - h Data and information analysis, including coding framework, capturing, processing, analysis, cleaning.
 - i Findings on gross human rights violations.
 - j Victim status and enquiries.
 - k Human resources-related activities, including staff profiles, staff complement, challenges by staff.
 - l Financial activities, including forecasts, budget negotiations and allocations, audited financial statements.
 - m Policies and operational procedures, including urgent interim reparation, reparation and rehabilitation policies and procedures, other operational policies and procedures.

- n Legal activities, including amendments and challenges.
- o Media liaison and communications.
- p Safety and security, including assets, information/intellectual assets register, processes, activities, and members of the Commission.
- q Psychosocial support services.
- r Audits, evaluations and appraisals, including programme activities, quality of work, staff performance, financial books and statements, progress to date.
- s Contracted services.
- t Support to the Commission, including Vodacom, NGOs and international donors.
- u Handing over of assets, including physical assets register, intellectual assets register, files, special reports and records.
- v Staff roll out and Commission close down plans.

■ ANALYSIS OF SELECTED PROBLEMS ENCOUNTERED

‘Grey’ and contradictory areas in the Act

- 43 The Act was by no means perfect. While it purported to clarify intricate legal principles and relationships, it correctly left many moral principles undefined and implied. Thus, while many of the tough, hardcore decisions made by commissioners can be corroborated, some remain value-laden and can be defended only as value judgements by people of integrity.
- 44 The Act was also silent on a variety of practical issues, one of which was the relationship between the chief executive officer and the commissioners.
- 45 With regard to victims, the Commission was not able to implement decisions and could only recommend policies and procedures to Parliament and the President

for implementation. However, the Commission could and did (via its Amnesty Committee) grant amnesties. This glaring contradiction in the founding Act led to sharp national and international focus and debates on a number of issues.

The roles and functions of the commissioners and portfolio heads

- 46 Owing to the short life of the Commission and the nature of its structure, there was a very thin line between the roles and functions of commissioners and portfolio heads concerning the formulation, development and implementation of operational policies. This explains the structural overlaps and operational duplication that occurred.

Income and expenditure forecasts, budget negotiations and allocations

- 47 Because the Commission was without precedent, initial budgeting was based on broad estimates of what might be required. The initial amount allocated in the budget of the Department of Justice was not, therefore, based on any precedent and required ongoing adjustments.
- 48 The Commission, while of the utmost national significance, was only one of many critical national priorities requiring funding from the national fiscus. Like many other projects, therefore, the Commission was restricted by limited national resources. This resulted in drastic cuts to the budget which made it impossible to negotiate with staff, especially regarding salaries and the termination of contracts.

Bidding/tendering

- 49 Owing to the very short period in which it was required to complete its work, the Commission had no alternative but to move quickly from the outset. For this reason, the Commission decided (without going through the State Expenditure Regulations and the State Tender Board's required bidding procedures) to contract out certain aspects of its work (in particular, furniture, equipment and other services). This proved to be the only significant point on which the Auditor-General took issue with the Commission.
- 50 It also needs to be noted that the above decisions were made during the first three months of the Commission, before the chief executive officer and finance and support services director came on board. From that point on, the Commission adopted its own internal financial policies and controls procedures.

- 51 The Commission formally requested authorisation for the above expenditures and/or an exception from the State Expenditure regulations and/or the State Tender Board requirements. At the time of reporting, it had still not received a reply.
- 52 It was clear that both the State Expenditure regulations and State Tender Board procedures are extremely cumbersome and liable to act as hindrances for accelerated start-up and smooth functioning of any project of short duration. Thus, reasonable internally developed procurement policies and procedures need to be adopted to facilitate the fast pace, smooth operations and accountability of such short-term projects.

The Commission's adopted *modus operandi*

- 53 The Commission adopted a number of strategies to attain its objectives. As reported elsewhere in this report, these included the gathering of data, converting data into usable information, corroborating information received, research and investigation work and victim and perpetrator findings.

Safety and security

- 54 Given the nature and national significance of the Commission's work, the need for the appropriate safety and security of our Commission's processes, programmes, activities and members was of great importance. Thus, a risks and threats analysis was done on each of the commissioners when the Commission began work.
- 55 Based on this analysis, the chairperson, the vice-chairperson and one commissioner in the Durban Regional Office were initially afforded in-transit and static safety and security officers.
- 56 The need for effective safety and security was underscored when a bomb threat stopped the proceedings of the first victim-oriented hearing in East London on April 16 1996.
- 57 From then on, safety and security plans, arrangements and efforts before, during and after hearings were intensified, constantly reviewed and consolidated. This work was co-ordinated by the Safety and Security Functional Committee through two safety and security co-ordinators, assisted by the established nodal (liaison) point in conjunction and consultation with members of the National Safety and

Security Department and the established on-site Joint Operations Commands (JOCs).

- 58 As other overt threats were directed at particular Commission members, further risks and threats analyses were performed. Consequently, in-transit safety and security officers were also afforded to the head of the Commission's Investigation Unit. Periodic patrols were also provided around the residential premises of the established at-risk and/or threatened members of the Commission.
- 59 Managing safety and security risks and threats and sustaining vigilance over time was dependent on the awareness and conscientiousness of those under threat, including the recording and reporting all manifestations of risks and threats they experienced.
- 60 One of the most difficult of the threats identified was that presented by leaks of critical and sensitive information - threatening the integrity of the work of the Commission. Whilst only commissioners and very few staff members handled very sensitive material, it became virtually impossible to establish the source of the many leaks that plagued the Commission.

■ POSSIBLE LESSONS

National honour, privilege and forgiveness

- 61 It remains an honour and a privilege to have led the management of this extraordinary Commission.

Truth and reconciliation

- 62 Transformative change and development requires a unity of purpose, driven by collective will and commitment from the government of the day. This necessitates material and political commitment.

Respect for democratic values

- 63 While openness, transparency and accountability must at all times underscore the activities of projects of national significance, it is equally important to maintain a balance between the right to know and due process of law designed to protect

alleged offenders. Within reasonable bounds, a Commission must respect the confidentiality of those who approach it, while using the media as a means to build and consolidate the new culture of human rights. This requires the media to show respect, professionalism and responsible journalism.

Partnerships

- 64 Given the depth and breadth of its work, the Commission realised early in its life that it would never have sufficient capacity to allow it to tackle its work and complete its mandate. Hence, in order to advance its causes, it established strategic alliances and partnerships with international donors and local human rights and other NGOs of repute.
- 65 Through partner NGOs, the Commission was able to reach out to a wider spectrum of both potential and declared victims of gross human rights violations. Through international donors, the Commission was able to strengthen its operational capacities.

Stewardship

- 66 Stewardship means placing service over self-interest and choosing responsibility over entitlement. It also means holding oneself accountable to those over whom one exercises leadership.

National assets

- 67 As a project of national significance, the Commission sought to broaden the capacities and widen the horizons of its staff members, as well as sharpening their skills. These become part of the human wealth of the broader society.
- 68 The Commission generated both physical and intellectual assets. The physical assets will be handed over to the Ministry of Justice. The intellectual assets will be transferred to the national archives. Indeed, commissioners and staff are encouraged to share their skills in ways that will enrich the nation.

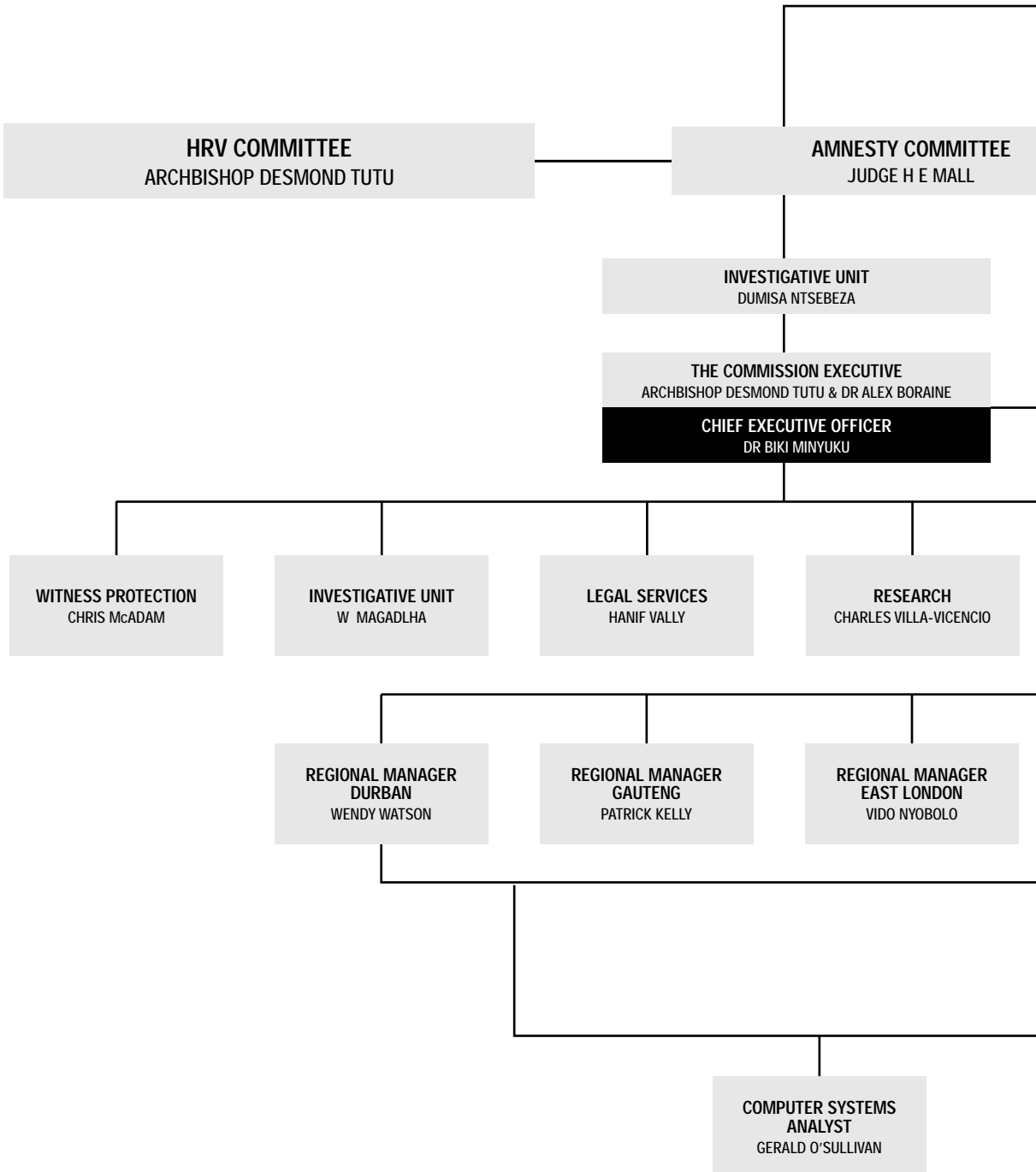
Focus on debates

- 69 The Commission generated a range of national and international debates on human rights issues. The success of the South African transition is dependent on the continuation of these debates.

APPENDIX 1

■ THE TRUTH AND RECONCILIATION COMMISSION FUNCTIONAL STRUCTURE

UPDATED AS AT 13 AUGUST 1998



THE TRUTH & RECONCILIATION COMMISSION
ARCHBISHOP DESMOND TUTU & DR ALEX BORAINÉ

R & R COMMITTEE
HLENGIWE MKHIZE

MEDIA AND COMMUNICATIONS
JOHN ALLEN

FINANCE AND SUPPORT SERVICES
KARIEM HOOSAIN AND
W GREYVENSTEIN

HUMAN RESOURCES
SANDRA ARENDSÉ

**REGIONAL MANAGERS
WESTERN CAPE**
RUTH LEWIN AND M NAIDOO

COMMISSIONS EXECUTIVE SECRETARY
(POLICY DEVELOPMENT) PAUL VAN ZYL

**EXECUTIVE SECRETARY
HRV COMMITTEE**
RUBEN RICHARDS

**EXECUTIVE SECRETARY
R & R COMMITTEE**
T GRENVILLE-GREY

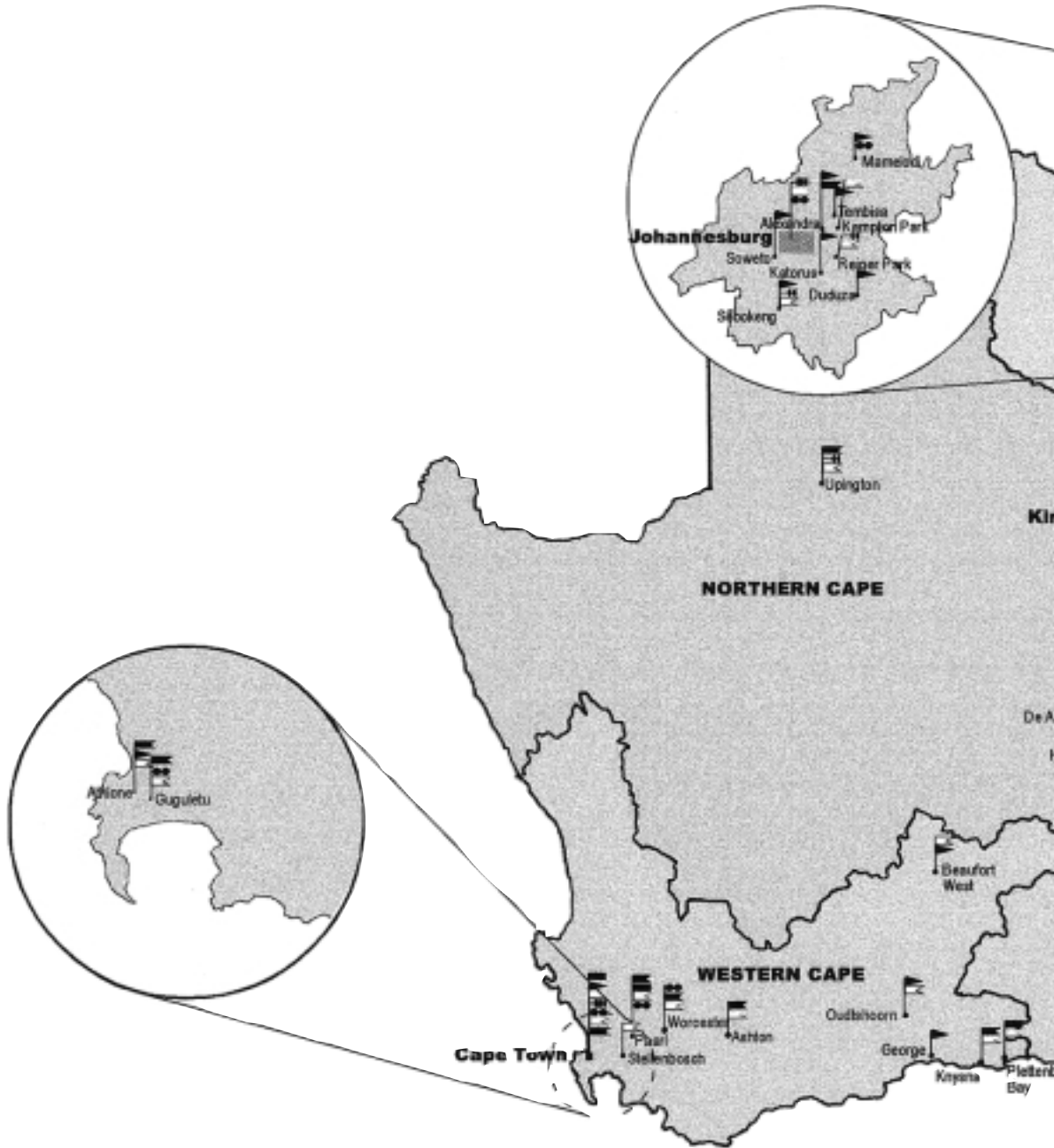
**EXECUTIVE SECRETARY
AMNESTY COMMITTEE**
MARTIN COETZEE

**NATIONAL FACILITIES
MANAGER**
MANIE STEYN

**SAFETY & SECURITY
MANAGER**
GARY BURKES

APPENDIX 2

■ NATIONAL HEARINGS, THINK TANKS AND WORKSHOPS



HRV HEARINGS

RR WORKSHOPS

RR THINK TANKS

TRC WORKSHOPS



APPENDIX 3

Volume **ONE** Chapter **NINE**

Staff

People have served this Commission in a range of different capacities and for different periods of time. Every attempt has been made to identify and record the names of all those who have served the Commission on a full-time, part-time and voluntary basis up until the time of reporting.

Abrahams, A
Abrahams, I
Abrahams, KA
Abrahams, Z
Ackerman, S
Ajam, N
Akoojee, MJ
Ali, N
Allen, JP
Allie, A
Ally, RT
Alpman - Dwane, PN
Ambler, LL
America, C
Andrews, JD
Arendse, N
Arendse, SAJ
Arendse, WPA
Ashabangu, OM
Barends, Z
Barnardo, MR
Barolsky, VE
Bassier, S
Bernard, W
Black, RS
Bodibe, R
Bolo, MW
Boltman, M
Booi, F
Booley, S
Bosman, FJ
Bosman, SM
Botha, DJ
Breytenbach, JW
Brink, RB
Brown, F
Brown, S
Buckley, L
Burts, MC
Caga, BM
Camagu, Z
Cappe'pe Leonval, CD

Carr, Z
Cawe, N
Cengani, BI
Chaskalson, J
Cherry, JM
Chili, DO
Claasen, JA
Clark, JP
Cloete, ER
Cloete, PA
Cooper, IM
Crawford-Browne, L
Crichton, JM
Dade, N
Daniel, J
Davids, VA
Daweti, NN
Dayimane, T
De Kock, LT
De Villiers, S
Desai, LM
Dhoda, YM
Dithlage, G
Dladla, D
Dladla, EN
Dlamini, M
Dlamini, MC
Dowman, PG
Du Plooy, LJ
Dubase, MN
Dukumbana, PM
Durczak, NM
Engel, GC
Engel, JD
Erasmus, FR
Esau, AS
Esau, VF
Faragher, RNE
February, TJ
Filizwe, LC
Fillies, S
Flanagan, LJ

Flanders, JL
Fourie, TV
Fredericks, F
Fullard, SM
Gambushe, JG
Gasa, LTT
Gaven, KP
Gayiya, N
Gaylard, MS
Gcabashe, L
Gcabashe, TV
Goba, SC
Gobodo-Madikizela, P
Gobodo, N
Godloza, C
Golding, J
Goldstone, M
Goosen, GG
Goss, S
Gould, CM
Govender, P
Govender, S
Govinder, R
Granville-Grey, T
Green, V
Greyvenstein, JW
Grobelaar, JI
Groenewald, L
Grove, M
Gubevu, TA
Gumede, BK
Gumede, TNT
Gumede, UM
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Sali, OS
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Sangweni, TPZ
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Schaube-Kuffler, ALB
Sealey, SA
Sebifelo, DM
Seedat, IM
Sepanya, TMJ
Seroke, JN
Sethibe, MJ
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Shabalala, NT
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Sichinga, T
Sigodi, S
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Simon, AC
Singh, A
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Siphika, NP
Sithole, TO
Siyabulela, N
Siyoko, NF
Skade, Z
Smit, DP
Sobey, I
Sokoyi, S
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Williams, JRK
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**ADMINISTRATIVE REPORTS
OF THE COMMISSION'S STATUTORY COMMITTEES**

Amnesty Committee

■ INTRODUCTION

- 1 The primary function of the Amnesty Committee was to consider applications for amnesty that were made in accordance with the provisions of the Promotion of National Unity and Reconciliation Act (the Act).
- 2 Initially, applicants could apply for amnesty in respect of any act, omission or offence associated with a political objective committed between 1 March 1960 and 6 December 1993. The cut-off date was later extended to 10 May 1994 by an amendment to the interim Constitution. The final date for the submission of applications was midnight 30 September 1997.
- 3 The total number of applications received before the deadline was 7 127.

■ CONSTITUTION AND ADMINISTRATIVE COMPONENT

Constitution of the Amnesty Committee

- 4 In terms of section 17 of the Act, the Amnesty Committee consisted initially of a chairperson, a vice-chairperson and three other members who were South African citizens, fit and proper persons, appropriately qualified and broadly representative of the South African community. Owing to the heavy workload, the number of additional members was twice increased in order to complete the process in the shortest possible time. On 27 June 1997, an amendment to the Act (18 of 1997) increased the number of committee members to eleven, and on 10 December 1997, a further amendment (84 of 1997) increased the number to a chairperson,

a vice-chairperson and seventeen members. The full committee included six High Court judges, eight advocates and five attorneys, namely:

- a Judges Hassen Mall (Chairperson), Andrew Wilson (Vice Chairperson), Selwyn Miller, Sandile Ngcobo, Bernhard Ngoepe, Ronnie Pillay.
- b Advocates Francis Bosman, Chris de Jager SC, Leah Gcabashe, John Motata, Denzil Potgieter SC, Ntsiki Sandi, Jonas Sibanyoni, Sibongile Sigodi.
- c Ms Sisi Khampepe, Mr Ilan Lax, Mr Wynand Malan, Mr Jake Moloi, Dr Wycliffe Tsotsi (attorneys).

Committee staff

- 5 From the date of its establishment in 1996, the Amnesty Department was based in the national office in Cape Town. At that time, there were two evidence leaders, two candidate attorneys (later referred to as evidence analysts), an administrative secretary, a filing clerk and a senior secretary.
- 6 Until the end of 1996, the Amnesty Department was managed by the chief leader of evidence, assisted by an administrative secretary. Both reported directly to the chief executive officer of the Commission.
- 7 At the beginning of 1997, the department's personnel was increased through the addition of an executive secretary, five secretaries to assist committee members and professional staff, an office assistant and a filing clerk.
- 8 As work increased, however, the staff component was expanded. In August 1997, the first executive secretary resigned and was replaced by a person seconded from the Department of Justice. By that time, the Amnesty Department had grown substantially to include an executive secretary, a chief leader of evidence, six leaders of evidence, eight evidence analysts, an administrative secretary, an administrative co-ordinator, six administrative assistants, an amnesty victim co-ordinator, five senior secretaries, six logistics officers, two data administrators, two secretaries and twenty-four investigators. In addition, three international interns and nine international investigators were assisting the department.

Administrative procedures

Registration

- 9 All 7 127 amnesty applications were registered on the database and allocated a serial number. Original applications were then filed in strong rooms, and a working file was created for each application.

Perusal

- 10 During September 1997, all applications were perused and divided into:
 - a 'hearable matters' (those applications involving gross human rights violations which required a public hearing in terms of the Act);
 - b 'chamber matters' (applications involving violations of human rights which were not 'gross' as defined by the Act);
 - c 'possible refusals' (applications that, at least superficially, did not qualify for amnesty in terms of the Act).

Operational themes

- 11 The 'hearable matters' were divided into themes. This assisted evidence analysts and evidence leaders in the perusal of the applications for consideration by the Committee. The themes were selected at a workshop attended by the Research Department, the Investigation Unit, data capturers and Amnesty Committee personnel. The themes were as follows:
 - a the Pan Africanist Congress (PAC) and its alliances
 - b the African National Congress (ANC) and its alliances
 - c the white right wing
 - d pro-state organisations
 - e the Inkatha Freedom Party (IFP) and its alliances.

Data gathering

- 12 The Amnesty Committee gathered data from a variety of sources, as did the other committees of the Commission. Evidence analysts and evidence leaders read and perused each application received with a view to verifying the information it contained. In addition, use was made of information gathered by the Research Department and the Investigation Unit or contained in submissions made to the Commission by political organisations and liberation movements. The section 29 *in camera* hearings were another source of information used to verify and corroborate information provided in applications.

Corroboration

- 13 The Investigation Unit and, to a certain extent, the Research Department assisted with the corroboration of statements made by applicants. The Investigation Unit was asked to obtain police dockets and other relevant information from institutions like the National Intelligence Agency (NIA), the South African Police Service (SAPS) and the Department of Justice. In certain instances, evidence leaders and analysts interviewed individuals, applicants and/or victims to corroborate information contained in particular submissions.

Document retrieval

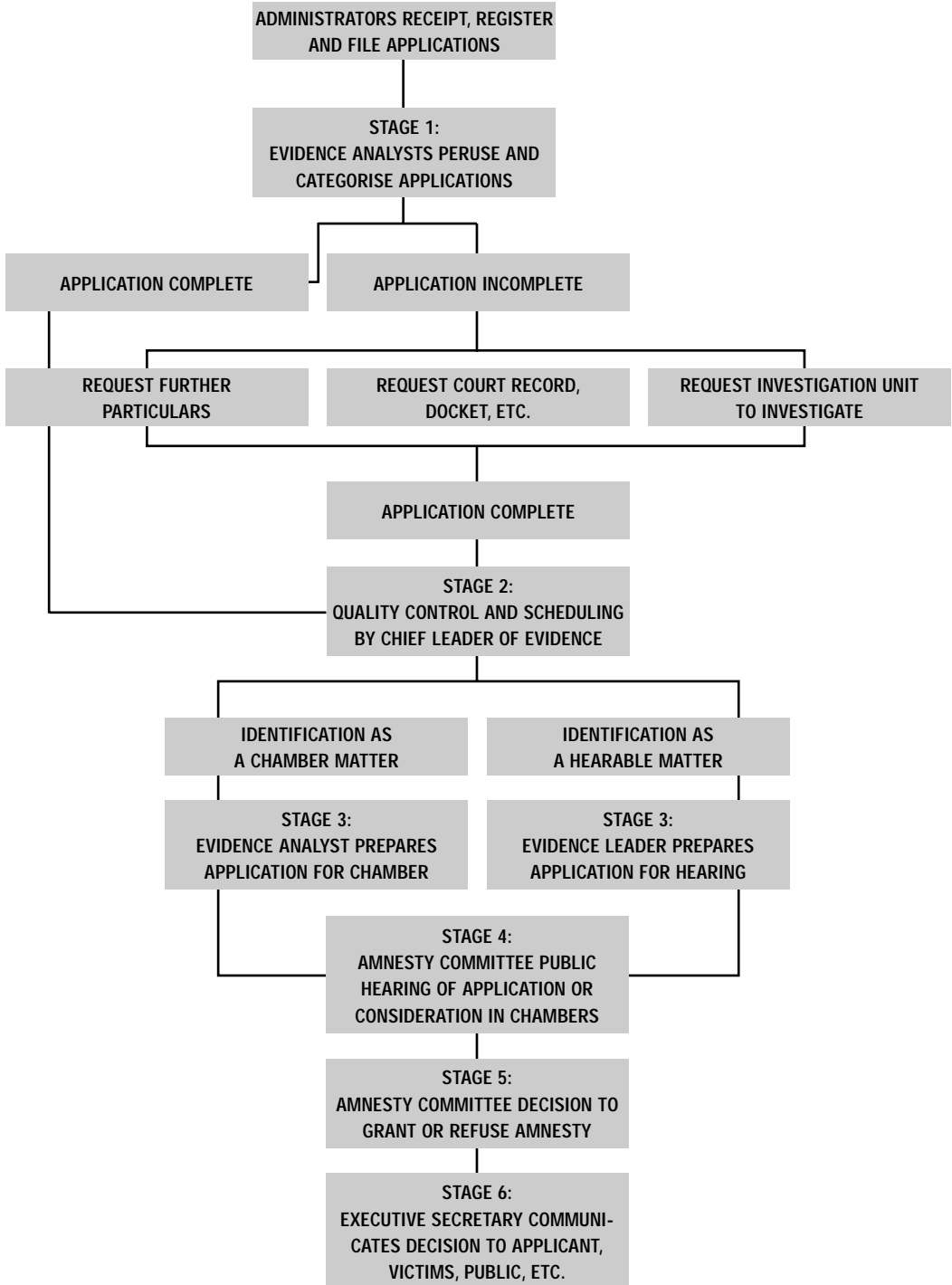
- 14 In an endeavour to assist the Committee in assessing and considering particular amnesty applications, documentation was retrieved from (amongst others) the NIA, the SAPS, the attorneys-general, and masters and registrars of the Supreme Court.

Workshops

- 15 The Amnesty Department held three workshops aimed at streamlining and assuring the proper execution of its work:
- a for evidence leaders and investigative personnel in October 1996;
 - b for evidence leaders, analysts and the Investigation Unit in November 1997;
 - c for logistic officers in December 1997.

■ FLOW CHART OF AMNESTY PROCESS

- 16 The purpose of the flow chart is to give an oversight of the whole amnesty process.



Notes on the flow chart

- 17 The process should be seen as overlapping and integrated and cannot be demarcated into clear-cut compartments. In order to understand the flow process in its entirety, the following points should be noted:

Starting point

- 18 By the time the starting point was reached, a great deal of work had already taken place. Steps performed by the administrative personnel included:
- a the registering of the application and the allocation of a reference number;
 - b sending an acknowledgement of receipt to the applicant;
 - c creating a working file;
 - d filing the original application and the working copy;
 - e capturing the information in the application on the database;
 - f compiling spreadsheets on group applications, applicants, political affiliation and incidents;
 - g ongoing correspondence and telephonic discussions with applicants, victims and legal representatives regarding non-legal matters;
 - h controlling and maintaining the flow of applications between filing rooms, evidence analysts, leaders, investigators, researchers and committee members.

Stage one

- 19 Evidence analysts were divided into 'specialisation groups'. They were provided with computer spreadsheets that prioritised applications (priority was generally given to applications from people in custody). The analysts then drew the applications and took whatever steps were necessary to prepare them. It is estimated that fewer than 10 per cent of all applications were complete and required no further preparation. Where further work was required, it may have included one or more or all of the following steps:

- a ascertaining whether the application complied with the formal requirements of the Act;
 - b requesting further particulars from the applicant or his or her legal representative;
 - c obtaining the relevant prison records from the Department of Correctional Services;
 - d requesting a criminal docket from the SAPS;
 - e securing transcripts of all relevant court records from the registrars or clerks of the court;
 - f acquiring a report from the attorney-general concerned;
 - g asking the Investigation Unit to investigate the application;
 - h making recommendations to the Amnesty Committee or evidence leaders.
- 20 The analysts and the analyst co-ordinator held fortnightly meetings to deal with problems and chart the progress of work.

Stage two

- 21 This was the quality control stage. One of the following routes would be followed. Incomplete applications were referred back to the analyst with further instructions. Completed applications were forwarded to the Committee by different routes. If the application did not involve a gross human rights violation and a public hearing was, therefore, not required, it was referred directly to the Committee which dealt with it in chambers. If a completed application involved a gross human rights violation, a public hearing was held. In the latter case, the application was scheduled for a hearing (in consultation with the legal representatives of the applicants, implicated persons and victims) and allocated to an evidence leader for preparation and finalisation.

- 22 Various factors determined the process of scheduling hearings including, amongst others:
- a the place where the violation took place (to allow for the public to attend the hearing);
 - b the current location of the applicant;
 - c the location and availability of victims;
 - d whether other similar applications could be heard simultaneously;
 - e the availability of legal representation for applicants, victims and implicated persons (some applications involved no less than fifteen legal representatives);
 - f the availability of the necessary logistic services, for example, a suitable and secure venue, translation services, sound and recording facilities, accommodation, transport and witness protection facilities and services;
 - g financial costs and constraints.

Stage three

- 23 The preparation of an application depended on whether it was a ‘hearable’ or a ‘chamber’ matter.
- 24 In the case of chamber matters, the analyst prepared a memorandum setting out the recommended decision and reasons for it. The application was then forwarded to the Committee in chambers and the recommendation to the chief leader of evidence.

25 In the case of 'hearable' matters, preparation was far more complex. First, the application was assigned to an evidence leader. The evidence leader and the analyst who prepared the application then served the necessary section 19(4) notices on all interested parties at least twenty-one days prior to the hearing date. They requested and confirmed all logistic requirements and arrangements with the logistics officers in the area concerned. The evidence leader and analyst then prepared the hearing bundle, comprising all relevant documentation and ranging in length from 50 to 500 pages. Copies of these bundles were made for the members of the hearing panel, applicants, victims and implicated persons, and forwarded to them by courier. Finally, as part of the general preparations for the hearings, the evidence leader and analyst presented the application to the Committee to assist it in coming to a correct decision.

Stages four and five

26 The Amnesty Committee then considered the application either in public hearings or in chambers. It should be noted that, owing to unforeseen circumstances, it often happened that a hearing could not be finalised in the time allotted and had to be postponed. This meant that the detailed process of scheduling would have to begin again.

27 Once a hearing was concluded, it remained for the Committee to make a decision on whether or not to grant amnesty.

Stage six

28 The last administrative steps were taken and the file closed.

29 All of the above steps were managed and supervised by the executive secretary.

■ STATISTICAL INFORMATION

Status of amnesty applications at 30 June 1998

APPLICATIONS FINALISED	
Amnesty application withdrawn	18
Amnesty granted	122
Amnesty not applicable: applicant acquitted	1
Amnesty not applicable: no offence specified	1
Amnesty not applicable: outside jurisdiction	281
Amnesty refused: denied guilt	158
Amnesty refused: no full disclosure	138
Amnesty refused: no political objective	2629
Amnesty refused: no political objective, denied guilt	211
Amnesty refused: no political objective, personal gain	275
Amnesty refused: outside cut-off date	564
Amnesty refused: personal gain	45
Subtotal	4443
APPLICATIONS NOT FINALISED	
Amnesty granted in part	9
Hearable matters	1239
Incomplete applications	160
Matters for chambers	602
Refusal: refused in part	2
Waiting for further particulars	672
Subtotal	2684
Grand Total	7127

**ADMINISTRATIVE REPORTS
OF THE COMMISSION'S STATUTORY COMMITTEES**

Human Rights Violations Committee

■ INTRODUCTION

- 1 The duties and functions of the Human Rights Violations Committee were clearly stipulated in section 14 of the Promotion of National Unity and Reconciliation Act (the Act). With reference to gross violations of human rights, the Committee was mandated, amongst other things, 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.

■ MEMBERSHIP

- 2 The Human Rights Violations Committee was made up of commissioners and committee members. In accordance with section 13(a) and (b) of the Act, the following commissioners were appointed to serve on the Human Rights Violations Committee. The regional offices in which they were located are indicated.

Archbishop Desmond Tutu (*Chairperson, Cape Town*)

Ms Yasmin Sooka (*Vice-Chairperson, Johannesburg*)

Mr Wynand Malan (*Vice-Chairperson, Johannesburg*).¹

Dr Alex Boraine (*Cape Town*)

Ms Mary Burton (*Cape Town*)

The Revd Bongani Finca (*East London*)

Mr Richard Lyster (*Durban*)

¹ Reassigned to and appointed as Amnesty Committee member in November 1997.

Mr Dumisa Ntsebeza (*Cape Town*)
Adv Denzil Potgieter (*Cape Town*).²
Dr Fazel Randera (*Johannesburg*)

- 3 In accordance with section 13(c), a further ten persons were appointed as Human Rights Violations Committee members.³ These were:

Dr Russell Ally (*Johannesburg*)
Ms June Crichton (*East London*)
Mr Mdu Dlamini (*Durban*)
Ms Virginia Gcabashe (*Durban*)
Ms Pumla Gobodo-Madikezela (*Cape Town*)
Mr Ilan Lax (*Durban*).⁴
Mr Hugh Lewin (*Johannesburg*)
Ms Judith 'Tiny' Maya (*East London*).⁵
Ms Motho Mosuhli (*East London*).⁶
Adv Ntsikilelo Sandi (*East London*).⁷
Ms Joyce Seroke (*Johannesburg*)

- 4 An executive secretary was appointed to the Human Rights Violations Committee.

■ MODUS OPERANDI

- 5 The Committee met on a regular basis. As a rule this was once a month in Johannesburg. The recorded minutes of these meetings reflect all the policy decisions adopted. A monthly activity report with recommendations was submitted to the Commission for inclusion on its agenda for discussion and adoption.
- 6 The Human Rights Violations Committee Findings Task Group, which included the vice-chairpersons, the executive secretary and one representative from each region (either a commissioner or committee member), met prior to each national meeting to make policy recommendations regarding the findings process and to report on regional pre-findings. Towards the end of the process, a representative from the Reparation and Rehabilitation Committee joined the

2 Reassigned to and appointed to the Amnesty Committee in July 1997.

3 Their contracts were due to end in March 1998, although some ended their work with the Commission earlier. Two contracts were extended for a short period.

4 Reassigned and appointed to the Amnesty Committee in early 1998.

5 Resigned from the Commission at the end of 1997.

6 Replaced Ms Tiny Maya.

7 Reassigned to and appointed as Amnesty Committee member in March 1998.

group. The Findings Task Group tabled reports and policy recommendations for approval and acceptance by the national business meeting held the following day.

- 7 While the Act outlined certain statutory obligations for the Human Rights Violations Committee, it gave it the latitude to develop its own unique operational procedures. Inevitably, a primary focus of the regular, national business meetings was to provide an operational policy framework for work in progress and anticipated work, processes and procedures. As a result, the development of policies that would govern the work of the Human Rights Violations Committee was both reactive and proactive. It was reactive in the sense that the experience of gross violations of human rights differed from region to region. It was proactive insofar as one could anticipate emerging processes. Policy formulation was thus a dynamic context-driven process that tried to be sensitive to regional dynamics within a national operating framework.⁸
- 8 The evolving methodological framework was comprehensive, ranging from the development of regionally sensitive policy on the gathering, processing and interpretation of data on gross human rights violations to mundane operational considerations such as the timing of business meetings.
- 9 The work of the Human Rights Violations Committee was extensively supported by the Investigation Unit, especially concerning the pre-findings and findings process. The Research Department also contributed by establishing the political context of the violations alleged by victims. It also provided an analytical capacity to enquire into the systematic patterns of abuse and the motives and perspectives that led to gross human rights violations.

■ FUNCTIONS AND DUTIES

- 10 Many of the operational activities of the Commission were driven by the need of the Human Rights Violations Committee to fulfil the terms of its mandate. Areas of operational policy included the following:

Public awareness

- 11 Public awareness initiatives, aimed at communicating the mandate of the Commission to ordinary South Africans, were co-ordinated by a Media and Communications Department.

⁸ See Volume One, *Methodology and Process*.

Liaison with stakeholders and others

- 12 Meetings were held with various stakeholders, nodal (liaison) points⁹ and state and non-state structures in order to encourage individuals and organisations to make statements (tell their stories) to the Commission.

Public 'victim hearings'

- 13 Public victim hearings were hosted. These had to take into account:
- a the safety and security of all activities and participants;
 - b representivity of victims appearing at hearings;
 - c sensitivity with regards to choice of hearing venues;
 - d seating arrangements at hearings;
 - e simultaneous translation services;
 - f the format and length of hearings;
 - g the length of testimony of victims;
 - h legal assistance to victims;
 - i psycho-social support for victims and their families who testified;
 - j the issuing of section 30 notices to alleged perpetrators;
 - k policy on 'cross examination of victims' by alleged perpetrators;
 - l policy on the types of public hearings to be held, including victim hearings, where the focus was on the individual victim testifying on her or his experience of suffering.

Theme hearings

- 14 Theme and event hearings were hosted with the aim of understanding patterns of abuse, motives and perspectives. Although the focus was on victims, theme hearings focused on groups of hearings rather than on individuals. These included hearings on:

⁹ See this volume, *Administrative Report of the Safety and Security Department*.

- a women as subjects of gross human rights violations
- b youth and children
- c Caprivi trainees in KwaZulu-Natal
- d Moutse/KwaNdebele incorporation conflict
- e Soweto 1976
- f the killing of the 'Guguletu Seven'
- g the 'Bisho massacre'
- h the 'Seven Day War' in KwaShange/Imbali in 1990
- i the 'Trojan horse' incident (Athlone, Cape Town)
- j the issue of compulsory military service
- k the special hearing on the disappearance of Sipiwe Mthimkulu in the Eastern Cape

Institutional hearings

- 15 Institutional hearings focused primarily on organisations as opposed to individuals within those organisations. These hearings examined:
 - a the prison system
 - b the media
 - c the legal system
 - d the role of business during apartheid
 - e the health care sector
 - f the faith communities

- g the state security system
- h the role of the armed forces
- i the involvement of the former state in chemical and biological warfare

Statement taking

- 16 Policy was also developed to govern the gathering and processing of information, including for example:
- a designing a statement (protocol) form, which would serve as the information gathering instrument to record the experiences of victims;
 - b training statement takers to enable them to record the oral testimony of victims in a professional manner, recognising that the language of the oral testimony might differ from that used in the record;
 - c designing and developing a database management system that would serve the analytical needs of the Commission, and in particular the Human Rights Violations Committee;
 - d appointing and training appropriate staff to operate the database;
 - e determining what would constitute a sufficiently 'corroborated' statement in order that findings could be made;
 - f identifying technical enhancements to the database, such as the pre-findings screen, the corroboration details screen and the findings register;
 - g preventing political parties and organisations from using their submissions for political or publicity purposes.

■ THE POLICY FRAMEWORK

- 17 The activities of the Human Rights Violations Committee, namely the hosting of public victim hearings and the not-so-public processing of victim statements by the information management system, took place within the policy framework.

Public victim hearings

- 18 The most visible activity of the Human Rights Violations Committee was its public victim hearings programme, which commenced on 15 April 1996 in East London. The rapid proliferation of public victim hearings necessitated the scheduling and streamlining of pre-hearings preparation. This required a number of steps, which included making information available in each area in which statements were to be taken, the logistics of statement taking, the briefing of statement takers, statement taking and follow-up visits after the hearings.
- 19 The statements themselves were processed in accordance with the policy developed for the database.
- 20 In addition, an extraordinary number of operational considerations had to be taken into account when hosting the hearings. An important concern of the Human Rights Violations Committee was to ensure that the human and civil dignity of victims was restored by granting them an opportunity to relate their own accounts of violations (as emphasised in section 3(1)(c) of the Act). It was, therefore, incumbent on the Human Rights Violations Committee to make sure that the environment at the hearing was conducive to achieving these objectives. Two examples illustrate the kinds of sensitivities that were enshrined in the policy.
- 21 First, the Committee had to ensure the availability of appropriate translation services for victim testimony. It was policy that victims should be allowed to tell their stories in the language of their choice, even if such languages fell outside of the eleven official languages of South Africa. The multi-lingual nature of South African society posed the unique challenge of ensuring that all the victims testifying across the country enjoyed the same access to translation services. However, the shortage of translation services meant that hearings schedules had to be carefully co-ordinated. To this end, the Committee later decided to allocate to each region a specific week of the month for hearings. The translation service could then travel between regions and be available for all hearings.
- 22 A second illustration of contextual and victim-sensitive policy development, within the context of public hearings, was the provision of adequate psycho-social support services (in co-operation with the Reparation and Rehabilitation Committee) for victims before they testified. Victims selected to give public testimony were debriefed before and after the hearing by specially trained Commission personnel known as briefers. The briefers accompanied the victim

throughout the process of public testimony, ever ready to be the shoulder on which victims could lean for emotional support.

- 23 It was also anticipated that commissioners, committee members and staff involved in the public hearing process might be affected by the collective trauma of receiving and processing victim testimony. To this end, the Commission employed mental health specialists to facilitate the debriefing of those involved.

Processing of victims' statements

- 24 The most time-consuming and costly (though invisible) activity of the Human Rights Violations Committee was the information gathering and processing operation, known as 'Infocom'.
- 25 The collection of data was done manually by trained statement takers who were required to deal sensitively with the person giving the statement. In many instances, the person testifying would be disclosing his or her experiences of gross human rights violations for the first time. It was also realised that 90 per cent of the victims coming to the Commission would not be appearing at a public hearing and that their experience of the Commission would be through making a statement to one of the Commission's statement takers. It was, therefore, important to ensure that statement takers were able both to act with empathy and to record accurately the stories told to them by victims.
- 26 In order to capture this data, the Commission opted for an information management system that used an electronic database, as opposed to the traditional manual hard copy or cardex system approach to data management. In order for such a process to work, standard operating procedures needed to be developed.
- 27 Statement taking needs to be seen against the broader backdrop of other information gathering processes: for example, section 29 investigative enquiries or the receiving of written submissions from political parties and others. The above discussion on the hosting of public victim hearings and processing of victim statements shows how the Human Rights Violations Committee had to use broad sensitivities in order to develop policy on what often seemed, at first glance, to be basic operational procedures.

**ADMINISTRATIVE REPORTS
OF THE COMMISSION'S STATUTORY COMMITTEES**

Reparation and Rehabilitation Committee

■ **FUNCTIONS OF THE REPARATION AND REHABILITATION COMMITTEE**

- 1 The Promotion of National Unity and Reconciliation Act (the Act) gave the Reparation and Rehabilitation Committee the following responsibilities:
 - a to consider matters referred to it by the Commission, the Human Rights Violations Committee and the Amnesty Committee;
 - b to gather evidence relating to the identity, fate and whereabouts of victims, and the nature and extent of the harm suffered by them;
 - c to make recommendations to the President on appropriate measures for reparation and rehabilitation of victims and on measures to be taken to restore the human and civil dignity of victims;
 - d to make recommendations which might include urgent interim measures on reparation to victims;
 - e to make recommendations on the creation of institutions conducive to a stable and fair society, and on the measures to be taken in order to prevent the commission of human rights violations.

■ COMMITTEE MEMBERSHIP AND STAFF

- 2 In each regional office, the Reparation and Rehabilitation Committee was represented by commissioners and/or committee members.
- 3 The commissioners allocated to the Reparation and Rehabilitation Committee were:

Ms Hlengiwe Mkhize (*Chairperson, Johannesburg*)

Dr Wendy Orr (*Vice-Chairperson, Cape Town*)

The Revd Dr Khoza Mgojo (*Durban*)

Dr Mapule F Ramashala (*Cape Town*)

Ms Glenda Wildschut (*Cape Town*)

- 4 The committee members were:

Dr S'Mangele Magwaza (*Durban*)

Mr Tom Manthata (*Johannesburg*)

Professor Piet Meiring (*Johannesburg*)

Archdeacon Mcebisi Xundu (*East London*)¹

Ms Mandisa Olifant (*East London*)²

- 5 A regional co-ordinator was appointed in each region. Each regional office appointed briefers, who were managed by the Reparation and Rehabilitation Committee regional co-ordinator. The Committee office in Johannesburg employed three additional staff members: an executive secretary, a Reparation and Rehabilitation Committee administrator and a mental health specialist. All members of the Committee met on a regular basis to co-ordinate activities at a national level.

■ METHOD OF WORK

- 6 The minutes of the Committee's meetings reflected its decisions. These minutes and a monthly activity report were included in the monthly agenda of the Commission. In order to fulfil its obligations and duties, the Committee developed an operational strategy to provide:

¹ Resigned end January 1998.

² Replaced Archdeacon Xundu on his resignation.

- a networking activities
- b psycho-social support programmes and follow-up workshops for witnesses
- c information management
- d policy development
- e Commission-related business activities.

■ OUTREACH AND NETWORKING ACTIVITIES

- 7 It became evident from the outset that, in order to fulfil its brief, the Commission would have to engage a wide range of groups and community structures to provide information and enlist support. This was done in a number of ways.
- 8 Public meetings, radio, television and the print media were used to inform the public about the Commission generally, and the work of the Reparation and Rehabilitation Committee in particular.
- 9 International visitors were hosted and shared their thoughts on the work of the Committee. Special groups interested in reparation corresponded with the Committee, thereby enriching its work. International literature was used extensively. Some members of the Committee were also invited to participate in conferences in other countries, thus increasing the international exchange of ideas.
- 10 Early in 1996, contact was established with academics nationally in order to get their input on policy development, while the regional offices made contact with local medical and tertiary institutions. In some instances, these institutions provided direct support, such as medical care and counselling services.
- 11 The Reparation and Rehabilitation Committee received significant assistance from the various church structures in its work, especially the South African Council of Churches which has a well developed infrastructure in both urban and rural communities and played an historical role in supporting victims. Its support for the activities of the Reparation and Rehabilitation Committee was invaluable. Interaction with other faith communities also played a part in the development of reconciliation programmes and reparation recommendations.

- 12 The Reparation and Rehabilitation Committee recognised the need to enlist the assistance of non-governmental organisations (NGOs) and community-based organisations (CBOs), particularly in order to provide support to deponents (people making statements) after their old ‘wounds’ had been re-opened. To avoid or minimise the re-traumatisation of deponents and to strengthen capacity, regional co-ordinators and briefers attempted to involve interested organisations in the provision of services to deponents. These organisations also provided support before, during and after hearings. To ensure that the services provided were adequate, staff provided training to these volunteers.
- 13 The fragmented nature of service provision posed a challenge for the Reparation and Rehabilitation Committee, and attention was given to establishing constructive relationships and alliances. Thus, the Reparation and Rehabilitation Committee established an audit of existing resources, including existing service organisations and their capacity. This information is included elsewhere in the final report, along with recommendations to the President on essential services that are needed and where they should be located.
- 14 All regions established NGO and CBO networks, although the success of these varied from region to region, depending on the availability of community resources. In rural areas, churches, family structures and traditional support systems were used in the absence or scarcity of formal NGOs and CBOs.
- 15 Many of the deponents had needs which could be met through government agencies such as clinics, hospitals and schools. However, access was often denied or payment levied where those seeking help did not pass the means test. As a result, the Commission approached Members of the Executive Councils³ in the provinces to negotiate concessions for Commission-related requests to support victims of gross human rights violations. A useful result of this exercise was the opportunity to assess the capacity of these state institutions to assist victims. This served to highlight, for example, the glaring disparity of services between rural and urban areas. The issue of such services forms part of the recommendations made to the President.
- 16 As reparations are to be granted by government to established victims of gross human rights violations, the Reparation and Rehabilitation Committee maintained a formal relationship with government through an inter-ministerial committee at Cabinet level⁴. The aim was to facilitate the discussion and adoption of the

³ Members of Executive Councils (MECs) are ‘ministers’ in charge of provincial departments.

⁴ The Inter-Ministerial Committee is a Cabinet committee set up to look at regulations issues. It includes the Ministries of Welfare, Health, Justice, Finance and Minerals and Energy.

Reparation and Rehabilitation Committee's policy recommendations and to ensure the speedy delivery of reparation and rehabilitation to victims.

■ ESTABLISHING APPROPRIATE PSYCHO-SOCIAL SUPPORT PROGRAMMES (WITNESS SUPPORT)

- 17 From the outset, the Commission recognised the need to provide an environment that supported and respected the dignity of all who approached it. It was also agreed that, as far as possible, there should be sensitivity to the immediate needs of deponents and that they should be referred to existing service agencies.
- 18 In order to achieve this, the Reparation and Rehabilitation Committee provided an internal training programme for briefers and statement takers. This training was then extended to those outside the Commission who would assist in providing support. Working with victims of violence exposed helpers to the high levels of trauma and pain that had been experienced. To deal with this effectively, they needed a certain level of skills. In view of the fact that specialised facilities for trauma services are very limited in South Africa, and tend to be situated mainly in urban areas, the challenge was to train counsellors living in areas that were accessible to deponents.
- 19 Treatment of trauma is also a long and slow process. It was, therefore, essential to provide deponents with a sustainable service that would be available long after the Commission had concluded its work. For this reason, the emphasis was on building capacity in existing community structures.
- 20 Statement takers were exposed to the traumatic accounts of deponents and needed training on how to solicit their stories sensitively, while containing their pain. A team of counsellors, experienced in trauma counselling, was contracted to provide this training, monitored by the Reparation and Rehabilitation Committee.
- 21 The goals identified in the training and re-training of statement takers concerned the ability to take a statement empathetically in accordance with the format or structure of the form. From the very first training programme conducted by mental health professionals, a strong focus was placed on some of the emotional and crisis management elements of statement taking. In retrospect, others who had been involved in processing statements should have been included, in particular representatives of the Investigation Unit, the Research Department and the Legal Department.

- 22 Briefers were responsible for supporting deponents who testified at public hearings. To do this work they needed special skills, including the ability to debrief deponents after testimony and to control their own emotions when faced with the pain of victims. Their training consisted of:
- a sensitisation to inter-personal dynamics;
 - b role playing with a focus on person-centred and fact-centred listening and the effects on the interviewee of different types of questioning style;
 - c the paralinguistic aspects of listening, such as body language, pace of speech and eye contact;
 - d an introduction to post traumatic stress syndrome symptoms;
 - e an introduction to basic crisis management skills;
 - f an introduction to stress management, using systems theory;
 - g an accent on defining the boundaries of the briefers' role.
- 23 The Reparation and Rehabilitation Committee maintained a presence in the development and presentation of training, in order to ensure that the concept of reparations remained in the forefront.
- 24 The training of briefers and statement-takers was co-ordinated by the regional co-ordinators and the mental health specialist. Community briefers were trained to increase the Commission's capacity to provide emotional support to those who participated in its activities, and assisted with the briefing and debriefing of deponents before, during and immediately after the hearings. After the hearings, they continued to provide support to people who gave statements, ensuring that support was available to them in their communities. The Commission undertook training in such a way as to strengthen already existing structures. It also ensured that support was provided by people who were trusted by the victims and who shared the same language and culture. Sensitivity to such aspects was part of the commitment of the Commission to provide a service that was victim-friendly, culturally appropriate and respectful of the dignity of witnesses.

- 25 Briefers were familiarised with the Commission's processes. Trauma counselling and training manuals were developed. Special training was also provided to psychologists and social workers in the South African Medical Service of the South African National Defence Force in Pretoria and Cape Town in order to prepare their staff to assist the Commission. Students working at SHAWCO (a student health and welfare organisation based at the University of Cape Town) were also trained.
- 26 After the first round of human rights violations hearings in 1996, it became evident that there was a need for post-hearing follow-up. In some areas, the hearings opened up old conflicts that threatened stability in the community. It also became clear that the hearings did not themselves provide opportunities for reconciliation. The Reparation and Rehabilitation Committee therefore formulated a policy of arranging follow-up visits to help communities to:
- a evaluate the impact of gross human rights violations;
 - b contribute towards the formulation of reparation and rehabilitation policy recommendations;
 - c devise strategies to promote reconciliation and healing in those neighbourhoods;
 - d begin to 'own' the reconciliation process and create community-based initiatives that would continue after the Commission's work had ended.

■ INFORMATION MANAGEMENT

- 27 The Human Rights Violations and Amnesty Committees also referred information to the Reparation and Rehabilitation Committee. In addition, the Reparation and Rehabilitation Committee generated information through its own activities, such as briefers' reports, post-hearing follow-up visits and so on. The Committee established a task team whose role it was to recommend a national strategy to process such information.

28 The Human Rights Violations Committee statement form included a section on the consequences of violations. People were asked about the emotional, medical and symbolic consequences of violations and the impact on their education and housing. They were also asked to articulate their expectations of the Commission at an individual, community and national level. A coding frame was developed for data relating to reparation and rehabilitation and was integrated into the Commission's information system. This assisted in the interpretation of deponents' responses and hearings, and thus influenced policy development. Unfortunately, data captured in this manner were linked to the deponent and not to the victim. Thus, although the data provided useful indicators, they were not as accessible as they might otherwise have been.

■ A RESEARCH COMPONENT

29 In order to evaluate the impact of gross human rights violations on people's lives, the Research Department facilitated an investigation in two areas: first, identifying the consequences of gross human rights violations on individuals, families and communities, and second, assessing people's expectations of the Commission. This research provided an empirical foundation for the chapter on the consequences of gross human rights violations contained elsewhere in the report.⁵ As the potential variables under study were limitless and both areas were extremely complex, that chapter provides a broad overview of these areas. It identifies patterns and trends, using illustrative case studies extracted from the statements and hearing transcripts, supplemented with statistics drawn from the database.

30 The research investigated four areas of differentiation. These were regional variations, gender differentiation, the impact on children and youth, and the effects on families and communities. Underlying questions that guided the research included: What enduring effects have the conflicts of the past had on social values and ways of life? What were the spiralling implications for families and communities? What had been identified as necessary action for dealing with these problems? What contribution could the Commission make in addressing these problems?

⁵ It was also captured in the chapters on *Women* and *Children and Youth*.

■ THE ROLE OF THE REPARATION AND REHABILITATION COMMITTEE IN OTHER COMMISSION ACTIVITIES

- 31 The Reparation and Rehabilitation Committee's commissioners, committee members and staff were involved in planning, preparing and conducting different hearings held throughout the country. Some of the event hearings (for example, the children and youth hearings held in all four of the Commission's regions) were the specific responsibility of the Reparation and Rehabilitation Committee.
- 32 A Reparation and Rehabilitation Committee briefer was present at many of the amnesty hearings, and either commissioners or committee members endeavoured to attend sessions of these hearings. Special efforts were made not only to support the victims, but also (when necessary) to give support to perpetrators and their families and to lay the groundwork for victim-offender mediation.
- 33 At most of the follow-up hearings, the Reparation and Rehabilitation Committee explored different views on reconciliation with communities. The committee also co-ordinated all Commission activities aimed at facilitating reconciliation.

Management and Operational Reports

FINANCE DEPARTMENT

■ INTRODUCTION

- 1 Section 46(2) of the Promotion of National Unity and Reconciliation Act (the Act) 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 officer¹. Thus the financial accountability for the Commission rested with the chief executive officer.
- 2 Section 46(5) of the Act required that the Commission 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.²
- 3 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.
- 4 Section 36(1) of the Act determined that “the Commission be independent and separate from any party, government, administration or other functionary or body directly or indirectly representing the interest of any such entity.”
- 5 Thus, a certain number of fairly unusual financial measures applied to the Commission. Although it was intended that the Commission should enjoy a degree of financial independence from normal state financial structures, there were a number of procedural and regulatory ambiguities in the setting up of the Commission.
- 6 First, there were questions about the applicability of State Expenditure regulations (the Treasury Instructions) and State Tender Board regulations.

¹ This served to satisfy section 15 of the Exchequer Act (66 of 1975).

² Section 2 of the Audit Arrangement Act (122 of 1992).

- 7 Second, there was a six-week delay from the time that the Commissioners were appointed until operations could be set up. This was because these appointments came into operation on 15 December 1995, immediately before the holiday season, at a time when most services and equipment providers close down for the year.
- 8 Third, the Commission had to set up operations very rapidly and did not have time to comply with all the procedures of the State Tender Board. The executive commissioners took a proactive decision to the effect that the Commission would procure its own goods and services.
- 9 The mandate of the Commission was also such that it required a number of specialised sets of equipment, goods and services for its operational activities, for example:
 - a the establishment of an Investigation Unit with all its personnel and logistical support (section 28(1) of the Act);
 - b the conducting of Commission hearings in public (section 33(1) of the Act);
 - c the provision of legal representation (section 34(1) of the Act);
 - d the establishment of a limited witness protection programme (section 35(1) of the Act);
 - e the provision of measures to allow victims to communicate in the language of their choice (section 11(f) of the Act);
 - f special provisions for dealing with victims (section 11 of the Act).
- 10 The Commission's own methodology³ had to be developed, and its decision to hold hearings in communities where gross violations of human rights had taken place required extensive travel requirements and logistic support.
- 11 In complying with the financial mandate as directed by the Act and interpreted by the Commission, the chief executive officer delegated responsibility to the director of finance. One of the first tasks of the director was to assist the Commission by preparing an estimate of revenue and expenditure.

3 See chapter on *Methodology and Process*.

■ OPERATIONS

- 12 The national 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.
- 13 Each regional office employed a bookkeeper, whose job description was later upgraded to that of administrator.
- 14 The national financial director reported to the Commission's chief executive officer.
- 15 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. At a later stage, human resources were added to the portfolio.

■ EXPENDITURE

- 16 In the early stages of the Commission, before most of its management and operational staff were in place, it was extremely difficult to conceptualise all of the areas of expenditure the Commission might encounter. The approach taken was that the Commission would operate on a quasi-judicial basis and that its operations would be directed around this concept.
- 17 It was clear from the beginning that the Commission would be a people-intensive organisation and that staff costs would form the bulk of its expenditure. Thus, the first major tasks were to design and develop an organisational structure that would meet the Commission's mandate and determine its staffing requirements.
- 18 The design and development of the organisational plan was a particularly difficult challenge. After extensive consultation with, amongst others, the vice-chairperson of the Commission, the human resources director and consultants, the first major substantive organisational plan was compiled over a weekend in late February 1996.

Determination of salaries

- 19 After the appointment of the commissioners, the vice-chairperson, Dr Alex Boraine, asked a personnel consultant to assist in setting up the staffing structure. Dr Boraine provided the consultant with a draft organisational design and a proposed salary outline, which originated in the Department of Justice. The organisational design and salary structure were based on a formula incorporating state grades, ranks and salary scales. The consultant also studied the salary structures of the Constitutional Assembly to obtain some guidance in developing salary structures for the Commission's staff.
- 20 Because the Commission would only have a short lifespan, it opted for a simple and straightforward 'cash package' approach, with salaries offered as a package with no benefits attached.
- 21 The human resources director, the financial director and the Commission's consultants assisted in developing a staffing plan and salary structure. The job evaluation and remuneration structure was based on the Paterson plan.
- 22 Remuneration specialists provided information on market-related salaries for the appropriate job classifications using the Paterson Job Evaluation Plan. A September 1995 survey of national median remuneration packages (according to the Paterson Job Evaluation System) was used for reference. Other factors taken into consideration in establishing the salaries were that no benefits were to be offered and that staff would effectively be employed on short-term contracts.
- 23 As a result of this work, detailed job descriptions were compiled and an appropriate remuneration package prepared. The median salaries and the staffing plan were then incorporated into the staffing budget of the Commission.
- 24 In negotiations with Commission staff members, the budgeted salaries were used as a median guideline, and actual salaries were determined according to professional qualifications, experience and ability. This resulted in certain people being offered salaries above the median mark and others below.

Capital outlay

- 25 The next major item of expenditure was the Commission's projected capital outlay. It was clear that the Commission would not be able to fulfil its mandate without an

extensive information management system. The Commission entered a contract with an international expert on information management from the American Association for the Advancement of Science. The consultant, together with the Commission's head of information systems, conceptualised and developed the database and laid the groundwork for the necessary hardware and support infrastructure.

Travel and accommodation arrangements

- 26 The Commission was necessarily a highly mobile organisation and as such required extensive travel arrangements. To meet its needs, it called for limited tenders for discounted air travel, hotel accommodation and car hire facilities. The Commission also established its own in-house travel agency, which was contracted out on the basis of limited tenders.
- 27 Commission staff, particularly investigation and logistics support staff, had extensive transport requirements. Thus, the Commission entered into extensive contracts with an international motor vehicle dealership to purchase over fifty motor vehicles.

Space, furniture and office equipment

- 28 Offices were obtained for the various regions, and furniture and office equipment were procured locally, using a limited tender process.

Security arrangements

- 29 Because of its high political profile, the Commission faced unique security risks. As a result of this, extensive security arrangements, equipment and infrastructure were put in place in order to safeguard premises, assets and lives.
- 30 Also on a limited tender basis, surveillance equipment, x-ray machines, bomb scanners, security disks and access control systems were acquired and installed at the Commission's national and regional offices. The expertise of consultants from the South African Police and other state security services was extensively utilised.

Translation and interpretation services

- 31 The Commission also set the precedent for a fairly new concept in South African governmental structures: the introduction of a simultaneous interpretation service.

The founding Act provided for persons to be able to use the language of their choice when accessing the Commission. This presented an interesting challenge to the Commission, given South Africa's eleven official languages. Special equipment was imported from Belgium, and a special team of simultaneous interpreters was recruited and trained. After a limited tendering process, the University of the Free State Language Facilitation Program was engaged to provide this very specialised service.

Internal communication facilities

- 32 One of the keys to the success of the Commission was effective communication. To achieve this, the Commission installed fax machines and e-mail on its computer systems. Cellular telephones were acquired and played a strategic role in facilitating the work of the Investigation Unit and the Witness Protection Unit. A local cellular telephone service provider also assisted the Commission with free use of eighteen cellular telephones.

Contracted services

- 33 Other operating expenditure was budgeted for after wide consultation with various other organisations. In particular, the Commission looked at the operating costs of legal practices to get a reasonable idea of the type and extent of the expenditure it might incur.
- 34 The Commission subcontracted the Legal Aid Board, which already had the necessary infrastructure, to provide legal aid services on its behalf.

Revenue

- 35 The Commission's revenues were allocated as a separate line item in the Department of Justice's budget, which was voted on and approved by Parliament.
- 36 In addition, many international donor countries expressed an interest in the Commission and offered their financial assistance 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.

- 37 These bureaucratic procedures resulted in a number of delays in the launching of projects for which the Commission had obtained donor funding. The net result of these delays was that the Commission was not able to extract optimum value from the various projects funded by donors. The various donations and their purposes are set out in an attached schedule (Appendix 3).
- 38 National economic challenges and priorities meant that the Commission operated under strained financial conditions virtually all the time. The Commission was originally allocated a budget of R8 million for the 1995/1996 fiscal year and a budget of R29 million for the 1996/1997 fiscal year. After completing the required estimates of income and expenditure, it was abundantly clear that this budget was inadequate. The projected budget requirement for the 1996/1997 fiscal year was in fact R79 million. This meant that the Commission had to approach the Treasury Committee for additional funding.
- 39 There was strong resistance from the Treasury Committee to making further funding available. After much negotiation and a line-by-line budget item evaluation, the Treasury Committee agreed to make a total of R69.419 million available for the 1996/1997 fiscal year.
- 40 At the same time, the Treasury Committee indicated that the total budget available for the 1997/1998 fiscal year would not exceed R50 million. The Commission's budget requirements, however, (based on its operating levels at the time) were in the region of R82 million. This meant that the Commission had to downscale its operations much earlier than envisaged and step up its requests for donations.
- 41 As the Commission's work progressed, it also became clear that it would not be able to complete all its work within the prescribed eighteen-month period, or even after a further six months' extension. After consultations with the Ministry of Justice, the Commission's lifespan was extended by an additional four months in order to give it enough time to complete all its work. In order to fund this extension, an additional R15.716 million was made available to the Commission for the 1997/1998 fiscal year and R21.904 million for the 1998/1999 fiscal year.
- 42 At the time of drafting this report, the audit for the 1996/1997 fiscal year had just been completed, and the Commission had remained within its approved budget of R69.419 million. Financial statements for the completed fiscal periods 1995/1996 and 1996/1997 are attached as appendices 1 and 2.⁴

⁴ Annual Financial Statement for 1997/8 were not available at the time of reporting.

■ APPENDIX 1

THE TRUTH AND RECONCILIATION COMMISSION

Chief Executive Officer's Report

FOR THE PERIOD 15 DECEMBER 1995 TO 31 MARCH 1996

The Chief Executive Officer hereby presents his report and submits the first annual financial statements for the period ended 31 March 1996.¹

■ 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 offices in Gauteng, the Eastern Cape and Kwazulu-Natal. The financial activities of the Truth and Reconciliation Commission for the above period were essentially dominated by this set up phase and the results thereof are clearly reflected in the attached financial statements and may be summarised as follows: -

Operating Surplus for the period	R 3 758 562
Capital Expenditure	R 4 683 480
Net Cash Flow Deficit	R 924 918

The Cash Flow Deficit represents an over expenditure in relation to funds received from the Department of Justice and other interest and Commission earnings. This is to be funded out of the 1996/1997 budget.

¹ See also Report of the Auditor-General on the Truth and Reconciliation Commission for 1995/6.

■ 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

**Secretary to the Reparation and
Rehabilitation Committee** B Watson

Date of Appointment: 1 May 1996

The following positions are still vacant:-

Secretary to the Human Rights Violations Committee

Secretary to the Amnesty Committee

■ 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.

CHIEF EXECUTIVE OFFICER

14 April 1997

BALANCE SHEET AS AT 31 MARCH 1996 • BALANSSTAAT SOOS OP 31 MAART 1996

	Notes	1995-96	
	Aant.	R	
Capital employed			Kapitaal aangewend
Accumulated fund		3,758,801	Opgehoopte fonds
		3,758,801	
Employment of capital			Aanwending van kapitaal
Fixed assets	4	4,663,976	Vaste bates
Net current liabilities		905,175	Netto bedryfslaste
Current assets		1,271,234	Bedryfsbates
Accounts receivable	5	647,704	Agterstallige inkomste
Bank and cash balances		623,530	Bank en kontantsaldo's
Less: Current liabilities		2,176,409	Min: Bedryfslaste
Accounts payable	6	2,116,409	Agterstallige uitgawes
Provisions		60,000	Voorsienings
		3,758,801	

B. S. V. MINYUKU,

Date • Datum, 01/04/97.

Accounting Officer • Rekenpligtige Beampstes.

INCOME STATEMENT • INKOMSTESTAAT

FOR THE YEAR ENDED 31 MARCH 1996 • VIR DIE JAAR GEËINDIG 31 MAART 1996

	Notes	1995-96	
	Aant.	R	
Income		8,037,319	Inkomste
State and other contributions		8,000,000	Staats- en ander bydraes
Other income	7	37,319	Ander inkomste
Expenditure		4,278,518	Uitgawes
Salaries		2,182,880	Salarisse
Other operating expenditure	8	2,095,638	Ander bedryfsuitgawes
Retained income		3,758,801	Onaangewende inkomste

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1996 • 31 MAART 1996

1. Formation and primary objectives

- 1.1 The Truth and Reconciliation Commission was constituted in terms 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 principle accounting policy is as follows:

- 2.1 *Basis of preparation*
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.

1. Stigting en primêre oogmerke

- 1.1 Die Waarheids- en Versoeningskommissie is ingevolge die Wet op die Bevordering van Nasionale Eenheid en Versoening, 1995 (Wet No. 34 van 1995) gestig. Die Kommissaris is ingevolge artikel 7(2)(a) van die Wet op 15 Desember 1995 deur die President aangestel.
- 1.2 Die oogmerke van die Kommissie is om nasionale eenheid en versoening te bevorder in 'n gees van begrip wat uitstyg die konflikte en die verdeeldheid van verkry van die oorsake, aard en omvang die verlede, deur 'n volledige beeld te van growwe skendings van mense-regte deur ondersoek te doen en verhore te hou; die verlening van amnestie te vergemaklik aan persone wat alle tersaaklike feite met betrekking tot die dade ten volle openbaar; die lot of verblyfplek van slagoffers vas te stel en bekend te maak en herstelmaatreëls ten opsigte van hulle aan te beveel; en 'n verslag saam te stel wat 'n volledige oorsig gee van die Kommissie se bedrywighede en bevindinge.

2. Rekeningkundige beleid

Die finansiële state word in ooreenstemming met algemeen aanvaarde rekeningkundige praktyk opgestel. Die hoof rekeningkundige beleid is soos volg:

- 2.1 *Grondslag van aanbidding*
Die finansiële state is op die historiese koste grondslag voorberei.
- 2.2 *Vaste bates en waardevermindering*
Vaste bates word teen kosprys minus opgehoopte waardevermindering getoon. Huurverbeterings word oor die verwagte lewensduur van die Kommissie afgeskryf. Alle ander bates se waarde verminder oor hul bruikbare lewensduur op die reguitlynmetode.
- 2.3 *Inkomste en uitgawes*
Inkomste en uitgawes word ooreenkomstig die toevallingsgrondslag erken.

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1996 • 31 MAART 1996
(continued/vervolg)

3. Cash flow statement and comparative figures

No cash flow statement and comparative figures have been presented as this is the first year of operation of the Commission.

3. Kontantvloeistaat en vergelykende syfers

Geen kontantvloeistaat en vergelykende syfers is voorgelê nie aangesien hierdie die eerste jaar van die Kommissie se bedrywighe is.

4. Fixed assets	1995-96			4. Vaste bates
	Cost price Kosprys	Accumulated depreciation Opgehoopte waarde- vermindering	Book value Boek- waarde	
	R	R	R	
Computer equipment	310,549	7,502	303,047	Rekenaartoerusting
Furniture and fittings	1,718,461	11,813	1,706,648	Meubels en uitrusting
Office equipment	163,345	1,954	161,391	Kantoortoerusting
Motor vehicles	2,358,852	49,496	2,309,356	Motorvoertuie
Leasehold improvements	191,260	7,726	183,534	Huurverbeterings
	4,742,467	78,491	4,663,976	

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1996 • 31 MAART 1996
(continued/vervolg)

	1995-96	
	R	
5. Accounts receivable		5. Agterstallige inkomste
Value Added Tax (VAT) refund	519,798	Terugbetaling van Belasting op Toegevoegde Waarde (BTW)
Refundable deposits paid on leased premises	17,200	Terugontvangbare deposito's op gehuurde geboue
Prepaid expenses	81,161	Vooruitbetaalde uitgawes
Interest receivable	15,424	Agterstallige rente
Commission receivable	14,121	Agterstallige kommissie
	<u>647,704</u>	
6. Accounts payable		6. Agterstallige uitgawes
Accruals for accounts payable	2,101,950	Voorsienings vir rekeninge betaalbaar
Travel management fees	14,459	Reisbestuursfoeie
	<u>2,116,409</u>	
7. Other income		7. Ander inkomste
Interest	21,062	Rente
Discount received	3,870	Korting ontvang
Commission	12,387	Kommissie
	<u>37,319</u>	

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1996 • 31 MAART 1996

(continued/vervolg)

1995-96

R

8. Other operating expenditure		8. Ander bedryfsuitgawes
Audit fees	60,000	Ouditfooie
Bank costs	1,011	Bankkoste
Communication	2,979	Kommunikasie
Conferences and workshops	32,851	Konferensies en werksinkels
Consulting fees	90,367	Konsultasiefooie
Consumables	16,794	Verbruikbare items
Depreciation	78,491	Waardevermindering
Entertainment, teas and refreshments	16,609	Onthaal, tee en verversings
Insurance	4,262	Versekering
Legal costs	6,737	Regskoste
Maintenance	17,037	Onderhoud
Equipment	1,230	Toerusting
Premises	6,391	Persele
Motor vehicles	9,416	Motorvoertuie
Postage	1,124	Posgeld
Printing	8,407	Drukwerk
Publications and subscriptions	5,554	Publikasies en subskripsies
Rentals	137,037	Huur
Equipment	4,109	Toerusting
Offices	132,928	Kantore
Staff recruitment	601,674	Werwing van personeel
Stationery	80,073	Skryfbehoeftes
Telefaxes	2,096	Telefakse
Telephones	117,255	Telefone
Telkom	86,893	Telkom
Cellular	30,362	Sellulêr
Transport	8,713	Vervoer
Freight	5,615	Vraggeld
Motor vehicle expenses	2,898	Motorvoertuiguitgawes
Use of private motor vehicles	200	Gebruik van private voertuie
Training	45,700	Opleiding
Travel and subsistence	746,408	Reis en verblyf
Travel management costs	14,459	Reisbestuurskoste
	2,095,638	

■ APPENDIX 2

THE TRUTH AND RECONCILIATION COMMISSION

Chief Executive Officer's Report

FOR THE YEAR ENDED 31 MARCH 1997

The Chief Executive Officer hereby presents his report and submits the first annual financial statements for the year ended 31 March 1997.¹

■ 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 fiscal year, the Truth & Reconciliation Commission started to operate on a full functional basis which also saw its first hearings being held during April and May of 1996. As an evolving organisation adaptations had to be made on the run. In addition to this and in recognition of national priorities, stringent fiscal control resulted in the approved budget of the Commission being limited to R70 million. The additional operating expenditure required by the Commission to make a meaningful contribution to national healing and reconciliation was facilitated through extremely generous foreign donors. In particular we wish to recognise the European Community, the Royal Danish Embassy, the Royal Netherlands Embassy, the Swedish International Development Agency, USAID, the Flemish Community, the Norwegian Embassy, the Austrian Government as well as the Belgian Government.

The results of the activities of the Commission are clearly reflected in the attached Financial Statements and may be summarised as follows:

Operating Surplus for the year	R12,483,372
Capital Expenditure	R10,804,671
Net Cash Flow Surplus	R 4,768,649

The Cash Flow Surplus represents an under expenditure in relation to funds received from the Department of Justice, approved donations, interest and Commission earnings.

¹ See also Report of the Auditor-General on the Truth and Reconciliation Commission for 1996/7.

■ 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

**Secretary to the Reparation and
Rehabilitation Committee** B Watson
Date of Appointment: 1 May 1996

**Secretary to the Human Rights
Violations Committee** Dr R Richards
Date of Appointment: 1 September 1996

Secretary to the Amnesty Committee L Matshaka
Date of Appointment: 13 February 1997

Subsequent to the year end the Executive Secretary of the Reparation and Rehabilitation Committee and the Executive Secretary to the Amnesty Committee resigned. The position of the Executive Secretary of the Amnesty Committee has been filled but the Reparation and Rehabilitation Committee position is still vacant.

■ 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.

CHIEF EXECUTIVE OFFICER

21 November 1997

BALANCE SHEET AS AT 31 MARCH 1997 • BALANSSTAAT SOOS OP 31 MAART 1997

	Notes		
	1996-97	Aant.	
	R		R
Capital employed			Kapitaal aangewend
Accumulated fund	<u>16,241,934</u>		<u>3,758,562</u>
	R16,241,934		3,758,562
Employment of capital			Aanwending van kapitaal
Fixed assets	11,473,285	4	4,683,480
Net current assets/(liabilities)	4,768,649		(924,917)
Current assets	19,557,049		1,268,872
Sundry debtors	1,582,387	5	645,342
Bank and cash balances	17,974,662		623,530
Less: Current liabilities	14,788,400		2,193,789
Sundry creditors	4,401,092	6	2,133,790
Unapproved donations	10,313,347		-
Provisions	73,960		60,000
	<u>R 16,241,934</u>		<u>R 3,758,563</u>

Cape Town • Kaapstad
Date • Datum, 14/10/97.

B. S. V. MINYUKU,
Accounting Officer • Rekenpligtige Beamptes.

INCOME STATEMENT • INKOMSTESTAAT

FOR THE YEAR ENDED 31 MARCH 1997 • VIR DIE JAAR GEËINDIG 31 MAART 1997

	Notes			
	1996-97	Aant.		1995-96
	R		R	
Income	74,383,577		8,031,416	Inkomste
State and other contributions	70,042,034		7,996,105	Staats- en ander bydraes
Donations	2,336,221		-	Skenkings
Other income	2,005,323	7	35,311	Ander inkomste
Expenditure	61,900,205		4,272,854	Uitgawes
Salaries	31,746,636		2,183,180	Salarisse
Other operating expenditure	30,153,569	8	2,089,674	Ander bedryfsuitgawes
Retained income for the year	12,483,372		3,758,562	Onaangewende inkomste vir die jaar
Retained income at beginning of the year	3,758,562		-	Onaangewende inkomste aan begin van die jaar
Retained income at end of the year	R 16,241,934		R 3,758,562	Onaangewende inkomste aan die einde van die jaar

CASH FLOW STATEMENT • KONTANTVLOEIESTAAT

FOR THE YEAR ENDED 31 MARCH 1997 • VIR DIE JAAR GEËINDIG 31 MAART 1997

	Notes Aant.	1996-97 R	
Cash flows from operating activities			Kontantvloei uit bedryfsaktiwiteite
Cash generated from operations	A	26,354,785	Kontant uit bedrywighede voortgebring
Interest received		1,617,546	Rente ontvang
Interest paid		(23,805)	Rente betaal
Net cash inflow from operating activities		<u>27,948,525</u>	Netto kontantinvloei uit bedryfsaktiwiteite
Cash flows from investing activities			Kontant vloei uit beleggingsaktiwiteite
Additions to equipment		(10,804,671)	Aankoop van toerusting
"Sale" of fixed assets		207,277	"Verkope" van vaste bates
Net cash outflow from investing activities		<u>(10,597,394)</u>	Netto kontantuitvloei uit beleggingsaktiwiteite
Net increase in cash and cash equivalents		17,351,132	Netto toename in kontant en kontantekwivalente
Cash and cash equivalents at beginning of period	B	623,530	Kontant en kontantekwivalente aan die begin van die tydperk
Cash and cash equivalents at end of period	B	<u>R 17,974,682</u>	Kontant en kontantekwivalente aan die einde van die tydperk

NOTES TO THE CASH FLOW STATEMENT • AANTEKENINGE BY DIE KONTANTVLOEIESTAAT

31 MARCH 1997 • 31 MAART 1997

A. Reconciliation of net surplus to cash generated from operations			A. Rekonsiliasie van netto surpluis met kontant uit bedrywighede voortgebring
Net surplus	12,483,372		Netto surpluis
Adjustments for:			Aansuiwerings vir:
Depreciation	3,817,576		Depresiasie
Investment income	(1,617,546)		Beleggings inkomste
Interest expense	23,805		Rentekoste
Profit on disposal of assets	(9,988)		Wins op bates afgeskryf
Operating profit before working capital changes	14,697,219		Bedryfs surpluis voor bedryfskapitaal veranderinge
Working capital changes			Bedryfskapitaalveranderinge
Increase in accounts receivable	(937,045)		Toename in diverse debiteure
Increase in accounts payable	12,594,611		Toename in diverse krediteure
Cash generated from operations	<u>26,354,785</u>		Kontant uit bedrywighede voortgebring
B. Cash and cash equivalents			B. Kontant en kontantekwivalente
Cash and cash equivalents consist of cash on hand and balances with banks.			Kontant en kontantekwivalente bestaan uit kontant voorhande en saldo's by banke.
Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:			Kontant en kontantekwivalente wat by die kontantvloeietaat ingesluit is, bestaan uit die volgende balanstaaatbedrae:
Cash and cash equivalents with banks	<u>17,974,662</u>		Kontant voorhande en saldo's by banke

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1997 • 31 MAART 1997

1. Formation and primary objectives

- 1.1 The Truth and Reconciliation Commission was constituted in terms 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 principle accounting policy is as follows:

- 2.1 *Basis of preparation*
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.

1. Stigting en primêre oogmerke

- 1.1 Die Waarheids- en Versoeningskommissie is ingevolge die Wet op die Bevordering van Nasionale Eenheid en Versoening, 1995 (Wet Nr. 34 van 1995) gestig. Die Kommissaris is ingevolge artikel 7(2)(a) van die Wet op 15 Desember 1995 deur die President aangestel.
- 1.2 Die oogmerke van die Kommissie is om nasionale eenheid en versoening te bevorder in 'n gees van begrip wat uitstyg die konflikte en die verdeeldheid van verkry van die oorsake, aard en omvang die verlede, deur 'n volledige beeld te van growwe skendings van mense-regte deur ondersoek te doen en verhore te hou; die verlening van amnestie te vergemaklik aan persone wat alle tersaaklike feite met betrekking tot die dade ten volle openbaar; die lot of verblyfplek van slagoffers vas te stel en bekend te maak en herstelmaatreëls ten opsigte van hulle aan te beveel; en 'n verslag saam te stel wat 'n volledige oorsig gee van die Kommissie se bedrywighede en bevindinge.

2. Rekeningkundige beleid

Die finansiële state word in ooreenstemming met algemeen aanvaarde rekeningkundige praktyk opgestel. Die hoof rekeningkundige beleid is soos volg:

- 2.1 *Grondslag van aanbidding*
Die finansiële state is op die historiese koste grondslag voorberei.
- 2.2 *Vaste bates en waardevermindering*
Vaste bates word teen kosprys minus opgehoopte waardevermindering getoon. Huurverbeterings word oor die verwagte lewensduur van die Kommissie afgeskryf. Alle ander bates se waarde verminder oor hul bruikbare lewensduur op die reguitlynmetode.
- 2.3 *Inkomste en uitgawes*
Inkomste en uitgawes word ooreenkomstig die toevallingsgrondslag erken.

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1997 • 31 MAART 1997
(continued/vervolg)**3. Cash flow statement
comparative figures**

No comparative figures for the cash flow statement have been presented as last year was the first year of operation of the Commission.

**3. Kontantvloeistaat se
vergelykende syfers**

Geen vergelykende syfers vir die kontantvloeistaat is voorgelê nie aangesien die vorige jaar die eerste jaar van die Kommissie se bedrywighele was.

4. Fixed assets**1996-97**

	Cost price Kosprys	Accumulated depreciation Opgehoopte waarde- vermindering	Book value Boek- waarde	
	R	R	R	
Computer equipment	3,010,355	811,115	2,199,240	Rekenaartoerusting
Computer software and installation	1,003,441	1,003,441	-	Rekenaarprogramme en installing
Furniture and fittings	2,671,545	514,136	2,157,409	Meubels en uitrusting
Office equipment	2,607,430	379,353	2,228,077	Kantoortoerusting
Motor vehicles	5,083,435	861,644	4,221,791	Motorvoertuie
Leasehold improvements	619,401	251,709	367,692	Huurverbeterings
Security equipment	347,679	48,604	299,075	Sekuriteitstoerusting
	<u>15,343,286</u>	<u>3,870,001</u>	<u>11,473,285</u>	

4. Vaste bates**1995-96**

Computer equipment	310,549	7,502	303,047	Rekenaartoerusting
Furniture and fittings	1,733,691	11,813	1,721,878	Meubels en uitrusting
Office equipment	163,345	1,954	161,391	Kantoortoerusting
Motor vehicles	2,358,852	49,496	2,309,356	Motorvoertuie
Leasehold improvements	195,534	7,726	187,808	Huurverbeterings
	<u>4,761,971</u>	<u>78,491</u>	<u>4,683,480</u>	

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1997 • 31 MAART 1997
(continued/vervolg)

	1996-97	1995-96	
	R	R	
5. Sundry debtors			5. Diverse debiteure
Commission receivable	89,332	10,379	Agterstallige kommissie
Income receivable	63,754	-	Inkomste ontvangbaar
Interest receivable	158,559	15,424	Agterstallige rente
Prepaid expenses	329,266	89,419	Vooruitbetaalde uitgawes
Refundable deposits paid on leased premises	43,272	17,200	Terugontvangbare deposito's op gehuurde geboue
Salary advances	69,906	-	Salarisvoorskotte
Value Added Tax (VAT) refund	828,298	512,920	Terugbetaling van Belasting op Toegevoegde Waarde (BTW)
	<u>1,582,387</u>	<u>645,342</u>	
6. Sundry creditors			6. Diverse krediteure
Accruals for accounts payable	4,401,092	2,119,331	Voorsienings vir rekeninge betaalbaar
Travel management fees	-	14,459	Reisbestuursfooie
	<u>4,401,092</u>	<u>2,133,790</u>	
7. Other income			7. Ander inkomste
Interest	1,617,546	21,062	Rente
Discount received	13,508	3,870	Korting ontvang
Profit on Assets written off	8,428	-	Wins op bates afgeskryf
Commission	365,840	10,379	Kommissie
	<u>2,005,323</u>	<u>35,311</u>	

NOTES TO THE FINANCIAL STATEMENTS • AANTEKENINGE BY DIE FINANSIËLE STATE

31 MARCH 1997 • 31 MAART 1997

(continued/vervolg)

1996-97 1995-96

8. Other operating expenditure

Audit fees	109,610	60,000
Bank costs	57,030	1,022
Communication	2,952,863	3,396
Conferences and workshops	275,724	32,560
Consulting fees	330,861	80,907
Consumables	313,201	17,391
Diginet lines	107,714	-
Depreciation	3,817,576	78,491
Entertainment, teas & refreshments	114,046	16,609
Exhumation costs	12,677	-
Hearings costs	939,322	-
Insurance	419,788	11,165
Interest paid	23,805	-
Legal costs	36,455	6,738
Legal aid	122,615	-
Maintenance	154,765	17,026
Computers	3,802	-
Equipment	21,726	1,209
Premises	26,757	6,391
Motor vehicles	102,480	9,426
Postage	22,878	1,124
Printing	348,573	8,407
Publications and subscriptions	125,841	5,655
Relocation costs	179,363	-
Rentals	3,597,814	124,449
Equipment	3,084	4,109
Offices	3,594,730	120,340
Staff recruitment	831,198	603,374
Stationery	402,437	80,073
Telephones	2,175,609	105,521
Telkom and Faxes	1,354,044	75,159
Cellular	821,565	30,362
Transport	848,556	3,532
Freight	90,676	434
Motor vehicle expenses	538,859	2,898
Use of private motor vehicles	219,021	200
Training	17,728	45,700
Transcription costs	145,843	-
Translation costs	3,228,313	-
Travel and subsistence	7,985,643	772,075
Travel management costs	347,004	14,459
Witness protection program	108,717	-
	30,153,569	2,089,674

8. Ander bedryfsuitgawes

Ouditfooie
Bankkoste
Kommunikasie
Konferensies en werkswinkels
Konsultasiefooie
Verbruikbare items
Diginetlyne
Waardevermindering
Onthaal, tee en verversings
Opgrawingskoste
Verhoringkoste
Versekering
Rente betaal
Regskoste
Regshulp
Onderhoud
Rekenaars
Toerusting
Persele
Motorvoertuie
Posgeld
Drukwerk
Publikasies en subskripsies
Hervestigingskoste
Huur
Toerusting
Kantore
Werwing van personeel
Skryfbehoeftes
Telefone
Telkom en fakse
Sellulêr
Vervoer
Vraggeld
Motorvoertuiguitgawes
Gebruik van private motorvoertuie
Opleiding
Transkripsiekoste
Vertalingskoste
Reis en verblyf
Reisbestuurskoste
Getuiebeskermingsprogram

■ APPENDIX 3

DONATIONS RECEIVED BY THE TRUTH & RECONCILIATION COMMISSION UP TO MAY 1997

Danish Government	R 490 000.00
Dedicated to various forms of research	

Government of Sweden

Contribution to salary of Special Advisor to the Vice-Chair	R1 527 280.00
Contribution to salary of Executive Assistant to the Vice-Chair	
Computer hardware, software and database development	
Amnesty Committee Extension	R4 475 000.00

Netherlands Government

Specific research assignment to be undertaken by the Institute for Southern Africa in the Netherlands and Kairos.	R 167 240.00
To be paid at the completion of the work	R 41 785.00

Netherlands Government - 2nd donation

Computer software to be utilized by the Investigation Department in crime analysis work.	R 163 020.00
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Netherlands Government - 3rd donation

Specific research assignment to be undertaken by the Institute for Southern Africa in the Netherlands and Kairos.	R 368 545.00
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Austrian Government

For general use	R 634 678.00
For general use	R 583 720.00

Flemish Government

To be used to fund the Designated Statement Taker Program	R1 629 480.00
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European Community

Secondment of European investigators dedicated to research work	R7 907 218.97
Interpretation and translation services equipment	
Interpreters' salaries and costs	
Contingent expenditure	

Human Sciences Research Council Research purposes.	R 31 750.00
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USAID

Communications, R&R Workshops and Think-Tanks, Briefers' Training, Technical Assistance, Accommodation and Car Hire, R&R Air Travel	\$ 400 000.00
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Final Report Writing, Special Investigations, Close Down Process, Legal Challenges	\$ 250 000.00
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Radio Coverage, Video Recordings of Hearings, Fieldworker Project, Rehabilitation and Reparation Notification and Inquiries Desk Project, Finishing the Work of the Commission (Database Cleanup and Findings Report Summaries), Investigating and Analysing Amnesty Applications	\$ 750 000.00
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Norwegian Embassy

SABC Radio Broadcast	R2 586 017.09
	R1 946 000.00

Local Donation - Justice in Transition Towards Communication Budget	R 99 000.00
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Belgian Donation Visit by Commission Delegation to Rwanda Visit by Rwandan Delegation to Commission	R 253 659.92
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Management and Operational Reports

HUMAN RESOURCES DEPARTMENT

■ INTRODUCTION

- 1 The tasks of the Human Resources Department were:
 - a policy development, implementation and maintenance
 - b recruitment and selection of staff
 - c administration and maintenance of salary structures, procedures and systems
 - d staff management
 - e strategic planning and implementation plans to release contracted staff in line with the Commission's roll out plan
 - f office planning
 - g written and verbal reporting at various levels within the Commission and in response to parliamentary requests on staff-related matters
- 2 At its peak, the national staff complement was 438 and reflected the diversity of the population. In order to address the previous imbalances in South African employment practices, the policy of affirmative action was applied in making all appointments.

■ POLICY AND PLANNING

- 3 The human resources function was considered by the Commission to be central to the operations of what was to become a people-intensive organisation. One of the first appointments made by the commissioners, therefore, was that of director of the Human Resources Department – before even the chief executive officer took up his position or offices had been established. The role of the director was to develop strategies and draw up policies and practices.
- 4 Thus, from February to June 1996, the unit focused on developing systems, structures, policies and procedures. Office planning was based on the principle of providing workstations for each staff member and providing appropriate space for the Commission's various functions.
- 5 Although the view was expressed that the procedures adopted were lengthy (given the short time frame of the Commission), they were founded on the legal principles of equity and justice and reflected the victories of the long struggle by the marginalised workforce of South Africa. These formed the cornerstone of equity in the working relationship of employee and employer.

■ STAFF RECRUITMENT AND MANAGEMENT

- 6 In view of its two-year life span, the Commission needed to hire staff with existing skills and competency. The emphasis of recruitment policy could not, therefore, be on staff development. Speed and sometimes extreme haste were necessary, with the result that competence, skill and compatibility were also sometimes compromised for availability.
- 7 Various agencies recruited staff. Ongoing recruitment for new and vacated positions continued throughout the life of the Commission.
- 8 Personnel (or human resource) policies and procedures integrated public and private sector practices with the requirements of the Commission's founding legislation, and were constantly amended and updated in line with new legislation or the Commission's requirements.
- 9 Job descriptions were developed for each function. These were constantly amended and updated in response to changing requirements.

- 10 Because the Human Resources Department was based in the national office, the regional managers were empowered and mandated to perform general human resource functions in the regions, including recruitment and selection.
- 11 The Commission's staff formed regional staff associations, each of which reflected different concerns. The regional associations aligned themselves into a unified, although neither permanent nor structured, national staff association. Their concerns ranged from normal worker/employer conflicts to legislated Commission benefits.
- 12 Industrial relations policies and procedures were used to resolve disputes, some of which were referred for resolution to the Commission for Conciliation, Mediation and Arbitration and to the Department of Labour.
- 13 As the Commission approached the end of its mandate, a four part staff roll out plan was put in place. The plan made the following provisions:
 - a by 31 July 1997, approximately 22 per cent of staff would leave the Commission's employ;
 - b by 30 September 1997, another approximately 22 per cent of staff would leave;
 - c by 30 December 1997, approximately 43 per cent of staff would leave;
 - d finally, by 14 March 1998, another approximately 13 per cent of staff should leave the Commission.
- 14 The plan provided that the remaining few staff members remain until the Commission completed its work at the end of June 1998. It was agreed that the very last group would remain to wind down the Commission's assets, to facilitate the presentation of the Commission's last audit report, and to switch off the lights on 31 December 1998.
- 15 However, as the Commission's work programme progressed, it became clear that it would not be able to complete all its work within the prescribed eighteen-month period. The Commission's lifespan was extended, initially by six months and then through to October 1998. The amendments to the Act allowing for this extension also made provision for the Amnesty Committee to continue until its work was completed. The staff roll out plan was adjusted accordingly.

Management and Operational Reports

INFORMATION MANAGEMENT

■ INTRODUCTION

- 1 The electronic infrastructure of the Commission was put in place as soon as office space became available. Equipment was procured within extremely tight deadlines (the whole network had to be functional within weeks) and was achieved before substantial organisational structures were in place.
- 2 Potential vendors of computer hardware and software supplies were shortlisted. Companies selected were required to have: a national presence; a proven track record; a reputation for delivery; the technical capacity to implement the proposed solutions; cost-effectiveness and a commitment to affirmative action. Vendors who met the criteria were asked to put together proposals for the system, including costs and time frames. These proposals, followed by face-to-face discussions with likely candidates, were used to make the final appointments, which were ratified by the Commission.
- 3 The Commission appointed DCE Networking to supply the hardware, Zervos (Pty) Ltd to install and support the network, Microsoft to supply the software for office administration and Oracle Corporation to supply software for the database.

■ NETWORK CONFIGURATION

- 4 Each of the four regional offices had a local-area network (LAN), consisting of Compaq Prolinea workstations that ran Microsoft Windows 95 and were connected together by a 10-Base T Ethernet network. Each workstation was loaded with a copy of Microsoft Office, providing staff members with a word-processor, a spread-

sheet and e-mail facilities. A computer officer in each of the Commission's four regional offices provided training and support.

- 5 At the centre of each LAN was a Compaq Proliant file server running Microsoft NT. The file server provided centralised file storage and hosted the regional copy of the Commission's database.
- 6 The LANs in each of the four regional offices were connected together to create the Commission's wide-area network (WAN). Each office was connected to its two nearest neighbours by means of a 64KB Diginet line, leased from Telkom. These lines carried the inter-office e-mail and shared the data between the regional copies of the database, using the X21 transport protocol.
- 7 For security reasons, there was no direct connection between the WAN and the Internet. Use of the Internet in the four regional offices was through a free-standing computer with no network connection. See diagram 1.1 below.

DIAGRAM 1.1

**THE TRC
WIDE-AREA
NETWORK**

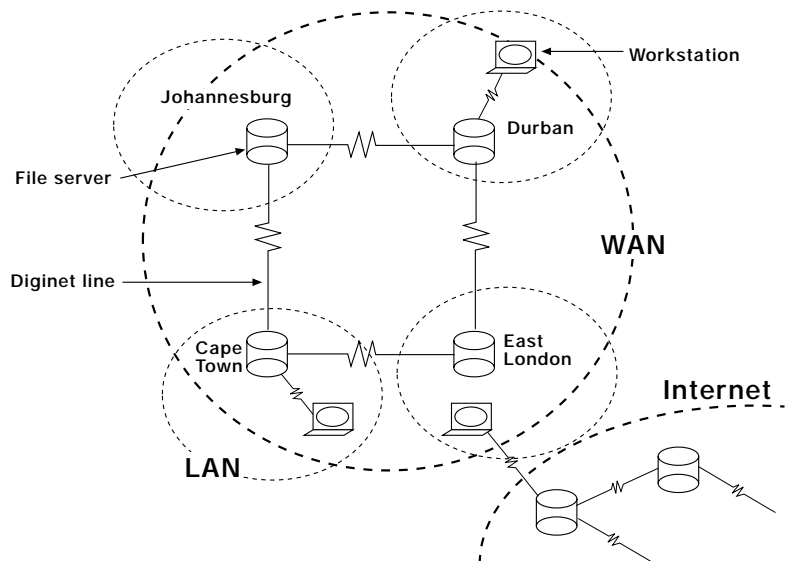


Diagram 1.1 shows a sample of three workstations. One of these is a free-standing machine connected to the Internet.

■ **THE DATABASE**

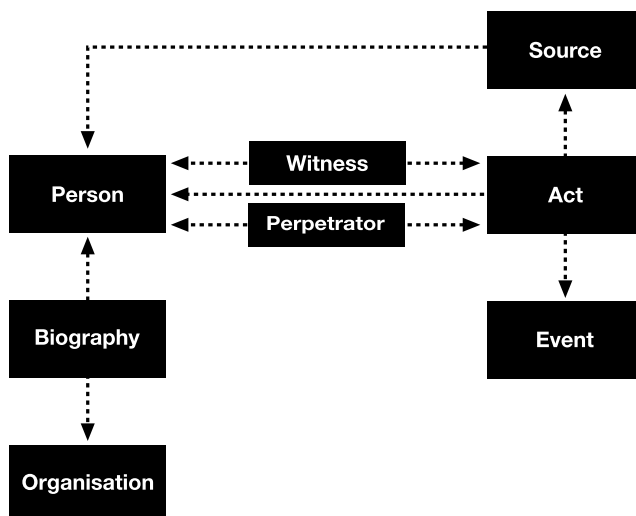
- 8 The Commission's database was the backbone of the information flow. All human rights violations statements and amnesty applications were loaded onto the database.

- 9 The database was designed and built from scratch by a small team consisting of consultants from Oracle Corporation, the information systems manager and a researcher. It was based on a design by a consultant from the American Association for the Advancement of Science, who specialises in the recording of human rights violations data. The design also drew on the work done by the Human Rights Documentation and Information System (Huridocs).
- 10 The database was designed on the assumption that any narrative description of human rights violations could be broken up into a series of time- and place-specific acts of violence, succinctly summed up in the phrase 'who did what to whom'. For example, an activist may have had his or her house burnt down, then been detained in solitary confinement before being subjected to electric shock treatment. These would be recorded as three separate violations - arson, detention and torture - as opposed to recording the incidents as a composite violation ('the harassment and torture of Mrs X').
- 11 This positivist approach allowed for more complex quantitative analyses to be carried out, to supplement the normal qualitative analysis to which narrative data are usually subjected. For example, by recording detention separately from torture, one could analyse the incidence of torture in the context of detention. If a strong correlation was shown to exist, this in turn informed policy recommendations about detention, to prevent a recurrence of the circumstances or conditions that give rise to the torture of prisoners.
- 12 The approach of breaking up the data into logical components lent itself to implementation on a relational database, which was why Oracle software was chosen. Once the logical model of the database was finalised, it was built in record time (it took exactly one month from the start of the design phase until it was ready for use by the Commission's data capturers).
- 13 The central part of the database design was a tabular list called 'Acts', which recorded the actual substance of the violation: the victim, the place, the date and time, the nature of the violation and the human rights violation category into which it fell (for example, attempted killing, torture, abduction, severe ill-treatment). Each violation committed by one or more perpetrators was recorded in a separate table called 'Perpetrators'. An act that could have been witnessed by one or more people was also recorded in the 'Witnesses' table.

- 14 The Commission's database was an advance on other such models because it allowed for people to be victims, perpetrators and witnesses at the same time. People were only defined as victims, witnesses or perpetrators in the context of the violation itself. This is illustrated in the diagram below, where the personal details of people (names, identification numbers, addresses) appear together in a separate table called 'Persons'. By searching the table for a name, users were able to find the person irrespective of whether they were a victim, a witness or a perpetrator. This represented the real South African context much more realistically, since it was entirely possible that an individual could have been victimised and then perpetrated an act of violence in revenge and, thus, could have been both a victim and perpetrator.

DIAGRAM 2.1

UNDERLYING LOGICAL MODEL OF THE TRC DATABASE



- 15 The database was enhanced to add new functions as needs arose. For example, facilities were added to record the corroboration carried out by the Investigation Unit as, for instance, in the registration of victims.
- 16 The database was the primary repository of data for all three of the Commission's standing committees. By integrating the data in this way, powerful cross-checks between amnesty information and human rights violations data was possible, while the identity of victims and details of the harm they suffered were immediately available to the Reparation and Rehabilitation Committee.
- 17 In addition to its original role as the source of all the raw data needed by the Research Department to write the final report, the database was integrated with the investigative software used by the Investigation Unit to provide a huge data bank of corroborative material for investigations.

Management and Operational Reports

INVESTIGATION UNIT

■ INTRODUCTION

- 1 One of the unique features of the Truth and Reconciliation Commission (Commission) was that, unlike commissions elsewhere in the world, it retained a permanent Investigation Unit as an integral component. Indeed, central to the endeavour of the Commission was its capacity to probe, enquire into and unravel the truth about the conflicts of the past. It is therefore not surprising that the Commission's founding Act made provision not only for the establishment of an Investigation Unit, but also provided a number of investigative powers to be used by the Commission in fulfilling the terms of its mandate.

■ STRUCTURE AND COMPOSITION OF THE INVESTIGATION UNIT

- 2 The Investigation Unit was made up as follows:
 - a the head of the Unit, who was a commissioner
 - b a civilian component consisting of investigative journalists, researchers, human rights lawyers and members of non-governmental organisations (NGOs)
 - c a trained police personnel component consisting of secondments from the South African Police Service (SAPS) and the National Intelligence Agency (NIA)

- d an international component consisting of trained police personnel, information technology specialists (using *Kortex* and *Analyst Notebook*) and human rights lawyers.
- 3 The national director was directly accountable to the chief executive officer in respect of all managerial matters, and to the head of the Investigation Unit in respect of policies, strategies and their implementation. In addition, from March 1997, all investigations, including proactive amnesty investigations, were nationally co-ordinated by a deputy national director.
 - 4 The regional heads oversaw staff, resources, communication, planning and operations. In these matters, the regional head's primary line of responsibility was to the national director. The regional heads, however, were also required to keep regional management properly informed of matters relating to the effective functioning of the region.
 - 5 The Unit staff included: current and former members of the police, magistrates, former members of the National Intelligence Service, former journalists and researchers, advocates, attorneys, public prosecutors, human rights specialists (including NGO workers, monitors and researchers) and international specialists. Thus, the Unit had a broad range of skills and expertise at its disposal.
 - 6 The total staff component for the Investigation Unit was initially set at sixty members, excluding the national director and administrative assistant. It was envisaged that the staff complement would comprise forty-eight locally employed members and twelve international investigators (finally, sixteen international experts assisted the Unit). Staffing levels were determined on the basis of broad budget criteria and not in accordance with any assessment of staffing needs in any of the regions.
 - 7 Of the sixty members of staff, forty-eight went to the regions. Each regional unit consisted of a regional head, nine local and two international investigators. Twelve staff members were assigned to the national office. These included four international and eight local investigators (five special investigators and three analysts, including an amnesty co-ordinator). There were also investigators from neighbouring countries.
 - 8 The Investigation Unit, however, only reached its full staff complement at a later stage. In July 1996, it was at 85 per cent of its strength, with fifty-one persons appointed and an additional five SAPS members seconded.

- 9 When funding from the European Union became available in April 1997, the Investigation Unit was restructured and extended. Provision was made for the employment of twenty-seven corroborative assistants to accommodate the ever-increasing volume of work in the Commission. The principle behind the appointment of staff was to ensure a broadly representative balance, so that the Unit reflected the broad spectrum of South African society with the requisite skills and knowledge. Where advertisements had failed to secure an appropriate body of prospective employees, efforts were made to elicit applications from different sectors of the population and from persons with a range of political backgrounds.
- 10 In order to achieve the requisite staff mix, it was necessary to obtain the secondment of members from the SAPS. This process proved cumbersome, however, and many logistic support problems were encountered. There was a lack of interest from certain sections of the SAPS, as evidenced by the relatively small number of applications to the Investigation Unit. The process of secondment presented a number of problems.
- 11 In addition, it was decided at an early stage that the Investigation Unit's staff should comprise both formally trained investigators drawn from the SAPS and persons with other skills and expertise. It was felt that a 'civilian component' would provide not only a multi-disciplinary skills base, but would also lend a greater degree of credibility to the investigative process. This approach accorded with the Commission's overall commitment to be accessible and sensitive to the victims of gross human rights violations.
- 12 A number of European governments provided support and assistance to the Commission in the form of seconded staff. The Commission benefited from the expertise of personnel from the Netherlands, Norway, Denmark, Sweden, Ireland, Germany and Switzerland.
- 13 The international component of the Unit consisted of persons with a great deal of investigative and general police experience drawn from foreign police agencies. Invariably, the governments who provided assistance seconded very senior police officers whose expertise was not restricted to investigative work. In this regard, the internationals provided valuable input.

■ METHODS OF WORK AND CRITERIA

- 14 A code of conduct was drafted as a basis upon which the behaviour of staff could be evaluated. In general, members maintained high levels of discipline and conducted themselves in a committed and dedicated fashion.
- 15 For official identification purposes, all investigators had to have some form of authentic identification when accessing documents and information from other agencies or institutions. Investigators also had a duty to produce identification to any witnesses they approached. There were, however, delays in the issuing of identity cards by the Safety and Security Committee.
- 16 Where required, members of the Investigation Unit received 'top secret' security clearance from the NIA.
- 17 The Investigation Unit adopted guidelines requiring that investigations show at least one of the following:
 - a a high level of authorisation
 - b involvement of particular institutions or organisations
 - c a systematic pattern of abuse or particular forms of abuse
 - d an international element (for example, cross-border raids)
 - e the possibility of an organised counter-response (for example, an attempt to conceal information or undermine an investigation).
- 18 The planning of all investigations involved staff from the regional office concerned as well as the national office.

Workshops and training

- 19 At the outset, it was firmly believed that the Unit would be able to identify and appoint investigators with the skills to begin investigations without training. This approach was a response to the major time constraints imposed on the Commission. Regrettably, identification of skilled investigators was not always possible, and

as a consequence, regional units had to conduct individual training sessions for investigators and corroborative assistants to meet the standards required.

- 20 National and regional workshops, arranged by the national director, identified the focus and type of investigative work to be done.
- 21 Strategic planning workshops were held in each of the regions with the objective of developing a framework to govern the work of the Unit. These workshops resulted in a much broader picture of the objectives in the regions, the strengths and weaknesses of the teams, and the major issues and priorities. The workshops also served as initial orientation and training exercises for newly appointed staff.
- 22 Time and workloads prevented any extensive training. Since the Unit (together with the rest of the Commission) was organised to function in a computer-assisted environment, the lack of computer skills proved problematic. However, on-the-job coaching and training and more formal training sessions improved computer skills levels dramatically.
- 23 As far as investigative skills were concerned, the Unit attempted to ensure that the more experienced investigators interacted with their less experienced colleagues, so that skills would develop through practice.

■ FUNCTIONS AND RESPONSIBILITIES

- 24 The Act envisaged the establishment of an investigation unit as one of four critical components of the Commission. It was, however, silent on the specific functions to be performed by the Unit and on its relationship to the three standing committees.
- 25 Chapter 6 of the Act established the legislative framework within which investigative activities of the Commission were to be carried out. This chapter defined the fact-finding process of the Commission and provided a useful starting point for examining the process the Commission would use to make its findings and recommendations.
- 26 The role and functions of the Investigation Unit were developed and refined during the first year of operation. Between March and August 1996, the Investigation Unit grew to a staff of approximately fifty people. In this period, its function was largely to service wave after wave of public hearings held by the Commission throughout the country.

27 Between September 1996 and February 1997, the Investigation Unit reformulated its approach and reorganised itself in keeping with the general recognition within the Commission of the need to focus resources not only on public hearings, but also on processing the large numbers of statements received. And again, once the amnesty application deadline date had passed and the extent of work in amnesty matters became apparent, the Investigation Unit adapted and organised itself to serve these new needs.

■ **DEVELOPING PROCESSES AND PHASES OF WORK**

28 To begin with, the Unit was decentralised internally into a national unit and four regional units: one in each of the Commission's four centres. Regional heads were responsible for the management of the regional units and reported to the national director. The Investigation Unit interacted with other components of the Commission within this framework. An internal communication system was designed in an attempt to ensure the exchange of information and reporting.

29 To facilitate the management function of the Investigation Unit, day-to-day contacts were established with the chief executive officer and the Finance, Human Resources and Research Departments.

30 As seen above, the work undertaken by the Investigation Unit fell into a series of phases, each characterised by shifts in policy and emphasis in the Commission's work. The Unit underwent constant development as it responded to changing conditions in the Commission. Although structural changes were introduced, the management framework that had been put in place remained largely the same throughout. In terms of this framework, areas of responsibility were assigned to the different components of the Unit, governed by both internal and external lines of communication.

■ **FIRST PHASE: GETTING STARTED**

31 Mr Dumisa Ntsebeza was named as the commissioner in charge of the Investigation Unit. The national director was appointed in March 1996, marking the beginning of a phase which came to an end in September/October 1996, when the

Commission and its senior management conducted a two-day *bosberaad* to assess and plan the way forward.

- 32 In the early months, the Unit concentrated on setting up structures and policies to guide its work. In order to achieve this and meet the challenge posed by round after round of public hearings, it was decided to appoint sufficient staff in each regional office to service the immediate needs of the Commission, and then attend to the completion of the staff component.
- 33 The fact that public hearings were launched in mid-April 1996, before the Investigation Unit was fully established and prior to the formulation of any policy regarding the selection of matters for public hearings, caused some difficulties.
- 34 Another problem was the fact that investigative tasks were formulated on the basis of statements which would feature at public hearings. In many instances, the process of selecting statements for public hearings, often at the last minute, meant that little or no investigative work could be done prior to hearings. However, investigators and researchers succeeded to some extent in providing background material, tracing witnesses and taking further statements from persons wishing to provide evidence to the Commission. The lack of policy at this stage also made post-hearing investigative work extremely difficult.
- 35 By May 1996, a basic management framework and a number of internal strategic and operational policies were in place. In terms of these, the Investigation Unit was required to provide an investigative service to the Commission's committees (principally the Human Rights Violations and Amnesty Committees) and to initiate independent investigations as determined by the Commission.
- 36 The policy framework sought to ensure that the Unit provided a service to the committees in a regulated and systematic fashion. Although the implementation of this framework was not uniform across regions and was hampered by the slow development of related components in the Commission, it served as a point of reference for the Unit and provided a means of systematising the service it provided.
- 37 At this stage, the Unit was structured into four regional investigation units, each managed by a regional head, and a staff component based in the national office. It was composed of a head of special investigations, a team of investigators (some of whom were based in different regional offices), a small group of analysts and management and administrative staff.

- 38 The 'hearings-driven' nature of investigative work continued well into the year. It resulted in a backlog in the processing of statements unrelated to hearings.
- 39 It became apparent that the vast majority of statements received by the Commission would need to be dealt with by the Human Rights Violations Committee outside of public hearings. As a consequence, a distinction was drawn between those statements that would require only a minimum level of investigation to establish the veracity of a claim and those that would require a more thorough investigation of the contents. The former would be dealt with by a process of 'low level corroboration', while the latter would form the subject of 'investigations'.
- 40 At a strategic planning meeting convened by the Commission in September/October 1996, it was recognised that more resources needed to be devoted to the process of making findings in respect of all the statements received. It was accepted that public hearings should be more focused and geared towards particular events or institutions. It was also agreed that there was a need to strengthen truth-seeking efforts by utilising the investigative powers of the Commission to encourage persons to apply for amnesty.

■ **SECOND PHASE: TACKLING THE BIG ISSUES**

- 41 The second phase commenced in October 1996 and extended until May/June 1997. In order to be effective, the Investigation Unit had to develop the capacity to corroborate claims made by victims or witnesses, and then to launch a programme of investigative enquiries in each of the regions.
- 42 Stringent budget cuts made the necessary increases in the staff component difficult, and donor assistance was sought and eventually received. Because state expenditure regulations delayed the receipt of funds, it was not until March/April 1997 that regional offices began to have the capacity to corroborate claims. Once funding was available, regional investigation units were able to identify and employ staff to serve as corroborative assistants. In consequence, the work output of corroboration teams increased, and the Unit could begin to address the tremendous backlog that had developed.
- 43 The other major component of the Commission's shift in strategy involved the launching of a programme of investigative inquiries. The shift was motivated by

the perception that the Commission should get tough on perpetrators and begin to provide answers to the many victims who had expressed a desire to know the truth about their own experiences. To achieve this, the Commission made use of powers granted in section 29¹ of the Act.

- 44 In November and December 1996, investigative inquiries commenced in each region. In early 1997, regional investigation units developed programmes based on investigations that were being conducted in the regions, as well as on scheduled special event hearings and institutional hearings convened by the regional offices.
- 45 By embarking on this strategy, the Unit was able to bring significant pressure to bear on potential amnesty applicants and thereby made significant breakthroughs in the Commission's understanding of the nature and extent of gross human rights violations committed during its mandate period.
- 46 As the Commission began to confront the challenge of delivery to victims and to the public at large, it was forced to resolve a number of key strategic and policy issues. In a similar vein, the Unit was forced to examine its own internal structures in order to determine whether they could be refined and improved.
- 47 It was at this stage, for example, that the national special investigation team was decentralised, and its members and resources were reallocated to regional investigation units. Regional units became responsible for investigations in their regions and reported results to the deputy director, who had to oversee the integration of material provided and to advise and co-ordinate the 're-tasking' of investigators.

■ **THIRD PHASE: AMNESTY AND THE EXTENSION OF THE COMMISSION**

- 48 The third phase began after the amnesty deadline had passed. In August/September 1997, the chief executive officer, assisted by the executive secretary of the Human Rights Violations Committee, drafted a report and the extent of the outstanding work was assessed. It was established that the committee had received more than 7 500 applications, and that more than 1 500 of those needed

¹ Essentially, section 29 allowed the Commission to issue a *subpoena* calling on a person to appear before it and answer questions relating to a matter under investigation. Unless otherwise determined by the Commission, the enquiry would take place *in camera* and the witness would be compelled to answer questions, even though the answers might be self-incriminating.

to be heard in public. It was at this stage that the Commission decided to approach the government to extend its life until April 1998.

- 49 The Investigation Unit was under great pressure to ensure that its corroborative work could be completed. The Unit was operating under a policy injunction determined in August 1997 that resources should be allocated to two areas of work: corroboration of statements and amnesty-related investigations. All other work, including the 'special' human rights violations investigations, was brought to completion as rapidly as possible.
- 50 Given these pressures and the obvious need to provide some basis upon which amnesty investigations could be conducted, a reorganisation of the Investigation Unit was proposed and approved by the Commission. Central to this new *modus operandi* was a far more direct line of communication between investigators and amnesty evidence leaders, as well as clearly defined and specific investigative instructions. To give effect to this, it was decided to allocate a number of investigators to the Amnesty Department to work in small teams to prepare matters for amnesty hearings. The Amnesty Department took over management responsibility for these investigators.
- 51 At the same time, it was recognised that the *de facto* regional control of the corroboration teams represented the most efficient way of organising the regionally-based findings process. It was decided to formalise this situation by transferring management responsibility for the corroboration teams to the regional representatives of the Human Rights Violations Committee.
- 52 The Investigation Unit's national office was left with a residual function and was responsible for the analysis of information in conjunction with the Research and Information Departments. Provision was also made for the resurrection of a special investigations team, comprising ten investigators (including international experts), to complete outstanding investigations into human rights violations.

■ **FOURTH PHASE: REORGANISATION AND RESTRUCTURING**

- 53 The fourth phase involved the redeployment of twenty-four of the investigators to the Amnesty Committee with a view to adding value to 'hearable' amnesty applications. Six of the twenty-four investigators were assigned back into the Investigation Unit in order to complete the remaining investigations into human rights violations and special investigations. This phase was in line with the Commission's staff roll out and close down plans.
- 54 This phase also involved the redeployment of approximately sixty low level corroborators from the Investigation Unit to the Human Rights Violations Committee, appropriately spread between the four regional offices in line with the population density and demographics of the areas they covered.

■ **ACTIVITIES OF THE INVESTIGATION UNIT: PATTERNS AND THEMES**

Human rights violations investigations

- 55 The Investigation Unit facilitated this activity on behalf of the Human Rights Violations Committee.

Amnesty applicants investigations

- 56 Amnesty applications were co-ordinated from the national office in Cape Town with the units in the four regions. The co-ordinator liaised with and reported to the Amnesty Committee and channelled investigations to the appropriate regions. The co-ordinator was also responsible for perusing applications that might assist in the linking of applications, extracting applications which might help complete human rights violations investigations, and identifying general patterns which would not necessarily be apparent if applications were sent directly to the regions.
- 57 The Investigation Unit handled amnesty applications as follows. First, the evidence analysts made an initial investigative request to the amnesty co-ordinator. The amnesty co-ordinator perused the application and referred it either to the head of the Investigation Unit in the appropriate region(s) for investigation or back to the evidence leader if the application was not ready for investigation or there was

some other problem. Next, the Investigation Unit examined the application and request and assigned a specific investigator to deal with the matter. Finally, the investigative report was completed and sent to the evidence analyst co-ordinator, who examined the report and directed it to the relevant evidence leader. If the evidence leader was satisfied with the report, the necessary logistic steps were taken to organise a hearing.

THE ANALYSIS FUNCTION²

- 58 The analysis function was established as a component of the national Investigation Unit in order to create a capacity for ongoing processing and analysis of information gathered.
- 59 It was envisaged that a small group of analysts could provide support to investigators engaged in fieldwork, and compile general, overall analyses of trends and patterns, for example, in gross human rights violations or in perpetrator or victim groupings.
- 60 Whereas the original concept of the analysis function was based on the notion of a crime analysis support unit - used by criminal investigation departments in most foreign (and more recently in South African) police departments - it was not possible to create such a structure. First, the nature of the investigative work being conducted by the Unit differed considerably from routine police work, and second, the scale of the Commission's work made it impossible to provide dedicated analytical and intelligence support to investigators in the field.
- 61 The analysis function was seen rather as a mechanism whereby the information gathered by investigators could be centrally processed and analysed in line with broad themes in order to identify trends or patterns. In this way, general support was provided.
- 62 The purpose of the analysis function was to establish whether there were any patterns, trends or common features in the types of cases being referred to the Investigation Unit, and to provide cross-referencing and analysis which would serve as the basis for national feedback to regional units and the Research Department. Further, analysts had to explain how gross human rights violations occurred, who the perpetrators were and on what authority they had acted; they had to discover the identity and affiliations of the victims, and they also had to assess the consequences of these gross human rights violations.

² See Appendix B: Progress Report, Statistical Analysis Unit

- 63 A small group of staff was assigned this task and provided with access to advanced computer equipment and sophisticated software (the *Kortex* and *Analyst Notebook* systems). The project was initiated in the second half of 1996. The group comprised three members and was later expanded to seven (including members of the NIA and international experts who were seconded to assist with the development of this capacity).
- 64 The analysis function was headed by a co-ordinator. Restructuring of the function led to the creation of three subsections: Data Capturing and Documentation, Research and Analysis, and Intelligence Gathering and Information Security Management. Each of these subsections had a co-ordinator with specific functions.
- 65 A group of analysts was engaged to examine documents, to assist investigations and to contribute to a broader understanding of specific events. They were most effective and efficient when there was a clear task coming from client departments, whether from the Human Rights Violations Committee, the Research Department or the Amnesty Committee. Basic documents used in this regard were reports from regional units; records from the Research Department, the Human Rights Violations Committee and the Amnesty Committee, and other documents, such as inquests and reports from the Goldstone Commission and the Harms Commission.
- 66 The investigators dealt with strategic, statistical and general analysis, and cross-referenced on a daily basis to deliver added value to investigations taking place in the regions. They gave responses to regional units through both qualitative and quantitative analyses of reports that had been processed. They reported to the national director on progress made.
- 67 One area of work that proved very valuable was statistical analysis based on the data available in the Commission's database. It represented one of the largest databases recording occurrences of gross human rights violations in the world. As such, it offered tremendous scope for analysis to determine patterns, trends and links between perpetrator groups and types of violations. This formed a significant part of the analysis function, notwithstanding the fact that it did not immediately assist the investigative process. In this way, the analysis function was able to play a broader support role within the Commission.
- 68 The analysis function served to identify prevailing trends and patterns of gross human rights violations based on case studies (the so-called 'window cases') and evaluate the

correlation between political developments and gross human rights violations, if that could be established. The primary sources were the database, section 29 interviews, victim and perpetrator statements to the Commission, political party and other institutional and individual submissions, amnesty applications, investigation reports and research notes.

- 69 The aim of the analysis was to paint a broader picture of gross human rights violations both at the national and regional levels, establishing patterns such as types of abuses, levels of authority, methods used, institutions and personalities involved and links between events.
- 70 In addition to the collation of material, the Analyst Notebook software assisted investigators with complex amnesty applications. This proved to be the area in which the analysis function was most effective. The use of programmes like the Analyst Notebook and IAS augmented the performance of the analysts, but did not decide the analytical results, which were determined by the analysts themselves.

■ STRUCTURES IN THE INVESTIGATION UNIT

Regional units

- 71 Because the Commission required only a relatively low level of corroboration of the violations alleged in the statements before it, the Investigation Unit structured the regional units in a way that would ensure that they had the capacity to conduct corroborative inquiries in a rapid and efficient manner.
- 72 In order to build a low level corroboration capacity, it was anticipated that the units would need to employ personnel who would liaise with various institutions to gather information to test facts raised in statements and with the national office, to obtain and share information, to access the databases when available and to manage the corroborative process.
- 73 There were, however, different understandings and conceptions as to what was meant by the term 'low-level' corroboration. It was not clear exactly what level of information the Commission needed in order to make a finding that a person was a victim of a gross human rights violation as described in the Act. The initial development of some corroboration 'pointers' and training were introduced to overcome this problem.

Database

- 74 The timely development of a comprehensive database, based on the information gathered from statements made by victims and their relatives, was central to the successful implementation of the information management system. There were, however, delays in setting up the database in the early stages.

■ LINKS WITH OTHER STRUCTURES

- 75 Access to information from government and non-government agencies was an important part of the investigative process, and from an early stage, the Investigation Unit made efforts to establish lines of communication with a variety of agencies and institutions.
- 76 Early discussions between members of the Commission and various government ministries resulted in the establishment of nodal points – an approach preferred by the SAPS and the Department of Defence.
- 77 Nodal points consisted of appointed officials whose function it was to facilitate communication and access to information sought by the Commission. All requests and responses were to be channelled through these nodal points.
- 78 The rationale for this approach was founded on the notion that the government department was best placed to utilise its internal communication systems to access the necessary information and respond appropriately. In the case of the police and the military, the documentary holdings were vast and not necessarily sufficiently well organised to allow for easy access. In addition, certain holdings contained information which was irrelevant to the work of the Commission or not for public disclosure.
- 79 This nodal system generated a great deal of tension, as there were real concerns in the Investigation Unit that the Commission's access to information was being 'managed'. Indeed, the Investigation Unit's initial experiences suggested an attitude of non-co-operation from sections of the SAPS and the South African National Defence Force (SANDF). The Commission, however, continued to rely upon these structures, and as the Commission became a fact of South African life, many initial obstacles were overcome. In addition, Commissioners and senior members of the Investigation Unit worked relentlessly and persistently to open doors.

80 Structures with which the Investigation Unit developed lines of communication included:

The South African Police Service

81 By agreement with the Ministry of Safety and Security, a nodal point for facilitation of communication between the police and the Commission was established. Although its initial function was to deal with the secondment of police to the Commission, it was recognised that it would play a broader role in facilitating access to information required by the Commission.

82 It was agreed that the Commission's investigators would request docket and documentation held by the police from the police facility which had originally dealt with the matter. If the information was not available or a concern was raised regarding the Commission's access to the information, the matter would be considered by a regional liaison officer appointed in the office of the regional Commissioner of Police. Only if the matter could not be finalised at that level would the national nodal point be activated.

83 Implementation of this agreement proved very difficult. At various stages, the police chose to ignore the agreement and in some regions adopted differing approaches. In the Gauteng region, for example, the sheer volume and type of information requested resulted in a very slow rate of response to the requests. In this region, the police insisted that requests be directed via the national nodal point office, which further complicated relations and resulted in long delays.

84 In view of difficulties experienced, the regional investigation units (in accordance with the agreement) adopted a direct approach and sought information from individual police stations after having informed the nodal points of their request. Whilst this occasionally resulted in tensions between the Unit and the police, it proved the most effective means of obtaining the information needed to conduct investigations.

85 Notwithstanding problems experienced by the Unit as a whole, regions experienced different and varying degrees of co-operation from the SAPS. In some regions, investigators enjoyed total co-operation and assistance, while elsewhere the work of the investigators was made onerous by an overly bureaucratic and uncooperative attitude.

The South African National Defence Force

- 86 The Commission met with the Ministry of Defence to facilitate communication between the Defence Force and the Commission and to establish a nodal point for this purpose. It was agreed that all requests would be directed through this nodal point. The Commission, nevertheless, retained its right to proceed by way of executing a search warrant if it decided that such a step was appropriate.
- 87 The nodal point structure never operated smoothly, and a measure of suspicion and mistrust dogged the relationship between the Commission and the SANDF. Ultimately, these difficulties were communicated to the Ministry, and alternative arrangements were made.

National Intelligence Agency

- 88 A meeting was held with the Deputy Minister for Intelligence and senior members of the NIA, the South African Secret Services and the National Intelligence Co-ordinating Committee. In consequence of this, a nodal point to facilitate communication between the NIA and the Commission was established.
- 89 In the light of the general assistance that the NIA offered to the Commission, liaison was handled jointly by the director of research and the director of investigations. This communication took place at a national level, and very little contact occurred regionally.
- 90 In respect of certain information held by the NIA, it was necessary to restrict access to persons who had been granted an appropriate security clearance or classification. Members of the national office of the Investigation Unit and members of the Research Department were appointed for this purpose. Their function was to evaluate the material in order to determine whether it was relevant to the Commission's work.
- 91 The question of security clearances generated considerable tensions within the Investigation Unit and indeed in the Commission as a whole, and a clear system was never implemented.

Attorneys-General

- 92 In terms of the Act, the Commission was required to conduct its activities with due regard to the interests of the administration of justice. This injunction presented unique challenges to the Commission in view of the fact that attorneys-general were active in the investigation and prosecution of matters which clearly fell within the mandate of the Commission.
- 93 In particular, the establishment of a Special Investigation Unit prior to the establishment of the Commission, under the direction and auspices of Dr Jan D'Oliviera, Attorney-General of Gauteng, necessitated communication between it and the Commission's Investigation Unit. Tensions emerged in respect of what was perceived as interference in investigative work, a lack of co-operation regarding information or dockets available and a perceived slow progress in investigations. Most of the problems were experienced over the many matters being investigated by both the Commission and the D'Oliviera unit.
- 94 Communication channels were also established with other attorneys-general and regional units were encouraged to establish contact with offices in their areas. Essentially, these channels were established to enable regional units to obtain access to material to assist with the corroboration work being conducted in the regions and to enable consultation to occur in respect of the conduct of investigative inquiries in terms of section 29 of the Commission's founding Act.

Other institutions and organisations

- 95 The Investigation Unit established sound relations with the Investigative Task Unit in KwaZulu-Natal. A procedure for obtaining access to information held by the Investigative Task Unit was established, and numerous meetings were held to facilitate proper co-ordination of activities.
- 96 Relations were also maintained with numerous NGOs, human rights organisations and political parties with the purpose of obtaining access to information both to facilitate corroboration work and as part of an information-gathering strategy.

Management and Operational Reports

LEGAL DEPARTMENT

■ INTRODUCTION

- 1 The Legal Department had the following functions:
 - a overall responsibility on a national level for all legal matters regarding the Commission;
 - b drafting legal opinions and advice for all the Commission's committees and its Investigation Unit;
 - c reviewing all legal documents and contracts and drafting contracts between the Commission and other interested parties;
 - d preparing legal matters and instructing the State Attorney in these matters;
 - e liaising with state attorneys and advocates with regard to legal actions brought by and against the Commission;
 - f leading evidence at section 29 hearings;
 - g handling legal aspects of human resources up to and including representing the Commission at the Commission for Conciliation, Mediation and Arbitration at the Labour Court;
 - h responding to all legal enquiries from legal representatives of witnesses and amnesty applicants involved in the Commission's legal processes;

- i liaising with the Department of Justice and with Parliament's portfolio and select committees on justice regarding proposed amendments to the Promotion of National Unity and Reconciliation Act (the Act);
- j drafting and settling responses to complaints to the Public Protector;
- k co-ordinating the provision of legal aid, as required by section 34 of the Act, through the Legal Aid Board;
- l monitoring criminal prosecutions based on charges laid by the Commission.

■ STAFFING

- 2 Although the Commission initially budgeted for one national legal officer and four regional legal officers, it was decided early on not to employ regional officers. A regional legal officer was appointed to the East London office in June 1996, but was transferred first to the national office in December 1996 and then to the Amnesty Committee in January 1998, where he served as an evidence leader until replaced by another attorney. The Legal Department, then, consisted of the national legal officer, an additional legal officer and a senior secretary.

■ LEGAL MATTERS DEFENDED BY THE COMMISSION

- 3 The Legal Department represented the Commission in the following legal cases.
- 4 **Azanian People's Organisation (AZAPO), the Biko, Mxenge and Ribeiro families v State President, Minister of Safety and Security and the Truth and Reconciliation Commission (Constitutional Court Case No CCT17/96).** In their application, AZAPO and the Biko, Mxenge and Ribeiro families asked the Constitutional Court to declare the Act establishing the Commission as unconstitutional, or alternatively, to declare as unconstitutional those sections that dealt with the granting of amnesty (sections 20(7), 20(8) and 20(10)). The Court dismissed the application and declared the relevant sections not unconstitutional.¹

¹ *AZAPO and others v the TRC, Case No. CCT17/97, 25 July 1996.*

- 5 **Azanian People's Organisation (AZAPO), the Biko, Mxenge and Ribeiro families v the Truth and Reconciliation Commission and Others (Case No 4895/96).** In this application, AZAPO and the Biko, Mxenge, and Ribeiro families applied to the High Court (Cape Provincial Division) for an order staying the Commission from granting amnesty, pending the outcome of their application to the Constitutional Court. The High Court dismissed their application in a judgement dated 9 May 1996.
- 6 **The National Party v Desmond Tutu, Alex Boraine, the Truth and Reconciliation Commission, the Minister of Justice and the State President (Case No 8034/97).** Following alleged public criticism by the chairperson of the Commission of the evidence presented by the National Party (NP) to the Commission, the NP applied to the High Court (Cape Provincial Division) for an order declaring that the he had behaved in a manner unbecoming of a chairperson of the Commission; that the vice-chairperson be held to be unfit to be a commissioner, and that the Commission should conduct its investigations impartially. The chairperson was away when the application was made. His return coincided with the appointment of the new leader of the NP. At that time, both parties expressed an eagerness to settle, which led to a meeting on the 19 September 1997. The matter was settled², each party bearing its own costs.
- 7 **Gerber v Amnesty Committee, Truth and Reconciliation Commission (Case No 21544/96) and Van Wyk v Amnesty Committee, Truth and Reconciliation Commission (Case No 16602/97).** In two separate cases, individuals asked the High Court (Transvaal Division) to review and set aside the Amnesty Committee's decisions to refuse their amnesty applications. Gerber's application was dismissed with costs. Van Wyk's application was still pending at the time of finalising this report.
- 8 **Leonard Veenendal v Minister of Justice, the Truth and Reconciliation Commission and the Government of Namibia (Case No 24709/96) and DG Stopforth v the Minister of Justice, the Truth and Reconciliation Commission, the Government of Namibia and the Minister of Safety and Security (Case No 25042/96).** In these two related cases, former members of the security forces applied to the High Court (Transvaal Division) for an order staying the Minister of Justice's

² Archbishop Tutu and Dr Boraine personally apologised for publicly criticising the evidence brought to the Commission on behalf of the National Party by Mr. FW de Klerk. The Commission expressed concern for the perception that such public criticism reflected negatively on its objectivity and impartiality. It acknowledged the legal requirement that it function without political or other bias and that it undertook to refrain from acting in such a way that would contravene the Act. It was agreed that Archbishop Tutu and Mr Van Schalkwyk (the new leader of the NP) would discuss the details of future co-operation between the NP and the Commission. In light of this, the NP withdrew its application, and it was agreed that the parties would bear their own legal costs.

decision to have them extradited to face criminal charges in Namibia, pending the outcome of their amnesty applications to the Commission. Although the Commission was cited as the second respondent, it did not oppose the application but simply undertook to abide by the court's decision. The High Court dealt with the two cases as one and dismissed the applications with costs.

9 **Gideon Nieuwoudt v the Truth and Reconciliation Commission (Case No 1136/96).**

Mr Nieuwoudt was a former member of the South African Police security forces. He applied to the High Court (Port Elizabeth) for an order interdicting the Commission from hearing public evidence that would implicate him in any human rights violation until and unless he had been given proper, reasonable and timeous notice. He also asked that the Commission be required to furnish him with copies of documents relevant to the incidents raised in the evidence. It was agreed, amongst other things, that the Commission would not allow the presentation of evidence implicating an applicant without prior notice being given to that applicant. The case was settled on 5 June 1996, and the application was withdrawn.

10 **Gideon Nieuwoudt v the Truth and Reconciliation Commission and Others (Case No 1253/96).**

Mr Nieuwoudt brought contempt of court proceedings against the Commission and those commissioners who sat on the panel during the Human Rights Violations hearing in Port Elizabeth. He contended that the Commission was in contempt of the rule *nisi* obtained under case number 1136/96 (above). The case was settled to the satisfaction of both parties and the settlement was made an Order of Court³.

■ CASES BROUGHT BY THE COMMISSION

11 **TRC v Coleman and 37 others (case no 3729/98).**

The Commission brought an application to establish legal certainty on a decision by the Amnesty Committee to grant amnesty to thirty-seven members of the African National Congress (ANC). Before the lodging of the application, the NP applied to the High Court (Cape Provincial Administration) for an order to review, set aside or correct the decision of the Amnesty Committee to grant

³ The Commission agreed to give Mr Nieuwoudt the opportunity to respond as soon as was reasonably possible to any evidence given at a hearing that implicated him in any human rights violations. It also agreed to take all reasonable steps to forward to him statements that implicated him in human rights violations before evidence was heard, and to inform him when and where it would be heard. The Commission agreed to pay Mr Nieuwoudt's legal costs in the matter.

amnesty to the respondents. The Commission lodged an application for an order to void or to review and set aside the decision and to direct the Amnesty Committee to consider the applications afresh. The matter was settled, and the court ruled in favour of the Commission.

- 12 The Commission also brought an application for the recovery of the salary paid to the former regional head of investigations employed in the East London office, based on his fraudulent misrepresentation. The application was still pending at the time of finalising the report.

■ HUMAN RESOURCES-RELATED LEGAL MATTERS

- 13 The Legal Department also handled human resources-related legal matters such as staff contracts and discipline.⁴

■ THE LEGAL AID BOARD

- 14 Section 34 of the Act, quoted above, set out the Commission's obligations regarding the funding of legal representatives.
- 15 Special meetings were held with the Legal Aid Board leading to agreements on the set forms that people would use when applying to the Commission for legal assistance and on the form of letters approving or refusing applications for legal assistance. The Commission prepared a manual on its statutory obligations in terms of section 34.
- 16 In consultation with the Legal Aid Board and the Department of Justice, the Commission promulgated the tariff of fees payable to legal practitioners who provided legal assistance in terms of section 34 of the Act.⁵ Leading Evidence at Commission Hearings
- 17 The Legal Department was directly involved in the preparation and the leading of evidence at hearings on the ANC, the Mandela United Football Club and the PW Botha hearing. In respect of the latter, only preparation work was done as Mr PW Botha did not attend the hearing and criminal action by the attorney-general was still pending at the time of reporting.

⁴ See Annexure 1.

⁵ The legal practitioners assisted and the amounts disbursed are set out in Annexure 2.

■ LEGAL ASSISTANCE

- 18 Section 34 of the Act provided that:

Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative.

The Commission may appoint a legal representative, at a tariff to be prescribed, to appear on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative.

- 19 The Commission created a scheme to provide for the granting of legal assistance to those who qualified. The Legal Aid Board in Pretoria administered the larger part of this scheme on behalf of the Commission.

■ LEGAL AID BOARD-RELATED CASES

- 20 In a few instances, lawyers who worked for the Commission through the Legal Aid Board disputed the tariff paid. The Legal Department represented the Commission in these cases.⁶

■ LEGAL DOCUMENTATION AND CONTRACTS

- 21 The Commission referred most of its contracts, including leases for the rental of premises, to the Legal Department for vetting and/or drafting. These included: staff contracts; a contract with the University of the Free State for the provision of translation services; a contract with Giant Video Screens for the leasing and usage of technical equipment to record hearings proceedings; a contract with the South African Broadcasting Corporation (SABC) for radio broadcasts of the Commission's hearings, and contracts of leases with the various owners of the premises being rented by the Commission.

⁶ Belinda Hartle v the Truth and Reconciliation Commission (Case no. 2006/97) and Soller v the Legal Aid Board and the TRC (Case No. 5563/98).

■ COMPLAINTS TO THE PUBLIC PROSECUTOR

- 22 The Legal Department responded to complaints to the Public Protector from the Inkatha Freedom Party (IFP) and from certain former South African Defence Force (SADF) generals.
- 23 The IFP had complained that the Commission had shown bias in its conduct towards the IFP, violating the party's constitutional rights, impairing its dignity and contradicting the Commission's own statutory objectives.
- 24 Certain former SADF generals also complained to the Public Protector that the Commission had prejudged the former SADF and that the Commission's approach bordered on a political vendetta or witch-hunt.

■ DRAFTING PROPOSED AMENDMENTS AND REGULATIONS

- 25 In some instances, the Legal Department drafted regulations or made recommendations to the government for amendments to the Act, including the promulgation of a tariff of fees for legal practitioners, regulations on reparation and rehabilitation, amendments to the Act, and amendments to the Constitution extending the 'cut-off date'. The Department monitored these amendments as they progressed through the various stages of the legislative process.

■ CRIMINAL CHARGES

- 26 In four cases, the Commission instituted criminal charges against individuals. These included:

- a **State v Godfrey Matiwane.**

In this case, a witness who perjured himself was convicted and sentenced to one year's imprisonment in terms of section 39 of the Act.

- b **State v Loyiso Mpumlwana.**

In this case a charge of fraudulent misrepresentation was laid against a former employee of the Commission's East London office. The matter was still pending at the time of reporting.

c **State v PW Botha.**

In this case, a criminal charge was laid against former state president Mr PW Botha following his refusal to appear before the Human Rights Violations Committee. The matter was still pending at the time of reporting.

d **State v Bennet Sibaya.**

In this case, a charge of perjury was laid with the attorney general on the recommendation of Judge Goldstone. The matter was still pending at the time of finalising the report.

■ CONCLUSION

- 27 For a full discussion of details and consequences of legal challenges to the Commission, see chapter on *Legal Challenges*.

Management and Operational Reports

MEDIA & COMMUNICATIONS DEPARTMENT

■ **INTRODUCTION**

- 1 From the outset, the Commission identified the mass media as critical in drawing all South Africans into the Commission process. It resolved, in particular, that one way of helping to restore the dignity of victims of violations of human rights - and of reporting to the nation such violations and victims - would be to promote maximum publicity for the Commission's activities, and in particular its hearings, by opening them fully to both broadcast and print media.
- 2 In addition, advance publicity was given in the media of workshops, public meetings, and opportunities for victims to make statements and of hearings (both human rights violations and amnesty hearings) which victims and members of the public could attend.
- 3 Particular attention was also paid to the use of radio to ensure that the proceedings and activities of the Commission were covered in all the country's official languages.
- 4 The Commission drew a distinction between the communication of its own messages, which it controlled (and usually paid for), and the distribution of news and information through journalists in the print and broadcast media which, by definition, resulted in publicity over which the Commission had no final control. This was reflected in a distinction in the structural operation of the media and communications functions during the first year of operation.

- 5 The Commission's communications work was summarised in an article written by Archbishop Tutu for the *Sunday Times* in December 1996:

One of our most substantial achievements, however, has been to bring events known until now only to the immediately affected communities – and sometimes to the small readership of alternative newspapers – into the centre of national life.

Millions of South Africans have heard the truth about the apartheid years for the first time, some through daily newspapers but many more through television and, especially, radio.... Black South Africans, of course, knew what was happening in their own local communities, but they often did not know the detail of what was happening to others across the country. White South Africans, kept in ignorance by the SABC and some of their printed media, cannot now say they do not know what happened.

■ MEDIA LIAISON

- 6 Media liaison was made a high priority from the first meeting of the Commission on 16 December 1995. The volume of news which the Commission's activities promised made this essential. It was also clear that if the Commission could meet the demands of the media for newsworthy material, this would help it fulfil its mandate to report to the nation on human rights violations and allow it to do so on a continuous basis throughout the life of the Commission.
- 7 The public image of the Independent Electoral Commission in 1994 gave warnings of the pitfalls that would lie ahead. The Commission had an enormous task; it could not begin to deliver on all expectations, and there was considerable potential for journalists to focus on areas that the Commission would not be able to cover. The Commission began operating on the premise that the fundamental task of the media liaison officers was to ensure that the Commission's public image reflected the reality of what the Commission was and did. The objective was, thus, not to manipulate the Commission's image, but to project accurately the challenges, the successes and the difficulties.
- 8 In implementing media liaison policy, the Commission attempted to adhere to the following principles.

Transparency

- 9 While the chairperson, the vice-chairperson and the chief executive officer were appointed the Commission's only spokespersons on matters of policy and implementation, the media had direct access to all commissioners and portfolio heads on matters that lay within their individual jurisdiction. The media liaison office was not used as a means of filtering inquiries or providing a 'public relations front' for the Commission. The Commission held that, if journalists were to inform the public accurately, they needed to speak directly to those who made and implemented decisions in the organisation. Thus, the media liaison office's task was to provide strategic and technical advice to the Commission on how best to convey news and to provide support for and be constantly available to journalists when Commissioners were unable to respond to media inquiries.

Proactive Release of Information

- 10 The Media Liaison Office promoted the pre-emptive release of news, whether it reflected well or badly on the Commission. The office also sought to encourage the simultaneous release of information to all the media in an attempt to achieve circumstances conducive to an early, single, full and thorough explanation of what the Commission was doing. The following extracts from reports of the Media Liaison Office during September and October 1996 illustrate the approach which the Commission attempted to follow:

The need for speed and flexibility needs to be stressed: when the Commission hesitates for too long before releasing news, it often trickles out bit by bit to individual journalists. This reduces the interest of other journalists, who do not like to carry late, second-hand news. It also forces us into a reactive position, where those with interests other than those of the Commission make the running in how the news is presented.

It goes without saying that anonymous leaks of important information by individuals acting without a mandate destroy our capacity to present the information in a co-ordinated, proactive way. They need to be avoided if we are to avoid constantly being caught on the back foot. At the same time it needs to be said that the longer we delay in releasing important information, the more we are held hostage by the agendas of those responsible for leaks.

It is strongly recommended that the Commission should run its media liaison operation in a manner which draws the public into its decision making. Thus,

the Commission should constantly give consideration to releasing draft documents indicating proposals under discussion before they are finalised. This does involve risks, such as public perceptions being influenced by ideas which are not eventually adopted. But the exposure of proposals to public debate before decisions are taken enhances the credibility of the final decisions.

- 11 The following extracts, also from the media liaison reports, concerning problems the Commission was facing in 1996 also illustrate the approach of the Department:

We discuss our intentions instead of announcing our actions, or at least too far ahead of implementing our intentions, leading to days and weeks of questions from the media about when we are going to act, and to allegations that we talk and don't act. And when unexpected developments delay the gap between the declaration of an intention and implementation, we lose credibility.

Through our failure to think through the release of news thoroughly enough, we do not give journalists comprehensive enough briefings, and misunderstandings and distortions arise. Journalists who do not regularly cover the Commission misunderstand developments, especially when they do not have written statements.

- 12 The sensitivity - even explosiveness - of information at the disposal of the Commission led to constant consideration as to when information should be released. This involved balancing a number of factors:
- a the right of victims of gross violations of human rights to early access to information;
 - b the right of those implicated to their detriment to information in advance of its publication by the Commission;
 - c the right of the public to information about violations;
 - d the potential of the publication of information to prejudice ongoing Commission investigations into the violations.
- 13 At various times in the life of the Commission, it was criticised from all sides over the timing of the release of information.

■ MEDIA COVERAGE

- 14 The print and broadcast media devoted extensive coverage to the Commission. Hearings, in particular, generated probably as much coverage as Parliament during the main periods of activities of the Commission.
- 15 Many newspapers appointed specialist correspondents to cover the Commission, virtually on a full-time basis. Among these were *Beeld*, *Business Day*, *City Press*, *Rapport*, the *Sowetan* and *The Star* in Johannesburg, *The Cape Argus* and *The Cape Times* in Cape Town and the *Daily News* in Durban. The appointment of journalists who built up a specialist knowledge of the workings of the Commission meant that there was a high quality of reportage of Commission activities, informed by a detailed understanding of the processes, and that a close watch was kept on the Commission's internal operations. *Business Day* carried regular, often lengthy and informed editorial comment; the *Sowetan* carried extensive features as well as news coverage, and *The Star* carried a weekly feature on the Commission, devoting most of its editorial page to activities of the Commission. The *Mail and Guardian* regularly carried probing material on the Commission, including incisive commentaries or editorial features by the poet Antjie Krog.
- 16 The South African Broadcasting Corporation (SABC) Radio appointed a pool of journalists to ensure that the activities of the Commission were covered in all languages. Between April 1996, when hearings commenced, and September 1996, extensive news and current affairs coverage was supplemented by a weekly 'wrap-up' of Commission activities on all language stations, as well as live coverage of hearings on Radio 2000.
- 17 Financial constraints forced cancellation of the weekly summary programmes and the live coverage from 1 October 1996. However, the Commission secured a grant from the Norwegian government which enabled it to contract SABC Radio to restore these two features on a full-time basis from June 1997. An essential element of the agreement between the Commission and the SABC was full recognition of the latter's editorial independence. The Commission had no control whatsoever over the contents of the SABC's programming. In 1997, the SABC Radio 'TRC team' won the Pringle Medal for outstanding services to South African journalism.

- 18 The reasons for focusing on radio were outlined in the Department's business plan:

In considering the best means of making sure that as many South Africans as possible are enabled and empowered to participate in the life and work of the Commission, it has judged radio the most effective communication medium for its proceedings to the widest number of people. Radio listenership figures far outstrip newspaper readership. In addition, radio broadcasts penetrate all corners of the country in the home languages of the majority of South Africans. For example, SABC radio stations have 3.3 million Zulu listeners, 1.6 million Xhosa listeners, 1.5 million seSotho listeners, one million seTswana listeners, almost 700,000 Afrikaans listeners, 450,000 listeners in English and 116,000 Venda listeners.

The view in the Commission is that the broadcast of its work in a wide range of languages is of paramount importance. Radio provides access to South Africans across-the-board: for the many who listen to radio as well as watch television, for those without television, for those who are not literate and for those in rural areas.

- 19 The Commission's decision to allow cameras in hearings was one of the most important factors in creating the high public profile it enjoyed. The Commission was not a court and did not intend to run its hearings like court hearings, particularly the hearings organised by the Human Rights Violations Committee. Still, the Commission sought to ensure that the hearings had the dignity and decorum of court proceedings. Courts in most parts of the world do not allow cameras to cover their proceedings, and members of the Amnesty Committee, in particular, shared the instinctive reservations of judges on this issue. Because of these concerns, the Commission sought guidance from broadcasters in the United States, Canada and the United Kingdom in the drawing up of guidelines for cameras in hearings. The Commission was particularly grateful to the BBC in London, supported financially by the British High Commission in South Africa, which sent the Commission a senior producer who had been involved in the making of documentary programmes on Scottish court cases. The Commission developed the guidelines with the assistance of broadcasters, and especially the BBC consultant. (It should be noted that, as people participating in hearings became more accustomed to the presence of cameras, the guidelines were relaxed in some instances.)

- 20 A difficulty never fully resolved was the unhappiness of 'stills' photographers from the press. Stills photographers were excluded from hearings because, as they move around, they are potentially more disruptive than television camera operators, who are confined to fixed positions. This meant that television cameras could follow every step of proceedings, while stills photographers could not. This appears to be a difficulty wherever video cameras are permitted in hearings.
- 21 The images relayed to the nation through television news bulletins and the SABC-TV weekly programme 'TRC Special Report' were probably the single most important factor in achieving a high public profile for the Commission. Repeatedly throughout the Commission process, hearings provided compelling images for those South Africans who watch television.
- 22 Commission hearings and activities featured frequently on television news bulletins during the first year of the Commission's work. When multiple hearings were held every week, Commission-related news formed up to one-third of the main evening news bulletins.
- 23 SABC-TV demonstrated a similar commitment to that of the SABC Radio in relaying to South Africans the untold stories of their past in its weekly documentary, 'TRC Special Report'. In 1996, the programme won a special award from the Foreign Correspondents' Association.

■ COMMUNICATIONS

- 24 The communications framework was developed early in 1996.
- 25 One of the Department's first tasks was to advertise for and receive presentations from advertising and communications agencies. The Commission selected Herdbuoy's as its advertising agency and Siyakha Communications as its communications agency.
- 26 The Commission's logo was chosen from seven designs presented by Herdbuoy's. Herdbuoy's also designed and produced a series of posters and stationery using the logo.
- 27 Herdbuoy's also produced a series of radio advertisements during 1996, comprising a generic Commission advertisement, an advertisement for the Human Rights

Violations Committee, an advertisement for the Amnesty Committee and an advertisement encouraging people to make amnesty applications. The radio advertising campaign ran from July to December 1996.

- 28 A number of other proposals were developed with the advertising agency, including taxi advertising, a commemorative stamp, tactical press advertising, a train ticket advertisement, an outdoor campaign and a Christmas advertising campaign. These initiatives, however, were not pursued as a consequence of budgetary constraints.
- 29 Materials developed in conjunction with Siyakha included:
 - a Advertisements announcing the setting up of the Commission's offices were placed in regional and national newspapers;
 - b a generic leaflet on the Commission in the eleven official languages;
 - c booklets on the Human Rights Violations Committee, the Reparation and Rehabilitation Committee and the Amnesty Committee, translated into all languages but published only in English as a result of budgetary constraints;
 - d a manual, with transparencies and flip-charts, to conduct explanatory workshops on the Commission and its activities;
 - e co-ordinated workshops in various regions of the country;
 - f posters advertising a statement-taking campaign and posters advertising the new amnesty application deadline date in early 1997;
 - g a poster on the Commission for use in high schools.
- 30 Other proposals explored with Siyakha included a public participation programme, an updated pamphlet, a comic book, a radio drama and a paid magazine radio programme. However, again, the development of these proposals was curtailed by budgetary constraints.
- 31 In the earlier stages of the Commission's life, an annual communications budget of R14 million was proposed. However, during negotiations with the government,

this was scaled down to R6 million in the 1996/97 fiscal year and to R2 million in the 1997/98 fiscal year (excluding donor funding subsequently raised). The financial limits on communication initiatives led to, amongst other things, the consolidation of the Commission's Media and Communications Departments into one department. It also led to criticism, particularly from organisations and lobby groups representing the interests of victims who argued, understandably, that the Commission had done too little to communicate directly with the public and with victims and survivors of human rights violations, particularly in South Africa's remote areas.

- 32 After the rationalisation and reconfiguration of the two departments into one early in 1997, the Commission's paid communications were placed very much in 'maintenance mode'.
- 33 During 1997, the posters that had begun to be developed late in 1996 - advertising a statement-taking campaign and the new deadline date for amnesty applications - were produced and distributed.
- 34 Also during 1997, a radio advertising campaign in support of and linked to the statement-taking project was implemented. In conjunction with this, more than 400 000 leaflets calling for victims and survivors to come forward and make statements were distributed. These were distributed particularly in areas where the Commission's regional offices felt that not enough statements had been gathered. In addition, in 1998 the Commission published a booklet in all official languages whose purpose was to report to victims, survivors and organisations on the Commission's reparation and rehabilitation proposals to government.
- 35 The Commission also published an occasional newsletter, *Truth Talk*. This was aimed particularly at its partner organisations in the community, especially non-governmental organisations (NGOs) and community-based organisations. The last two issues of *Truth Talk* were also sent to those who made statements to the Commission.
- 36 During 1997, it was decided to inform students in secondary schools about the structure and work of the Commission. In conjunction with Siyakha Communications, the Media and Communications Department developed an information chart to be used by teachers when addressing classes about the Commission. The chart, generally referred to as the 'Teacher Insert', was inserted in a magazine called *The Teacher*, which is distributed to a wide range of schools throughout the country.

- 37 In July 1997, the Department contracted a ‘stills’ photographer to capture images of the Commission at work in the four regional offices and at hearings. The materials were to be used for *Truth Talk*, for a proposed in-house pictorial publication, *Moments of the TRC at Work*, published as a limited historical edition and for the final report.
- 38 During August 1997, the Department developed and produced a letter of acknowledgement¹ for organisations and individuals who had assisted the Commission with the designated statement taker programme. Certificates of recognition were also produced² and presented to all staff members as they came to the end of their employment contracts with the Commission.
- 39 In response to a number of inquiries from South Africa’s foreign missions, the Media and Communications Department prepared a special information package for use by diplomatic missions. The package was also made available to both domestic and foreign institutions, including visitors to the Commission’s national office in Cape Town.
- 40 The strategy of the Media and Communications Department during the winding-down phase was to convey the core message that the Commission wished to leave with the public as its work ended. To achieve this, in April 1998, the Department published a reparation and rehabilitation policy and proposals handbook. The handbook was published in eleven languages and had a print run of 60 000 copies. It was felt that this was one of the last opportunities for the Commission to communicate directly with victims and survivors, partner organisations in the NGO sector, the public generally and the international community and that the Commission owed them a report-back on its work.

■ STRUCTURES AND STAFFING

- 41 The Media and Communications Committee was established as one of the ‘functional’ committees of the Commission. It was composed of commissioners and, initially, committee members from each of the main, statutory committees of the Commission. The chief executive officer also sat on the committee, which was responsible for overseeing the work of the Department. During 1996, the committee was chaired by Dr Fazel Randera and, thereafter, by Advocate Denzil Potgieter.

1 Signed by the Commission’s chairperson and chief executive officer as well as the NGO relations committee chairperson.

2 Signed by the Commission’s chairperson, the chief executive officer, regional commissioners, convenors and managers.

Media Liaison

- 42 An embryonic media liaison function was started during the week before the establishment of the Commission and was developed into a Media Liaison Department between the first meeting of the Commission on the Day of Reconciliation (16 December) 1995 and the move into the national offices in Cape Town in February 1996. A Communications Department was established later, after the chief executive officer, the financial director and human resources director had been appointed and formal Commission structures began to emerge.
- 43 Following the resignation of the director of communications in 1996 and reductions in the projected communications budget for 1997, the Commission decided early in 1997 to rationalise and consolidate the two departments into one, while keeping the media liaison and communications functions separate to a degree.
- 44 The media liaison function of the Commission was carried out under the control of the departmental director and staff for most of the life of the Commission.
- 45 The staff initially comprised four media liaison officers, who were all senior and experienced professional journalists, and two administrative staff.
- 46 The media liaison officers were attached to each of the four regional offices of the Commission. Their primary responsibilities were co-ordinating media arrangements for public hearings for the Commission and liaising between journalists on the one hand, and commissioners and senior staff members of the Commission on the other. The primary task of the administrative staff involved the control, development and operation of news distribution and monitoring systems.
- 47 Apart from supervising the activities of the Department, the director performed a media liaison function for the chairperson, the vice-chairperson and the chief executive officer, to the degree that this was necessary, and attended Commission and committee meetings and hearings with a view to making recommendations on media coverage.

Communications

- 48 Because of the size of the task of building structures and recruiting staff for the Commission, there were delays in the establishment of a Communications Department. However, a suitably qualified director was employed and began work

in May 1996. The director, assisted by a secretary in the national office, managed the relationship between the Commission and advertising and communications agencies and oversaw the work of the communications officers based in each of the Commission's four regional offices.

- 49 The tasks of the communications officers were to obtain, help distribute and communicate promotional material and news of Commission events to the public. Another important function of communications officers was liaison with NGO, community-based and non-profit organisations.

- 50 After the resignation of the communications director in December 1996, the Communications Department was merged with the Media Liaison Department. The director of media liaison oversaw the combined departments. A communications and marketing manager was appointed to supervise the relationship with advertising and communications agencies and to liaise with regional communications officers.

Management and Operational Reports

MENTAL HEALTH UNIT

■ INTRODUCTION

- 1 The almost complete lack of reference to the issue of psychological support in the Promotion of National Unity and Reconciliation Act created some ambivalence with issues relating to psychological support services remaining an ongoing source of debate throughout the life of the Commission.
- 2 This dynamic was most demonstrably played out in the development of the statement-taking process. Initially, statements took the form of personal story telling to empathetic listeners, who recorded what was being said in a relatively informal manner. Due to the huge volume of statements, however, the process evolved into a more formalised fact-finding effort. In order to capture, process and corroborate each statement, a standard (but comprehensive) form was used to record victims 'stories'. This could be used even where no 'listener' was available.
- 3 It must be acknowledged that this compromised the healing potential of the encounter. It took away much needed emotional space. This affected the experience of making a statement and denied statement takers the opportunity to make broad assessments and, where necessary, refer people to appropriate support services.

■ THE NATURE OF TRAUMA

- 4 The people who suffered most from traumatic episodes fell into five categories: the victim, the perpetrator, their families and dependants, the community and, in a different way, Commission personnel. Commission personnel and some dependants and family members formed a distinct group in that their traumatic experience was often of a vicarious nature. However, all groups vicariously or directly shared classic symptoms

of post-traumatic stress syndrome. Symptoms included lowered self-esteem, depression, emotional blunting, avoidance behaviour, impulsiveness, uncontrollable anger, substance abuse, paranoia, relationship difficulties (social and interpersonal), complicated bereavement and sleep disturbance. Often such symptoms had become a part of life for the sufferer and were so deeply entrenched in the individual that they had to be viewed as part of that person and not merely a passing crisis.

- 5 It was important not to generalise or simplify diagnosis or, indeed, understanding of treatment. Often the trauma that individuals presented had been complicated by a range of socio-economic and medical problems and was also affected by the time that had elapsed since the traumatic event. Often living conditions caused a new range of emotional difficulties that conflated with previous ones, resulting in a complicated traumatic cocktail that demanded more than a mere therapeutic or healing intervention. The mental health of a person could not be seen or understood in isolation from socio-economic realities.

■ SUPPORT FOR WITNESSES AT HEARINGS

- 6 Support for witnesses at human rights violations hearings was the most visible part of the work undertaken by the Mental Health Unit. The public perception was of a briefer giving solace to a witness who had found the process of giving testimony deeply upsetting. This essentially 'snap shot' perception gave an impression of short-term interest and solace on the part of the Commission and did not reflect the interventions made by the Commission both before and after the hearings.
- 7 Such interventions included the preparation and briefing of witnesses before hearings, the containment and advocacy of witnesses during hearings and, after the hearings, the debriefing and referral of witnesses to regionally appropriate service providers who had a knowledge of local resources and who followed up accordingly.
- 8 The development of the Commission's witness support strategy could best be described as the quest to bridge the gap between the need for and the provision of emotional support.
- 9 Although constrained by the limitations of the Act and overwhelmed by witnesses' understandably high expectations of direct and immediate service delivery, the Commission, on the whole, managed to navigate a path that went some way towards restoring human dignity and facilitating the delivery of support.

- 10 The witness support strategy represented a creative and successful response to the problem of service delivery for witnesses in need of urgent follow up. During hearings, the Commission's briefers provided direct support to witnesses. Outside of hearings, they tried to perform a co-ordinating role, auditing regional support services, enlisting the involvement of community briefers, training them in debriefing skills and monitoring the referral process. Community briefers also assumed the critical task of supplying longer-term support to people in need. As local service providers, community briefers endeavoured to ensure that people received the sustained interest and support that they required, although they met with different levels of success. The ability to provide ongoing support to those in need of counselling was ultimately, however, beyond the resources of the Commission.

■ MAKING STATEMENTS

- 11 People who gave public testimony represented only a small percentage (about 10 per cent) of those who approached the Commission. The more usual route was by making a statement, a process that could take from thirty minutes to three hours.
- 12 Three kinds of people made statements: direct victims, family members and witnesses. Each approached the Commission for a range of different reasons. All imagined there would be some benefit in doing so. People's reasons for participating included: contributing to national reconciliation, finding out why family members had disappeared, requesting financial assistance to pay for expenses incurred as a result of human rights violations, and demanding that the perpetrator pay or account to the public in person.
- 13 Statement takers reported that the mental state of deponents varied greatly and that often there was little time to enquire more fully into the state of a deponent's mental health, let alone to make any kind of accurate assessment. The encounter between the statement taker and deponent was always powerful and often painful: full of promise for the deponent and, for the statement taker, often a question of managing expectations and the re-emergence of trauma. The degree to which the deponent was able to benefit from the experience depended on the statement taker's ability to handle the encounter.
- 14 Statement takers reported that often, for the deponent, the statement taker was the Commission and embodied all the Commission stood for. Bonds formed while taking a statement often continued, as the statement taker came to be seen as the only conduit through which the statement giver could follow up with the Commission.

- 15 By the same token, the length of time it took for information and reparations to reach the deponent was often a cause of frustration, and undermined what had begun as a relationship of trust. This was also frustrating for the statement taker who felt helpless at being unable to feed back the required information.
- 16 Making a statement to the Commission brought relief to some. The experience itself helped to break an emotional silence, started the process of integrating experiences that had been repressed or shut out for years, alleviated feelings of shame and, in an atmosphere of acceptance, began to restore dignity and self-respect. The experience initiated more than it closed, however, except perhaps where the statement was made at the end of a process of healing. In the majority of cases, making a statement represented a brave confrontation with something deeply painful. The result was often the re-emergence of trauma that, without an appropriate intervention, might have been 'managed' historically through negative coping behaviour - which would have been counter productive and served to repress traumatic and psychological realities.
- 17 On occasion, individuals were referred to briefers for onward referral to support services. However, by and large the only way (barring final reparations) that the deponents' needs could be identified was through the screening of their statements - particularly the information they provided on the consequences of their experiences, their means of coping and their expectations. The quality of this information varied, depending on the statement taker's ability to probe, as well as the deponent's readiness to articulate a need.
- 18 Support services were given free of charge and depended on the good will of those organisations that had made a commitment to bridge the gap between people's immediate needs and the delivery of final reparations.

■ THE EXPERIENCE OF FAMILIES

- 19 In its endeavour to capture the experience of the individual through personal testimony, the Commission often could not gauge the impact of gross human rights violations on the family system. Family members often gave testimony on behalf of their deceased loved ones without articulating their own suffering. This was especially true of the mothers whose children had been killed. Although the family was often a powerful support system in the event of trauma, the focus on the primary victim drew attention away from the trauma experienced by family

members. The Act made provision for this, describing victims as “such relatives or dependants of victims as may be prescribed”. However, dependants or relatives only received supportive intervention in cases of urgency, which were picked up in consultation at case conferences or at the urgent interim stage.

■ AMNESTY APPLICANTS

- 20 Although the amnesty process was a fundamental part of the Commission's work, it was distinct from the Human Rights Violations and the Reparation and Rehabilitation committees, because it used very different processes and procedures. Amnesty applicants seldom encountered the Commission on an interpersonal level. Their association was through written applications and subsequent hearings. As the content of applications was wholly concerned with making full disclosure on the perpetration of gross human rights violations, applications were analysed by lawyers and judges on a strictly legal basis. Legal representatives usually accompanied amnesty applicants, and information about family situations and reactions, if known at all, was restricted to these parties.
- 21 Essentially, therefore, the Commission did not examine the effects *on the perpetrator* of committing a gross human rights violation. This was understandable, as this was not part of its mandate.
- 22 It should be noted, however, that the Mental Health Unit identified the mental health of perpetrators as an essential concern in respect of the wider goals of national reconciliation. Pursuing this, however, would have resulted in further pressure on limited resources and services available to victims. In addition, there was the danger of creating a public perception of bias and inequity.
- 23 Nevertheless, a commitment to reconciliation and healing means that the psychological plight of individuals who were involved in the perpetration of gross human rights violations and their families should be acknowledged. Like victims, perpetrators need to be given space to examine their emotional reactions and to reintegrate what has probably been disassociated from their emotional life. Simply declaring that one has committed an act does not constitute coming to terms with oneself emotionally. Perpetrators share with their victims the potential for and experiences of post traumatic stress disorder. Significantly, there is a commonality of psychological fall-out involved in a traumatic episode that can form the basis of reconciliatory programmes.

■ COMMUNITIES

- 24 It was acknowledged that the sheer pace of the Commission's hearings programme had counterproductive effects. Perhaps the most significant of these was the perception that the Commission was failing to follow up and consolidate the truths it had uncovered. Although the Commission was unable to provide adequate follow-up meetings in some regions, acknowledgement of the problem led to the development of well thought out strategies and planning which were used in a number of follow-up workshops.

■ POST HEARING FOLLOW-UP MEETINGS

- 25 Post hearings workshops attempted to involve all significant stakeholders in communities, including those individuals who had made statements to the Commission but who did not testify at public hearings. On the surface, these workshops aimed at encouraging communities to assess the impact of gross human rights violations and of the hearing process, and to formulate initiatives to promote reconciliation. In many ways, however, the underlying goal of these workshops was to hand the truth and reconciliation process back to communities and to define clearly the limitations of the Commission itself. Post-hearing follow-up workshops went a long way towards consolidating the process, adding value to the development of reparations policy, and acknowledging the unique problems of different communities.

■ COMMISSION STAFF

- 26 Research indicated that Commission staff, in varying degrees, were vulnerable to suffering vicarious trauma because of the material and personalities to which they were exposed. The *material* (or the narrative content of the statements) was of an emotionally challenging nature. It could challenge the staff member's belief systems and that individual's ability:
- a to stay focused on the task;
 - b to work within the constraints of the legislation;
 - c to integrate her or his own experience as a South African into the emerging truths about past conflicts.

- 27 The Commission engaged with *personalities*, ranging from victims to perpetrators, who encompassed every shade of trauma, from unconstrained expression to dispassionate denial. Failure to acknowledge this would have increased the likelihood of a destructive and negative working dynamic developing in the Commission, with symptoms becoming repressed and eventually finding their expression in a variety of negative coping mechanisms - both at a personal and at an organisational level.
- 28 Using the analogy of a therapeutic relationship, it was the responsibility of Commission staff to be, above all, emotionally and psychologically healthy to ensure that their interventions were appropriate, considered and, as far as possible, unclouded by their own defensive processes.
- 29 As far as the professional encounter was concerned, maintaining emotional and psychological health required:
- a preparedness
 - b knowledge of the emotional and psychological terrain
 - c ongoing appraisal of the staff member's own emotional, psychological and cognitive (thinking) responses
- 30 Only then did interventions have the best chance of being therapeutic and useful to the victim or perpetrator.
- 31 Commission personnel, in varying degrees, represented the first phase in providing responsible and reconciliatory interventions. Failure to provide staff with the necessary support (in terms of criteria a, b and c above) would have undermined both the work and those doing it. For this reason, the Commission acknowledged the need to provide staff with ongoing support groups and allocated one and a quarter work hours a week for this purpose.
- 32 A six-week pilot project in Gauteng initiated the first staff support group, which was facilitated by the mental health specialist (a trained group therapist). Following this, staff support groups were introduced in all the regions. Three group facilitators were employed to work with support groups in the other regions. Regional group facilitators were responsible for making individual referrals on behalf of Commission staff. Services were offered at reduced rates and were paid for by Commission staff themselves.

- 33 The support group's function was to provide a space where Commission staff could express, discuss, share and receive support on matters relating to the emotional effects of working within the Commission and their exposure to traumatic material and traumatised individuals. On the surface, the groups served a dual purpose: debriefing and general support. The respective focuses varied according to exposure levels.
- 34 The groups also worked on maintaining staff members' psychological health: their preparedness, knowledge of the emotional and psychological terrain and ongoing appraisal of their own emotional, psychological and cognitive responses. The facilitator performed a supervisory and a didactic role, offering alternative coping strategies and outlining indications of trauma.
- 35 Finally, bearing in mind that staff was based in the same office, facilitators attempted to keep discussions focused on psychological issues and steered consideration of practical issues to other fora, such as staff meetings.
- 36 An initial assessment was undertaken by the mental health consultant to determine what constituted 'necessary' support for Commission personnel. The method used was arrived at through a series of meetings with various staff groups.
- 37 The support groups did not follow any hierarchical structure, but dealt with issues (for example, traumatising material or personalities) which affected the particular group at any particular moment.

■ CONCLUSION

- 38 The extent of trauma experienced by victims of the policies of the former state is incalculable, reaching far beyond those who approached the Commission. This trauma is part of the legacy of apartheid and it will be many years before its effects are eradicated from society. The best that the Commission could provide was to attempt to cater for the immediate needs of victims and, where possible, to refer them for further help. However, because of the extreme paucity of mental health services in South Africa, the mental health of the many victims of apartheid – and indeed of all South Africans – will depend on the ability of the new government to work towards the provision of adequate services.

Management and Operational Reports

RECORDS MANAGEMENT DEPARTMENT

■ DOCUMENTS USED BY THE COMMISSION

- 1 The activities of the Commission resulted in the creation, use and distribution of volumes of documentation. These ranged from vital confidential documents such as amnesty applications and gross human rights violation statement forms, to Commission newsletters, posters and pamphlets. Such documentation also included research and special reports, transcripts of the Commission's hearings, confidential, secret and top secret records of the security forces, the National Intelligence Agency and the National Archives, computer generated database records and audio and video tapes. A documentation officer was made responsible for the management of records in each region.

■ INTRODUCTION OF A RECORDS MANAGEMENT POLICY

- 2 Initially, the methods employed to manage records varied regionally, as did the type of records collected, with the exception of the human rights violation statements. Furthermore, various committees, units and departments within the Commission operated fairly independently. The lack of uniformity or set policy on classification and storage systems and management and care of the Commission's records resulted in less than adequate record management. This needed to be remedied.
- 3 A better records management policy was subsequently developed and introduced by the Commission. This provided a uniform system of records management and improved the security and care of confidential records kept within the Commission as potential assets of the nation.

- 4 Furthermore, the Commission's records management policy ensured that the Commission's records could be retrieved for the writing of the final report. To this end, all the Commission's records were transferred to the national office to facilitate the writing of the report and a smooth handover process.
- 5 The Minister of Justice indicated that, while the Commission's records were the property of the Department of Justice, they should be located in the National Archives under his protection and made available to the public as he, in consultation with the National Archivist, saw fit.¹ The National Archives assisted the Records Management Department in developing a records management policy to facilitate this transfer.

■ METHOD OF WORK

- 6 The documentation classification system and records management policy was developed and approved by the Commission in consultation with the National Archives.
- 7 A documentation officer in each region was responsible for the proper implementation of this policy and reported progress to the national office on a monthly basis. Each documentation officer was required to present and explain the policy to regional staff and all other units and departments in order to ensure that the proposed systems were being implemented.

¹ See the Recommendations of the Commission in this regard.

Management and Operational Reports

RESEARCH DEPARTMENT

■ INTRODUCTION

- 1 The primary functions of the Research Department were to:
 - a assess and add value to information before the Commission
 - b provide an understanding of the historical context within which alleged gross human rights violations referred to by the Commission occurred
 - c facilitate the writing of the report submitted to the President in October 1998.
- 2 This, by definition, meant that the work of the Department impacted on a range of activities.
- 3 The work of the Department began with a series of workshops held during the first months of the Commission in the geographic areas covered by the Cape Town, Durban, East London and Johannesburg regional offices. These events brought together a range of community-based people, historians, journalists, human rights activists and others.
- 4 The purpose in each case was to identify gross violations of human rights that occurred in the area, moments of liberation and significant occasions of resistance – including events both well-known and documented, as well as lesser known events in danger of being lost to public memory.

- 5 The outcome of these workshops was the beginning of a national chronology and four regional chronologies.¹ These early workshops and chronologies provided a preliminary overview of the thirty-four years under review by the Commission.
- 6 The chronologies (often disparate in form and substantially developed as a result of statement taking, human rights violations hearings and amnesty applications) provided a framework for the information gathering work of the Commission, the corroboration and investigative phase of its work and the findings process.

■ RESEARCH THEMES

- 7 The early chronologies were carefully scrutinised and analysed in a joint workshop involving the Research Department and the Investigation Unit. This resulted in the preliminary identification of fourteen strategic research themes:
 - a Normative and moral questions, conceptual issues and causal/social analyses.
 - b The Commission in historical context (1960 – 1994).
 - c The development of the security establishment.
 - d The judiciary and the legal system.
 - e Imprisonment and detentions.
 - f The ‘homelands’.
 - g KwaZulu-Natal.
 - h Liberation movements.
 - i Opposition groupings inside South Africa.
 - j White right wing extremism in South Africa.
 - k Vigilantes.
 - l Gender concerns.

¹ These appear elsewhere in the report.

m Children and youth.

n The health sector.

- 8 These themes were researched on the basis of available material to provide a context within which the primary data of the Commission could be understood and interpreted, as information became available. The appropriateness of the themes was subsequently confirmed on the basis of primary data available to the Commission and, in some instances, adjustments were made to the themes.
- 9 Hypotheses were established largely on the basis of secondary material and the lived experience of the Commission, and the primary data were interrogated on the basis of the questions arising from these hypotheses. In the process, the questions asked of the database were often modified. This dialectical encounter between primary and secondary material provided an enriched understanding of the cases under scrutiny by the Commission.
- 10 The integrity of the Commission was dependent as much on its *process* or *methodology* as on its actual *findings*. Each of the statutory committees of the Commission (the Amnesty, Human Rights Violations and Reparation and Rehabilitation Committees) devised appropriate structures to promote their work. The Research Department sought to service the Commission at the levels of data gathering, the verification or corroboration of data and the findings process – which phases are outlined in the chapter on the methodology of the Commission. (See chapter on *Methodology and Process*)

Contracted assignments

- 11 The work of the Research Department was greatly facilitated by the contributions of a range of scholars and others with specific areas of expertise. In each case this work was carefully assessed and integrated, where appropriate, into other aspects of the Commission's work.
- 12 Contracted assignments included the following:
 - a The conflict between the African National Congress (ANC) and the United Democratic Front (UDF) in KwaZulu-Natal; apartheid as a crime against humanity; apartheid legislation; Bonteheuvel Military Wing; the Caprivi trainees (the Caprivi trainees, who were trained by the South African Defence Force

(SADF) and deployed as a covert paramilitary force in KwaZulu-Natal in 1986); commissions of enquiry in South Africa; the medical and social consequences of gross human rights violations; detention in the KwaZulu-Natal region; gender relations; historical overview: 1960-1994; history of conflict in KwaZulu-Natal; homelands policy and development; hostel violence; international human rights law; medical services: 1960-1994; conflict in the Natal Midlands; the Pan Africanist Congress (PAC) in historical context; political prisoners and detainees in South Africa; the 1960 Pondoland Rebellion (which took place in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands); public order policing; the SADF in Namibia and Angola; the 1990 Seven Days War (which resulted from Inkatha Freedom Party (IFP)-ANC clashes in the Pietermaritzburg area); State Archives and records management; the Black Consciousness Movement; homelands security forces; legal and judicial system; Moutse/KwaNdebele homeland incorporation conflict; the South African broadcasting corporation and print media; the white right wing; torture in South Africa; torture in the Western Cape; warlords in KwaZulu-Natal; legal structures; the motives and perspectives of perpetrators.

■ DATA GATHERING

- 13 Data were received from a number of different sources.
- 14 Researchers aimed to read each statement taken with a view to providing an initial check on the information captured on the database, inserting the political context within which the particular event occurred and tagging the statement to the relevant chapter in the report. The large numbers of tasks undertaken by the Research Department prevented its staff from reading each of the statements. This meant that the checking of the database was left to others, while the primary data of the Commission (including the hand-written statements) were given priority attention by researchers in the drafting of the report.
- 15 Another major source of data came from submissions made to the Commission by political parties and liberation movements, the South African National Defence Force (SANDF), the South African Medical Services, non-governmental organisations (NGOs), research institutions and a range of individuals within state structures and civil society. The majority of these came from within the country, but some came from organisations and persons outside South Africa.

These submissions were analysed and, in many instances, executive summaries were made. The Commission used this information as the basis for questioning political parties and members of the former liberation movements at hearings and, where appropriate, to question alleged or possible perpetrators in section 29 hearings. The submissions were also used extensively in the report.

- 16 The Research Department undertook extensive work for 'special event' hearings on a number of issues: the health sector, the media, business, the judiciary, gender issues and children and youth, and for hearings on specific incidents. These latter included:
 - a The 1976 Soweto student uprising.
 - b The 1986 Alexandra six-day war that followed attacks on councillors.
 - c The KwaNdebele/Moutse homeland incorporation conflict.
 - d The killing of farmers in the former Transvaal.
 - e The 1985 Trojan Horse ambush by the security forces in the Western Cape.
 - f The 1986 killing of the 'Gugulethu Seven', following security force infiltration of ANC structures in the Western Cape.
 - g The 1990 Seven-Day War, resulting from IFP-ANC clashes in the Pietermaritzburg area.
 - h The Caprivi Trainees, who were trained by the SADF and deployed in KwaZulu-Natal as a covert paramilitary force in KwaZulu-Natal in 1986.
 - i The 1960 Pondoland Rebellion, in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands.
 - j The 1992 Bisho Massacre (which took place in response to an ANC national campaign for free political activity in the homelands).
- 17 Amnesty applications were scrutinised by researchers. This material was employed, amongst other things, in the questioning of political parties and others appearing before the Commission and, specifically, in the special hearings on the armed forces and on state security policy. When it became clear that the Commission

would not be able to hear all amnesty applications prior to closure on 14 March 1998, the Research Department became responsible for the co-ordination of 'Operation Capture'. This involved reading all amnesty applications with a view to categorising these into themes and identifying and accessing relevant material for the final report.

- 18 The transcripts of *in camera* Section 29 hearings provided a further source of information.
- 19 The researchers and others conducted a number of in-depth interviews. These included interviews with perpetrators representing the different political groupings involved in the conflict and with present and former politicians and security force operatives. Information on state security policy and operations obtained through these interviews provided important information for the research initiative. Special attention was given in these interviews to understanding the motives and perspectives of both perpetrators and victims of gross human rights violations.
- 20 Secondary material provided a further source of research information. Research staff consulted the writings, documentation and databases of specialist researchers, investigative journalists and others who had worked for a long time on issues falling under the mandate of the Commission. Databases on human rights violations recorded by other organisations were reviewed and tested against the criteria used in the corroboration and findings process. A small number of these was considered sufficient to provide a sound basis for making findings. Others were used only as a more general research tool and, in some instances, as a basis for corroborating the Commission's information.

■ CORROBORATION

- 21 Researchers assisted in the scrutiny of statements by deponents. To this end, they consulted police records, the databases of human rights organisations, newspaper reports, the records of government departments and archival material as well as amnesty applications. Information received from submissions made to the Commission by political organisations and other bodies was also pertinent to this process, as was the archival material identified above. Where necessary and possible, individual witnesses were interviewed, and organisations of the state and civil society consulted.

■ DOCUMENTATION RETRIEVAL

- 22 Material was retrieved from the National Archives, as well as the National Intelligence Agency (NIA), the South African Police Service and the SANDF archives. Cabinet minutes, minutes of the State Security Council and its substructures and other forms of state documentation were scrutinised by researchers and Investigation Unit personnel, who obtained top secret clearances from the NIA for this purpose.
- 23 The Research Department was also assigned the responsibility of investigating the unauthorised destruction of the records of state departments. The destruction of documents is described in a separate chapter of the report (see chapter on the *Destruction of Documents*).

■ WORKSHOPS

- 24 A number of *ad hoc* workshops was held with resource people outside of the Commission on research-related topics. These included workshops on children and youth, the health sector, the military and security, the homelands, the white right wing and the media. Several regional workshops were also held in each of the Commission's designated regions where and when this was regarded as necessary. In addition, seven national research workshops were held. A number of additional *ad hoc* meetings were held to deal with specific matters of concern.

■ STAFFING AND CONTRACT WORK

- 25 In addition to a director of research, two researchers were appointed to the national office and three to each of the regional offices. Several additional part-time researchers were appointed on a contract basis to work in the various offices of the Commission. A number of interns augmented the work of the Department. In the final phase, further staff was contracted in to assist with the final edit and layout of the report.
- 26 A number of specialist researchers were contracted and made significant contributions. These included researchers located in different academic institutions, research institutes and NGOs – both inside the country and abroad. The European

Union and the Danish government funded much of the contract research inside the country. Some researchers contributed work on a voluntary basis.

- 27 This work was received strictly as *information only*. The insights gained, views expressed and information submitted were all assessed in the first instance by the Research Department and ultimately by the Commission, which takes full responsibility for all information and findings included in the report.
- 28 The internship programme was designed to expose both post-graduate students and young professionals to the work of the Commission as a basis for empowerment and as a means of facilitating the work of the Commission.
- 29 European Union funding also made possible the employment of paid South African interns from educationally underprivileged backgrounds.
- 30 Overseas applicants showed extensive interest in the internship programme. Many of those who participated in the programme received academic and/or professional credit for the internship in their home countries.

■ THE REPORT

- 31 The Research Department was centrally involved in facilitating the drafting of the report. In order to arrive at an outline for the report, a series of regional and national planning workshops was held, involving researchers and others. The Commission adopted the outline, together with a proposal for the drafting process. Beginning in June 1997, regular Commission workshops were held to discuss the report, and the Commission spent the entire month of July 1998 working through the various chapters to be included in the report. In some instances a series of collaborative exercises was undertaken to produce drafts, notably in the case of chapters on regional profiles and those dealing with the various role players in the process that resulted in the gross violation of human rights. In other instances, individuals were given the responsibility of drafting chapters. In each case, however, the Commission as a whole was required to give its imprimatur to the various chapters.
- 32 The exercise was the responsibility of the Research Department which, in addition to drafting the report, co-ordinated the editorial, layout and printing process.

Management and Operational Reports

SAFETY AND SECURITY

■ HISTORICAL BACKGROUND

- 1 After consultation between the South African Police Service (SAPS) and the chairperson of the Truth and Reconciliation Commission, security was provided for the first meeting of the Commission on 16 December 1995. The meeting took place at Bishops court in Cape Town.
- 2 Superintendent Victor of the VIP Unit informed the chairperson and vice-chairperson that, on the instruction of Commissioner Fivaz, static and personnel protection would be provided to them for the duration of the Commission.
- 3 The Director-General of the Department of Justice requested that SAPS provide protection to the Truth and Reconciliation Commission for its next meeting on 13-14 February 1996. The protection was co-ordinated by Superintendent Naicker of the National Protection Service, Parliament, and Superintendent Victor.
- 4 The management of the National Protection Service, Cape Town, decided that it was necessary to hold discussions with the Commission before its next meeting in order to address the protection needs of the Commission and to eliminate *ad hoc* requests.
- 5 Subsequently, Superintendent Rhoades and Superintendent Victor were appointed by the National Commissioner as the national co-ordinators for all aspects of security relating to the Commission.
- 6 On 12 February 1996, the National Protection Service of SAPS and the National Intelligence Agency (NIA) jointly briefed the commissioners on personal security and information security. The briefing was held at the Commission's national office in Cape Town.

- 7 The Security Advisory Service of the National Protection Service conducted a survey of all commissioners' residences, except that of Mr Wynand Malan, who requested that no survey be conducted of his residence.
- 8 By instruction of the Head: Operational Function of National Protection Service, protection was given to the chairperson and the vice-chairperson of the Commission. The National Protection Service was also to guard the Commission's national office in Cape Town.
- 9 The two co-ordinators were requested to work out guidelines for the protection of the Commission and also to set up national structures for better co-ordination in respect of the Commission's activities.

■ SETTING UP

- 10 Initially, safety and security structures were set up only in KwaZulu-Natal, Gauteng and the Eastern Cape. The *modus operandi* was for the Commission to send requests to the SAPS representative in that particular province to arrange the necessary protection. However, the first public hearing with its attendant problems forced the co-ordinators to re-examine the structure.
- 11 At that stage, the newly appointed chief executive officer of the Commission, Dr B Minyuku, established a safety and security committee whose mandate was to determine structures for and policy on safety and security matters. This committee decided that a proper national structure should be set up and that the National Protection Service should be requested to second the two national co-ordinators to the Commission. This request was turned down by National Protection Service management, which proposed instead that a 'nodal point' be established. The safety and security committee agreed to this.

■ STRUCTURES

- 12 The Commission's safety and security structure functioned at two critical levels, namely at the strategic (policy formation) level and at the operational (day to day) level.

Strategic level

- 13 The safety and security standing committee oversaw policy formation and national co-ordination. It had thirteen members, including the two national co-ordinators of SAPS and the national nodal point commander. This committee reported to the chief executive officer who was responsible for overseeing the safety and security efforts of the Commission.

Operational level

- 14 The co-ordination of operational safety and security occurred on three levels.
 - a The first level involved day to day, tactical safety and security issues and national co-ordination. A separate, 'functional' safety and security committee was established to deal with this. It consisted of nine members, including the national co-ordinators and the national nodal point commander, and was chaired by the chief executive officer.
 - b The second level was regional co-ordination. This involved a partnership between the regional managers, the appointed provincial co-ordinators of SAPS and the national nodal point commander.
 - c The third level was area co-ordination. This involved a partnership between the Commission's logistic officers, the assigned provincial area co-ordinators of SAPS and the national nodal point commander.
- 15 The above structure was established after a national 'brain storm' involving the chief executive officer, the national safety and security co-ordinators, the nodal point commander, representatives of SAPS in all nine provinces, the four regional managers of the Commission and their logistic and support officers.

■ THREATS

- 16 Threats to the Commission were not unexpected and, from its inception, precautionary measures were put in place to protect both personnel and assets.
- 17 These measures included: lectures to staff on personal security; security surveys of buildings and the commissioners' and committee members' residences, and

continued threat analysis in respect of commissioners, committee members and the Commission as a whole by the SAPS Internal Security Division and the NIA.

- 18 Verbal and written threats were registered against the following members and events of the Commission:
- a Archbishop Desmond Tutu (Chairperson)
 - b Dr Alex Boraine (Vice-Chairperson)
 - c Revd Dr Khoza Mgojo (Commissioner)
 - d Dr Wendy Orr (Commissioner)
 - e Mr Dumisa Ntsebeza (Commissioner and Head of the Investigation Unit)
 - f Ms Kate Pitt (Staff member)
 - g Ms Virginia Gcabashe (Human Rights Committee member, Durban)
 - h the Commission's first hearing in the Eastern Cape
 - i the Commission's first Western Cape hearing
 - j Archbishop Tutu at the Commission's Bloemfontein hearing.
- 19 Another security issue concerned security of information. Each commissioner and staff member was required to take either an oath or affirmation of secrecy. Despite this precaution, there were a number of information leaks that were investigated by the functional safety and security committee. These included: two leaks relating to amnesty applications, one relating to a section 29 investigative enquiry and two from meetings of the Commission.

■ PROCEDURES

- 20 Superintendents Victor and Rhode set up standard operational procedures for hearings. They used principles based on communication, needs, purpose and outcome to define the procedures, which were adhered to by SAPS provincial

co-ordinators and the Commission's provincial managers. There were initial teething problems arising from issues relating to line of command, small security breaches and territorial attitudes. These problems were effectively addressed.

- 21 The standard of performance of the provincial co-ordinators was high, and co-operation was excellent. Reports received from hearings, particularly in KwaZulu-Natal (where political instability was at times feared), showed that the Commission and SAPS established good relationships before, during and after hearings. Feedback from police sources proved that, in areas where hearings were conducted, the police, who were seen as perpetrators in the past, moved closer to their communities and vice versa. Positive and genuine attitudes were expressed toward the Commission process, and the police experienced general feelings of relief and freedom from political pressure.
- 22 As the aims and goals of the Commission became clear, owing to widely published and televised reports, the concept and process became more acceptable to police personnel.
- 23 Generally, the task of the Commission was made easier through the assistance of the police in various ways. During the initial stages of the Commission's investigations, police provided protection to statement takers working in volatile regions. The police assisted with investigations to corroborate statements and with the delivery of documents and case dockets. The Commission was given access to police archives, and commissioners were protected when engaged in briefing and pre-hearings activities during the Commission's community awareness programmes. Police expertise and technology were made available to the Commission in exhuming bodies, helping with evidence and logistics, protecting witnesses and protecting perpetrators in custody and in transit, and generally ensuring that the process ran smoothly.
- 24 Initially, permanent VIP protection was provided only to Archbishop Tutu and Dr Boraine. This was extended to Mr Ntsebeza after he received threats to his life and also given the nature of his portfolio. *Ad hoc* VIP protection was extended to the Revd Dr Mgojo, Ms Gcabashe and Dr Orr.
- 25 The SAPS, the National Protection Service, and the VIP Units performed these functions in Cape Town, Gauteng and Durban. However, given the nature of the Commission's mandate, these functions were also performed by the respective provincial protection units in the other provinces.

Management and Operational Reports

WITNESS PROTECTION PROGRAMME

■ INTRODUCTION

- 1 The Promotion of National Unity and Reconciliation Act required that protection be made available to any person giving evidence, before, during and after any Commission hearing. This included any member of a witness's family who had been placed in danger as a result of his or her evidence. The Commission's witness protection programme was to be set up in terms of regulations prescribed by the President, and a witness protector appointed. Pending the promulgation of these regulations, the Minister of Justice would be responsible for the establishment of the programme using, as an interim measure, the criminal justice system witness protection programme.
- 2 As a result, in late 1995 the Minister of Justice appointed a broadly representative task group to formulate a witness protection programme for the Commission. Advocate RC Macadam, a Deputy Attorney-General in KwaZulu-Natal, was appointed to lead the task group in producing a draft set of regulations and an implementation plan. The task group identified a number of problems with the existing legislation on witness protection, and concluded that the Commission's programme would have to break new ground by establishing a programme unique to the work of the Commission.
- 3 The draft regulations and implementation plan were presented at the first meeting of the Commission in December 1995 and were unanimously accepted. The Commission's witness protection programme was instituted on 1 May 1996. The original programme was subsequently refined due to lack of available funds. The new regulations were finally promulgated on 20 December 1996.

■ METHOD OF WORK

- 4 The regulations provided for a three tier personnel structure, including the Commissioner in charge of the Investigation Unit, the witness protector and security officers.
- 5 The task of the security officers was to receive applications for protection, to grant temporary protection and to investigate the circumstances surrounding each application. The task of the witness protector was to evaluate all applications for protection in terms of the requirements, to enter into agreements with witnesses and to manage the programme. The task of the Commissioner in charge of the Investigation Unit was to confirm all decisions made by the witness protector in consultation with the Commission's chief executive officer and to represent the programme at Commission level.
- 6 Owing to delays in setting up the programme, witnesses began applying for protection long before either budget or staff was in place. In the interim, the cases were attended to and the costs paid by the Department of Justice. From May to July 1996, the witness protector attended to each case personally, paying for and being remunerated for the costs of the operation. By August 1996, however, the programme was operational.
- 7 Given the limited budget, it was clear that witnesses could only be placed under protection as a last resort. Rigorous admission criteria were set, requiring a thorough investigation of a witness's case and allowing for admission to the programme only on evaluation by and recommendation of the witness protector, and finally confirmed by the Commissioner in charge of the Investigation Unit. This procedure protected the programme from abuse by persons who were either offering untruthful evidence or were in no danger.
- 8 Once a witness had met the admission criteria, a further evaluation was conducted in order to determine the nature of the risk. Persons assessed as low risk were placed in community-based projects, and only persons assessed as medium- or high-risk were placed in safe houses.

- 9 In order to maintain a community base, the project used non-governmental organisations involved in combating crime in their communities, community police forums and visible policing structures. This method of protecting witnesses, which had not been previously attempted in South Africa, proved highly successful and had the following advantages:
- a the witness's life was not disrupted and the attendant problems of loneliness, boredom, alienation and potential loss of employment were avoided;
 - b the police, previously viewed as enforcers of the apartheid system, now became the protectors of victims, thus helping place the relationship between communities and the police on a better footing;
 - c witness protection officials were free to devote their attention to cases which warranted protection;
 - d the notion of the need to protect witnesses was promoted in communities.
- 10 Another innovative concept involved assigning VIP protectors to protect witnesses in their own homes. This saved the costs of obtaining safe houses and ensured that witnesses' lives were not disrupted.
- 11 Where there was justification for placing witnesses in safe houses, the witness protector persuaded various state organisations to make accommodation available free or at reduced cost.
- 12 In the regions, contact was made with persons in each area who could, at no cost to the Commission, deal with emergencies in their communities until the regional official became available. This kept staff appointments to a minimum. For example, a single officer was appointed in Cape Town to cover a region extending as far as Upington, Kimberley and Port Elizabeth.
- 13 Unofficial nodal points were established to assist in the gathering of intelligence. These included the National Intelligence Agency, the D'Oliviera investigative unit (a special unit set up by the Gauteng Attorney-General), the Investigation Task Unit and the Department of Justice witness protection programme. In addition, security officers were encouraged to maintain contact with their former units and dip into their informer networks.

- 14 At the outset, requests for protection came from three sources: first, victims who were being terrorised by vigilante groups linked to various political parties; second, potential witnesses who feared for their safety and security should they disclose what they knew or had done, and third, confidence tricksters who, often motivated by financial enrichment, wished to mislead the Commission by falsely professing knowledge of cases under investigation. Such misrepresentation was easily achieved because of the media publicity accorded to such cases over the years, the absence of independent eyewitnesses and the destruction of official documentation. It is a tribute to the calibre of the security officers that the confidence tricksters were identified without compromising the programme. In one extreme case, the culprit was prosecuted on a charge of making a false statement to the Commission, convicted and sentenced to a year's imprisonment.
- 15 Geographically, most applications were received from the politically unstable KwaZulu-Natal region, followed by the former 'Vaal Triangle'. Because of this, an early decision was taken to transfer the East London officer to Durban, where one officer on his own could not be expected to cope with the demand.
- 16 By October 1996, the emphasis had changed. During this period, requests were received from potential amnesty applicants who feared reprisals when testifying at public hearings. The protection of persons at hearings was labour intensive and involved bringing together security officers from various regions. This process led to further public exposure of the programme. These ventures could not have succeeded but for additional assistance provided by the South African Police Services (SAPS) Special Task Force and public order policing units.
- 17 By this stage, the witness protection programme had succeeded in placing a large number of witnesses under protection, well within the allocated budget. In November 1996, the Commissioner in charge of the Investigation Unit decided that the Witness Protection Unit should also be used for investigation work. As the Unit's staff had long experience in the investigation and prosecution of political crimes, this decision was welcomed and regarded as a tribute to its success.
- 18 While maintaining its role as witness protector, the Unit achieved the following successes. A senior member of the security police compound at Vlakplaas was persuaded to make a complete disclosure. His statements, particularly as regards secret orders issued by generals, were passed on to the Investigation Unit and made a major impact on section 29 inquiries. As a direct and immediate result

of this disclosure, a group of former security officers headed by an ex-director decided to 'come clean' and were debriefed by the Witness Protection Unit. In response to these developments, the Eastern Cape Security Branch, which had previously vehemently resisted the Commission's investigations, made direct contact with the Unit. Consequently, the following cases were solved: the disappearance and murder of Madaka and Mthimkulu; the 'PEBCO Three'; the 'Cradock Four'; Steve Biko; Kondile and Mkhuseleli Jack. Thereafter, the Unit extensively debriefed a significant number of members of the Directorate of Covert Intelligence of the South African Defence Force Military Intelligence. In addition, considerable low key assistance was given to regional investigation units.

■ STAFFING

- 19 Six posts were created for security officers. Given the circumstances surrounding the setting up of the programme, a decision was taken to fill the posts with persons seconded from the SAPS. One officer was posted at each regional office of the Commission, and two additional national appointments were made.
- 20 The two national security officers were given the titles of VIP protector and intelligence officer. The former was required to attend to all high-risk cases where witnesses required twenty-four hour a day protection. The latter acted as a link between the regional officers and the witness protector and also conducted risk evaluations.
- 21 The VIP protector and the Cape Town officer cancelled their secondments shortly after their appointment and were replaced with secondments from the offices of the Commissioner of Police, Pretoria and the regional Police Commissioner in the Western Cape. In January 1997, the intelligence officer cancelled his secondment; the Johannesburg officer followed suit in July 1997. A member of the uniform branch of the SAPS at Brixton and a member of the Department of Correctional Services filled their posts in March 1998.
- 22 A senior secretary/administrator was appointed to assist the witness protector.

Regional Office Reports

CAPE TOWN OFFICE

■ INTRODUCTION

- 1 The Cape Town regional office was located in the same building as the Commission's national office, and served the Commission's activities in the Western Cape and Northern Cape provinces. It was also given responsibility for many national events, such as political party submissions, health sector hearings and section 29 hearings. The regional information unit took responsibility for overseeing the data processing requirements of the Amnesty Committee and for the distribution of applications for urgent interim relief. Such relief was made available in terms of reparation and rehabilitation policy. These additional responsibilities created huge pressures on regional staff but, due to the high level of commitment, both regional and national demands were met.
- 2 The office did extensive work on the widespread repression that had occurred in towns in the Boland, Southern Cape, Karoo and Northern Cape. However, many rural communities (particularly farm workers) expressed disappointment that the Commission's mandate did not extend, except in exceptional circumstances, to human rights violations relating to land and labour. This was of particular concern in Namaqualand and other areas of the Northern Cape.
- 3 An issue of particular sensitivity in the region was the perception that the Western Cape was representing the Northern Cape where no staff members were employed for financial reasons. This factor also had a bearing on travel to the Northern Cape, which was largely determined by the statement taking and planning required for the Kimberley and Upington hearings.
- 4 The regional office also experienced some difficulties in attempting to document repression on the Cape Flats. A number of activists were reluctant to come forward to talk about their experiences or to refer others to the Commission. Many expressed discomfort with the fact that the legislation did not allow for formal court proceedings.

■ IDENTITY AND EXTENT OF REGION

- 5 A number of features distinguish the political and social terrain of the Northern and Western Cape provinces from the rest of the country. The demographic profile is unique: the majority of the population is coloured and only a minority is African. This was partly a reflection of the declaration of the Western Cape as a 'coloured labour preference area' with very restricted opportunities for African people. The region also experienced extreme social and spatial engineering through the Group Areas Act, with significant cleavages developing between coloured and African communities, as well as between rural migrants and urban residents. As a result, the Western Cape developed historically distinct political groupings and ideological approaches, which often differed from developments in the rest of the country.
- 6 The Western Cape province can be divided into six distinct sub-regions: the Cape Metropolitan Area; the West Coast; the Boland and Breede River area, including the Cape winelands; the Southern Cape, including the Little Karoo; the Overberg, and the Central Karoo. The Northern Cape includes the Kimberley commercial area, Upington and the greater Namaqualand region.

Population

- 7 The Western Cape has a population of 3.6 million people, comprising 8.9 per cent of South Africa's total population. According to the 1993 census, the population composition is: 58.4 per cent coloured people, 23.7 per cent white people, 17.1 per cent African people and 0.8 per cent 'Asian' people. Sixty-eight per cent of the entire population of the province (or 2.5 million people) lives in the Cape Metropolitan Area. By contrast, the West Coast has a population of 235 000.
- 8 Although the Northern Cape has the largest surface area in the country, only 1.9 per cent of the total South African population (or 764 000 people) live there. The annual population growth rate lies far below the South African average, indicating a steady outflow of people. According to the 1993 census figures, the population composition is: 52 per cent coloured people, 31.3 per cent black people, 16.1 per cent white people and 0.2 per cent Asian people.

Income/poverty profile

- 9 The Western Cape has the second highest degree of urbanisation (95 per cent) in the country. However, it also has the highest human development index (HDI) in South Africa, meaning that it is marked by extreme social and economic inequalities.
- 10 There is little heavy industry in the Cape Metropolitan Area, which supports instead light industries such as garment and textile manufacturing and small factory food processing. Over half a million people are employed in the textile industry, which is the largest single employer in the Western Cape. However, the textile industry is currently declining and experiencing job losses. Only 57 per cent of the labour force are engaged in the formal sector; the remainder work in the informal sector or are self- or unemployed.
- 11 The West Coast is dominated by agriculture, which focuses mainly on the production of wheat, wine and citrus fruit. While white farmers have flourished, African and coloured seasonal farm workers are locked into impoverished dependence, earning an average of forty-seven rand a week. Coastal towns like Saldanha Bay and Lamberts Bay are dominated by the fishing industry and provide 80 per cent of South Africa's fishing catch. Large national companies have decimated independent fishing communities through the quota system, resulting in wide-scale poverty in the area. The unionisation of the fishing industry in turn led to an intensification of industrial and political conflict.
- 12 The Karoo is predominantly a sheep farming area. There has, however, been substantial migration of coloured families out of the area and into urban areas, leading to a population decline in Karoo towns.
- 13 The major city in the Northern Cape is Kimberley. The main economic activities in this area are the mining of diamonds, asbestos and copper and agriculture, mainly cattle and maize. Industrial and commercial activity in the Northern Cape is limited to areas around Kimberley, Kuruman, Sishen and Postmasburg. Migrant labour comes mainly from the former independent homelands of Bophuthatswana, Transkei and Ciskei.

Languages

- 14 The major languages in the Western Cape Province are Afrikaans (the home language for 47 per cent of the population), English (19 per cent) and Xhosa (15 per cent).

The main home languages in the Northern Cape are Afrikaans (65 per cent) and Tswana (22 per cent).

■ METHOD OF WORK

Commissioners allocated to the region

- 15 As in other regions, the Cape Town regional office included a Human Rights Violations Committee and a Reparation and Reconciliation Committee. Commissioners Adv Denzil Potgieter, Ms Mary Burton and committee member Ms Pumla Gobodo-Madikizela were assigned to the Human Rights Violations Committee, while commissioners Dr Mapule F Ramashala, Dr Wendy Orr and Ms Glenda Wildschut were assigned to the Reparation and Rehabilitation Committee.

Staffing

- 16 The total staff complement was seventy-four. After some staff contracts came to an end, further appointments were made in order to cope with additional national tasks assigned to the regional office.
- 17 The regional manager and the Reparation and Rehabilitation co-ordinator started work on 18 March 1996. The statement takers and briefers started a week later and commenced immediately with training.
- 18 At this stage, recruitment was done through agencies that assisted with the work of sifting through hundreds of applications. However, the application of affirmative action policies proved problematic. This was resolved, in the main, by the appointment of people who understood the communities they were to work with. In the beginning, job descriptions often proved inadequate and staff members were re-deployed in line with needs that only became apparent after work had begun.

Accommodation, resources and equipment

- 19 The national finance director managed the allocation of office space and resources for the Western Cape regional office. This removed much of the responsibility from the regional manager and allowed the region to focus on other aspects of the work such as planning the work of the region.

- 20 Although there were many advantages to being based in the same building as the national office, there were also difficulties, including a blurring of the distinction between national and regional staff. National demands often made regional planning very difficult and, despite the advantages of the close proximity of the Finance Department, it was often difficult to maintain effective cost controls.
- 21 A policy of frugality and conscientious cost saving guided the allocation of resources, and the region put in place systems to monitor the use of equipment like vehicles and cell phones.

Methodology and assessment of work

- 22 The Cape Town regional office held a weekly regional management meeting, weekly regional commissioners' meetings, team meetings (for hearings and statement taking) and meetings of the Investigation Unit, Support Services Unit, statement takers and briefers.

■ WORK OF THE REGIONAL OFFICE

- 23 The daily work of the Commission was divided into five areas: statement taking, information flow, investigations, hearings and co-operation with other organisations.

Statement taking

- 24 To ensure that statement takers covered the Western and Northern Cape effectively, the area was divided into eleven manageable sub-regions that were each visited by a team of statement takers over a period of two to three weeks. Where there were sufficient statements to warrant it, a hearing was held at a central point in that sub-region.
- 25 The Research Department supplied statement takers with a chronology of political events and a brief account of documented cases of gross human rights violations - giving them a useful point of entry. In addition, workshops were held for Commission staff statement takers and local non-governmental organisations (NGOs) and community-based organisations before statement takers worked in a sub-region. These workshops helped further familiarise statement takers with political events and with the people in the community who had been involved in these events, as well as engaging useful assistance from the organisations invited to the workshops.

- 26 In 1996, statement takers followed a demanding schedule of visiting the various sub-regions or, alternatively, taking statements from people at the regional office. Towards the end of the year, the sub-regional visits were near completion while, at the same time, the number of people arriving at the regional office to make statements began dropping off.
- 27 It was observed that large numbers of people on the Cape Peninsula itself were not coming forward to make statements and that a more proactive strategy would need to be pursued. The approach adopted was to research newspapers for the period under review for articles and reports on political violence as a basis for creating specific chronologies of events for each part of the Peninsula. In addition, community-based organisations were asked for information in order to locate potential deponents. The voters' roll was used to try to establish their current whereabouts.
- 28 This shift from passive to proactive statement taking involved a change in the job requirements of the statement takers. There was also a need for more caution as they were now required to approach potential statement givers, rather than receiving statements from people who had come forward of their own volition. This new direction also required more managerial supervision from an already over-stretched information manager who could not always meet the increased demands.
- 29 In line with this more proactive stance, the team of statement takers analysed the many misconceptions and fears they encountered from people who were reluctant to make statements. They tried to address these by producing a radio play, based on the enactment of a statement-taking interview. Fears that had been identified, such as the need for confidentiality in areas that were still feeling the effects of conflict, as well as the problems of facing the overwhelming publicity of a televised hearing, were talked through in the play. In this way, it was hoped that some of the reservations would be overcome. The radio play was broadcast in English, Xhosa and Afrikaans.
- 30 The Commission's narrow mandate was disappointing to some, especially in the rural areas, where many people had to be turned away from making statements on matters that fell outside the Commission's mandate. Issues such as the abuse of farm labourers, loss of land rights, police thuggery and racial beatings were raised, and it was difficult for statement takers to explain to the victims of these experiences that, in most cases, they could not take their statements.

Referrals to other organisations were made where possible. In many cases, however, there was no obvious possibility of redress of any kind.

- 31 In the small towns, statement takers found that white people generally would not even co-operate with requests, for instance, to leave pamphlets and posters at their shops. The attitude of white people was generally negative, and there was a poor turnout of white people at the hearings.
- 32 Statement takers felt that many more statements could have been taken if more resources had been available for publicity and education about the Commission. The limited media and communication budget was a true constraint.
- 33 It was also regrettable that the official designated statement taker programme did not get off the ground earlier in the region, especially in the rural areas. In 1996, a total of sixty-two community statement takers were trained in four of the eleven sub-regions in anticipation of the launch of this programme; but funding only became available in April 1997, too late to be of significant use.

Information flow

- 34 Once a statement arrived at the regional office, the information contained in it was entered into the information flow process and database.
- 35 The information manager was charged with the enormously difficult task of making the 'information flow' a reality - ensuring that the material was seen by researchers, corroborated by investigators and reviewed by commissioners and committee members so that findings and recommendations for reparations could be made.
- 36 To a large extent, this process was made more difficult by the regional nature of the Commission's work. Despite the call for standardised national procedures, interaction between regions was poor, and each region tended to develop its own system. In addition, the work schedules of over-stretched commissioners and committee members made it difficult to ensure their regular attendance at 'Infocom' meetings or regional findings meetings. Many of these problems arose from the unique nature of the work of the Commission. There were no established precedents and policy, and success depended entirely on very hard work and a flexible approach.

- 37 The database evolved, as did the requirements for processing and interpreting information.
- 38 The Cape Town information manager was also required to cater for national needs, taking responsibility for centralising all documentation from the regions and for the processing of all amnesty applications (stored at the national office) on the Commission's database.

Investigations

- 39 The regional investigation unit was assigned to conduct investigations on behalf of the Human Rights Violations and Amnesty Committees. Because the national Human Rights Violations Committee did not set guidelines on levels of corroboration, the process of investigation devolved on the investigation units themselves. This accounts for regional variations in the investigative process.
- 40 Each investigator was assigned to the corroboration of cases by collecting and analysing information. Information was obtained by interviewing complainants and witnesses and retrieving a wide range of documents. These included inquest records, medical records, institutional records - for example, those of the South African Police (SAP), the liberation movements and the South African Defence Force (SADF) - commission reports, legal records, newspaper reports and *post mortem* reports.
- 41 The South African Police Service (SAPS), the South African National Defence Force (SANDF), the African National Congress (ANC) and other structures each established a central nodal point through which requests could be filtered. In the case of the SAPS, security police and police stations in the region were generally approached directly for records, and the nodal point used only where problems were experienced with document retrieval. This worked, except where documentation had been destroyed - either in terms of specific legislation, such as that governing the National Archives, or sometimes without authorisation. Specific mention must be made of the serious lack of co-operation from the SANDF which, to a significant degree, did not comply in supplying documentation concerning gross human rights violations.
- 42 Section 29 enquiries proved a valuable mechanism for conducting investigations. Due to logistical, budgetary and resource constraints, they were limited in the regions to cases chosen for in depth investigation such as the 'Gugulethu

Seven' (3 March 1986), KTC (9/10/11 June 1986) and the 'Trojan horse' killings (15 October 1985).

- 43 The 'Gugulethu Seven' enquiry initiated a significant sequence of events which began with statement taking and culminated when two people who had been *subpoenaed* applied for amnesty. An important result of the investigation was the discovery of involvement by security police operatives based at Vlakplaas in the killing of these seven young black men. In addition, it was revealed that some of the alleged perpetrators still occupied senior positions in the command structure of the SAPS in the Western Cape.
- 44 Other special investigations undertaken in this region included: the death of Coline Williams and Robert Waterwich (1989); the national gun-running project in the 1990s (which was implicated in the destabilisation of Khayelitsha) and the taxi conflict (a national Investigation Unit project to which all regions contributed); the Civil Cooperation Bureau (CCB) killing of Peaches Gordon (1991); the killing of Ashley Kriel (1987); the *Amasolomzi* in the Boland (so-called vigilantes in these areas in the 1980s); the St James Church massacre (1993); the Heidelberg Tavern attack (December 1993) and the killing of Pro Jack (1991).

Hearings

- 45 In order to reach as many people as possible and to involve local communities and organisations, the regional office held as many hearings as it could. These covered the Peninsula, Boland, Southern Cape, Karoo, Northern Cape and West Coast. Decentralised hearings were also held in many suburbs and rural towns.
- 46 For hearings purposes, the region was divided into six geographical areas: the Northern Cape, the Peninsula, the Boland, the south-western Cape, the Karoo, and the West Coast/ Namaqualand. Staff and commissioners were divided into three teams, each consisting of a Human Rights Violations and a Reparation and Rehabilitation commissioner or committee member, two statement takers, a briefer, a driver, a researcher and a logistics officer, later joined by an investigator. Each team was co-ordinated by the logistics officer who was responsible for administration and logistical support, and a commissioner who was largely responsible for information flow ('Infocom') and helping to set themes for the hearing. Administrative staff members were not officially part of the team, but were integrated at different levels to ensure the smooth running of the hearing.

At times, for example in the rural areas, the media (whose presence was crucial at hearings) were treated as part of the team.

- 47 Each team worked within a ten-week cycle that consisted of a pre-hearings, hearings and post-hearings phase. During the pre-hearings phase, the team held meetings with strategic people in the various towns. It also held public education and information meetings and set up the process of collecting statements from witnesses. Researchers prepared information to help each team decide where to focus on statement taking and in which towns to hold hearings. Each team passed on the statements it collected to the 'Infocom' group for processing.
- 48 During the hearings stage, the team planned, set up and held hearings in selected towns. The availability of suitable venues and the need to accommodate the needs of the media determined where hearings were held. Occasionally, however, the chosen location proved inaccessible. This limited the participation of communities. For example, it was decided on the basis of the aforementioned criteria to hold the southern Cape hearing in George, without taking into account the fact that human rights violations took place predominantly in Oudtshoorn. This limited the involvement of members of the Oudtshoorn community and informed a later decision to hold a reparation and rehabilitation programme in Oudtshoorn in February 1997.
- 49 The post-hearings stage included individual follow-up of people who had testified, as well as referrals. In addition, community workshops were held after each of the public hearings. These focused on the community's experiences of the Commission's activities in the area, possible ways forward and workshopping of possible human and financial solutions that could be implemented using local resources. In many instances, these workshops became the vehicle to start addressing the issue of reconciliation in a community. For example, the hearing in Paarl and the special reparation and rehabilitation programme in Oudtshoorn focused specifically on ways in which reconciliation and rehabilitation could be addressed, and on how to initiate discussions and make constructive links to the everyday experience and life of people in these communities.
- 50 The teams met weekly to plan, implement and evaluate the various stages of work. Special attention was paid to ensure that commissioners were as prepared as possible for hearings in regions where it was believed there might be an additional opportunity for investigation. Participating commissioners were provided with a 'case file', which contained statements, the Investigation Unit report and research

notes. Commissioners were given a final briefing on the eve of each hearing. In the case of the event hearings, commissioners on the panel were also furnished with a specific set of questions for the witnesses assigned to them.

- 51 During 1996, the work of the Commission was largely driven by hearings. Later in the year, this strategy came under criticism because of the low number of statements collected in comparison to other regions. The Commission found that a hearings-driven approach militated against the collection of statements, since the team was only able to set aside two of the ten weeks of each cycle to statement collection.
- 52 The introduction of the designated statement taker programme was seen as one way to overcome this problem. In addition, in November 1996, the region decided to divide its workforce into two teams - one for hearings and one for statement taking - in order to ensure equal attention to and promotion of proactive statement taking. Thereafter, the hearings team became responsible for all the hearings which had been diarised by the region earlier that year.
- 53 Two hundred and eighty-nine cases were investigated for presentation at twelve public hearings. In general, cases at these public hearings were chosen to highlight human rights violations that had been committed in each sub-region. There was criticism that the Cape Town office showed a bias towards investigations and hearings on violations committed by the security forces rather than those committed by the liberation movement. However, 90 per cent of statements demonstrated the involvement of the security forces in human rights violations.
- 54 Hearings were scheduled to fit into the national schedule that allocated one week per month to each region to avoid competition for the media, commissioners' time and other resources. Some hearings (in the south-west Cape, West Coast and central Karoo) were cancelled because there were not sufficient statements to justify a hearing. Research had already indicated that these geographical areas would not yield a significant number of statements on gross human rights violations. In addition, the statements collected reflected a number of violations falling outside the Commission's mandate.
- 55 Area hearings dealt with a variety of human rights violations cases. Some of the hearings focused on specific events or themes.

a **Peninsula (Cape Flats) (24 - 26 April 1996)**. This was the second hearing to take place nationally and the first to be held in the Western Cape. The cases

heard were drawn from events spanning the three decades under scrutiny by the Commission and were examples of the widespread resistance which took place. Some of the better known events referred to in the hearing included the ambush and killing of the 'Guguletu Seven', the shoot-out and killing of Anton Fransch in Athlone and the shooting of Yvette Otto in Valhalla Park. The hearing also drew attention to the death of Looksmart Ngudle, the first detainee to die in detention, and also to human rights violations committed by the liberation movement, such as the St James Church massacre.¹

b Northern Cape (Kimberley) (10 - 11 June 1996). This hearing focused on events that happened in the towns surrounding Kimberley, drawing particular attention to the indiscriminate shooting of civilians in this region. Other cases heard included the shooting and torture of Umkhonto weSizwe (MK) cadres, and the confession by Walter Smiles that he was responsible for a hand grenade attack for which two men were then serving a jail sentence (the Smiles case became the subject of an amnesty hearing).

c South East Cape (George) (17 - 19 June 1996).

This hearing focused on the human rights violations committed by *kitskonstabels* and the torture of young teenage activists who had their testicles, penises or breasts slammed in drawers. The hearing also heard about human rights violations committed by perpetrators from political organisations fighting apartheid, such as the killing of a community councillor and the attack on a Plettenberg Bay teacher.

d Boland (Breëriviervallei, Worcester) (24 - 26 June 1996).

This hearing focused on the actions of the *Amasolomzi* (vigilantes supported by municipal police), the recurrent shooting and killing of youths by the police and torture in police cells.

e Peninsula (Helderberg/Tygerberg) (5 - 7 August 1996).

This hearing focused on women, of whom two were activists and another had been caught in the crossfire. The hearing also highlighted violations committed against the Bonteheuwel Military Wing, the killing of the MK cadre Ashley Kriel and the Pollsmoor march.

¹ This was verified in an amnesty application.

f Karoo (Beaufort West) (12 -14 August 1996).

This hearing focused on community violence, such as the burning of residents who did not support the comrades, and the arrest and incarceration in 1968 of 100 men who allegedly conspired to poison the Victoria West water supply. Another case highlighted the torture of a young woman whose breast was slammed in a drawer.

g Northern Cape (Upington) (30 September - 2 October 1996).

The first day of the hearings was dedicated to the killing of the policeman, Jetta Sethwale, and the trial of the 'Upington Twenty Six'. The hearing gave valuable insights into conditions in prison and the trauma of being on death row. Investigation of the Upington cases showed that the police records of political cases between 1985 and 1993 are no longer available. The panel also heard evidence from the mother of the policeman who was killed, shedding light on her alienation and isolation. The case demonstrated the fact that, in communities as small as Pabalello, perpetrators and victims continue to live in close proximity to each other.

h Karoo (Colesburg) (7 - 9 October 1996).

The cases dealt with the torture of youth, attacks on *impimpi* (informers) on community councillors and police officers. The hearings were decentralised and held in De Aar, Hanover and Colesberg to make them more accessible to the communities concerned.

i Boland (Paarl & West Coast) (14 - 16 October 1996).

This hearing was accompanied by an exhibition at the museum that provided insight into gross human rights violations. A particularly moving exhibit concerned a conscript who died in combat. A statement of apology from the Nederduitse Gereformeerde Kerk was read. The hearing also focused on the clashes between the United Democratic Front (UDF) and Azanian People's Organisation (AZAPO), the 1960 killing of a suspected informer, and the killing of Vivian Matthee and others in the 1985 cross-border raid. This hearing was unique in that the pre-hearing preparation was specifically geared towards the process of building reconciliation in the community.

- 56 After the Boland hearing, the Cape Town regional office held event hearings. These focused on events that had attracted a great deal of public interest or had involved extensive legal proceedings. They were significant because they

confirmed long held beliefs about the role of the state in fomenting violence (as in KTC), the involvement of the police in provoking unrest in order to kill (as in the 'Trojan horse' incident) and the involvement of security forces based at Vlakplaas in the Western Cape (as in the 'Guguletu Seven' incident). All these hearings provided a window into understanding human rights violations during the period of intense resistance and repression that characterised the 1980s. These violations included:

- a 'Guguletu Seven' (Peninsula, 25 -27 November 1996 and 18 - 19 February 1997). The hearing concerned the ambushing and killing of the Guguletu Seven cadres and highlighted the Vlakplaas connection.
- b 'Trojan horse' (Peninsula, 20 - 21 May 1997). The Trojan Horse hearing highlighted the killing of three youths. Evidence was led to show that the police were not reacting, but deliberately set out to provoke unrest in order to kill.
- c KTC (Peninsula 9 -11 June 1997). The hearing highlighted *witdoek* and police complicity in an attack on the KTC community.

57 The region also organised other hearings, some of which were initiated at a national level. These included:

- a a health sector hearing
- b submissions by the SADF
- c political party submissions and recall
- d the Oudtshoorn reconciliation programme
- e section 29 hearings (national and regional)
- f children and youth
- g chemical and biological warfare

■ WORKING WITH OTHER ORGANISATIONS

- 58 From the start, the Cape Town regional office sought to develop meaningful and constructive interaction with different organisations and structures in order to maximise the Commission's activities in all areas. In the Western Cape, a strong lobby of interested NGOs had already expressed its desire to be involved in various aspects of the Commission's work. At the outset, it seemed likely that relationships with organisations could be built to assist the Commission in various ways. First, such organisations could help communicate the Commission's aims and objectives to local communities. Second, they could help it arrange public hearings, take statements or provide support for statement taking. Third, they could support people who testified before the Commission by providing individual and community support networks. Finally, they could help the Commission think through problematic or contentious issues at research seminars.
- 59 The Cape Town regional office benefited in particular from three experiences in formulating its strategies and determining its relationships with NGOs and community based organisations in the region: first, a workshop held with major stakeholders on 20 July 1996; second, on the ground experience gained during the first ten week hearing cycle and, third, lessons drawn from training sessions with designated statement takers. As a result of these, the region identified five categories of organisations it could work with.
- a those interested in providing mental health support: social welfare officers, psychiatric nurses, religious groupings, respected local community workers and organisations such as the Trauma Centre for Victims of Violence and Torture and Ilitha Labantu;
 - b those interested in promoting human rights: including advice offices, the Human Rights Commission, religious organisations and institutions and the Land Commission;
 - c those interested in promoting and supporting the Commission in general: Re-construction and Development (RDP) forums, local councils and political parties;
 - d those interested in the debates and policy issues that arose in the course of the work of the Commission;
 - e academics and others.

- 60 When the Commission moved into an area, an initial workshop was held to bring people together in order to find out how they could assist. Groups that were interested in supporting the work of the Commission helped logistics officers set up pre-hearing meetings and organisations volunteered to assist in the hearing preparation process. A similar gathering concluded activities in the area, including people who had made statements to the Commission. Support was solicited from a wide range of role players and stakeholders. These included the local councils, NGOs and community-based organisations, religious groupings and community leaders. As a result of such workshops, organisations assisted with communication (pamphleteering, putting up posters and loud-hailing) and logistics (helping to find and prepare venues for hearings and assisting with catering), and community briefers were trained to provide support to witnesses and to assist with debriefing and follow-up work.
- 61 The national office provided general communications materials and event-specific material for distribution by local organisations. The regional office produced posters, pamphlets (in the language(s) spoken by local people) and banners for each of the areas in which a hearing was held or where statement taking took place. Logistics officers often used loudhailers to inform community members of the time and venue for hearings. Community-based organisations and NGOs distributed pamphlets and posters and directed the logistics officers to the most appropriate places to call people to hearings.
- 62 It became clear that the pamphlets distributed were not necessarily reaching potential statement makers, so the communications strategy was broadened through the use of radio. Radio was used as a means of communicating with the public at large and with potential statement makers. Talk shows became a popular way to address specific issues that related to statement taking. Radio Xhosa, Bush Radio, Radio 786 and Voice of the Cape gave the Commission regular slots.
- 63 In general, the regional office found it difficult to draw white South Africans to hearings. The Paarl hearing provided an opportunity to try new ways to encourage members of that community to participate. As noted earlier, the hearing was preceded by an exhibition held at the local museum, which included material from conscripts, newspaper clippings and photographs which told of the struggles of the people of Paarl and the surrounding communities. In addition to the exhibition, the Commission organised a number of church services in Paarl, Pinelands and Bellville.

- 64 Organisations repeatedly expressed the need to know about the work of the Commission and how they could assist. A national newsletter was issued, and teams working in different communities made efforts to keep interested role players informed. Similarly, many schools and churches, university and women's groups invited commissioners to make presentations at their meetings.
- 65 A recurring theme was that of payment for services rendered. The Commission's policy was that it could not raise funds on behalf of organisations, but could provide letters of support for organisations that did work that assisted the Commission. Despite a decision to pay for the performance of or assistance with core tasks, this too proved impossible.
- 66 The socio-economic realities in rural areas added a particular dynamic to partnerships with NGOs and community-based organisations based there. NGOs in the vast rural areas of the Karoo, the southern and northern Cape and the West Coast and Namaqualand are severely under-resourced in contrast to NGOs in urban areas. They were particularly concerned to receive payment for their work. They were also often less able to provide the necessary services. It proved, for example, very difficult to set up support networks for deponents in the Karoo, where there was no NGO working in the mental health care field and where government services were scarce.² Thinly spread Commission, church and other resources made it impossible to provide coherent services in these areas.
- 67 Organisations (especially in rural areas) assisted with logistic arrangements for statement taking and hearings. These were normally conducted on a very short-term basis and were event focused. Unlike relationships with support networks, these contacts were normally short-lived, and the Commission found it difficult to arrange long-term assistance.
- 68 In all areas where the Commission worked, it identified advice office structures, as well as organisations and individuals that would be able to provide mental or medical health care and support to deponents. In most cases, the Commission negotiated an agreement that they would provide services to people referred by the Commission.

² For example, during the life of the Commission, only one psychiatrist supported by two psychiatric nurses served the area stretching from De Aar to Colesberg and Noupoort.

- 69 In the early stages, the Cape Town regional office identified the possible positive aspects of using designated statement takers recruited from local organisations. Local statement takers enjoyed levels of trust in their communities and had a good understanding of and were proficient in the language of the community involved. Thus, the regional office gave the go-ahead for the training of volunteers in the Peninsula as well as in the areas where the first three hearings were planned (George, Worcester, and Kimberley). The regional office also spear-headed the training manual for statement takers. Lack of resources, however, led to the suspension of most of these activities until the formal introduction of the designated statement taker programme.
- 70 Support networks extended not only to people invited to testify at hearings, but enabled statement takers to refer people who made statements to appropriate organisations and individuals. Informal referrals were also discussed at case conferences on a basis of urgency. A good example of such a network was the Mental Health Response set up in the Cape Peninsula. Unfortunately this type of network only functioned in the greater Cape Town area because of the lack of resources in rural areas.
- 71 Community briefers were also identified and trained to assist at all public hearings. These people were normally linked to community or NGO structures and provided their services free of charge. This strategy provided a positive answer to the lack of language representivity on the part of the briefers employed by the Commission. It had the further advantage that, after the Commission had left an area, people in the community could themselves provide support or set up peer support groups.
- 72 The regional office also developed post-hearing follow-up workshops in response to the 'circus-left-town syndrome' experienced after the first hearings. The close involvement of NGOs was the key to the effort to link people who made statements to existing support services in their immediate vicinity. Post-hearing workshops also provided feedback and a way of challenging individuals and organisations to take control of the ideas developed at the workshops. The issue of reconciliation was discussed, and it was made clear that the Commission could only initiate this process. Ultimately, reconciliation was something that the community would have to come to terms with itself.

73 Finally, research seminars took place on a monthly basis. These were the responsibility of the Research Department. The seminars took the form of panel discussions on issues of public interest, focusing largely on reconciliation and amnesty. Invitations were circulated widely amongst academic institutions and human rights organisations in the Peninsula and Boland areas.

Regional Office Reports

DURBAN OFFICE

■ INTRODUCTION

- 1 The Durban regional office operated across the two provinces of KwaZulu-Natal and the Free State – each with widely differing political and social dynamics. Although the office served a total population of just over ten million people (over 25 per cent of the total population of South Africa), KwaZulu-Natal has almost three times the population of the Free State. For this reason, the greater part of the work was concentrated in KwaZulu-Natal, where some eighty permanent staff members were employed, while a satellite office with a staff of seven people was set up in the Free State.
- 2 The Commission was designed to be implemented in a society in which transition had at least begun, and in which there was a degree of political tolerance. In KwaZulu-Natal, the ruling Inkatha Freedom Party (IFP) had not been party to many of the transitional negotiations and had, in fact, only come into the election process days before 27 April 1994. From its inception, the Commission was treated with mistrust and scepticism by the IFP and, in spite of written representations and personal requests by the most senior members of the Commission, it was not willing to encourage its members to take part in the process. However, at a very late stage, approximately one month before the cut-off date for submission of statements, the IFP called on its members to apply for reparations. Some 5 000 people subsequently made statements, a small percentage of whom were declared members of the IFP.

■ IDENTITY AND EXTENT OF REGION

- 3 The total area of KwaZulu-Natal (comprising the former KwaZulu homeland and the Natal province) is just over 92 000 square kilometres, with a sub-tropical coastline on the eastern border and the Drakensberg Mountains to the west. The province includes two large industrial areas: the 'Durban Functional Region'

(the third fastest growing urban area in the world in the past decade) and Richards Bay. Together, these two ports are responsible for the bulk of sea-based export and import for southern Africa.

- 4 The Free State is larger than KwaZulu-Natal and occupies a total area of 129 000 square kilometres. Its major urban centre is Bloemfontein, which is the judicial capital of South Africa.

Population

- 5 KwaZulu-Natal has a population of just over eight million people. The Durban area has the largest population of Asians outside of the Indian sub-continent, many of whom came to South Africa as labourers to work on the sugar plantations during the last century. In terms of the categories created by apartheid legislation, 81 per cent of the population of the province is African, 9.6 per cent Asian, 6.2 per cent white and 3.2 per cent coloured.
- 6 The Free State is much more sparsely populated and, although a larger geographical area, the population is under three million people. Approximately 83 per cent of people living in the Free State are African, 12 per cent white, and 5 per cent coloured. Very few Asians live in the Free State because, historically, apartheid legislation forbade their settlement in the area.

Languages

- 7 Most of the people in KwaZulu-Natal speak Zulu as a home language, and the majority of the white population is English-speaking. Other prevalent languages are South Sotho, Xhosa, Gujarati and Hindi.
- 8 In the Free State, the majority of the population is South Sotho speaking. Most of the white population is Afrikaans-speaking; ten times more people speak Afrikaans as a home language than English. Other major languages spoken include Xhosa, Zulu and Tswana.

Income/poverty profile

- 9 In KwaZulu-Natal, about 50 per cent of the economically active population is unemployed. The annual per capita income is R3 288. Nearly two million people in the 'Durban Functional Region' still live in informal settlements. Many people depend on informal employment, such as street trading, for their survival.

- 10 The Free State has an average annual per capita income of R4 416 and an unemployment rate of approximately 30 per cent. Many of the inhabitants of this province work as farm labourers under very poor conditions of employment or as contract labourers or migrant workers on the mines in other provinces.

■ METHOD OF WORK

Commissioners allocated to region

- 11 Two of the national commissioners were allocated to this region: the Revd Dr Khoza Mgojo and Mr Richard Lyster. Both had a record of extensive work in KwaZulu-Natal.
- 12 The Commission appointed four committee members to support its work in the region: Mr Mdu Dlamini, Ms Virginia Gcabashe and Mr Ilan Lax¹ for the Human Rights Violations Committee and Dr S'Mangele Magwaza for the Reparation and Rehabilitation Committee. In addition, Judge Hassen Mall and Judge Andrew Wilson of the Amnesty Committee were both based in the Durban office, although they travelled widely throughout the country for amnesty hearings. Ilan Lax also served on the national legal working group and acted as the regional legal aid committee representative.

Staffing

- 13 Several hundred applicants submitted *curriculum vitae* for consideration for employment. A personnel agency initially assisted with short-listing applicants, but the region soon took full responsibility for the staff selection process to ensure that appointments responded to political sensitivities and followed affirmative action criteria.
- 14 Of the first thirty people appointed, twenty had been unemployed and, of these, many had never worked previously. They were employed for their potential to do good work. This policy was maintained, with preference given to unemployed people where possible. The racial mix at all levels strongly reflected that of society. In addition, a gender balance of 50 per cent men and 50 per cent women was maintained. A staff member with a disability was also employed.
- 15 The Durban office came to employ a permanent staff of eighty. The satellite office in the Free State employed a staff of seven, including a manager.

¹ Later redeployed to the Amnesty Committee.

- 16 A regional manager and an information manager were appointed in March 1996. The region appointed a head of the Investigation Unit who was functionally responsible to the national office, but administratively responsible to the region. A support services manager was appointed in April 1996 and was responsible for the administrative functioning of the office. A regional bookkeeper was appointed together with three logistics officers. Other staff included an information manager and an assistant to the Human Rights Violations Committee. The Reparation and Rehabilitation Committee was supported by a regional co-ordinator and briefers, and the Amnesty Committee was supported by two secretaries. Three logistics officers were responsible for organising hearings and venues for statement taking, workshops, briefings and amnesty and section 29 hearings.

Accommodation, resources and equipment

- 17 The regional office was based in Durban and, despite some initial difficulty in finding suitable premises due to the tense political climate², a lease was finally signed for two floors of a new building. A corporate interior designer assisted with the design of the offices and acquisition of furniture and fittings.
- 18 The necessity for a satellite office in Bloemfontein quickly became evident. Staff from the main regional office tried to visit the satellite office regularly and to keep in touch, but staff in Bloemfontein often felt unsupported, under-resourced and out of touch with regional work. Despite these drawbacks, work done in the Bloemfontein office was extremely effective.

Methodology and assessment of work

- 19 The regional manager oversaw work in the region, made sure that national decisions were implemented regionally, ensured the control of finances, and regularly reported on regional work to the chief executive officer.
- 20 The core of planning took place at weekly management meetings. Other meetings supplemented these. The Reparation and Rehabilitation and the Human Rights Violations committees held regular meetings and, about every six months, there were regional strategic planning meetings to prepare for briefings and hearings, and devise an overall vision for the region.
- 21 An attempt was made to evaluate the work of the region regularly, using procedures where staff, colleagues and managers evaluated themselves. However, time

² The offices and equipment of the Independent Electoral Commission had been damaged, and many property owners were wary of leasing property to the Commission in a tense political climate.

constraints made this process rather difficult to implement.

- 22 The Commission was, in many respects, a very hurried process. To investigate and produce a satisfactory product in only two years was very difficult both in terms of time and resources. Even at a very late stage of operations, attempts to interpret the Act revealed that practical implementation of some aspects was impossible, despite several changes to the Act and to the regulations. Furthermore, owing to delays in appointments of staff and in the full operation of the database, the office only began working at full capacity in June 1996. Then, in July 1997, hearings and proactive statement taking had to stop, as the Commission began to release staff in the gradual process of closing down. This meant that, although the legislation provided for a two-year life span, the Commission was only fully operational for just over a year.
- 23 As in other regions, groups of staff left at the end of July 1997, at the end of September 1997 and in mid-December 1997. This roll out plan was managed as sensitively as possible, with assistance given to staff to find jobs where feasible, to improve their interviewing skills and to prepare *curriculum vitae*. A four-week course by a counselling psychologist also helped staff to cope. There was also an attempt to fill longer-standing posts where staff resigned. The roll out plan left the region very short staffed in some departments.
- 24 The regional office was granted two extensions, however, initially until March 1998 and then to the end of June 1998. Most of the remaining staff stayed on until the end of May, and a small staff component remained until the end of June in order to provide support for the commissioners, the Amnesty Committee and investigators.

■ WORK OF THE COMMISSION

Statement taking

- 25 Eight regional statement takers worked throughout the region, often spending days out of the office as they visited rural areas. Preparation included briefings, pamphlet distribution and radio publicity. In many areas, hostility was shown towards the statement takers and, on several occasions, they had to be withdrawn when their safety could not be assured. In some cases, the Public Order Policing Unit of the South African Police (SAP) was asked to accompany statement takers, and arrangements were made with local *indunas*³ for permission to enter certain areas.

³ Zulu headmen

- 26 The designated statement taker programme was launched in Durban in April 1997. Archbishop Tutu made a special plea for the involvement of the IFP, either directly with the Commission or through the non-governmental community. Once again, the success of the plea was limited.
- 27 The designated statement taker programme employed two community liaison officers, one in Bloemfontein and the other in Durban. By forging contractual relationships with over forty organisations, they greatly increased the statement taking capacity of the office and its ability to reach out to remote areas in the two provinces.

Information flow

- 28 The Information Department was responsible for the collection of statements, the control of all documents within the regional office, data capturing, coding and processing, as well as the maintenance of the database. Later, the capturing, coding and processing functions were combined.
- 29 Information meetings were held weekly to discuss the development and implementation of the information flow policy and to evaluate cases, the quality of statements taken and progress made.

Investigations

- 30 The Investigation Unit was divided into sections dealing with general investigations, corroboration, amnesty applications and special investigations. The Investigation Unit employed four members of the police and four civilians, two of whom were seconded from the Department of Justice.
- 31 A sub-unit dealing specifically with corroboration was formed in early 1997 and employed a co-ordinator assisted by seven staff members. Separate funding was raised nationally for this purpose. This unit was later enlarged to include twenty staff members. It had the enormous task of corroborating all the late statements, many of which related to arson and were difficult to prove. Victims had been unwilling to report such instances to the police for fear of further retaliation.
- 32 Three police observers from Denmark and Sweden were assigned to this unit and played an important role in its functioning.

- 33 The Investigation Unit held weekly meetings to share information, plan work and report on progress.

1996 hearings in the KwaZulu-Natal/Free State Region

- 34 There were only two commissioners assisted by four committee members in the region and the burden of the public hearing schedule was heavy. Commissioners and most of the committee members attended most hearings. This was particularly demanding during 1996 when there was more than one hearing a month.
- 35 In the early days, briefings and workshops were held in many areas, and it was difficult to fit all the events into the programme. Yet, despite the regular planned briefings, there were many additional requests for briefings from rural and urban communities who felt that they were insufficiently informed about the process.
- 36 The IFP criticised commissioners, committee members and some staff members in this region throughout the process. From the time that the first hearing took place, when several deponents gave evidence of IFP involvement in violence, hostile accusations of bias were received by letter and in newspaper articles, many in the form of personal attacks on certain commissioners and committee members. As indicated, the IFP refused to take part in the process and, despite many approaches, the Commission in the region had very little success in changing its attitude. Representation at the hearings was, therefore, inevitably skewed.

a Durban (7-10 May 1996).

The first human rights violations hearing in this region took place at the Jewish Club in Durban. The hearing was organised so as to give as wide a view as possible of human rights violations which occurred in the two provinces, and forty-three cases were heard from all over the region. Testimony was heard about the killing of the parents of a one year old child in a cross border raid into Lesotho and a bomb in central Durban which killed the parents of a young boy. The Commission also heard the testimony of the mother of Stompie Seipei, who was killed in Soweto, as well as a submission on difficulties with the justice system.

b Bloemfontein (2-4 July 1996).

The second hearing took place in Bloemfontein, where forty cases were heard from all over the Free State with the aim of painting a broad picture of human rights violations in that province.

c Pietermaritzburg (23-25 July 1996).

The third hearing took place in the City Hall, Pietermaritzburg. Forty-nine cases were heard, including testimony relating to the murder of prominent trade unionists in Mpophomeni Township. The hearings were very well attended.

d Port Shepstone (12-14 August 1996).

At the Port Shepstone hearing, thirty-nine cases were heard from an area torn apart by political violence, especially in the rural areas surrounding the town. Evidence was heard of close co-operation between the police and the IFP in this region. It was difficult to find a suitable venue for these hearings because people feared reprisals, and very few community members attended.

e Durban (28-30 August 1996).

The second hearing in Durban took place at the Christian Centre. Witnesses described incidents such as the death of fifteen young people who were amongst the mourners attacked after the killing of activist attorney, Victoria Mxenge. Of the thirty-six cases heard, twenty-four were directly associated with murders. The majority of the victims were members of the African National Congress (ANC), but four were from the IFP, and eleven were of uncertain political affiliation. Most of the cases dealt with were from Umlazi in the Durban region, and there was much evidence to demonstrate a relationship between the police (both the SAP and the KwaZulu Police (KZP)) and the IFP. Many of the deponents were women, but only two spoke of their own experiences. The rest spoke of crimes against their families.

f Northern Natal (10-12 September 1996).

The sixth hearing took place at Newcastle. Twenty-nine cases were heard, including that of the brutal slaying of trade unionist and ANC activist, Professor Hlalanathi Sibankulu, whose burnt body was found in his car. Most of the cases involved murder, harassment and detention at the hands of the Security Branch of the SAP or the KZP, sometimes in collaboration with the IFP in the region. There were also cases where the Special Branch worked in the townships without the participation of the KZP. In the case of the Hlobane Mine massacre, where eleven people were killed, witnesses implicated mine management in addition to the Special Branch and the IFP. Another trend that emerged at this hearing related to disappearances. Some children had not been seen by their families since they went into exile, which left unanswered questions as to their whereabouts.

g Welkom (8-10 October 1996).

The focus of this Free State hearing was on the roles played by black vigilante

gangs in fomenting violence. Allegations were made against the A-team, the Eagles and the 3 Million gang, all of which operated with the collusion of the SAP against the United Democratic Front (UDF) in the area.

h Hearing on assassinations, Durban (24 October 1996).

This event focused on specific assassinations. Ms Daphne Mnguni spoke about the death of her brother Mr Msizi Dube, who had been an activist since the 1950s and was shot in 1983 on his way home from a meeting. Four men served prison sentences for his murder, and one received the death penalty. Fatima Meer and Harold Strachan told of attempts on their lives, allegedly by the Security Branch, and several members of the family of leading anti-apartheid intellectual Rick Turner gave testimony about his death. He was shot through a window of his house in the presence of his two young children.

i Hearing on women, Durban (25 October 1996).

Following the testimony on assassinations, a second day was set aside to hear testimony from women. It had become apparent that, although many women gave evidence at the hearings, very few spoke about their own experiences. The hearing was open only to women; even the technicians on site were women. Ten women spoke very eloquently about their own suffering and brutal treatment at the hands of men. In two of the three rape cases heard, the women had never spoken about their experiences before. In one of these instances, a woman was gang-raped by some ANC youths over a period of a month and conceived a child. She reported that one of the men who raped her began visiting her home regularly and claimed parenthood of the child, which she was finding very difficult. Some of the women targeted were not themselves activists, but were family members of activists. Nosizwe Madlala-Routledge, Phyllis Naidoo and Marie Odendaal-Magwaza read special submissions on their experiences as women activists. A large number of deponents asked for psychological counselling to assist them in dealing with their trauma.

j Empangeni (4-6 November 1996).

Testimony was heard from twenty-five people in the highly volatile Empangeni area. Of the eighty deponents whose cases could potentially be used, only twenty-eight were prepared to appear in public, which was an indication of the political intolerance and intimidation in this region. In addition, one-third of the selected witnesses failed to arrive at the hearings because of intimidation. Testimony was heard about three massacres that resulted in twenty-three deaths. One of the cases concerned the death of Dr Henry Vika Luthuli, who was gunned down in his

surgery. In that instance, the investigating officer was killed, and other detectives were afraid to pursue their investigations. Ms Mary de Haas of the University of Natal gave a background submission on the political history of the area, and the failure of the SAP and KZP to investigate properly and deal with the situation.

k Hearing on the 'Seven Day War', Pietermaritzburg (November 1996).

The eleventh and final hearing of 1996 took place in Pietermaritzburg. This was an event hearing that heard evidence on the 'Seven Day War', which took place in March 1990. Evidence pointed to very close co-operation between Inkatha members and the riot unit of the SAP, leading to the deaths of hundreds of people. Tensions at this hearing ran high when a local IFP leader, David Ntombela arrived, accompanied by his lawyer and several IFP members. Ntombela's lawyer read a statement as to why his client would not testify.

l Vryheid (16-17 April 1997).

The Vryheid hearing attempted to reflect a cross section of human rights violations. Evidence pointed to collaboration between the KZP and the IFP in collective action against the ANC and the UDF in over 85 per cent of the cases.

m Parys hearing (28-30 April 1997).

Many witnesses alleged that there was state complicity in violence in the form of police involvement with black vigilante gangs working to destabilise communities.

n Children's hearing (14 May 1997).

A special hearing for children was held. During the two days before the hearings, children who had been affected by violence were given the opportunity to express themselves through art and drama workshops. Their stories were presented at the hearing by caregivers, and some recordings of the children's voices were played.

o Bruntville (27-29 May 1997).

The Bruntville hearing dealt with political violence in the area and also with the 'Bruntville massacres' where Inkatha hostel residents attacked local township residents, killing many women and children. Because of the unwillingness of the IFP to appear at these hearings, Human Sciences Research Council (HSRC) researcher Dr Anthony Minnaar was asked to give an overall impression of what happened in this part of the Midlands.

p Hearing on the 'Caprivi trainees' (4-15 September 1997).

A special hearing was scheduled to deal with the role of the Caprivi trainees.

Owing to the volume of advance research and preparation needed, this hearing – vital to an understanding of violence in this region - was twice delayed. Witnesses alleged that the South African Defence Force had trained members of Inkatha for the purposes of forming a covert offensive para-military unit to be deployed against the political enemies of the state. Evidence also indicated that this group was responsible for killings and attacks in many communities and showed, too, that very few convictions for these attacks had succeeded.

q Second children's hearing (June 1997).

A further special hearing was held for children in the Free State.

r Ladybrand (24-26 June 1997).

The final hearing of the Durban regional office took place at Ladybrand, which dealt with evidence regarding cross-border raids.

37 In addition to these hearings on human rights violations, section 29 hearings (*in camera* investigative enquiries) were held at the regional office. Several amnesty hearings were also held in various centres in the two provinces.

38 As was the case for national events, media coverage of the hearings was excellent. The media liaison officer had very good relationships with the print media and television, and there was thorough press coverage of hearings and other work over the entire period, often on the front pages of several publications.

Reparation and rehabilitation

39 The region's four briefers were supervised by co-ordinators in the Durban and Free State offices. Briefers provided support and counselling services to victims and witnesses who had made statements, especially to those who appeared at hearings. They also set up structures to continue to provide support for victims after the life of the Commission.

40 It was noted in the second Durban hearing and the Northern Natal hearing that the material expectations of those testifying were low. Most expressed a wish for an investigation into deaths that had occurred to establish who had committed the violations and why. Many requested assistance with schooling and expenses for families of victims, assistance with tombstones and pensions for the elderly. At the women's hearing, counselling was requested. Very few people asked for direct financial compensation.

■ WORKING WITH OTHER ORGANISATIONS

- 41 Workshops were held with non-governmental organisations (NGOs), community-based organisations, relevant government departments and churches to ensure a close relationship with organisations in the region. Areas of co-operation included planning, policy formulation for reparation and rehabilitation, and trauma counselling and support for victims.
- 42 The regional office established a close association with the Programme for Survivors of Violence, the Diakonia Council of Churches, the Natal Church Leaders' Group, and other NGOs and community based organisations involved in providing psychological and legal support and advocacy. Many members of staff had come from and had close ties with these organisations, and existing relationships were strengthened in this way.
- 43 The Natal Church Leaders' Group was involved in getting a Reconciliation Committee working in the region, as it was felt that the churches should be part of the process and would, indeed, carry on the work after the end of the official life of the Commission.
- 44 A very close relationship developed with the Mennonite Central Committee, represented by Dr Karl and Ms Evelyn Bartsch, which trained Commission staff and associates from the NGO communities in trauma counselling. Their book on healing for victims of trauma was also widely distributed to support groups in KwaZulu-Natal and in the Free State.

Regional Office Reports

EAST LONDON OFFICE

■ INTRODUCTION

- 1 The East London regional office of the Truth and Reconciliation Commission (Commission) faced its first real challenge with the announcement that the launch of the Human Rights Violations Committee hearings would be held in the Eastern Cape. This was met with threats of legal action and interdicts aimed at preventing the event from taking place.
- 2 There was some popular discontent as well. People had difficulty in understanding some of the changes that were taking place, particularly with regard to the integration of the security forces of the former Ciskei and Transkei with the South African Defence Force (SADF), Umkhonto weSizwe (MK) and the Azanian National Liberation Army (AZANLA). In addition, the redeployment of numbers of former security police meant that many perpetrators of human rights abuses were now in the service of the new African National Congress (ANC)-led government. Considerable bitterness was expressed by those who had suffered abuse at the hands of the former state and who felt that the 'negotiated settlement' (of which the Commission was a product) had benefited people other than themselves. Not only did they feel that they had not seen justice done concerning perpetrators of human rights abuses but, in some cases, those same perpetrators were still in positions of power. This scenario was not particularly conducive to the desired culture of respect for human rights and a positive attitude towards the work of the Commission.
- 3 Some families of victims of human rights violations, such as the family of Steve Biko and Griffiths and Victoria Mxenge, were deeply suspicious of the Commission's ability to address their deeply felt grievances towards those responsible for the deaths of their loved ones. At the time of the launch of the Commission, the Azanian Peoples' Organisation (AZAPO) and members of some of the victims'

families repeatedly and publicly voiced their objections. The same organisation, together with the Biko and Ribeiro families, took the matter to the Cape Provincial Supreme Court Division for an order to restrain the Commission from conducting hearings until the Constitutional Court had ruled on the validity of their constitutional challenge. Former members of the security forces also launched a legal action. Human Rights Violations Committee was legally justified, in the course of its public hearings, in receiving evidence from witnesses adversely implicating any person as a perpetrator without prior notice being given to them.

- 4 This legal action took its toll on the Commission's work, both in the region and nationally. Apartheid victims resented the fact that they could not mention the names of those they alleged were their persecutors without giving them warning. Some were further embittered by the fact that the legal challenges imposed incalculable expense on the taxpayer. Under the principle of vicarious liability, the new government continued to be financially responsible for the defence and litigation of those who served the previous government if the matter or criminal charge related to acts committed in the execution of their duties. The Commission, however, was obliged to abide by the ruling of the courts and sought to uphold what were seen as the natural justice rights of alleged perpetrators.

■ IDENTITY AND EXTENT OF REGION

- 5 The East London regional office was located at a central point in the region. It served an area stretching from the KwaZulu-Natal border to the Tsitsikama forest on the border of the Western Cape province. It incorporated the eastern part of the old Cape Province, the former 'independent homelands' of Transkei and Ciskei, and the so-called 'border corridor', a strip of land between the two homelands which previously formed part of white South Africa. East London and Port Elizabeth are the two main industrial centres in the region, and Grahamstown, Bisho and Umtata serve as judicial and administrative centres.

Population

- 6 The region has a population of about six million, the third largest in the country. While roughly half of the total population is urbanised, the majority of the African population lives in rural areas that previously fell under homeland administrations.

- 7 The overwhelming majority of the population (approximately 87 per cent) is African. Six per cent of the population is made up of white people who live mainly in the industrial cities and generally in the western half of the province. Coloured people constitute 6.7 per cent of the population. A small number of Indians also resides in this province.

Languages spoken

- 8 African people in the area are almost entirely Xhosa-speaking. White people are fairly evenly divided between English and Afrikaans speakers, and the coloured population consists of both Afrikaans and English speakers.

Income/poverty profile

- 9 The Eastern Cape Province is the second poorest of the nine South African provinces (following the Northern Province). Unemployment is estimated at 65 per cent of the economically active population. The 1991 Development Bank figures show that over half the adult population received no formal education. Levels of literacy and life expectancy are lower and levels of poverty higher in the Eastern Cape and Northern Province than in any other provinces. This poverty is concentrated in the former homeland areas, which are under-resourced and lacking in infrastructure and basic health care facilities.

■ METHOD OF WORK

Commissioners allocated to region

- 10 The regional office was allocated a single commissioner, the Revd Bongani Finca, formerly of the Border Council of Churches. Four committee members were assigned to it: Mr Ntsikilelo Sandi, Ms Judith 'Tiny' Maya and Ms June Crichton for the Human Rights Violations Committee and Archdeacon Mcebisi Xundu for the Reparation and Rehabilitation Committee. Ms Motho Mosuhli was later appointed to replace Ms Maya, who resigned from the Commission.

Staffing

- 11 The total staff component in the region was seventy persons, although numerous vacancies were experienced throughout the life of the Commission. Several organisations helpfully released staff to the Commission without insisting on proper notice periods. Some staff members were seconded to the Commission, but most were hired directly. The lack of skilled persons was severely felt in the East London office and a large staff turnover was experienced.
- 12 The Investigation Unit was hardest hit by staffing problems, enduring three different heads of unit. Its work was further hampered by the lack of proper hand-over between the successive co-ordinators. It also proved extremely difficult to find and retain suitable investigators. All this had a serious effect on the unit's work.
- 13 Bonding between staff who came from different political, work and racial backgrounds was a challenge, and major efforts were made to build relationships, trust, communication and understanding. A staff association played an invaluable role and enjoyed support from almost all members of staff.

Accommodation, resources and equipment

- 14 After some teething problems, accommodation for the entire East London regional office was eventually located within the same building. Offices were spread across four floors, with the Commission occupying only two of these floors in their entirety. This made security of the building, people, equipment and documentation an ongoing problem.
- 15 A small satellite office was later set up in Port Elizabeth to augment the work taking place in East London.
- 16 Despite excellent computer facilities, there was a lack of computer skills in the office. An e-mail link helped communications with staff in Port Elizabeth.
- 17 A shortage of office equipment and vehicles also created problems.

Methodology and assessment of work

- 18 The regional office used unit and departmental meetings to facilitate greater co-ordination and management of its work. Regular meetings included staff meetings,

regional management meetings and regional committee meetings for committee members, the commissioner and the regional manager.

- 19 It took a considerable time before systems adopted by the Commission nationally were properly implemented in the East London office. This was owing in part to a lack of understanding of the systems by staff, and partly to the shortage of departmental heads. This particularly affected work on human rights violation cases.
- 20 The lack of systems and crucial personnel resulted in a lot of unnecessary initial confusion and uncoordinated work in the office. However, many staff used their own initiative to get work underway, with several staff members performing duties beyond those described in their job descriptions.
- 21 Fiscal and other controls were put in place in the office, although the absence of a regional budget undermined the effective monitoring and control of expenditure at regional level.

■ WORK OF THE COMMISSION

Statement taking

- 22 Statement taking began early. Both statement takers and briefers helped to get the first human rights violation hearing off the ground in April 1996 by taking a significant number of statements. During the first hearing, the statement takers and briefers also helped transport witnesses to the hearing and protected them from crowds of journalists and other interested people.
- 23 The East London office eventually employed eight statement takers, based mainly in towns throughout the region (Umtata, Butterworth, Queenstown, Grahamstown and Port Elizabeth) for easy access by deponents. After a few months, however, it became clear that few people were coming forward to make statements, and a more proactive strategy was needed. By the beginning of 1997, personnel were re-deployed: one each in Umtata and Grahamstown and three each in Port Elizabeth and East London.

- 24 Poor access to vehicles impacted on statement taking programmes and vehicles were rotated in an attempt to accommodate the needs of statement takers, whose responsibilities also included fetching witnesses for the hearings on human rights violations and identifying which communities had not yet been contacted for statement taking. The shortage of vehicles meant that statements were taken largely in cities and towns and at the human rights violation hearing venues. Rural villages were, of necessity, often ignored.
- 25 Later assessment revealed that there should have been closer links between the investigation work and statement taking. Despite setbacks and problems, by June 1997 statement takers had recorded over 2 000 statements in the Eastern Cape.

Information flow

- 26 The job of the data analyst was to do a basic analysis of the hand-written human rights violation statements and capture details on the Commission's database.
- 27 Because the Commission's database was not functioning until mid-1996, analysts were not hired until long after the office had been set up. There was also no clarity in the East London office about what the job entailed, which resulted in the hiring of people without the correct qualifications. In addition, with no information manager to oversee the process, work was done in a haphazard and unco-ordinated fashion for several months. This contributed to a filing crisis which dogged the East London office for much of its existence.
- 28 Despite these obstacles, the data analysts managed to work speedily through the backlog of hand-written cases, logging almost all of them onto the database by the end of 1996. Some learnt rapidly on the job, showing a remarkable determination to get the work done.

Hearings in the Eastern Cape

- 29 The office held fifteen human rights violation hearings (ten during 1996 and five in 1997) in twelve different towns throughout the province. Nearly 700 witnesses were heard, including some alleged perpetrators and a small number of witnesses who made submissions on behalf of organisations or provided background information. Thus, about one-third of the people who made human rights violation statements by June 1997 were given the opportunity to testify at the public hearings.

- 30 The success of the first hearing in East London gave the office a great boost of confidence, despite a bomb scare during the morning session. Thousands flocked to the hearing and, by the end of the first day, support for the Commission and its work was confirmed. Twenty witnesses testified about their direct and/or indirect experiences of gross human rights violations - including killings, disappearances, torture and various forms of severe ill treatment at the hands of either the state security forces or liberation movements. This set the standard for the rest of the hearings organised by the East London office.
- 31 Almost all the Eastern Cape hearings were very well attended, with crowds sometimes filling halls to beyond capacity. Generally, staff felt that the hearings had been successful both in giving victims and their families an opportunity to be heard and in working towards reconciliation.
- 32 Hearings were often logistic nightmares, and the fact that they were all fairly successful is a tribute to the hard work and dedication of the staff involved in them. The frequent changes to the schedule for human rights violation hearings - necessitated by efforts to cover as much of the province as possible - meant that planning was disrupted, often resulting in last minute rushes.
- 33 Staff went to a lot of trouble to identify different types of cases for the human rights violation hearings so that both high and low profile cases were heard, witnesses from across the political spectrum were given a voice, and both individual and group cases were heard. Occasionally alleged perpetrators were able to give their side of the story at the same hearings as their accusers. The hearing at Lusikisiki, for example, became a landmark in uncovering the history of rural rebellions from the early 1960s.
- 34 Amnesty hearings were difficult because there was no member of the Amnesty Committee in the office. There were also no clear guidelines on how to conduct the hearings. A lengthy amnesty hearing in late 1997 put a great deal of pressure on the office at a time when staff numbers and morale were low because of the roll out plan.
- 35 Inevitably, the hearings took priority, but there was a need to focus on other cases too. As noted earlier, while about one-third of the cases collected by the East London office by June 1997 were dealt with in public hearings, other cases required the same level of attention. Each case needed to be investigated and an eventual finding made by the Human Rights Violations Committee.

36 Following is a list of the human rights violations hearings organised in the Eastern Cape and a short description of important trends or cases dealt with:

a **East London (15 - 18 April 1996).**

This was the national launch of Human Rights Violations Committee hearings, the first of its kind. It received overwhelming media coverage and community support. For the first time, the South African community across the racial divide was exposed to the gruesome human rights violations that happened in the past. This was the hearing that was disturbed by a bomb threat.

b **Port Elizabeth (21 - 23 May 1996).**

The second hearing was equally enthusiastically received by the community, with non-governmental organisations (NGOs) giving counselling and support. The Commission's legality was also tested by a court application, lodged by the attorney of an alleged perpetrator of human rights violations, which consequently prevented the Mthimkulu case from being heard.

c **Umtata (18 - 20 June 1996).**

These hearings were a departure from the first two in that they concentrated on abuses that occurred in rural areas under the homeland system. The homelands security forces proved to have been more brutal than those of the South African state.

d **Port Elizabeth (26 - 27 June 1996).**

This was a special hearing for the Mthimkulu case, which could not be heard in May because of a court application. In another case, Mzwandile Maquina, an alleged perpetrator, was afforded the opportunity to tell his story and respond to allegations against him.

e **Queenstown (22 - 24 July 1996).**

Forty cases, which included the massacre of eleven people in a church hall, were heard.

f **Uitenhage (26 - 28 August 1996).**

This was an event hearing and looked at the 1985 'Langa massacre' in which forty-three people were killed. The conflict between the United Democratic Movement (UDM) and *Ama-Afrika* featured prominently.

g Bisho (9 - 22 September 1996).

This hearing focused on the 'Bisho massacre'. It was the first time that testimonies of victims and those of the alleged perpetrators were heard in the same hearing. Also, the way in which submissions of the alleged perpetrators were scrutinised and interrogated was a clear demonstration of the Commission's determination to present as full a picture as possible.

h Duncan Village, East London (23 - 24 September 1996).

This event hearing focused on the killing of twenty-one people who were returning from a funeral service of the political activist, Victoria Mxenge.

i Aliwal North (21 - 23 October 1996).

The regional office tried to reach out to small, rural towns, where *kitskonstabels* operated. Sixty-one deponents from Aliwal North, Barkly East, Burgersdorp and Sterkspruit gave testimony. The Human Rights Violations Committee observed that human rights violations in small towns did not receive much publicity, and people consequently suffered in silence, without adequate legal representation, at the hands of the state apparatus.

j Bisho (18 - 19 November 1996).

This was a follow-up to the 'Bisho massacre' hearing and Brigadier Oupa Gqozo testified. After the hearing, there were allegations that the Commission's panel was biased against the perpetrators.

k Cradock (10 - 11 February 1997).

Testimony included that of two young people aged fifteen years who were caught in the crossfire when they were very young. They were, according to the records, the youngest people ever to testify before the Commission.

l Lusikisiki (24 - 26 March 1997).

The hearing took place in a deep rural area and was hampered by logistic problems, such as the lack of electricity. However, it was successful in giving insights into lesser-known South African history, like the 1960 Pondoland revolt.

m Grahamstown (7 - 9 April 1997).

A number of shooting incidents by the security forces and 'necklacings' were reported at this hearing. This was the first hearing where a number of alleged perpetrators had legal representatives.

n King William's Town (12 - 14 May 1997).

Sixty-six witnesses testified about struggles with headmen, especially when Oupa Gqozo's party in the Ciskei homeland sought to oppose progressive movements.

o Mdantsane (9 - 13 June 1997).

This hearing focused on killings that occurred during the 1983 bus boycott. Wreaths were laid at Egerton and Highgate, where Ciskei and Azanian Peoples Liberation Army (APLA) armed forces had attacked people. Human rights violations relating to women were also given a full day at this hearing.

p Youth hearing, East London (18 June 1997).

Youth structures and surrounding schools made submissions.

q Faith communities hearing (17 - 19 November 1997).

The faith communities hearing was a national hearing, hosted by the region. Prominent faith community leaders spoke about their role during the apartheid era.

Reparation and rehabilitation

- 37 The Reparation and Rehabilitation Committee had a relatively small presence in the East London regional office, with a committee member based in the Port Elizabeth office and three staff members in East London. Although the size of the group made communications and sharing responsibilities easier, it meant that staff had to work under pressure, as there were large numbers of victims to deal with.
- 38 The Committee actively participated in briefing witnesses during and after hearings. It provided support and counselling services to victims and witnesses and found time for home visits in urgent cases. It focused on referrals of victims to psychological and counselling services, and worked on setting up structures to continue supporting victims beyond the Commission.
- 39 Work included the referral of children of deponents to various government departments for bursaries; accessing assistance from the Department of Health and Welfare and local universities; helping organise a youth hearing, and promoting the erection of monuments (as for the victims of the 'Ngquza Hill massacre' in Pondoland and the 'Bisho massacre').

- 40 Individual examples of the committee's work included assistance to the family of murdered activist Phumezo Nxiweni, whose bones were exhumed from a farm in KwaZulu-Natal and reburied; and the accessing from private donors of a wheelchair and physiotherapy for activist Ernest Malgas.
- 41 The Committee held workshops with interested parties to feed into national reparation and rehabilitation policy. In addition, a local psychologist was retained as support for the emotional needs of staff members.

■ WORKING WITH OTHER ORGANISATIONS

- 42 Public relations were crucial for the Commission throughout its life, but particularly in the difficult early months. Without either a communications or a community liaison officer, many of these tasks fell to the statement takers.
- 43 The most notable opposition came from the Biko and Mxenge families and their supporters and, while their right to oppose the Commission was respected, they continued to make their views known when they attended some of the Commission's hearings.
- 44 In general, the East London office was extremely fortunate in the support it received from communities. However, staff did encounter a number of problems in outreach and fieldwork, including a great deal of ignorance about the Commission. Amnesty issues particularly needed explanation. Many NGOs in the region were closing down, and those that remained often did not have the resources to help. Some found that communities strongly associated the Commission with the government, rather than seeing it as an independent body. Finally, statement takers found that, in some areas, branches of the ANC were promoting the Commission as an instrument of their own party rather than as something for all.
- 45 A substantial number of those who made statements to the office were illiterate, which often affected their knowledge of the process and impacted on the Commission's ability to stay in contact with them.
- 46 In 1997, the designated statement taker programme was set up and became a crucial addition to internal statement taking programmes, freeing staff to work in other areas. Three NGOs were contracted to assist with the programme: Lawyers for Human Rights, through its links with advice offices and the

Paralegal Association, covered the eastern half of the province and the Tsitsikama area; the Institute for Pastoral Education in Grahamstown covered the Albany area and the Eastern Cape, and the Adult Learning Programme in Port Elizabeth covered the Karoo-Midland region. These three organisations provided forty-two designated statement takers.

- 47 Training of the designated statement takers went well, and the quality of the statements was high. However, the programme was very slow to get off the ground, due to time constraints and financial misunderstandings. Moreover, there were problems and delays in getting statements to the office. Unfortunately the programme was not very successful; by mid-July, fewer than seventy statements had been received from designated statement takers.

Regional Office Reports

JOHANNESBURG OFFICE

■ INTRODUCTION

- 1 The Johannesburg regional office was located in the heart of downtown Johannesburg and served four provinces: Gauteng, Mpumalanga, the North West Province and the Northern Province. The area includes some of South Africa's biggest and most industrialised urban areas, including Johannesburg, the East Rand, the Vaal Triangle, Pretoria and Pietersburg. Yet most of the territory is rural, with vast stretches of bushveld dotted with remote villages.
- 2 A total of 6 200 statements was made to the office; twenty-five Human Rights Violations hearings were organised at which witnesses gave oral testimony of gross human rights violations, and six post-hearing follow-up meetings were held in the different areas.
- 3 The biggest challenge facing the Johannesburg office was how, with limited human and logistic capacity, to deal with the large population and the wide scope of human rights violations that occurred in this region. The office was allocated a similar staff component to the other regional offices, even though the area it served houses over half the nation's population. However, through a combination of creative strategies and hard work by the Commission's staff, the Johannesburg office managed to cover a good many areas that would otherwise have remained untouched. Yet, because of the shortage of resources, the office was not able to cover the full area comprehensively.

■ IDENTITY AND EXTENT OF REGION

Population

- 4 The Johannesburg office served a population of 16.9 million people, out of a total population of 37.9 million people countrywide. Its area of responsibility included the old Transvaal province and the former homelands of Bophuthatswana, Venda, KwaNdebele, Lebowa and Gazankulu.

Income/poverty profile

- 5 Poverty and deprivation take various forms in the region. In urban and peri-urban areas, nearly two million people came to live in approximately one hundred informal settlements in the central Witwatersrand region, with an estimated 2 500 homeless people in central Johannesburg alone. In rural areas, between 1.5 million and 2.5 million farm labourers and their families live in great poverty in the former Transvaal Province, vulnerable to stark hunger as a result of drought. The Northern Transvaal had the highest dependency ratio in the country (the number of people supported by one economically active person) at 4.8:1 in 1990.

Languages

- 6 All of South Africa's eleven official languages are spoken in this area.

■ METHOD OF WORK

Commissioners allocated to region

- 7 As the convening commissioner, Dr Fazel Randera assumed overall responsibility for the work of the office. He was also a member of the Human Rights Violations Committee. Joint deputy chairpersons of that committee, lawyers Ms Yasmin Sooka and Mr Wynand Malan¹ were based in this office. These commissioners were assisted by Human Rights Violations Committee members Dr Russell Ally, Mr Hugh Lewin and Ms Joyce Seroke.

¹ Dr Malan was later re-deployed to the Amnesty Committee and replaced as vice-chairperson by Mr Richard Lyster.

- 8 Ms Hlengiwe Mkhize, a psychologist and chair of the Reparation and Rehabilitation Committee, was based in the office and was assisted by Reparation and Rehabilitation Committee members Mr Tom Manthatha and Professor Piet Meiring.
- 9 Amnesty Committee members included commissioners Ms Sisi Khampepe and Adv Chris de Jager and committee member Judge Bernard Ngoepe. Although nominally based in this office, they spent almost all of their time elsewhere.

Staffing

- 10 A national staffing plan was drawn up for the entire Commission before any staff was actually employed. The plan distributed staff equally between the four regional offices, with an additional component for the national office in Cape Town. No cognisance was taken of the territory, population or extent of human rights violations each office was required to service. This meant that the Johannesburg office was, proportionally speaking, understaffed from the outset.
- 11 Interviews for staff were conducted in March 1996 and, by the end of April 1996, approximately 75 per cent of the envisaged staff complement had been employed. Panels of commissioners selected senior staff, and other staff were interviewed and selected by management teams (often with the participation of a commissioner).
- 12 One of the first groups to be employed were the statement takers, and a statement taking form and training programme was developed by a team of consultants. It soon became evident, however, that the training focused too exclusively on the psychological aspects of interacting with victims. As a result, a more legally orientated training course was developed. The statement takers were the only team in the office to receive any formal training at the beginning of their employment.
- 13 Almost everyone who came to work in the Johannesburg office was driven by a desire to contribute to the process of truth recovery and national reconciliation. This meant that it was possible for the office to develop a synergy in the difficult months of setting up the Commission, while the diversity of members ensured active debate on all issues.
- 14 Many recruits were unemployed at the time of coming to the Commission, which enabled them to start immediately. Many were young, and most had a background in statutory or non-governmental organisations (NGOs). Very few came from the private sector.

- 15 Recruitment policy was guided by criteria of representivity and merit. During the period of fullest employment, 44 per cent of staff were men and 56 per cent were women; 55 per cent were African, 12 per cent coloured, 26 per cent white and 7 per cent Indian.

Accommodation, resources and equipment

- 16 The Johannesburg office had a particular advantage over all of the Commission's other regional offices in that it was on one floor, and the ability of office workers, management and commissioners to communicate easily with each other enhanced productivity.

Methodology and assessment of work

- 17 The office had a dynamic and cohesive management team, consisting of a regional manager, a support services manager and an information manager. Regular meetings played a pivotal role in defining roles and plotting policy directions.
- 18 The smooth flow of information was central to the Commission's success. Weekly 'Infocom' meetings evaluated the work of the Information Department and monitored and charted the flow of information.
- 19 The Commission had extensive national and regional research needs that often pulled the team in conflicting directions. Fundamentally, the regional work of the Research Department fell into four areas:
- a compiling geographically-based background reports on areas to be covered by statement takers and hearings;
 - b preparing thematic surveys for use by the Commission as a whole;
 - c evaluating statements to identify trends and ascertain the political content of statements, and
 - d writing sections of the final report.
- 20 Eight statement takers were employed, one of whom acted as a co-ordinator. Although the team was initially managed by the information manager, it later

became more practical for this task to be performed by the support services manager as part of the Commission's outreach programme.

- 21 The Support Services Unit dealt with office administration and outreach work.
- 22 The office bookkeeper was the backbone of the office's efficient administration and finance and was also responsible for all office supplies, maintenance and catering.

■ WORK OF THE COMMISSION

Statement taking

- 23 Statement takers acted as the front line of the Commission's work with communities. Working in teams of up to five, their formal job description entailed only the recording of stories of gross human right violations. Yet statement takers often had to run education workshops, negotiate with local leaders, organise venues and take statements from those who arrived at hearings.
- 24 Statement taking fell under the banner of the Human Rights Violations Committee and was the primary information-gathering activity of the Commission. It was often the only channel open to victims to tell their story to the nation. The pressure this implied, coupled with having to listen to traumatic stories of victims under conditions that were often difficult, made the job of statement taking one of the most stressful in the Commission.
- 25 The designated statement taker programme was launched in 1997 in order to provide communities with greater access to the Commission. The aim was to involve NGOs, faith communities and community based organisations in taking statements and was particularly important in the light of the extremely low staff to population ratio in the office. Co-ordinated by the community liaison officer, almost 100 designated statement takers from twenty-three NGOs, faith communities and community based organisations in twenty towns and cities were involved in taking statements on gross human rights violations. Through this programme, almost 2 000 statements were collected.

Information flow

- 26 The Information Department managed the flow of information in the office from the starting point of statement taking to the point at which commissioners made findings. As discussed earlier, the weekly 'Infocom' meeting co-ordinated the process.
- 27 Once statements had been recorded, they were registered on the Commission's database, and a letter of acknowledgement was sent to the deponent. Each statement was copied, the original was placed in the archives, and a copy was sent for processing and capture on the Commission's database.
- 28 The Data Unit was initially divided into processors (analysts) and capturers. Late in 1996, however, an efficiency review recommended the merging of these tasks. The efforts of the co-ordinator of this unit and the constant vigilance of the information manager ensured the high quality and quantity of work produced.
- 29 The presence of the national information systems manager meant that the unit was able to participate in the development of the database, thereby enhancing its appreciation of the database's uses and applications.

Investigations

- 30 Towards the end of 1996, the concept of low level corroboration gained popularity as a way of fulfilling the Commission's promise to do some investigation on every statement.
- 31 A Dutch investigator managed the process of conducting these administrative investigations. The low level corroboration team comprised one section of the Investigation Unit, the largest department in the regional office. It took responsibility for presenting a complete product to the Human Rights Violations Committee for a finding. The team initially included two local investigators who worked on amnesty applications and substantive human rights violations cases. Later, however, the team took on board up to twenty corroboration assistants.
- 32 Amnesty investigators spent much of their time tracking down the victims of perpetrators. Despite the heavy workload caused by the large number of applications in the area, investigators often carried the increased burden of having to make logistic arrangements for victims and their families to participate in the Commission's work.

- 33 The Investigation Unit used section 29 of the Act to assist in its investigations. This section gave the unit the power to *subpoena* suspects to a hearing in which they were obliged to answer all questions.

Hearings in the Johannesburg region

- 34 More by default than design, the holding of public human rights violations hearings became the dominant activity of the Commission. Very little thought had been given to the process of organising these hearings before the Commission began its work, and it was left to commissioners and management to work out a format. An eight-week cycle was devised which started with public education meetings, moved into statement taking and logistic arrangements, and closed with a media campaign, a selection of cases for public attention and the hearing itself.
- 35 Three multi-functional teams were established to cover (1) the North West province and the West Rand in Gauteng; (2) Mpumalanga province, Johannesburg, Soweto, Alexandra and the East Rand in Gauteng, and (3) the Northern Province and Pretoria in Gauteng. These teams consisted of commissioners and committee members, a logistics officer, a briefer, two statement takers, a secretary, and a researcher. The media liaison and communications officers were members of all three teams.
- 36 In 1997 these three teams were collapsed into one. This allowed commissioners to specialise in their areas of focus (some on hearings, some on investigations). The new arrangement also provided for tighter control in organising public meetings, statement taking and hearings.
- 37 Another reason for this change of strategy was a concern that the Human Rights Violation Committee had become too hearings-driven and needed to be more statement-driven. However, with systems in motion and work already underway, the office never really succeeded in making the transition to statement taking as its prime activity.
- 38 Each member of the team played a distinct role in the hearings process. Logistics officers organised meetings with stakeholders and communities, taking care of venues, catering, security and transport. Commissioners and committee members oversaw the hearings process from the initial meetings with stakeholders up to the hearings themselves. They met with the local community, selected the cases to be heard and sat on the panel. Four to five commissioners and committee members usually attended each hearing.

- 39 Briefers were the primary interface between the Commission and witnesses at hearings. They provided emotional support to witnesses before, during and after testifying and by so doing carried out the Reparation and Rehabilitation Committee's mandate regarding rehabilitation. The Reparation and Rehabilitation regional co-ordinator oversaw the work of the briefers. The briefing team, in turn, was responsible for informing deponents that they would be testifying at hearings and ensuring that they arrived. In addition to providing individual support to witnesses who testified at hearings, briefers prepared resource lists of support services, including counselling centres, hospitals and government social workers, to which they could refer witnesses after hearings. Community briefers provided post-hearings support, complemented by the resource list.
- 40 The communications officer took responsibility for organising educational workshops, publicising hearings through posters and pamphlets and periodically liaising with the media. Unfortunately, budget cuts and problems in establishing an effective national communications office severely hampered the work of the communications officer. There was only limited success in publicising hearings in this region and almost none in educating communities about the mandate and operation of the Commission. As will be discussed below, however, a variety of community-based organisations and NGOs stepped in to help fill the gaps.
- 41 The primary work of the Media Liaison Department was to assist the press at hearings. From time to time, it arranged talk shows in the run-up to hearings.
- 42 In 1997 the Johannesburg office embarked on a series of follow-up visits to centres where hearings had been held. Briefers were responsible for organising these workshops, which focused on identifying possibilities for reconciliation and reparation in the communities. Meetings were held in Ermelo, Pietersburg, Johannesburg, Boksburg, Sebokeng and Pretoria.
- 43 Much logistic work went into the organisation of hearings. The office tried to ensure that hearings were held in as many towns as possible throughout the fourteen or so months during which they took place. Efforts were made to use venues that were accessible to the communities which had suffered violations, although this consideration was sometimes outweighed by the need for adequate facilities and to minimise expense. The Commission was generously assisted by the municipal government in each town it visited, which allowed free use of facilities, such as the town hall, for the hearing.

44 The Johannesburg regional office hosted the following hearings:

a **Johannesburg (29 April - 3 May 1996).**

The first hearing organised by the Johannesburg office took place at the Central Methodist Church. The whole office worked on preparing different aspects of the event. Not much statement taking had taken place prior to the hearing, and commissioners tried to identify the better known cases. The hearings acted as a public showcase of the kind of work in which the Commission would be involved. Some of the cases dealt with were bombings by liberation movements, the assassinations of David Webster and Bheki Mhlange and the death in detention of Ahmed Timol.

b **Mmabatho (8-11 July 1996).**

Although this hearing took place in the former capital of Bophuthatswana, a large number of the witnesses came from Huhudi in Vryburg. Many of the cases emanated from conflict in the 1980s involving the local youth congress. Several incidents of torture by the South African Police (SAP) at 'die Lang Boom' were reported.

c **Pietersburg (17-19 July 1996).**

This was the first hearing in the Northern Province. There were reports from Pan Africanist Congress (PAC) members who had been detained and tortured by members of the South African and Lebowa police. Violations stemming from politically-related tribal conflicts in the KaMatlala area were reported by several witnesses. The Commission also heard of the death of activist Peter Nchabaleng and the disappearance of Stanza Bopape.

d **Soweto (22-26 July 1996).**

The first two days of this hearing focused on the events of the 1976 student uprising. Many activists and observers of that time made submissions about the activities and repression of the uprising. The rest of the hearing heard about a wide range of violations, including allegations of murder against Ms Madikizela-Mandela by the Sono and Tshabalala families.

e **Sebokeng (5-8 August 1996).**

Testimony at this hearing ranged from the Sharpsville massacre of 1960 to the 'night vigil massacre' of the 1990s. The Commission heard about the murders of community councillors in the 1980s and the killing of 'the Vaal Monster', Victor Kheswa, by the community. Residents from both sides told the

Commission about the conflict between the Inkatha Freedom Party (IFP) and the African National Congress (ANC).

f Pretoria (12-15 August 1996).

The Pretoria hearing in the University of South Africa auditorium heard contradictory accounts of the murder of nine Mamelodi youths in KwaNdebele in the late 1980s. Victims of the Church Street bombing, the 'Silverton siege' and the 'Mamelodi massacre' told the Commission their stories.

g Nelspruit (2-5 September 1996).

The Mpumalanga provincial government provided substantial logistic support for this event by providing an office for the committee, which continued to function for as long as the Commission was active in the province. Besides human rights violations including killing, torture and harassment by the security forces, the Commission heard testimony about the activities of the vigilante Kabasa gang, which wreaked havoc in the townships around Nelspruit in the 1980s.

h Klerksdorp (23-26 September 1996).

In this North West Province town, the Human Rights Violations Committee was told of violations carried out by white right wing extremists, often in relation to land issues. A bus and consumer boycott in several small towns in the area resulted in repression and harassment by the security forces.

i Venda (3-4 October 1996).

Allegations of torture against the SAP and former Venda security forces were frequently made to the Commission during this hearing. Victims said that their torturers sometimes accused them of harbouring activists before they went into exile. Violations flowing from politically-related chieftaincy conflicts were common in this predominantly rural area.

j Alexandra (28-30 October 1996).

This township was the site of resistance and repression for many decades. Witnesses told the Commission of violations including killings, torture and shootings at protest marches. Deponents also related events concerning political violence between the ANC and the IFP that erupted in the early 1990s.

k Krugersdorp (11-14 November 1996).

The Krugersdorp hearing covered the whole of the West Rand. The Commission

heard the story of a youth killed by booby-trapped hand grenades allegedly planted by notorious hit squad member, Joe Mamasela. Residents of Bekkersdal related their community's experience of the conflict between the local youth congress and the vigilante *Zim-Zim* gang. Relatives of victims of the Swanieville massacre told the Commission how IFP-aligned hostel residents attacked their informal settlement one night.

l 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.

m Moutse (2-5 December 1996).

For the first time, victims, perpetrators and analysts appeared at the same hearing to tell their different versions of the same conflict. The hearing focused on the strife generated by the incorporation of Moutse into the KwaNdebele homeland. In particular, violations allegedly committed by the Mbokodo vigilante group were discussed. Testimony was given on the murder of KwaNdebele government minister Piet Ntuli.

n East Rand (4-7 February 1997).

This week-long hearing took place in Duduza, Benoni and Vosloorus. The East Rand experienced more intensive violence between the ANC and the IFP in the early 1990s than any other part of the country. For this reason, the Commission went out of its way to collect statements from IFP-aligned victims. Testimony relating to this conflict covered incidents such as attacks on hostels, train violence, activities of the Khumalo gang and battles between ANC-aligned 'self-defence units' and IFP-aligned 'self-protection units'. The Commission also heard about the Duduza hand grenade incident in which several youths were killed by a booby-trapped hand grenade allegedly given to them by Vlakplaas operative Joe Mamasela. The first victim of the notorious necklacing method, Maki Skosana, was killed in response to the hand grenade event. A white mother told the Commission how the South African Defence Force continued to feed her disinformation about the death of her son in Angola.

o Messina, Louis Trichardt and Tzaneen (8-10 April 1997).

Situated in the far north of the country, many farmers in these districts had been the victims of landmines laid by the liberation movements. However, although the

Commission was in possession of statements by some of these victims, and despite extraordinary efforts to persuade them otherwise, only three victims (Johannes van Eck, Lindiwe Mdluli and Johannes Roos) were willing to testify in public. The Commission heard about the torture and harassment of activists and how the security forces had fired on a protest march, killing at least one person.

p Zeerust, Rustenburg, Mabopane (6-8 May 1997).

This three-day hearing in different towns in the North West Province focused on the violations committed by the erstwhile Bophuthatswana government.

q Piet Retief, Ermelo, Balfour (21-23 May 1997).

In this part of southern Mpumalanga, the Commission heard about the Black Cat gang of IFP-aligned vigilantes. In Balfour, several victims spoke about their pain following the explosion of a bomb planted by the ANC. Violations associated with forced removals and land issues were also discussed at the hearing.

r Witbank, Leandra (3-5 June 1997).

At this hearing, the Commission heard about members of a unit of Umkhonto weSizwe (MK) who were killed while on their way to Swaziland and about life in the liberation movement's underground. Members of the PAC made a submission on the Bethel treason trial. Relatives of former community councillors testified about attacks on them by activists aligned to the ANC.

s Children's hearings (12-13 June 1997).

Very few child victims testified at this hearing, which consisted mainly of submissions from organisations that had dealt with children and children's issues for many years. The Commission heard about the physical and mental abuse of children when they were detained and about the efforts that were made to assist these victims.

t Women's hearings (28-29 July 1997).

Women suffer different forms of human rights violations, and these were the focus of this two-day hearing. Deponents told of rape and other forms of sexual harassment. They also related the difficulties of being the family breadwinner when state repression had resulted in the deaths of husbands and sons.

u National hearings.

The regional office provided logistic support for several national hearings that were held in Johannesburg. These focused on prisons (21-22 July 1997), the

media (15-17 September 1997), the legal system (27-29 October 1997), business (11-13 November 1997), and the State Security Council (14-15 October 1997).

v **Mandela United Football Club hearing (24 –28 November, 1 – 4 December 1997).**

The hearing focused on allegations of gross human rights violations by members of the Mandela United Football Club, including the death of Stompie Seipei.

■ WORKING WITH OTHER ORGANISATIONS

- 45 Without the co-operation of civil society organisations, the Commission would not have been able to do its work. Before every hearing, in many small towns, Commission representatives met with local faith communities, NGOs and community organisations. These organisations took the word of the Commission to the people on the ground. They put up posters, organised meetings, accommodated staff in emergencies, distributed pamphlets, made use of loudhailers and even assisted with logistical requirements such as finding venues and caterers.
- 46 Several organisations in the area ran workshop programmes aimed at educating members of different communities about the Commission. The Centre for the Study of Violence, for example, developed its own audio-visual educational materials for this purpose. The communication officer met frequently with these organisations in order to co-ordinate their workshop programmes with the Commission's publicity needs.
- 47 Local organisations helped the Reparation and Rehabilitation Committee provide psychological support by counselling witnesses at hearings. These community briefers would attend a one-day training course about a week before a hearing. Social workers, priests, nurses and Life Line counsellors provided invaluable comfort to victims during and after hearings.
- 48 As discussed earlier, statement taking was greatly enhanced by the contribution of local organisations. During 1996, the office ran a voluntary statement-taker programme in which local organisations assisted the in-house statement takers to reach as many victims as possible. These local statement takers proved invaluable in identifying and reaching victims in both urban and rural areas and gathered most of the statements in preparation for the Vaal Triangle hearing in Sebokeng. This voluntary programme became formalised in 1997 as the designated statement taker programme.

Chronology of Apartheid Legislation¹

■ INTRODUCTION

This chronology seeks to record all major apartheid legislation as a context within which gross human rights violations occurred, but is not exhaustive of all legislation passed in the period under consideration by the Truth and Reconciliation Commission (the Commission). Legislation of 'independent' and 'self-governing' homelands is given separately. The homelands chronology is not, however, as comprehensive as that on the legislation enacted by the South African Parliament. Much of the homelands legislation was similar to South African parliamentary legislation. In several instances it proved extremely difficult to trace and record all details of homelands legislation.

The chronology is divided into two parts: Part 1 examines legislation in South Africa while Part 2 focuses on the 'independent' states - Transkei, Bophuthatswana, Venda and Ciskei (the TBVC states) - and the 'self-governing territories'.

The naming of legislation follows *Statutes of the Republic of South Africa Classified and Annotated from 1910* (Butterworths). Where an alternative name is in use, this is provided in brackets.

The commencement: date of the legislation is underlined and, where applicable, the repealing act is in italics. Where the legislation was still in force in September 1996, the name of the Butterworths title (subject category) is cited in upper case italics. Only the most important amending legislation (as this impinges on the mandate of the Commission) is cited. Where amendments contain extended detail which is relevant to the mandate of the Commission, appropriate references only are provided for the sake of brevity. Dates of some major events are included as historical landmarks; these are given in italics.

Note: For the purposes of this chronology, the term 'black' is taken to exclude coloured and Asian persons except where otherwise indicated.

¹ We acknowledge the work of the following in the compilation of this chronology: Meryl Federl, Zubair Khan, Humphrey Mashiyane and Khotso Ramolefe in the Centre for Applied Legal Studies at the University of the Witwatersrand; Paula McBride, Sharon Ekambaram, Britta Strietzel, Holger Kreuzkamp and Jennifer Llewellyn. The library resources of the law firm Denys Reitz are also gratefully acknowledged.

■ PART I: SOUTH AFRICAN PARLIAMENT

The legislation in this section is flagged as follows for ease of reference:

Basic apartheid laws (A):

The most important legislation relating to segregation of race groups.

The workplace (W):

Laws which determined racially based job reservation, employment practices and labour relations.

Security legislation (S):

The history of security legislation in South Africa is very convoluted. Only those laws mentioned in the *Race Relations Surveys (RRS and SRR)* and John Dugard's *Human Rights and the South African Legal Order (1978)* are listed. In particular, those laws relating to the tightening up of detention legislation are included. Only a brief description of the various state of emergency regulations is given.

Political representation (P):

Discriminatory legislation related to political rights, including freedom of movement of homeland residents.

Land and property (L):

Legislation referring to black rural areas and the homelands: Prior to 1913 in the three northern provinces and 1936 in the Cape, blacks were legally entitled to acquire land from whites in parts of the country outside the scheduled areas. After 1913 (for the Orange Free State, Natal and Transvaal, and after 1936 in the Cape) this was prohibited unless the purchases were in areas which had been recommended by various commissions for 'release' to blacks (Horrell 1978: 203).

Education (E):

Racially discriminatory laws which relate to primary, secondary and tertiary education.

Urbanisation (U):

Legislation concerning freedom of movement issues and land ownership in white urban areas. See also 'political representation' above.

Note: Only discriminatory legislation is listed; laws and amendments that are purely administrative and not race-based are excluded.

1856-1910 Masters and Servants Acts:

W These Acts, which had been passed between 1856 and 1904 in the four territories, remained in force after Union. They made it a criminal offence to breach the contract of employment. Desertion, insolence, drunkenness, negligence and strikes were also criminal offences. Theoretically these laws applied to all races, but the courts held that the laws were applicable only to unskilled work, which was performed mostly by black people (Dugard 1978: 85; Horrell 1978: 6).

Repealed by s 51 of the Second General Law Amendment Act No 94 of 1974

1911 Mines and Works Act No 12:

W Permitted the granting of certificates of competency for a number of skilled mining occupations to whites and coloureds only.

Repealed by s 20 of the Mines and Works Amendment Act No 27 of 1956

1913 Admission of Persons to the Union Regulation Act No 22:

U Required Indians to obtain permission to travel from one province to another.

Commenced: 1 August 1913

Repealed by s 57 of the Admission of Persons to the Union Regulation Act 59 of 1972

1913 Black Land Act No 27:

L Prohibited blacks from owning or renting land outside designated reserves (approximately 7 per cent of land in the country).

Commenced: 19 June 1913

Repealed by s 1 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1923 Native (Black) Urban Areas Act No 21:

U Made each local authority responsible for the blacks in its area. 'Native advisory boards' regulated influx control and removed 'surplus' people, i.e. those who were not employed in the area. The country was divided into prescribed (urban) and non-prescribed areas, movement between the two being strictly controlled (Horrell 1978: 2-3). This Act was consolidated by the 1945 Blacks (Urban Areas) Consolidation Act.

Assent gained: 14 June 1923; commencement date not found

Repealed by the Blacks (Urban Areas) Consolidation Act No 25 of 1945

1924 Industrial Conciliation Act No 11:

W Provided for job reservation. Excluded blacks from membership of registered trade unions, prohibited registration of black trade unions.

Commenced: 8 April 1924

Repealed by s 86 of the Industrial Conciliation Act No 36 of 1937

1926 Mines and Works Amendment Act No 25:

W Re-enacted the 1911 Mines and Works Act.

Repealed by s 20 of the Mines and Works Amendment Act No 27 of 1956

1927 Immorality Act No 5:

A Extra-marital intercourse between whites and blacks prohibited (Horrell 1978: 8). (Extended in 1950 to include coloureds and Asians.)

Commenced: 30 September 1927

Repealed by s 23 of Sexual Offences Act No 23 of 1957

1927 Black (Native) Administration Act No 38:

L,U Section 5(1)(b) provided that 'whenever he deemed it expedient in the public interest, the minister might, without prior notice to any persons concerned, order any tribe, portion thereof, or individual black person, to move from one place to another within the Republic of South Africa' (Horrell 1978: 204).

S Section 29(1) prohibited the fomenting of feelings of hostility between blacks and whites. Amended by s 4 of the Black Laws Further Amendment Act No 79 of 1957. This was extended to all racial groups in terms of s 1 of the 1974 Second General Law Amendment Act (see below). 'All the reported cases concern charges of inciting hostility among blacks towards the white section of the community' rather than cases of whites who cause feelings of racial hostility by racially abusive comments (Dugard 1978: 178). Used extensively to carry out forced removals. Later amended by the 1973 Bantu (Black) Laws Amendment Act.

Commenced: 1 September 1927, except ss 22, 23 & 36: 1 January 1929

Sections 5(1)-(5) repealed by the Abolition of Influx Control Act No 68 of 1986; repealed in full by the Abolition of Restrictions on Free Political Activity Act No 206 of 1993

1930 Riotous Assemblies (Amendment) Act No 19:

S Authorised the Governor-General to prohibit the publication or other dissemination of any 'documentary information ... calculated to engender feelings of hostility between the European inhabitants of the Union on the one hand and any other section of the inhabitants of the Union on the other hand' (Dugard 1978: 177).

Commenced: 21 May 1930

Repealed by s 20 of the Riotous Assemblies Act No 17 of 1956

1936 Representation of Blacks Act No 12:

P Removed black voters in the Cape from the common roll and placed them on a separate roll (Dugard 1978: 90). Blacks throughout the Union were then represented by four white senators.

Commenced: 10 July 1936

Repealed by s 15 of the Representation between the Republic of South Africa and self-governing Territories Act No 46 of 1959

1936 Development Trust and Land Act No 18:

L Expanded the reserves to a total of 13, 6 per cent of the land in South Africa and authorised the Department of Bantu Administration and Development to eliminate 'black spots' (black-owned land surrounded by white-owned land) (Horrell 1978: 203). The South African Development Trust (SADT) was established and could, in terms of the Act, acquire land in each of the provinces for black settlement (RRS 1991/92: 381).

Commenced: 31 August 1936

Repealed by Proc R 28 of 1992, 31 March 1992 (phasing out and abolishing the SADT in terms of the Abolition of Racially Based Land Measures Act No 108 of 1991)

1937 Aliens Act No 1:

P Restricted and regulated the entry of certain aliens into the Union and regulated the right of any person to assume a surname.

Commenced: 1 February 1937

Repealed by s 33 of the Births and Deaths Registration Act No 51 of 1992

- 1937 Industrial Conciliation Act No 36:**
W Provided for the registration and regulation of trade unions and employers' organisations, the settlement of disputes between employers and employees, and the regulation of conditions of employment.
Repealed by s 56 of the Industrial Conciliation Act No 28 of 1956
- 1937 Black (Native) Laws Amendment Act No 46:**
U Prohibited acquisition of land in urban areas by blacks from non-blacks except with the Governor-General's consent (Horrell 1978: 3).
Commenced: 1 January 1938
Sections repealed by the Abolition of Influx Control Act No 68 of 1986 and the Abolition of Racially Based Land Measures Act No 108 of 1991. The only section remaining in force is s 36, which amended s 7 of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 and has no discriminatory implications.
- 1939 Aliens Registration Act No 26:**
U Provided for the registration and control of aliens.
Assent gained: 14 June 1939; commencement date not found
Repealed by s 60 of the Aliens Control Act No 96 of 1991
- 1945 Natives (Urban Areas) Consolidation Act No 25:**
U Introduced influx control - applicable to black males only (Horrell 1978: 172). People who were deemed to be leading idle or dissolute lives or who had committed certain specified offences could be removed from an urban area (Horrell 1978: 173).
Commenced: 1 June 1945
Repealed by s 17 of the Abolition of Influx Control Act No 68 of 1986
- 1946 Asiatic Land Tenure (and Indian Representation) Act No 28:**
P Granted Indians separate representation by three white members of Parliament and two senators in the Central Parliament. This chapter of the law was rejected by the Indian population and the Act was repealed by the Asiatic Laws Amendment Act No 47 of 1948. *The chapter on land tenure was repealed by the Aliens Control Act No 96 of 1991.*
Commenced: 6 June 1946
- 1948 *Nationalist Party comes to power*
- 1948 Asiatic Laws Amendment Act No 47:**
P Repealed the chapter on Indian representation of the 1946 Asiatic Land Tenure (and Indian Representation) Act.
Commenced: 12 October 1948
Repealed by s 55 of the Abolition of Racially Based Land Measures Act No 108 of 1991
- 1949 Prohibition of Mixed Marriages Act No 55:**
A Prohibited marriages between whites and members of other racial groups (Horrell 1978: 19).
Commenced: 8 July 1949
Repealed by s 7 of the Immorality and Prohibition of Mixed Marriages Amendment Act No 72 of 1985

1950 Immorality Amendment Act No 21:

A Extended the 1927 Immorality Act to all black people - including coloureds and Asians (Dugard 1978: 70).
Commenced: 12 May 1950
Repealed by s 23 of the Sexual Offences Act No 23 of 1957

1950 Population Registration Act No 30:

A Required people to be identified and registered from birth as belonging to one of four distinct racial groups. This Act was more rigid than earlier race classification laws.
Commenced: 7 July 1950
Repealed by s 1 of the Population Registration Act Repeal Act No 114 of 1991

1950 Group Areas Act No 41:

U Provided for areas to be declared for exclusive use of one particular racial group. It became compulsory for people to live in an area designated for their classification group.
Commenced: 7 July 1950
Repealed by s 44 of the Group Areas Act No 77 of 1957

1950 Internal Security Act (Suppression of Communism Act) No 44:

S Prohibited certain (listed) organisations and persons from promoting 'communism', which was broadly defined.
Commenced: 17 July 1950
Repealed by s 33 of the Internal Security and Intimidation Amendment Act 138 of 1991

1951 Suppression of Communism Amendment Act No 50:

S Related to situations where people conspired to overthrow the government, or alternatively to those where people harboured, concealed, failed to report, or assisted those intent on committing so-called acts of terrorism against the state.
Commenced: 18 June 1951
Repealed by s 73(1) of the Internal Security Act No 74 of 1982

1951 Separate Representation of Voters Act No 46:

P This attempt by the National Party to remove coloured people from the common voters' roll was declared invalid by the Supreme Court: A group of coloured voters in *Harris v Minister of the Interior 1952(2) SA 428(AD)* challenged the Act, which the Appellate Division unanimously declared invalid. In response, the government, via an 'ingenious and devious' (Dugard 1978: 31) process of increasing the numbers of Appellate Division judges from five to eleven (where an Act of Parliament was in issue) and increasing the size of the Senate from forty-eight to forty-nine, introduced the 1956 South Africa Act Amendment Act (see below).
Commenced: 18 June 1951; revalidated after challenge: 2 March 1956
Repealed by s 4 of the Separate Representation of Voters Amendment Act No 50 of 1968

1951 Black Building Workers Act No 27:

W Prohibited blacks from performing skilled work in the building industry in white urban areas (Dugard 1978: 87).
Repealed by s 11 of Industrial Conciliation Amendment Act No 95 of 1980

1951 Prevention of Illegal Squatting Act No 52:

U Prohibited persons from entering land or a building without lawful reason, or remaining there without the owner's permission. Magistrates were granted powers to order squatters out of urban areas, demolish their dwellings and move them to a place as might be determined.

Commenced: 6 July 1951

IN FORCE (This Act has been amended several times - see O'Regan 1990): CRIMINAL LAW AND PROCEDURE

1951 Bantu Authorities Act No 68:

P Gave recognition to traditional tribal authorities.

Commenced: 17 July 1951

Repealed by s 69 of the Black Communities Development Act No 4 of 1984

1951 Black (Bantu) Authorities Act No 68:

L Provided for the establishment of tribal, regional and territorial authorities in the reserves.

Commenced: 17 July 1951

IN FORCE as on September 1996: LOCAL GOVERNMENT

1952 Black (Native) Laws Amendment Act No 54:

U The 1945 Urban Areas Consolidation Act was amended to specify that all black persons, men and women, over the age of sixteen were to carry passes and that no black person was to be allowed to stay in the urban areas longer than seventy-two hours unless they had permission to do so. Section 10, which governed who could stay in the urban areas, stated that black people who had been born in the urban areas and had lived there continuously since then, and those who had been in continuous employment for ten years or continuous residence in the urban areas for fifteen years, were the only categories of black people legally entitled to stay in urban areas (Dugard 1978: 74; Horrell 1978: 173). Powers of authorities were widened to include the ordering of the removal of blacks deemed to be 'idle or undesirable' even though they were lawfully in an urban area (s 29 of the 1945 Urban Areas Consolidation Act). If found guilty, a person could be sent to her/his homeland, to a rehabilitation centre or to a farm colony for a period not exceeding two years. Section 29 of the 1945 Urban Areas Consolidation Act permitted the arrest, without a warrant, of any black person believed to be 'idle or undesirable'. In 1956, a new section was added to s 29, (i.e. s 29 *bis*) allowing for 'the removal of an African from an urban area ... where his presence was detrimental to the maintenance of peace and order in any such area' (Dugard 1978: 77). Because the purpose of this new s 29 was 'to confer upon local authorities arbitrary powers to rid themselves of "agitators", this new provision (unlike s 29 of Act 25 of 1945) did not 'provide for an appeal against a banishment order' (Dugard 1978: 77). (The provisions under this Act are extremely complicated. For a full description see Horrell 1978: 171-95.)

Commenced: 27 June 1952

Sections 1-17 repealed by s 33(1) of the Black Labour Act No 67 of 1964, s 18 repealed by s 1(g) of the Abolition of Racially Based Land Measures Act No 108 of 1991; ss 27-32 by s 17 of the Abolition of Influx Control Act No 68 of 1986; and ss 33-8 by s 69(1) of the Black Communities Development Act No 4 of 1984

- 1952 Blacks (Abolition of Passes and Co-ordination of Documents) Act No 67:**
U Repealed the laws relating to the carrying of passes by blacks. These laws had differed from province to province. This new Act provided for the issuing of reference books to all black persons in all provinces (Horrell 1978: 173).
Commenced: 11 July 1952
Repealed by s 23 of the Identification Act No 72 of 1986
- 1953 Reservation of Separate Amenities Act No 49:**
A Allowed for public facilities and transport to be reserved for particular race groups.
Commenced: 9 October 1953
Repealed by s 1 of Discriminatory Legislation Regarding Public Amenities Appeal Act No 100 of 1990
- 1953 Public Safety Act No 3:**
S This Act, passed in response to the ANC's civil disobedience campaign, provided for a state of emergency to be declared. The first state of emergency was declared only in 1960. Under a state of emergency the Minister of Law and Order, the Commissioner of the South African Police (SAP), a magistrate or a commissioned officer could detain any person for reasons of public safety. There was no commission to which a detainee could appeal, nor was there a body with the power to decide objectively whether a state of emergency was justified or not. This legislation also empowered a magistrate or the Commissioner of Police to ban meetings and gatherings.
Commenced: 4 March 1953
Repealed by the State of Emergency Act No 86 of 1995
- 1953 Criminal Law Amendment Act No 8:**
S Made civil disobedience punishable by a three-year jail sentence.
Commenced: 4 March 1953
Repealed by s 73 of the Internal Security Act No 74 of 1982
- 1953 Black Education Act No 47:**
E Formalised segregation of black education and laid the foundations for Bantu Education.
Commenced: 1 January 1954
Repealed by s 45 of the Education and Training Act No 90 of 1979
- 1953 Black Labour Relations Regulation Act (Black Labour and Settlement of Disputes Act) No 48:**
W Amended the 1937 Industrial Conciliation Act, changing the definition of 'employee' to exclude blacks so that they could no longer be members of registered unions (Horrell 1978: 281). The Act also incorporated the War Measure No 145 of 1942, which prohibited strikes by black workers. In addition, it made lock-outs of blacks, the instigation of strikes and lock-outs, and sympathetic strikes illegal (Horrell 1978: 281).
Commenced: 1 May 1954
Repealed by s 63 of the Labour Relations Amendment Act No 57 of 1981

- 1954 Riotous Assemblies and Suppression of Communism Amendment Act No 15:**
W The Minister of Justice was 'empowered to prohibit listed persons from being members of specific organisations or from attending gatherings of any description without giving them the opportunity of making representations in their defence or furnishing reasons'. The Minister was also 'authorized to prohibit any particular gathering or all gatherings, in any public place for specified periods'.
Commenced: 15 April 1954
Repealed by s 73 of the Internal Security Act No 74 of 1982
- 1954 Blacks Resettlement Act No 19:**
U Established a Resettlement Board which would remove blacks from townships. This authorised the Sophiatown and other removals.
Commenced: 1 August 1954
Repealed by s 69 of the Black Communities Development Act No 4 of 1984
- 1955 Black Labour (Settlement of Disputes) Amendment Act No 59:**
W Amended the 1953 Black Labour Relations Regulation Act. Provided for separate industrial conciliation machinery which applied to black workers other than those employed in farming operations, in domestic service, governmental or educational services or coal and gold mining industries (Horrell 1978: 288).
Repealed by s 63 of the Labour Relations Amendment Act No 57 of 1981
- 1955 Criminal Procedure Act No 56:**
S Consolidated the laws relating to procedure and evidence in criminal proceedings. The Criminal Procedure and Evidence Act No 31 of 1917 and its numerous amendments were all repealed.
Commenced: 1 July 1955
Repealed by s 344(1) of the Criminal Procedure Act No 51 of 1977
- 1956 Riotous Assemblies Act No 17:**
S Prohibited gatherings in open-air public places if the Minister of Justice considered that they could endanger the public peace. Also included banishment as a form of punishment (Dugard 1978: 137).
Commenced: 16 March 1956
Repealed in part (ss 1-9 inclusive and ss 19-20) by ss 10-15 of the Internal Security Act No 74 of 1982.
IN FORCE: Sections 16, 17 & 18 as at September 1996 (Section 17 covers the common-law offence of incitement to public violence): CRIMINAL LAW AND PROCEDURE
- 1956 South Africa Act Amendment Act No 9:**
P Effectively revalidated the 1951 Separate Representation of Voters Act (see above), which had been challenged and declared invalid.
Commenced: 2 March 1956
Repealed by the Republic of South Africa Constitution Act 32 of 1961

1956 Mines and Works Act No 27:

W Commenced: 4 May 1956

*IN FORCE (as amended by the Mines and Works Amendment Act No 51 of 1959):
MINES, WORKS AND FACTORIES*

1956 Industrial Conciliation Act (Labour Relations Act) No 28:

W Replaced the 1924 and 1937 Industrial Conciliation Acts. A new provision, s 77, provided for job reservation. Although excluded from the provisions of the Act, blacks were included in the definition of 'employee' for the purposes of this section. Black trade unions, though they could not be registered under the Act, were not illegal (Horrell 1978: 263, 281).

Commenced: 1 January 1957

Repealed by the Labour Relations Act No 66 of 1995

1956 Separate Representation of Voters Amendment Act No 30:

P Amended the 1951 Separate Representation of Voters Act to remove coloureds from the common roll. The Senate was enlarged to obtain the required majority.

Commenced: 18 May 1956

Repealed by s 4 of the Separate Representation of Voters Amendment Act No 50 of 1968

1956 Bantu (Black) Administration Amendment Act No 42:

L Amended the 1927 Black Administration Act so that a person being banished in terms of s 5(1)(b) could no longer present her/his case to the Governor-General (Dugard 1978: 140). (See also: Black (Native) Laws Amendment Act No 54 of 1952, above.)

Commenced: 1 June 1956

Repealed by the Abolition of Influx Control Act No 68 of 1986

1956 Blacks (Prohibition of Interdicts) Act No 64:

L Prohibited 'Africans from obtaining a court interdict to suspend the operation of any banishment order pending an attack on the validity of any such order' (Dugard 1978: 78).

Assent gained: 15 June 1956; commencement date not found

Repealed by s 17 of the Abolition of Influx Control Act No 68 of 1986

1957 Sexual Offences Act (Immorality Act) No 23 (s 16):

A Made it an offence for a white person to have intercourse with a black person or to commit any 'immoral or indecent act' (Dugard 1978: 69). This Act repealed the 1927 Immorality Act and the 1950 Immorality Amendment Act.

Commenced: 12 April 1957

IN FORCE, although s 16 was repealed by the Immorality and Prohibition of Mixed Marriages Amendment Act No 72 of 1985: CRIMINAL LAW AND PROCEDURE

1957 Group Areas Act No 77:

U Consolidated the law relating to the establishment of group areas and the control of the acquisition of immovable property in those areas.

Assent gained: 24 June 1957; commencement date not found

Repealed by s 49 of the Group Areas Act No 36 of 1966

1958 *24 August: Strijdom dies.*

2 September: Three candidates are suggested as successors, including Dr Verwoerd.

3 September: Dr Verwoerd assumes office as Prime Minister and leader of the National Party.

1959 Extension of University Education Act No 45:

E Empowered the Minister of Bantu Education to designate colleges for specified African ethnic groups. Black students were prohibited from attending the University of Cape Town or the University of Witwatersrand without a permit (Dugard 1978: 84).

Commenced: 19 June 1959

Repealed by s 21 of the Tertiary Education Act No 66 of 1988

1959 Representation between Republic of South Africa and Self-Governing Territories Act (Promotion of Bantu Self-Government Act) No 46:

P Provided for the transformation of reserves into fully fledged independent bantustans, dividing blacks into ethnically discrete groups. Abolition of parliamentary representation for blacks.

Commenced: 19 June 1959

Repealed by Sch 7 of the Constitution of the Republic of South Africa Act No 200 of 1993

1960 Extension of University Education Amendment Act No 32:

E Amended the extension of University Education Act No 45 of 1959 and the University of Fort Hare Transfer Act No 64 of 1959.

Assent gained: 7 April 1960; commencement date not found

Repealed by s 21 of the Tertiary Education Act No 66 of 1988

1960 Unlawful Organisations Act No 34:

S Provided for organisations threatening public order or the safety of the public to be declared unlawful. The ANC and the PAC were immediately declared unlawful.

Commenced: 7 April 1960

Repealed by s 73 of the Internal Security Act No 74 of 1982

1960 *21 March: Sharpeville*

Sixty-seven people were killed and 186 wounded by police at the Sharpeville police station during a PAC anti pass law demonstration. In September, 224 civil claims for damages were served on the Minister of Justice. He stated on 21 October that legislation would be introduced into the next parliamentary session to indemnify the government and its officials retrospectively against claims resulting from action taken during the demonstration (SRR 1959/60: 57). The passing of the 1961 Indemnity Act (assented to on 28 June 1961 - see below) can be explained in terms of the ministerial announcement of 21 October 1960.

1961 *A state of emergency was declared on 30 March 1961, lasting until 31 August. Regulations made provision for the arrest of persons without warrant and for their detention without charge for a period of twelve days (Horrell 1978: 440). Regulations under Proc 91 of 30 March, which included indemnity for persons exercising powers under these regulations, were passed in May (SRR 1959/60: 73, 78).*

1961 General Law Amendment Act No 39:

S Provided for twelve-day detention. Amended:

- the Arms and Ammunition Act 28 of 1937 regarding the issuing and cancellation of firearm licences;
- the 1955 Criminal Procedure Act regarding powers of the Attorney-General to prohibit release on bail or otherwise; and
- the 1956 Riotous Assemblies Act.

Commenced: 19 May 1961

Sections 6 and 7 repealed by the Internal Security Act No 74 of 1982

1961 Indemnity Act No 61:

S With retrospective effect from 21 March 1960. This Act indemnifies the government, its officers and all other persons acting under their authority in respect of acts done, orders given or information provided in good faith for the prevention or suppression of internal disorder, the maintenance or restoration of good order, public safety or essential services, or the preservation of life or property in any part of the Republic.
Commenced: 5 July 1961

1961 Urban Blacks Council Act No 79:

P The first provision for black 'self-government' in the urban townships.

Assent gained: 30 June 1961; commencement date not found

Repealed by s 14 of the Community Councils Act No 125 of 1977

1962 General Law Amendment Act (Sabotage Act) No 76:

S Increased the State President's power to declare organisations unlawful. Further restrictions could be imposed in banning orders, restricting movement. Persons could now even be banned from social gatherings, including having more than one visitor at a time. The Minister could list banned persons in the *Government Gazette (GG)*.

This Act created the offence of sabotage by providing that any person who committed any wrongful and wilful act whereby he/she injured, obstructed, tampered with or destroyed the health or safety of the public, the maintenance of law and order, the supply of water, light, power, fuel or foodstuffs, sanitary, medical, or fire extinguishing services could be tried for sabotage (Horrell 1978: 443).

Commenced: 27 June 1962

Section 16 repealed by the State of Emergency Act No 86 of 1995

1963 General Law Amendment Act No 37:

S Section 17, the ninety-day detention law, authorised any commissioned officer to detain - without a warrant - any person suspected of a political crime and to hold them for ninety days without access to a lawyer (Horrell 1978: 469). In practice people were often released after ninety days only to be re-detained on the same day for a further

ninety-day period. The 'Sobukwe clause' allowed for a person convicted of political offences to be detained for a further twelve months. The Act also allowed for further declaration of unlawful organisations. The State President could declare any organisation or group of persons which had come into existence since 7 April 1960 to be unlawful. This enabled the government to extend to Umkhonto we Sizwe and Poqo the restrictions already in force on the ANC and the PAC (Horrell 1978: 416).

Commenced: 2 May 1963, except ss 3, 9 & 14, which came into effect at different times.
Sections 3-7 and 14-17 repealed by the Internal Security Act No 74 of 1982

1963 Transkei Constitution Act No 48:

P Self-government given to Transkei.

Commenced: 30 May 1963

Repealed by Sch 7 of the Constitution of the Republic of South Africa Act No 200 of 1993

1963 Extension of University Education Amendment Act No 67:

E Amended the 1959 Extension of University Education Act and the University College of Fort Hare Transfer Act No 64 of 1959.

Commenced: 3 July 1963

Repealed by s 21 of the Tertiary Education Act No 66 of 1988

1964 Black Labour Act No 67:

U Consolidated the laws regulating the recruiting, employment, accommodation, feeding and health conditions of black labourers.

Commenced: 1 January 1965

Repealed by s 69 of the Black Community Development Act No 4 of 1984

1964 General Law Amendment Act No 80:

S Amended the 1963 General Law Amendment Act so that the Minister of Justice could extend the operation of the Sobukwe clause in individual cases. Sobukwe was thus imprisoned until 1969. This clause was re-enacted in amended form in 1976.

Commenced: 24 June 1964

Repealed by the Corruption Act No 94 of 1992

1965 Criminal Procedure Amendment Act No 96 (180-Day Detention Law):

S Provided for 180-day detention and re-detention thereafter. The Attorney-General was empowered to order the detention of persons likely to give evidence for the state in any criminal proceedings relating to certain political or common-law offences. Unlike the ninety-day provision, this did not specify interrogation as part of the detention. Detainees could be held for six months in solitary confinement and only state officials were permitted access. No court had the jurisdiction to order the release of prisoners or to rule on the validity of the regulations under the Act.

Commenced: 25 June 1965

Repealed by s 344 of the Criminal Procedure Act No 51 of 1977 except for ss 319(3) and 384

1966 Group Areas Act No 36:

U While in theory this was not discriminatory legislation, it was implemented in a way that was advantageous to whites (Dugard 1978: 82).

Commenced: 26 October 1966

Repealed by s 48 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1966 Industrial Conciliation Further Amendment Act No 61:

W Prohibited strikes and lock-outs for any purpose unconnected with the employee/employer relationship (Horrell 1978: 279).

Commenced: 4 November 1966

Repealed by Labour Relations Act No 66 of 1995

1966 General Law Amendment Act No 62:

S Designed in response to guerrilla activities on the northern borders of the then South West Africa (Dugard 1978: 116). Section 22(1) was amended to provide for the detention of suspected 'terrorists' for up to fourteen days for purposes of interrogation. The Commissioner of Police could apply to a judge to have the detention order renewed. This was essentially a forerunner of the 1967 Terrorism Act.

Commenced: 4 November 1966

Sections 3-6 & 22 repealed by the Internal Security Act No 74 of 1982

1967 Suppression of Communism Act No 24:

S Prohibited certain persons from making or receiving donations for the benefit of certain organisations; prohibited others from practising as advocates, attorneys, notaries and conveyances, and extended the grounds for deporting people from the Republic.

Commenced: 8 March 1967

Repealed by s 73 of the Internal Security Act 74 of 1982

1967 Terrorism Act No 83:

S According to Horrell (1978: 473), this Act signalled the beginning of the struggle against 'Red arms' as opposed to purely 'Red ideology'. It authorised indefinite detention without trial on the authority of a policeman of or above the rank of lieutenant colonel. The definition of terrorism was very broad and included most criminal acts. No time limit was specified for detention; it could be continued until detainees had satisfactorily replied to all questions or no useful purpose would be served by continued detention. Fortnightly visits by magistrates were provided for 'if circumstances permit'. No other visitors were permitted. The Act was operative retrospectively to 27 June 1962 and also applied to South West Africa retrospectively (Horrell 1978: 445). It differed from the ninety-day and 180-day detention laws in that the public was not entitled to information relating to the identity and number of people detained under the Terrorism Act (Dugard 1978: 118).

Commenced: 27 June 1962

All sections except s 7 repealed by s 33 of the Internal Security and Intimidation Amendment Act 138 of 1991

1967 Environmental Planning Act No 88:

W Placed restrictions on the number of blacks who could be employed in the manufacturing industry in the larger industrial areas.

Assent gained: 19 June 1967; commencement date not found

IN FORCE: LAND

1968 Prohibition of Mixed Marriages Amendment Act No 21:

A Invalidated any marriage entered into outside South Africa between a male citizen and a woman of another racial group (Dugard 1978: 69).

Commenced: 27 March 1968

Repealed by the Immorality and Prohibition of Mixed Marriages Amendment Act No 72 of 1985

1968 South African Indian Council Act No 31:

P Established the Council consisting of twenty-five members appointed by the Minister of Indian Affairs. The number was increased to thirty members, of which fifteen were appointed by the Minister and fifteen indirectly through electoral colleges in the provinces (Dugard 1978: 100). Unlike the Coloured Persons Representative Council, the South African Indian Council was not granted legislative powers.

Commenced: 26 March 1968

Repealed by s 23 of the Republic of South Africa Constitution Act No 110 of 1983

1968 Separate Representation of Voters Amendment Act No 50:

P The Coloured Persons Representative Council was formed with forty elected members and twenty nominated members. It had legislative powers to make laws affecting coloureds on finance, local government, education, community welfare and pensions, rural settlements and agriculture. No bill could be introduced without the approval of the Minister of Coloured Relations, nor could a bill be passed without the approval of the white Cabinet (Dugard 1978: 98).

Assent gained: 27 March 1968; commencement date not found

Repealed by s 101(1) of the Republic of South Africa Constitution Act No 110 of 1983

1968 Prohibition of Political Interference Act No 51:

P Prohibited non-racial political parties (ss 1 & 2) and foreign financing of political parties (s 3). The Act was later renamed the 'Prohibition of Foreign Financing of Political Parties Act' by the 1985 Constitutional Affairs Amendment Act.

Sections 1 and 2 relating to the ban on non-racial political parties repealed by the same Act (No 104) of 1985.

Section 3 repealed by Abolition of Restrictions on Free Political Activity Act No 206 of 1993

1968 Dangerous Weapons Act No 71:

S Prohibited the possession of weapons which could cause bodily injury if used in an assault. The Minister of Justice could prohibit the possession or manufacture or supply of such objects.

Commenced: 3 July 1968

IN FORCE (as amended by the Dangerous Weapons Amendment Act No 156 of 1993): ARMS AND AMMUNITION

- 1969 Public Service Amendment Act No 86:**
S Established the Bureau of State Security (BOSS) (Horrell 1978: 449).
Commenced: 1 April 1969
Repealed by s 37 of the Public Service Act No 111 of 1984
- 1970 Bantu Homelands Citizenship Act (National States Citizenship Act) No 26:**
P Required all black persons to become citizens of a self-governing territorial authority. As Minister Connie Mulder stated: 'No black person will eventually qualify in terms of section 10 because they will all be aliens, and as such, will only be able to occupy the houses bequeathed to them by their fathers, in the urban areas, by special permission of the Minister,' i.e. black people are forced by residence in designated 'homelands' areas to be citizens of that homeland and denied South African nationality, the right to work in South Africa etc.
Assent gained: 26 March 1970; commencement date not found
Repealed by the Constitution of the Republic of South Africa Act No 200 of 1993
- 1971 Bantu Homelands Constitution Act (National States Constitutional Act) No 21:**
P Provided for the granting of increased powers to homeland governments, thus facilitating their eventual 'independence'.
Commenced: 31 March 1971
Repealed by Sch 7 of the Constitution of the Republic of South Africa Act No 200 of 1993
- 1971 Extension of University Education Amendment Act No 29:**
E In order to prevent students from changing courses after admission, the Minister would give consent only in respect of a specific university and a specified qualification. He could withdraw his consent if the student concerned changed her/his course of study (SRR 1971:288).
Commenced: 12 May 1971
Repealed by s 21 of the Tertiary Education Act No 66 of 1988
- 1971 Black Affairs Administration Act No 45:**
P Provided for black self-government in townships.
Commenced: 26 November 1971
Repealed by s 69 of the Black Communities Development Act No 4 of 1984
- 1972 Suppression of Communism Amendment Act No 2:**
S Amended provisions regarding the participation of certain persons in the activities of certain organisations as well as ministerial powers regarding the registration of newspapers.
Commenced: 8 March 1972
Repealed by s 73(1) of the Internal Security Act No 74 of 1982
- 1972 Admission of Persons to the Republic Regulation Act No 59:**
U Consolidated the laws relating to prohibited persons and to the admission of persons to the Republic or any of its provinces.
Commenced: 2 June 1972
Repealed by s 60 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1972 Security Intelligence and State Security Council Act No 64:

S Commenced: 14 June 1972

Repealed by s 7 of the National Strategic Intelligence Act No 39 of 1994

1972-77 *Between 1972 and 1977, all the homelands were given self-government similar to that of the Transkei (Dugard 1978: 91). All enactments of the Legislative Assemblies of the homelands required the approval of the State President of the Republic of South Africa.*

1972 *Bophuthatswana, Ciskei and Lebowa proclaimed a self-governing territories*

1973 *Venda and Gazankulu proclaimed a self-governing territories.*

1973 Black Laws Amendment Act No 7:

L Designed to speed up the planning for partial consolidation of homelands. The 1927 Black Administration Act was amended so that 'a removal order might be served on a Bantu Community as well as on a tribe or portion thereof' (Horrell 1978: 205). If a tribe refused to move, and Parliament approved the plan, the tribe was unable to appeal to Parliament. Commenced: 21 March 1973

Repealed by the Abolition of Influx Control Act No 68 of 1986

1973 Aliens Control Act No 40:

U Exempted Indians from the need to obtain permits for travel between provinces.

However, in terms of provincial legislation, Indians were not allowed to stay in the Orange Free State and parts of northern Natal for more than a brief period unless prior permission had been obtained (Dugard 1978: 73).

Repealed by s 60 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1973 Black Labour Relations Regulation Amendment Act 70:

W This Act was passed in response to a wave of strikes in 1972 and 1973

(Bendix 1989: 302) and included a limited right to strike. Previously black workers had been completely prohibited from striking.

Repealed by s 63 of the Labour Relation Amendment Act No 57 of 1981.

1974 *OwaQwa proclaimed a self-governing territory*

1974 Riotous Assemblies Amendment Act No 30:

S Redefined 'gathering' and removed the reference to 'public'. A gathering could comprise any number of persons.

Commenced: 15 March 1974

Sections 1-8 and 11 repealed by the Internal Security Act No 74 of 1982.

IN FORCE: Sections 9 and 10 (dealing with ss 16-18 of the Riotous Assemblies Act No 17 of 1956): CRIMINAL LAW AND PROCEDURE

1974 Affected Organisations Act No 31:

S Provided for the declaration of Affected Organisations. Such organisations could not solicit foreign funds.

Commenced: 15 March 1974

Repealed by s 7 of the Abolition of Restrictions on Free Political Activity Act No 206 of 1993

1974 Second General Law Amendment Act No 94

(as amended by Acts No 87 of 1977, No 99 of 1978, No 74 of 1982, No 110 of 1983, Nos 84 & 95 of 1986 and No 101 of 1987):

W Repealed the Masters and Servants Acts (1856-1910). Section 1 of this Act prohibits any words or acts intended to cause feelings of hostility between different population groups of the Republic. Section 2 prohibits the furnishing of information about business carried on in or outside the Republic to any person outside the Republic without the permission of the Minister of Foreign Affairs.

Commenced: 20 November 1974

1976 Parliamentary Internal Security Commission Act No 67:

S Established a parliamentary Internal Security Commission and set out its functions. It differed little from the USA House Committee on Un-American Activities except that the South African law had more sanctions at its disposal (Dugard 1978: 173).

Commenced: 21 May 1976

Repealed by s 7 of the Abolition of Restriction on Free Political Activity Act No 206 of 1993

1976 Internal Security Amendment Act No 79:

S Removed the requirement that internment be linked with states of emergency. It amended five other Security Acts and embodied the 1967 Suppression of Communism Act with some amendments. The 'Sobukwe' clause for indefinite detention was deleted and a new provision for indefinite preventive detention was created instead. A Review Committee was established to review detentions within two months and could recommend further detention. Prohibition of bail and detention of potential witnesses were provided for. Restrictions on movement of banned persons were included.

Commenced: 16 June 1976

Repealed by the Internal Security Act No 74 of 1982 and the Internal Security and Intimidation Amendment Act No 138 of 1991 except for s 10. Section 10 was repealed by the State of Emergency Act No 86 of 1995.

1976 *Inter-Cabinet Council formed by the Prime Minister with members drawn from the Coloured Persons Council and the Indian Council and the white cabinet. First meeting boycotted by the Coloured Labour Party (Dugard 1978: 101).*

1976 *2 October: Republic of Transkei Constitution Act
26 October: Transkei becomes the first independent homeland.*

1977 *Bophuthatswana independence
KwaZulu proclaimed a self-governing territory*

1977 Community Councils Act No 125:

P Provided for the establishment of community councils, and for civil and criminal judicial powers to be conferred in certain black townships.

Assent gained: 11 July 1977; commencement date not found

Repealed by s 56 A of the Black Local Authorities Act No 102 of 1982

1977 Indemnity Act No 2:

S Retrospective to 16 June 1976

Commenced: 16 March 1977

IN FORCE: PUBLIC SERVICE

1977 Criminal Procedure Act No 51:

S Consolidates the law relating to procedure in criminal proceedings. Repeals the 1955 Criminal Procedure Act and its numerous amendments except for ss 319(3) and 384.

Commenced: 22 July 1977

IN FORCE (as amended by the Criminal Procedure Second Amendment Act No 75 of 1995): CRIMINAL LAW AND PROCEDURE

1978 Blacks (Urban Areas) Amendment Act No 97:

U Introduced a ninety-nine-year leasehold system. Full ownership was not attainable until 1986.

Commenced: 17 November 1978

Repealed by s 17 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1979 *Venda independence.*

1979 Education and Training Act No 90:

E Repealed the Bantu (Black) Education Act No 47 of 1953 and the Bantu Special Education Act No 24 of 1964.

Commenced: 1 January 1980

IN FORCE (as amended by Educators Employment Act No 138 of 1994): EDUCATION

1979 Industrial Conciliation Amendment Act No 94:

W Permitted certain blacks, excluded under the 1953 Act, to join unions. However, the exclusion of migrant workers and frontier commuters remained in force until it was lifted in the *Government Gazette* No 6679 of 28 September 1979 (SRR 1979: 285). This Act prohibited the existence of mixed trade unions (SRR 1979: 281) and repealed s 77 of the 1956 Act (see above) regarding job reservation (SRR 1979: 282).

Commenced: 1 October 1979

Repealed by the Labour Relations Act No 66 of 1995

Between 1980 and 1983 important amendments were made to the 1979 Industrial Conciliation Amendment Act, but by 1983 the following major changes had been made:

- The term 'employee' was redefined to include all persons working for an employer.
- Racially mixed unions were allowed.
- Ministerial approval was no longer required for the registration of mixed unions.
- Job reservation was repealed (Bendix 1989: 305).

1980 Industrial Conciliation Amendment Act No 95:

W Commenced: 1 August 1980

Repealed by the Labour Relations Act 66 of 1995

1980 Republic of South African Constitution Fifth Amendment Act No 101:

P Abolished the Senate, which was replaced with a multiracial President's Council, consisting of sixty white, coloured and Indian nominated members. The council was charged with creating a new constitution that would give expression to coloured and Indian political ambitions. The recommendations of this body would lay the basis for the constitution of a tricameral Parliament.

Commenced: 1 August 1983

Repealed by the Constitution of Republic of South Africa Act No 200 of 1993

1981 *KwaNdebele proclaimed a self-governing territory*

Ciskei independence

1981 Labour Relations Amendment Act No 57:

W Redefined 'employee' to cover all black workers, including local and foreign migrants and commuters (SRR 1981: 202). The Act deleted the 1956 provision which prohibited the establishment of new unions (SRR 1981: 203). It gave black workers the right to organise and abolished job reservation. However, it clamped down on unions' involvement in politics by, for example, prohibiting any union, federation or employers' organisation from giving financial assistance to a person involved in an illegal strike (SRR 1981: 203-4). Union headquarters could not be established in independent states (SRR 1981: 203). This Act repealed the 1953 Black Labour Relations Regulation Act which provided for works and liaison committees, and replaced these with works councils (SRR 1981: 203).

Commenced: 1 November 1981, excluding the provisions of s 21(b):

1 November 1982 and s 63(1): 1 March 1982

Repealed by the Labour Relations Act No 66 of 1995

1982 Intimidation Act No 72:

S Repealed s 10-15 of the Riotous Assemblies Act No 17 of 1956.

Commenced: 2 June 1982

1982 Internal Security Act No 74:

S Following the recommendations of the Rabie Commission of Inquiry, this Act provided for the following:

- Sections 4 and 6: Banning of organisations, if the Minister had reason to believe than an organisation was using, encouraging, or threatening violence or disturbance in order to overthrow or challenge state authority or bring about change.
- Sections 5 and 15: Banning of publications.
- Sections 19(1) and 20: Banning of people, including confinement to a particular district, prohibition from attending any kind of meeting and prevention from being quoted. Also provided for house arrest.
- Section 28: Indefinite preventive detention.
- Section 29: Indefinite detention for interrogation. Detainees were held in solitary confinement.

- Section 29(2): The validity of a detention order was not subject to court challenge.
- Section 31: Detention of potential witnesses for not longer than six months or for the duration of a trial.
- Section 30: Empowerment of the Attorney-General to order that prisoners arrested be refused bail.
- Section 50: Fourteen-day preventive detention. A low-ranking police officer could detain a person deemed to be threatening public safety. For the detention to be extended beyond fourteen days, a magistrate's permission was required.
- Sections 46-53: Prohibition of meetings.
- Section 54: Redefinition of 'communism' to include campaigns of civil disobedience and creation of racial hostility between European and non-European races of the Republic (SRR 1982: 222). This definition was removed by the 1991 Internal Security and Intimidation Amendment Act.
- Section 54(2): Proscription of such activities as the promotion of 'general dislocation' or the causing of 'prejudice or interruption' to an industry or undertaking 'with the purpose of effecting social, political, constitutional, industrial or economic change'.
- Section 56(1): A ban on the publication or dissemination of any statement made by a listed person, except with the permission of the Minister of Law and Order.
- Section 62: Prohibition of actions causing, encouraging or fomenting feelings of hostility between different population groups.

Commenced: 2 July 1982

IN FORCE: CRIMINAL LAW AND PROCEDURE

1982 Black Local Authorities Act No 102:

P Provided for the establishment of local communities, village councils and town councils for blacks in certain areas.

Commenced: 1 August 1983

Repealed by the Local Government Transition Act No 209 of 1993

1983 Republic of South Africa Constitution Act No 110:

P Provided for the establishment of a tricameral Parliament consisting of separate legislative houses for whites, coloureds and Indians. Matters before Parliament were to be divided into 'general affairs' (to be discussed by all houses and applying to all South Africans) and 'own affairs' (relevant to one particular race group). The Constitution also made PW Botha both the formal and executive head of state and Commander-in-Chief of the South African Defence Force.

Commenced: 3 September 1984, except ss 48, 49(1)-(3), 50 & 102(9): 24 February 1984.

Repealed by the Constitution of Republic of South Africa Act No 200 of 1993

1984 Black Communities Development Act No 4:

U Introduced freehold ownership (Budlender 1989: 5). The Act stated that only a 'competent person' could lease or rent property. A person was 'competent' if she/he had section 12 rights in terms of the 1945 Natives (Urban Areas) Consolidation Act. (For further information see *RRS* 1984: 161-3.)

P This Act provided for purposeful development of black communities outside the national states and amended and consolidated certain laws which applied to such communities.

Commenced: 1 April 1984, except s 55: to be proclaimed; ss 56 & 57: 1 November 1985
Repealed by s 72 of the Abolition of Racially Based Land Measures Act No 108 of 1991, with the exception of chapters VI and VIA

1984 Aliens and Immigration Laws Amendment Act No 49:

U Amended the 1937 Aliens Act, the 1939 Aliens Registration Act and the 1972 Admission of Persons to the Republic Regulation Act, used against squatters (*RRS* 1984: 345-6). Several critics warned that the 'amendment act would lead to a massive clamp-down on Africans present in white-designated areas but officially regarded as citizens of the "independent" homelands' (*RRS* 1984: 345). It is not clear from the *Race Relations Survey* whether this did in fact occur. What is more than clear is that those South Africans eligible to carry passes, if found not carrying one, were arrested and prosecuted for a wide range of influx control related offences (e.g. being in a prescribed area for longer than 72 hours without permission or having taken up employment without the necessary permission being granted).

Commenced: 18 June 1984

Repealed by s 60 of the Aliens Control Act No 96 of 1991

1984 *KaNgwane proclaimed a self-governing territory*

1984 Group Areas Amendment Act No 101:

U Amended the 1966 Act in order to give effect to the policy of declaring certain central business districts as free trade areas (*RRS* 1986: 11). Free trade areas were not permitted in black townships since these were established in terms of the 1945 Natives (Urban Areas) Consolidation Act and other laws and not in terms of the 1966 Group Areas Act.

Commenced: 30 May 1985

Repealed by s 48 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1984 Public Service Act No 111:

S Provided for the organisation and administration of the public service, and laid down terms of office and conditions of employment and discharge for members of the public service.

Assent gained: 12 July 1984; commencement date not found

Repealed by s 43 of Proc 103 of 1994

1985 *20 July midnight: State of emergency declared in terms of Public Safety Act No 3 of 1953, affected 36 magisterial districts.*

Regulations (Proc R 121 of 1985) were amended as follows:

- The power to detain was extended to every member of the police, railways police, prisons and army.
- Detainees had no right to visitors or a lawyer, nor were they entitled to receive letters or any reading material other than the Bible.
- No member of the force could be brought to account, by civil suit or criminal charge, for unlawful actions in carrying out emergency laws.
- It became a crime to disclose the identity of any detainee without prior disclosure by the Minister of Law and Order.
- The Commissioner of Police was authorised to impose blanket censorship on press coverage of the emergency.

- The Minister of Law and Order was empowered to ban organisations, individuals, or publications which were ‘calculated to endanger the security of the State or the maintenance of public order’.

Courts were denied jurisdiction to set aside any order or rule issued under emergency regulations.

1985 *2 November: Emergency regulations amended to prevent TV coverage of unrest without police approval*

1985 Immorality and Prohibition of Mixed Marriages Amendment Act No 72:

A Repealed s 16 of the 1957 Sexual Offences Act.

Commenced: 19 June 1985

1985 Constitutional Affairs Amendment Act No 104:

P Amended the 1968 Prohibition of Political Interference Act to allow non-racial political parties. Separate voters’ rolls remained. However, s 3, which prohibited a political party from receiving foreign financial assistance, was re-enacted with technical amendments. The 1968 Act was also renamed to the ‘Prohibition of Foreign Financing of Political Parties Act’ (RRS 1985: 57).

Commenced: 2 July 1985

Repealed by s 230 of the Constitution of Republic of South Africa Act No 200 of 1993

1986 *7 March: State of emergency lifted (RRS 1985: 455).*

12 June: Countrywide state of emergency declared in terms of the Public Safety Act No 3 of 1953.

Far-reaching regulations prevent the dissemination or publication of information relating to police conduct or any incidents categorised as ‘unrest’ incidents.

- Regulation 16 provided that the security forces were indemnified from prosecution or civil liability for unlawful acts committed in good faith.
- Regulation 16(3) attempted to exclude the jurisdiction of the Supreme Court to set aside regulations issued in terms of the Act.
- Regulation 10 provided for the prohibition of publication or dissemination of ‘subversive’ statements.

Numerous challenges to the regulations resulted in further amendments. Commissioners of Police were authorised to restrict township funerals, impose curfews, prohibit school pupils from being outside their classrooms during school hours and prohibit indoor gatherings by named organisations.

1986 Public Safety Amendment Act No 67: 20 June

S Allowed for any area to be declared an ‘unrest area’ by the Minister of Law and Order, thus avoiding the negative consequences of declaring a national state of emergency. Denied the Supreme Court the jurisdiction to set aside any regulations in terms of the Act.

Commenced: 26 June 1986

Repealed by s 4 of the State of Emergency Act No 86 of 1995

1986 Internal Security Amendment Act No 66:

S Created a new section 50(a) of the 1982 Internal Security Act to allow for continued detention for a period of 180 days on the authorisation of a policeman at or above the rank of lieutenant colonel, if he was of the opinion that such detention would contribute to the 'termination, combating or prevention of public disturbance, disorder, riot or public violence at any place within the Republic'.

Commenced: 26 August 1986

Repealed by s 33 of the Internal Security and Intimidation Amendment Act No 138 of 1991

1986 Abolition of Influx Control Act No 68:

L Amended the 1927 Black Administration Act in order to repeal sections relating to the removal of black communities as well as individual black persons (*RRS* 1986: 339).

Commenced: 1 July 1986

IN FORCE: LOCAL GOVERNMENT

1986 Abolition of Influx Control Act No 68:

U Provided for the partial or entire repeal of thirty-four laws (*RRS* 1986: 339) relating to influx control in respect of blacks, the removal of blacks from land they occupied and the control of squatting.

Commenced: 1 July 1986

1986 Identification Act No 72:

U Repealed the 1952 Blacks (Abolition of Passes and Co-ordination of Documents) Act and large portions of the 1950 Population Registration Act (*RRS* 1986: 338). Identity numbers would no longer reflect a person's race group in terms of the 1950 Population Registration Act or any other law (*RRS* 1986: 7).

Commenced: 1 July 1986

IN FORCE (as amended by the Identification Amendment Act No 47 of 1995: CENSUS AND STATISTICS

1986 Restoration of South African Citizenship Act No 73:

P Granted South African citizenship to TBVC citizens who were born in South Africa prior to their homeland's independence or who resided in South Africa permanently. TBVC citizens who remained in South Africa temporarily while seeking employment, working, studying or visiting and whose permanent home was one of the TBVC areas remained 'aliens' (*RRS* 1986: 94-5). Citizenship was restored to about 1 751 400 TBVC citizens, but eight to nine million still remained subject to the provisions of the 1937 Aliens Act. There was, however, according to Budlender (1989: 4), no official attempt to enforce this new migrant labour system.

Commenced: 1 July 1985

Repealed by s 7 of the Restoration and Extension of South African Citizenship Act No 196 of 1993

1986 Black Communities Development Amendment Act No 74:

U Introduced freehold rights in urban black townships and extended the definition of 'competent person' such that TBVC citizens could acquire leasehold or ownership (Budlender 1989: 5). The 1984 Black Communities Development Act was amended to allow 'South African' citizens and certain other blacks to acquire freehold property rights in black townships (RRS 1986: 343).

Commenced: 15 September 1986

Repealed by s 72 of the Abolition of Racially Based Land Measures Act No 108 of 1991

Both the above Acts introduced freedom of movement for South African citizens (i.e. excluding the TBVC states) (RRS 1986: 343). However, according to the South African Institute of Race Relations, 'shifting the basis of discrimination from race to foreign nationality would fool nobody' (RRS 1986: 343). According to the Black Sash, about 7.5 million TBVC citizens who did not have urban residence rights in South Africa remained aliens in 'South Africa' (i.e. South Africa excluding the TBVC states) (RRS 1986: 344).

1987 *11 June: State of emergency declared*
Regulations governed security, media and black education. Initial period of detention extended from fourteen to thirty days.

1988 *24 February: The State President amended the emergency regulations to allow the Minister of Law and Order to restrict the activities of organisations or people. Orders prohibiting organisations from performing any activities whatsoever could be gazetted (RRS 1987/88: 587).*

1988 Black Communities Development Amendment Act No 42:

U Amended the 1984 Black Communities Amendment Act and made further provisions for the development areas and townships. Also regulated the rights of holders of mineral rights and mining titles where townships were established on the surface of the land in which these rights were held.

Commenced: 15 April 1988

Repealed by s 72 of the Abolition of Racially Based Land Measures Act No 108 of 1991

1988 *10 June: State of emergency reproclaimed*

1988 Tertiary Education Act No 66:

E Repealed the 1959 Extension of University Education Act and others.

Commenced: 29 June 1988

IN FORCE: EDUCATION

1989 *Desegregation of Residences:*
In June, the Minister of Constitutional Development and Planning announced that 'the government had accepted ... that the right to desegregate residences at tertiary institutions should rest with the governing bodies' (Budlender 1989: 24).

1989 *10 June: State of emergency declared*
Security regulations broadened to prohibit certain acts, wearing of specific clothes etc. Blanket renewal of restrictions on ex-detainees. Education, prison and media regulations re-imposed.

- 1989 Disclosure of Foreign Funding Act No 26:**
S Provides for the regulation of foreign donations by or for certain organisations and persons.
Commenced: 18 August 1989
Repealed by s 7 of the Abolition of Restrictions on Free Political Activity Act No 206 of 1993
- 1990 Discriminatory Legislation Regarding Public Amenities Repeal Act No 100:**
A Repealed the 1953 Reservation of Separate Amenities Act as well as various other Acts '...so as to abolish the distinction made therein between persons belonging to different races or population groups'.
Commenced: 15 October 1990
IN FORCE: CONSTITUTIONAL LAW
- 1990 *2 February: ANC, SACP and PAC unbanned; Emergency restrictions on 33 organisations and 225 listed people lifted*
11 February: Mandela released
- 1990 Indemnity Act No 35:**
S Granted temporary or permanent indemnity against prosecutions for exiles returning to South Africa.
Commenced: 18 May 1990
Repealed by s 48 of the Promotion of National Unity and Reconciliation Act No 34 of 1995
- 1990 *8 June: Countrywide state of emergency lifted; partial emergency declared in Natal. Wide-ranging powers of arrest and detention remain in place.*
- 1990 *27 townships declared unrest areas in terms of the Public Safety Act No 3 of 1953*
- 1990 *18 October: Natal state of emergency lifted*
- 1991 *January: 205 white government schools admit black children for the first time (RRS 1991/2: xxxiii)*
- 1991 *June: The quota system for universities repealed (RRS 1991/92: 184)*
- 1991 Black Communities Development Amendment Act No 77:**
U Amended the 1984 Black Communities Amendment Act to further regulate the granting and transfer of leasehold and the conversion of leasehold into ownership.
Commenced: 29 May 1991
Repealed by s 72 of the Abolition of Racially Based Land Measures Act No 108 of 1991
- 1991 Aliens Control Act No 96:**
U, P Replaced all previous legislation regarding foreigners entering, leaving or being resident in the country.
Commenced: 1 October 1991
IN FORCE: ALIEN AND CITIZEN

1991 Abolition of Racially Based Land Measures Act No 108:

L, U

Provided for the repeal of the 1913 Black Land Act, the 1936 Development Trust and Land Act, the 1966 Group Areas Act and the 1984 Black Communities Development Act. 'A total of 189 sections and acts that had supported racial discrimination in respect of land legislation regarding rural areas under the administration of the House of Representatives and the non-independent homelands were also repealed by the Act' (RRS 1991/1992: 385; see also 339-42). The promulgation of this Act 'did not affect the legal status of the non-independent homelands, their geographical definitions or their administrative structures' (RRS 1991/92: 385).

Promulgated: 28 June 1991

Commenced: 30 June 1991, except s 72: 1 September 1991, s 23: 1 April 1992, ss 4(1), 14(1), 17(1), 18(1), 19(1), 27(1), 35(1), 41(1), 43(1), 46(1): to be proclaimed *IN FORCE: LAND (as amended by the Housing Amendment Act No 6 of 1996: HOUSING)*

1991 Population Registration Act Repeal Act No 114:

A

Repealed the 1950 Population Registration Act. The population register as compiled by the 1986 Identification Act was to remain in effect until the 1983 Republic of South Africa Constitution Act was repealed.

Commenced: 28 June 1991

IN FORCE: CENSUS AND STATISTICS

1991 Internal Security and Intimidation Amendment Act No 138:

S

Abolished indefinite detention without trial and limited detention without trial to ten days. Abolished s 55, which had prohibited the furthering of the aims of communism (RRS 1991/92: 466).

Repealed:

- the 1950 Internal Security Act (parts not repealed earlier);
- the General Law Further Amendment Act No 93 of 1963 (s 22);
- section 23 of the 1966 General Law Amendment Act;
- the 1967 Terrorism Act (parts not repealed earlier);
- sections 13-14 of the 1976 Internal Security Amendment Act;
- the 1986 Internal Security Amendment Act in its entirety.

Commenced: 31 July 1991

IN FORCE: CRIMINAL LAW AND PROCEDURE

1992 *February: Carrying of dangerous weapons prohibited:* Participants in gatherings in unrest areas are prohibited from carrying listed weapons and firearms, excluding traditional cultural weapons and/or objects not specifically designed to inflict injury (Government Notice 719, GG 13801 of 28 Feb 1992).

1992 Births and Deaths Registration Act No 51:

P

Regulated the registration of births and deaths.

Commenced: 1 October 1992

IN FORCE (as amended by the General Law Third Amendment Act No 129 of 1993, the Home Affairs Laws Rationalisation Act No 41 of 1995 and the Births and Deaths Registration Amendment Act No 40 of 1996): BIRTHS, MARRIAGES AND DEATHS

- 1992 Corruption Act No 94:**
S Provided anew for the criminalisation of corruption.
Commenced: 3 July 1992
IN FORCE: CRIMINAL LAW AND PROCEDURE
- 1992 Indemnity Amendment Act No 124:**
S Amended the 1990 Indemnity Act to provide for the disposal of articles seized in connection with the investigation of events for which a particular person has been granted indemnity.
Commenced: 10 July 1992
Repealed by s 48 of the Promotion of National Unity and Reconciliation Act No 34 of 1995
- 1992 Internal Peace Institutions Act No 135:**
U Provided for the establishment of a National Peace Secretariat and local dispute resolution committees to combat and prevent public violence and intimidation.
Commenced: 4 November 1992
Repealed by s 1 of the Internal Peace Institutions Act Repeal Act No 28 of 1995
- 1992 Judicial Matters Amendment Act No 143:**
U Amended the Investigation of Serious Economic Offences Act No 117 of 1991 in order to regulate the appointment of a Director, and amended the Attorney-General Act 92 of 1992 to provide for the appointment of attorneys-general to perform certain functions.
Commenced: 6 November 1992
Amended by the Internal Peace Institution Act Repeal Act No 28 of 1995
- 1992 Further Indemnity Act No 151:**
S Extended indemnity to state offenders and provided for total secrecy regarding the actions for which individuals sought indemnity.
Commenced: 10 November 1992 (unless otherwise indicated), ss 2-25: September 1992
Repealed by s 48 of the Promotion of National Unity and Reconciliation Act No 34 of 1995
- 1993 Restoration and Extension of South African Citizenship Act No 196:**
P Restored and extended South African citizenship to citizens of the TBVC states who would still have been citizens of South Africa but for the South African Citizenship Act No 44 of 1949.
Commenced: 1 January 1994
Repealed by s 26 of the South African Citizenship Act No 88 of 1995
- 1993 Constitution of the Republic of South Africa Act No 200:**
P Commenced: 27 April 1994, except ss 248, 249: 28 January 1994; ss 6, 40, 42, 127, 132, 143(1), Sch 2: 9 March 1994.
IN FORCE: CONSTITUTIONAL LAW

1993 Regulation of Gatherings Act No 205:

S Repealed ss 46(1) & (2), 47-9, 51, 53, 57 & 62 of the 1982 Internal Security Act. Section 46 measures were related to certain gatherings. Section 62 dealt with actions causing and/or encouraging feelings of hostility between different population groups.
Only Commenced: 15 November 1996
IN FORCE: CRIMINAL LAW AND PROCEDURE

1993 Abolition of Restrictions on Free Political Activity Act No 206:

S Repealed:

- section 29 of the 1927 Black Administration Act;
- the whole of the 1968 Prohibition of Foreign Financing of Political Parties Act (Prohibition of Political Interference Act);
- the whole of the 1974 Affected Organisations Act ;
- the whole of the 1976 Parliamentary Internal Security Commission Act;
- sections 29, 58-61 & 71 of the 1982 Internal Security Act;
- the whole of the 1989 Disclosure of Foreign Funding Act.

Commenced: 28 January 1994, except s 7: 29 April 1994
IN FORCE: CONSTITUTIONAL LAW

1993 Local Government Transition Act No 209:

P Provided for revised interim measures to promote the restructuring of local government and facilitate the establishment of Provincial Committees for local government of the provinces.
Commenced: 2 February 1994
IN FORCE: LOCAL GOVERNMENT

1994 National Strategic Intelligence Act No 39:

S Defined the functions of members of the National Intelligence Structures and established a National Intelligence Co-ordinating Committee. It repealed the 1972 Security Intelligence and State Security Council Act.
Commenced: 1 January 1995
IN FORCE: DEFENCE

1995 *January: Compulsory schooling introduced on a gradual basis for black children in January starting with the enrolment in Sub A of all six-year-olds (RRS 1994/95: 267). In a draft white paper on education published in September 1994, it was proposed that children between the ages of five and fourteen be required by law to attend school. This differed from the existing provisions for other race groups: it had been compulsory for white and coloured children to attend school between the ages of six and sixteen years; for Indian children the upper limit was fifteen years of age (RRS 1989/90: 808).*

1995 Internal Peace Institution Act Repeal Act No 28:

U Repealed the 1992 Internal Peace Institutions Act and provided for matters connected to it.
Commenced: 21 July 1995
IN FORCE: CRIMINAL LAW AND PROCEDURE

1995 Promotion of National Unity and Reconciliation Act No 34:

S Provided for investigation towards the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution.
Commenced: 1 December 1995

IN FORCE (as amended by the Promotion of National Unity and Reconciliation Amendment Act No 87 of 1995): CONSTITUTIONAL LAW

1995 Identification Amendment Act No 47:

U Amended the 1986 Identification Act so as to repeal certain obsolete provisions, and ordered, with retrospective effect, that a new population register be compiled and maintained.

Commenced: 4 October 1995

IN FORCE: CENSUS AND STATISTICS

1995 Labour Relations Act No 66:

W Repealed the 1956 Industrial Conciliation Act and all its amendments.

Commenced: 11 November 1996.

1995 State of Emergency Act No 86:

S Provides for the declaration of a state of emergency as well as empowering the President to make regulations in consequence of such a declaration.

Commenced: 6 October 1995

IN FORCE: CRIMINAL LAW AND PROCEDURE

1995 South African Citizenship Act No 88:

P Provides for the acquisition, loss and resumption of South African citizenship. Unlike the 1993 Restoration and Extension of South African Citizenship Act, this Act deals, *inter alia*, with situations where citizenship was renounced or lost on such grounds as, for example, being a child or already being a citizen of another country.

Commenced: 6 October 1995

IN FORCE: CONSTITUTIONAL LAW

■ PART II: HOMELANDS

Introduction: Self-governing territories and independent homelands

The major pieces of legislation governing both the 'independent homelands' and the self-governing states were the National States Constitution Act 21 of 1971 and the National States Citizenship Act No 26 of 1970. (Both of these Acts were repealed by Schedule 7 of the Constitution of the Republic of South Africa Act No 200 of 1993.)

The legislative powers of the self-governing territories were contained in section 30(1) of the National States Constitution Act 21 of 1971. Any national state which was self-governing was entitled to ask for full independence from the Republic.

The Act made provision for three stages of autonomy: Homelands could progress from territorial authority status, in which no legislative power was conferred to the territory, to responsible government (the second stage) to self-government (the third stage).

The final stage of full independence was catered for in the National States Citizenship Act 26 of 1970. This Act provided for the establishment of ten so-called homelands to which eventually all black South Africans were to belong as citizens according to their ethnic, linguistic and cultural affiliation. This policy of denationalisation may be traced back to even before the National Party came to power in 1948.

Self-governing national states had their own symbols of state such as a national flag, anthem, and official language. Their legislation could repeal or amend any law listed in Schedule 1 of Act 21 of 1971, including Acts of the South African Parliament dealing with such matters.

No new South African law relating to Schedule 1 matters was applicable once the territory had become self-governing. This included Acts of Parliament but excluded laws made by the State President or any section 6(2)(a)(ii) or (iii) Act or ordinance. South African laws remained fully applicable in matters *not* listed in Schedule 1.

The constitutions of the homelands were based solidly on the South African Constitution. The president was elected by the National Assembly. The Constitution expressly provided that the president of a homeland possessed the same powers by virtue of prerogative as the South African President possessed at the time when the Constitution came into operation, and the conventions applicable in South African law continued to apply.

The legislature of the self-governing territory was composed of the president and the National Assembly. The latter body was not wholly elected: half the members were elected and the rest were traditional headmen and chiefs.

In each of the independent homelands, government-paid, nominated chiefs formed at least half of the parliament and dominated the various cabinets. They wielded inordinate power over the people under their jurisdiction and were one of the key methods of control. This in itself was a substantial restraint on democratic opposition to the system; consent was engineered through the chiefs and an armoury of security laws backed by the police, who earned a reputation for heavy-handedness.

The homelands' claim of 'independence' from South Africa was generally ridiculed. On the surface, all the trappings of a sovereign state were there: parliament, government and judiciary, even military forces and diplomatic missions, though ambassadors were exchanged only with the other independent homelands and with the Republic of South Africa. In reality, however, all were totally subservient to Pretoria. This was quite obvious in the economic sphere - the homelands formed a monetary and customs union with South Africa.

Security Legislation of the Homelands:

It is in the security sphere that the independent homelands demonstrated their willingness and ability to pass and administer legislation to great effect. In legal terms, the four independent homelands had complete sovereignty, with their own police and defence forces to administer laws operative in those areas. The Ciskei government, for example, had the power to implement laws and detain people, even in the case of a family feud, and the Transkei re-imposed a state of emergency in July 1983 with extensive powers not subject to any judicial control.

In the non-independent self-governing territories the security laws were the same as those for the rest of South Africa, but in some cases the control of the police within the territories was transferred to the homeland government. In KwaZulu, for instance, control of the police was transferred in 1983 to the then Minister of Police, Chief Mangosuthu Buthelezi, who was also Chief Minister of the territory.

Notes to the chronology of homelands legislation

Listings related to the independent homelands are given in alphabetical order followed by those of the self-governing homelands, also alphabetically.

With the independent homelands, the focus is on the security legislation, particularly where it differed from that of South Africa. Security matters were, however, also addressed through regulations and proclamations, which proved difficult to trace in many instances. While specific attention is given to emergency regulations, the inventory does not fully cover other security regulations or proclamations.

In the case of the self-governing homelands, all the legislation has been listed since it did not differ significantly from that passed by the South African Parliament. It has proved very difficult to describe this legislation the laws themselves were very difficult to access. Security orders passed by the self-governing territories are not listed here as the chronology focuses only on legislation, not subordinate legislation.

The legislation of the homelands was not all repealed by a single act, but has been and is being repealed piecemeal. As a result, the repeal dates of legislation have not been included here.

BOPHUTHATSWANA

1977 Proclamation R174: (Government Gazette 5716 of 19 August 1977)

Laid down certain regulations for the administration of declared security districts in Bophuthatswana (SRR 1977: 331-2).

1977 6 December: *Bophuthatswana becomes an independent homeland*

1978 Riotous Assemblies Amendment Act

Amended the 1956 Riotous Assemblies Act [SA] and made provisions relating to the prohibition of gatherings and the dispersal of unlawful gatherings.

1979 Republic of Bophuthatswana Constitution Further Amendment Act No 21:

Provided for the detention of individuals 'in the interests of national security or public safety' (s 12(g)).

Commenced: 9 March 1979

- 1979 Internal Security Act No 32:**
Empowered Government to declare an organisation unlawful and to control the distribution of publications. Meetings of more than twenty persons were declared unlawful unless authorised by the magistrate. This Act repealed the whole of the 1950 Internal Security Act [SA] and related Acts, with the exception of the 1960 Unlawful Organisations Act which declared that any organisation which threatened public safety was unlawful. Included in this category were the ANC and the PAC (SRR 1979: 312).
Commenced: 27 April 1979
Sections 27-9 inclusive repealed by the State of Emergency Act No 86 of 1995 [SA]
- 1983 Prisons Amendment Act No 8:**
Prohibited any publications about prisons and prisoners without the permission of the Commissioner of Prisons.
Commenced: 3 June 1983
- 1984 Industrial Conciliation Act No 8:**
Prohibited unions with head offices outside the homeland from organising within the homeland. COSATU continued despite these restrictions.
Commenced: 1 July 1983
- 1984 Internal Security Amendment Act No 22:**
Prohibited any meeting of more than twenty persons to be held without the permission of the Minister of Law and Order.
Commenced: 31 August 1984
- 1985 Internal Security Amendment Act No 39:**
Empowered the President to close certain educational institutions in certain circumstances (notably circumstances of unrest etc.), in particular the University of Bophuthatswana.
Commenced: 20 December 1985
- 1985 Security Clearance Act No 40:**
Required security clearance of people as a prerequisite to their employment in certain educational or training institutions and certain parastatal bodies.
Commenced: 20 December 1985
- 1986 Internal Security Amendment Act No 5:**
Granted further control over illegal gatherings.
Commenced: 17 April 1986
- 1986 Security Laws Amendment Act No 13:**
Imposed imprisonment for up to ten years for disruption of any educational institution, unlawful strikes, boycotting of consumer goods, civil disobedience, obstruction of public places, or attending a restricted funeral.
Commenced: 11 June 1986
- 1986 Special Offences Act No 6:**
Made it an offence to possess a tyre or similar object, or any inflammable liquid, in circumstances in which it could be inferred that such things could be used to commit an offence.
Commenced: 17 April 1986

- 1987 Electoral Amendment Act No 7:**
Provisions of section 16(a) allowed for the refusal of registration to political parties. Parties could be disqualified if their object was deemed to be 'hostile to the state'.
Commenced: 5 June 1987
- 1988 Internal Security Amendment Act No 2:**
Amended the 1979 Internal Security Act (*RRS* 1988/89: 58).
Commenced: 15 March 1988
- 1990 Proclamation No 4:**
Gave the President power to make emergency regulations and to govern the state of emergency which had been declared in some districts under Proclamation 3 of 1990.
Commenced: 10 March 1990
- 1991 Industrial Relations Act No 27:**
Prohibited worker bodies from registering with unions based outside the homeland, and unions from contributing or to receiving money from any organisation banned under the 1979 Internal Security Act or any other security law.
- 1991 Internal Security Amendment Act No 5:**
Continued to bar registered political parties other than the ruling party from holding meetings without official permission.
Commenced: 28 March 1991

CISKEI

- 1975 Proclamation No 86:**
Provided that the Legislative Assembly could, by petition, request the State President to remove a minister from office and order the appointment of another.
Commenced: 29 April 1975
- 1977 Proclamation R 252:**
Gave the government of Ciskei powers to declare a State of Emergency. Powers repealed by the 1982 National Security Act, below (*SRR* 1977: 348-9).
- 1981 The Status of Ciskei Act No 110:**
Enabled Ciskei to get its independence.
- 1981 *4 December: Ciskei becomes an independent homeland*
- 1982 National Security Act No 13:**
Replaced Proclamation R252 of 1977. Provided for detention without trial, banning of individuals and outlawing of organisations and publications. Offences were defined in typically broad terms (*SRR* 1982: 386-7).
Commenced: 27 August 1982

- 1982 *The Ciskei National Assembly amends its Constitution so that no law in effect in the territory can be declared invalid by any court of law on the grounds that it contravenes fundamental human rights.*
- 1983 National Security Amendment Act No 35:**
Empowered police officers to detain and interrogate persons suspected of having committed or intending to commit an offence.
Commenced: 15 February 1983
- 1983 Arms and Ammunition Amendment Act No 17:**
Removed several clauses in the old Act (Arms and Ammunition Act 75 of 1969) adopted from South Africa.
Commenced: 5 August 1983
- 1983 Explosives Amendment Act No 18:**
Amended the Explosives Act 26 of 1956 [SA] to include, under 'explosive', petrol bombs and other apparatus which could cause an explosion.
Commenced: 5 August 1983
- 1984 Citizenship Act No 38:**
Specified who were citizens, who could become citizens and who could lose their citizenship.
Commenced: 1 July 1985
- 1984 Supreme Court Act No 2:**
Provided for the separation of the Ciskei judiciary from South Africa.
Commenced: 16 July 1984
- 1984 Republic of Ciskei Constitution Amendment Act No 10:**
Removed the post of Vice-President.
Commenced: 27 July 1984
- 1985 Defence Amendment Act No 11:**
Incorporated the Department of Defence into the Ciskei defence legislation.
Commenced: 26 July 1985
- 1985 National Security Amendment Act No 24:**
Empowered the Minister of Justice to lift banning orders.
Commenced: 23 August 1985
- 1985 Indemnity Act No 31:**
Indemnified the Ciskei administration against any court proceedings arising from their actions.
Commenced: 25 July 1985
- 1985 Explosives Amendment Act No 30:**
Widened the definition of explosives.
Commenced: 7 February 1986

- 1985 National Security Second Amendment Act No 33:**
Empowered the Attorney-General to prohibit the release on bail of people in seventy different cases (*RRS* 1985: 264-5).
Commenced: 23 August 1986
- 1985 Repeal of Laws Act No 22:**
Further eliminated legislation adopted from South Africa.
Commenced: 23 August 1985
- 1986 Defence Act No 17:**
Established a Ciskei defence force.
Commenced: 26 September 1986
- 1986 Elite Unit Act No 18:**
Established an intelligence organisation which could investigate almost anything.
Commenced: 1 August 1986
- 1986 National Key Points Act No 16:**
Empowered the Minister of Defence to declare any premises a 'national key point'. Such premises could not be destroyed.
Commenced: 1 August 1986
- 1988 National Security Amendment Act No 5:**
Provided for the arrest of any person who directly or indirectly rendered any assistance to persons suspected of being 'terrorists', or failed to report them (or have them reported) to the police.
Commenced: 19 August 1988
- 1990 Proclamation No 3:**
Provided for security emergency regulations and for external assistance to be sought from a neighbouring country in order to maintain law and order (*RRS* 1989/90: 490-96).
Commenced: 9 March 1990
- 1991 National Security Amendment Decree No 4:**
Declared a state of emergency in the residential areas of Shiloh, Ekuphumeleni, Sada and Whittlesea, and in the industrial area of Sada, in the magisterial district of Whittlesea.
Commenced: 9 March 1990
- 1993 Ciskei National Security Decree No 19:**
Provided for indefinite detention without trial.
Commenced: 3 September 1993
Sections 14-17 repealed by the State of Emergency Act No 86 of 1995 [SA].

TRANSKEI

1960 Proclamation No 400 and Proclamation No 413:

Emergency regulations contained in Proclamations 400 and 413 were issued under pre-union statutes (Dugard 1978: 110). Proclamation 400 was only repealed in 1977 by the Public Security Act No 30.

1964 Education Act No 2:

Overrode South African apartheid schooling systems and provided for black schooling and subsidies.

Commenced: 1 April 1965

1964 Transkei Authorities Act No 6:

Set in place mechanisms for the recognition of the Transkei government.

Commenced: 28 August 1964

Repealed by the Transkei Authorities Act No 4 of 1965

1965 Transkei Authorities Act No 4:

Made further provisions for the recognition of local bodies.

Commenced: 11 February 1966

1966 Transkeian Police Act No 5:

Provided for a national policing service and the various powers vested in it.

Commenced: 6 January 1967

1966 Transkeian Authorities Amendment Act No 7:

Amended the list of authoritative bodies in the homeland.

Commenced: 30 June 1966

1966 Education Act No 9:

Enacted various schooling mechanisms.

Commenced: 6 January 1967

1967 Labour Laws Amendment Act No 4:

Amended South African labour laws for Transkei.

Commenced: 1 September 1967

1972 Marriage Act No 4:

Created a local marriage recognition regime, distinct from that of South Africa.

Commenced: 19 April 1973

1973 Legal Aid Act No 2:

Provided legal aid for blacks, which was absent in the South African setting.

Commenced: 24 August 1973

1974 Prisons Act No 6:

Set out prison services in Transkei.

Commenced: 1 August 1975

- 1976 Bantu Administration Amendment Act No 2:**
This Act was similar to the 1927 Black Administration Act [SA], with a few amendments.
- 1976 Extension of the Application of Transkeian Laws Act No 6:**
Attempted to define areas of function for Transkeian laws.
Commenced: 19 July 1976
- 1976 Republic of Transkei Constitution Act No 15:**
Created a Transkei Constitution.
Commenced: 20 October 1976
- 1976 Population Registration Act No 24:**
Provided for census and citizenship rights in Transkei and for the compilation of a population register.
Commenced: 4 March 1977
- 1976 Citizenship of Transkei Act No 26:**
Set out requirements for citizenship.
Commenced: 4 March 1977
- 1976 *26 October: Transkei becomes an independent homeland*
- 1977 Labour Relations Act:**
Transkei's equivalent of the Labour Relations Act [SA].
Commenced: 1 October 1977
- 1977 Labour Act No 14:**
Set out further requirements for labour in Transkei.
Commenced: 1 October 1977
- 1977 Wage Act No 15:**
Provided for a minimum wage and wage regulation bodies.
Commenced: 1 October 1977
- 1977 Intelligence Service and State Security Council Act No 16:**
Provided for a state security advisory board in which South Africa played a role.
Commenced: 22 July 1977
- 1977 Publication Act No 18:**
Provided for state-sanctioned censorship.
Commenced: 14 April 1978
- 1977 Newspaper and Imprint Registration Act No 19:**
Required newspapers to be registered and conform to a code of conduct.
Commenced: 28 October 1977

- 1977 Acquisition of Immovable Property Control Act No 21:**
Provided for state expropriation and other powers.
Commenced: 2 September 1977
- 1977 Military Discipline Act No 23:**
Specified punishment for military disobedience.
Commenced: 12 August 1977
- 1977 Aliens and Travellers Control Act No 29:**
Provided for the control and monitoring of aliens, and for refusal of entry.
Commenced: 18 August 1978
- 1977 Public Security Act No 30:**
Repealed all security laws applicable in South Africa (including the 1950 Suppression of Communism Act, the 1930 Riotous Assemblies Act and the 1960 Unlawful Organisations Act). Further, it repealed the Proclamation 400 of 1960 but retained some of its provisions (Horrell 1978: 230; *SRR* 1977: 336; Dugard 1978: 96).
Commenced: 7 October 1977
Sections 44 and 45 repealed by the State of Emergency Act No 86 of 1995.
- 1978 Undesirable Organisations Act No 9:**
Granted the state power to act against illegal organisations.
Commenced: 19 May 1978
- 1978 Marriage Act No 21:**
Made further amendments to the Marriage Act No 4 of 1972, largely in keeping with South African trends.
Commenced: 2 July 1979
- 1979 Police Act No 16:**
Granted the police further powers with regard to search and seizure.
Commenced: 3 August 1979
- 1979 Births and Deaths Registration Act No 20:**
Specified persons who could be registered as Transkeian citizens by birth.
Commenced: 3 October 1980
- 1979 State Land Disposal Act No 23:**
Set out mechanisms for the disposal of state land.
Commenced: 8 June 1979
- 1980 Public Security Amendment Act No 6:**
Made further amendments to state security legislation, allowing for greater control by state security mechanisms.
Commenced: 1 August 1980
- 1980 Public Security Further Amendment Act No 20:**
Made further amendments regarding the declaration of states of emergency.
Commenced: 6 June 1980

- 1980 Second Public Security Further Amendment Act No 31:**
As above.
Commenced: 1 August 1980
- 1983 Public Security Amendment Act No 10:**
As above.
Commenced: 5 August 1983
- 1983 Aliens and Travellers Control Amendment Act No 16:**
Regulated the control of travellers during states of emergency.
Commenced: 21 October 1983
- 1984 Diplomatic Privileges Act No 4:**
Regulated the recognition of diplomats and privileges afforded in reciprocity.
Commenced: 22 February 1985
- 1984 Proclamation No 8:**
Concerning a state of emergency.
Commenced: 21 June 1984
- 1984 Government Notice No 66:**
Restricted the movement of certain persons at institutions of learning.
Commenced: 21 June 1984
- 1984 Government Notice No 149:**
Authorised the arrest and conviction of people found loitering within a municipal area.
Commenced: 5 December 1984
- 1985 Government Notice No 76:**
Provided for emergency regulations for the maintenance of law and order.
Commenced: 7 July 1985
- 1985 Government Notice No 109:**
Gave power to a district commissioner or non-commissioned officer of the Transkeian Police, or a chief having jurisdiction in respect of a place where a meeting is held, to cancel such a meeting and/or impose conditions to be adhered to.
Commenced: 30 August 1985
- 1985 The National Key Points Act No 26:**
Aimed at tightening up security following sabotage in Umtata.
Commenced: 8 November 1985
- 1985 The University of Transkei Amendment Act No 17:**
Empowered the Transkei Minister of Education to veto, without giving reasons, the appointment of any person to a post at the University.
Commenced: 8 November 1985
- 1986 Government Notice No 72:**
Defined curfew regulations.

- Commenced: 1 July 1986
- 1986 Defence Amendment Act:**
Dealt mainly with various ways of combating terrorism.
Commenced: 4 December 1986
- 1987 Intelligence Service and State Security Council Act No 20:**
Granted further powers to the security mechanisms.
Commenced: 6 November 1987
- 1987 *11 June: State of emergency declared in South Africa*
- 1987 Government Notice No 68:**
Repealed curfew regulations.
Commenced: 24 June 1987
- 1987 Proclamation No 8:**
Declared a state of emergency in Transkei.
Commenced: 30 June 1987
- 1987 *30 December: Bloodless coup d'etat. Martial law declared (SRR 1987/88: 936).*
- 1988 Establishment of Military Council Act No 1**
Established a Military Council and a Council of Ministers to rule the Transkei until civilian rule was restored. Although the Act was published on 5 January 1988, it was deemed to be in effect from 30 December 1987.
Commenced: 30 December 1988
- 1988 Explosive, Public Security and Criminal Procedure Amendment Act No 10:**
Controlled public activity and possession of contraband.
Commenced: 22 December 1988
- 1989 *8 November: State of emergency lifted in Transkei (RRS 1989/90: 522).*
- 1990 Enforcement of Foreign Civil Judgements Decree No 13:**
Provided for civil judgements given in designated countries (mainly South Africa and the other homelands) to be enforceable in Transkeian magistrates' courts.
Commenced: 1 September 1990
- 1990 Second Public Security Amendment, Decree No 10:**
Prohibited any demonstration or gathering of people without the written consent of the magistrate of that district.
Commenced: 20 June 1990
- 1991 Cross Border Arrest, Decree No 12:**
Provided mechanisms for cross-border raids.
Commenced: 1 January 1991

- 1993 Application in Transkei of Certain South African Laws Relating to Transitional Democracy, Decree No 13:**
Gave recognition to the democratic processes in South Africa.
Commenced: 7 December 1993
- 1994 Dispute Resolution, Peace Structure and Support Administrative Forums No 1:**
Provided mechanisms for dispute resolution.
Commenced: 7 March 1994
- 1994 (Consequential, Transitional and Temporary Provisions) Constitution**
Further legislation making transition possible.
Commenced: 26 April 1994

VENDA

- 1977 Proclamation No 276:**
Passed in response to an outbreak of trouble in Venda schools. It is 'identical to Proclamation 252 of the Ciskei except that an additional clause includes in the definition of subversive statements or actions, the threatening of a scholar or by any means influencing him to refrain from attending classes or sitting for any examination' (*SRR* 1977: 360).
- 1979 Republic of Venda Constitution Act No 9:**
Provided for a Venda Constitution.
Commenced: 13 September 1979
- 1979 *13 September: Venda becomes an independent homeland.*
- 1980 National Security Intelligence and National Security Council Act No 4:**
Enacted mechanisms for state security.
Commenced: 30 May 1980
- 1980 Preservation of Good Morals Act No 14:**
Dictated segregation similar to that required by South African apartheid laws.
Commenced: 15 August 1980
- 1982 Venda Advisory Council Act No 8:**
Provided for a state advisory council to dictate state policy.
Commenced: 9 March 1982
- 1982 Labour Act No 18:**
Enacted labour legislation similar to that of South Africa.
Commenced: 29 April 1983
- 1983 National Security Intelligence and National Security Council Amendment Act No 8:**
Granted further powers to the intelligence mechanisms.
Commenced: 17 June 1983

- 1983 Publications Act No 15:**
Provided for state censorship of the media.
Commenced: 19 August 1983
- 1983 Electoral Act No 18:**
Provided for state elections and the creation of a voters' roll.
Commenced: 17 February 1984
- 1985 Prisons Act No 3:**
Provided for prisons and prison protocol.
Commenced: 1 April 1985
- 1985 Venda Police Act No 4:**
Created a police service and granted policing powers of search and seizure.
Commenced: 9 March 1985
- 1985 Maintenance of Law and Order Act No 13:**
Provided for state declaration of states of emergency and suppression of uprising.
Repealed a number of South African Acts but not the 1953 Public Safety Act [SA].
This was not repealed until the 1995 State of Emergency Act [SA] was passed.
Commenced: 1 April 1986
- 1987 The Republic of Venda Constitution Amendment Act No 4:**
Had the effect of making Venda a one-party administration (s 24(1)).
Commenced: 30 March 1987
- 1987 The Electoral Amendment Act No 8:**
Stipulated that no person could be nominated as an election candidate without being a registered member of the Venda National Party.
- 1987 Venda Border Extension Act No 31:**
Included further territory into Venda.
Commenced: 13 September 1979
- 1988 National Intelligence Act No 31:**
Created state security bodies.
Commenced: 1 April 1989
- 1989 Foreign States Immunity Act No 4:**
Attempted to create diplomatic relationships.
Commenced: 31 March 1989
- 1991 Venda Reincorporation Forum Act No 5:**
Provided for the reincorporation of Venda into South Africa.
Commenced: 6 September 1991
- 1991 Demonstration in or near Court Buildings Prohibition Act No 10:**
Prohibited certain public gatherings and demonstrations.
Commenced: 27 September 1991

- 1992 Council of National Unity Constitution Amendment Proclamation No 23:**
Created unity bodies and mechanisms.
Commenced: 5 April 1990
- 1993 Application in Venda of Certain South African Laws Relating to Transition to Democracy Proclamation No 26:**
Recognised certain South African Legislation as enforceable in Venda.
Commenced: 3 December 1993
- 1995 State of Emergency Act No 86 [SA]**
Repealed the 1953 Public Safety Act [SA], as amended.

GAZANKULU

- 1973 *Gazankulu proclaimed a self-governing territory*
- 1973 Education Act No 7:**
Commenced: 1 January 1974
- 1973 Social Pensions Act No 7:**
Commenced: 24 September 1976
- 1979 Black Administration Amendment Act No 4:**
Commenced: 1 April 1980
- 1979 Criminal Procedure Amendment Act No 7:**
Commenced: 1 April 1980
- 1980 Police Act No 5:**
Commenced: 1 July 1981
- 1980 Divorce Act No 7:**
Commenced: 1 April 1981
- 1982 Business and Trading Undertakings Amendment Act No 7:**
Commenced: 1 April 1983
- 1984 Application of Laws to Added Areas Amendment Act No 7:**
Commenced: 25 October 1985
- 1985 Police Amendment Act No 5:**
Commenced: 1 January 1984
- 1986 Labour Regulations Repeal Act No 4:**
Commenced: 6 February 1987

- 1987 **Civil Protection Act No 5:**
Commenced: 25 April 1988
- 1987 **Social Pensions Amendment Act No 7:**
Commenced: 24 December 1987
- 1988 **Control of Access to Public Premises and Vehicles Act No 5:**
Commenced: 20 January 1989
- 1988 **Removal of Restrictions on Economic Activities Act No 15:**
Commenced: 30 June 1989
- 1990 **Immorality and Prohibition of Mixed Marriages Amendment Act No 6:**
Commenced: 25 March 1991
- 1992 **Criminal Procedure Amendment Act No 9:**
Commenced: 25 September 1992

KANGWANE

- 1979 **Public Services Act No 3:**
Commenced: 28 March 1980
Repealed by s 37 of the Public Service Act No 5 of 1989.
- 1984 *31 August: KaNgwane proclaimed a self-governing territory*
- 1986 **Labour Relations Repeal Act No 6:**
Commenced: 25 June 1987
- 1988 **Police Act No 4:**
Commenced: 27 January 1989
- 1988 **Control of Access to Public Premises and Vehicles Act No 5:**
Commenced: 15 February 1989
- 1988 **Local Authorities Act No 9:**
Commenced: 17 March 1989
- 1989 **Public Service Act No 5:**
Commenced: 16 March 1990
- 1991 **Regulations for Administration and Control of Townships in Black Areas Amendment Act No 3:**
Commenced: 16 August 1991
- 1991 **Black Areas Land Regulation Amendment Act No 5:**
Commenced: 16 August 1991

- 1992 **Child Care Harmonisation Act No 2:**
Commenced: 21 August 1992
- 1992 **Criminal Procedure Amendment Act No 6:**
Commenced: 21 August 1992
- 1993 **Deeds Registry Amendment Act No 4:**
Commenced: 4 February 1994
- 1993 **Births and Deaths Registration Act No 5:**
Commenced: 4 February 1994

KWANDEBELE

- 1981 *20 March: KwaNdebele proclaimed a self-governing territory*
- 1981 **Public Services Act No 3:**
Commenced: 1 July 1981
- 1986 **Labour Regulations Repeal Act No 3:**
Commenced: 5 September 1986
- 1986 **Police Act No 11:**
Commenced: 1 May 1987
- 1987 **Public Safety Act No 5:**
Commenced: 4 September 1987
- 1987 **Civil Defence Act No 7:**
Commenced: 12 February 1988
- 1988 **Criminal Procedure Amendment Act No 8:**
Commenced: 5 January 1989
- 1988 **Mines and Works Amendment Act No 19:**
Commenced: 28 July 1989
- 1989 **Traditional Hearings of Civil Cases Act No 7:**
Commenced: 16 March 1990
- 1990 **Traditional Authorities Amendment Act No 7:**
Commenced: 1 April 1990
- 1991 **Labour Relations Act No 19:**
Commenced: 10 January 1992

- 1992 Land Tenure Act No 11:**
Commenced: 21 January 1994
- 1992 Intimidation Act No 13:**
Commenced: 22 January 1993
- 1992 Corruption Act No 14:**
Commenced: 5 February 1993

KWAZULU

- 1973 Medium of Instruction and Language Act No 5:**
Commenced: 19 October 1973
- 1974 Chiefs and Headmen Act No 8:**
Commenced: 20 September 1974
- 1974 Labour Amendment Act No 11:**
Commenced: 1 September 1975
- 1975 Public Services Act No 7:**
Commenced: 5 December 1975
- 1977 *1 February: KwaZulu proclaimed a self-governing territory*
- 1978 Education Act No 7:**
Commenced: 8 December 1978
- 1978 Black Taxation Amendment Act No 13:**
Commenced: 1 March 1978
- 1979 Black Authorities Amendment Act No 6:**
Commenced: 14 December 1979
- 1979 Criminal Procedure Act No 14:**
Commenced: 1 June 1979
- 1979 Financial Regulations for Tribal and Community Authorities Act No 7:**
Commenced: 15 February 1980
- 1980 Labour Amendment Act No 9:**
Commenced: 28 November 1980
- 1980 Divorce Act No 10:**
Commenced: 28 November 1980

- 1981 Act on the Code of Zulu Law No 6:**
Commenced: 29 October 1982
- 1981 Police Amendment Act No 11:**
Commenced: 2 October 1981
- 1982 Marriage Amendment Act No 9:**
Commenced: 25 February 1983
- 1985 Wage and Basic Conditions of Employment Act No 9:**
Commenced: 10 April 1987
- 1985 Tribal, Community and Regional Authorities Amendment Act No 20:**
Commenced: 22 August 1986
- 1986 National Welfare Act No 9:**
Commenced: 24 July 1987
- 1985 KwaZulu Education Amendment Act No 17:**
Empowered the Minister of Education and Culture to close schools and to suspend or transfer teachers.
Commenced: 1986
- 1987 The KwaZulu Act on the Tracing and Detention of Offences:**
Empowered the KwaZulu Police and South African Police to detain without warrant, for the purposes of interrogation and for a period of up to ninety days, any person suspected by the police of intending to commit or having committed a crime.
Commenced: 1987
- 1991 Labour Relations Amendment Act No 13:**
Commenced: 19 November 1991
- 1992 Land Affairs Act No 11:**
Commenced: 30 November 1993

LEBOWA

- 1972 *20 October: Lebowa proclaimed a self-governing territory*
- 1974 Education Act No 6:**
Commenced: 24 January 1975
- 1976 Criminal Procedure Amendment Act No 11:**
Commenced: 20 August 1976
- 1977 Bantu Administration Amendment Act:**
Commenced: 21 October 1977

- 1978 **Social Pensions Act No 11:**
Commenced: 1 September 1979
- 1984 **Royal Allowance Act No 3:**
Commenced: 1 January 1984
- 1985 **Police Act No 6:**
Commenced: 24 August 1979

QWAQWA

- 1974 *1 November: QwaQwa proclaimed a self-governing territory*
- 1976 **Education Act No 4:**
Commenced: 3 December 1976
- 1980 **Police Act No 7:**
Commenced: 27 February 1981
- 1981 **Special Taxation Act No 8:**
Commenced: 1 January 1981
- 1985 **Welfare Act No 10:**
(Commencement date not found)
- 1986 **Labour Regulations Repeal Act No 7:**
Commenced: 1 September 1986
- 1987 **Education Act No 7:**
Commenced: 1 July 1988
- 1988 **Labour Regulations Act No 13:**
Commenced: 13 June 1989
- 1988 **Local Authorities Act No 18:**
Commenced: 2 October 1989
- 1989 **Police Amendment Act No 8:**
Commenced: 26 July 1989
- 1989 **Criminal Law Amendment Act No 10:**
Commenced: 26 July 1989
- 1989 **Land Act No 15:**
Commenced: 6 August 1989
- 1990 **Immorality and Prohibition of Mixed Marriages Amendment Act No 6:**
Commenced: 4 March 1988

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Commissions of Enquiry from 1960 - 1995

1960 Commission of Inquiry into Sharpville, Evaton and Vanderbijlpark Location Riots

Mandate: To inquire into and report on the events in the district of Vereeniging (especially in Sharpville and Evaton) and Vanderbijlpark, Transvaal.

Date of Report: 1960

Chair: WESSELS, P.J.

Ref: Ann. 125-61

1961 Judicial Commission on Langa Location Riots

Mandate: To inquire into and report on the riots in Langa, district of Wynberg, Cape of Good Hope, on 21 March 1960.

Date of Report: 1961

Chair: DIEMONT, M.

Ref: Ann. 126-61

1963 Commission appointed to inquire into the events on 20-22 November 1962 at PAARL and the causes which gave rise thereto

Mandate: To inquire into and report on the events at Paarl in the province of the Cape of Good Hope on the stated dates, and the causes of these events.

Date of Report: 20 June 1963

Chair: SNYMAN, J.H.

Ref: RP 51/1963

1963 Commission of Inquiry into the Postal Vote System and Registration of Voters

Mandate: To inquire into the postal vote system.

Date of Report: 1963

Chair: VAN DEN HEEVER, D.J.G.

Ref: RP 12/1963

1964 Commission of Inquiry into South West African Affairs 1962-1963

Mandate: To inquire thoroughly into further promoting the material and moral and the social progress of the inhabitants of South West Africa, and more particularly its 'non-white' inhabitants, and to submit a report with recommendations for a five-year plan for the accelerated development of the various 'non-white' groups of South West Africa (inside and outside their own territories) and for the further development and building up of such 'Native' territories in South West Africa.

Date of Report: 1964

Chair: ODENDAAL, F.H.

Ref: RP 12-64

- 1964 Commission of Inquiry into Secret Organisations**
Mandate: To inquire into and report on the conduct of any secret organisation, including Freemasonry, the Afrikaner Broederbond and the Sons of England, and on the secret activities of any other organisation which comes, or is brought, to the Commission's attention and which, in the opinion of the Commission, calls for inquiry in terms of the purpose of its appointment.
Date of Report: 12 December 1964
Chair: BOTHA, D.H.
Ref: RP 20/1965
- 1966 Commission of Inquiry into the Circumstances of the Death of the late Dr Honourable Hendrik Frensch Verwoerd**
Mandate: To inquire into and submit a report on all aspects relating to the death of the late Dr Hendrik Frensch Verwoerd which the said Commission deems to be in public interest.
Date of Report: December 1966
Chair: VAN WYK, J.T.
Ref: RP 16/1967
- 1967 Commission of Inquiry into Improper Political Interference and the Political Representation of the various Population Groups**
Mandate: To investigate, report on and make recommendations with regard to the matters referred to by the Prohibition of Improper Interference Bill (A.B. 81-'66) and any matters concerning the political representation of the various population groups.
Date of Report: 20 November 1967
Chair: MULLER, S. L.
Ref: RP 72/1967
- 1969-70 Commission of Inquiry into matters relating to the Security of the State [BOSS]**
Mandate: To inquire into and submit recommendations and a report on -
1. whether the State Departments concerned with security function properly and act in a co-ordinated manner so as to ensure the greatest measure of efficiency, and to what extent each State Department concerned plays a necessary and an efficient part;
 2. any matter which, in the opinion of the Commission, constitutes a threat to the efficient functioning of the security organisations; the harmful effects, if any, which their activities might have on the State or its citizens, and the anomalies which might arise as a result of the operations of any of the said organisations or of individuals attached to or in control of them;
 3. any further aspect concerning the security structure of the State;
 4. whether, and to what extent, present legislation concerning the Bureau for State Security should be amended in the light of the report and recommendations on the above matters;
 5. the release to the public of as much of the Commission's report as would not, in opinion of the Commission, be in conflict with the security of the State.
- Date of Report:**
Report I: 27 November 1969
Report II: 4 August 1970
Chair: POTGIETER, H.J.
Ref: Report I: RP 17/70
Report II: RP 102/1971

1973-75 Commission of Inquiry into Certain Organisations

Mandate:

- 1) To inquire into and (taking into account the evidence, memoranda and exhibits submitted to the Parliamentary Select Committee on Certain Organisations) report on -
 - a) the objects, organisation and functioning of the National Union of South African Students, the South African Institute of Race Relations, the University Christian Movement, the Christian Institute of Southern Africa and any related organisations, bodies, committees or groups of persons;
 - b) the activities of the above-mentioned organisations and the direct or indirect results or possible results of such activities;
 - c) the activities of individuals in or connected with the aforementioned organisations, and the direct or indirect results or possible results of those activities; and
- 2) to make recommendations as necessary.

Date of Reports: (see specific dates listed after ref. for each report)

Chairpersons: KRUGER, J.T. (4 July 1972 - 1 August 1972)

SCHLEBUSCH, A.L. (1 August 1972 - 14 May 1974)

LE GRANGE, L. (14 May 1974 - completion)

Refs: Reports 1 and 2, concerning the National Union of South African Students (NUSAS): unnumbered, signed 23.2.73, tabled 27.2.73, S297/43 and S297/43a

Date: 1973

Report 3, concerning same as above: unnumbered, signed 11.4.73, tabled 25.4.73 **Date:** 1973

Report 4: Final Report concerning the National Union of South African Students: RP 33-74 **Date:** 1974

Report 5, concerning the South African Institute of Race Relations: RP 62-74 **Date:** 1974

Report 6, concerning the University Christian Movement: RP 64-75 **Date:** 1975

Final Report, concerning the Christian Institute of Southern Africa: RP 44-75 **Date:** 1975.

1975 Commission of Inquiry into Certain Matters Relating to the University of the North

Mandate: To inquire into and report on -

- 1) the events on 25 September 1974 on the campus of the University of the North to determine their causes and the part played by the University management, the student representative council and any other organisation of either students or faculty, with specific attention to-
 - a) the relationship on the campus between black and white academic staff, as well as between the black academic staff and the students; and
 - b) related matters concerning the present and future management of the university, including possible interference by the black academic staff association;
- 2) any related matter which comes to the notice of the Commission and which in its view calls for inquiry.

Date of Report: 30 June 1975

Chair: SNYMAN, J.H.

Ref: G68 E: EDUC 1/75

1976 Commission of Inquiry into the Penal System of the Republic of South Africa
Mandate: To inquire into the penal system of the Republic of South Africa and to make recommendations for amendments: in this respect the question of the death penalty should not be inquired.

Date of Report: 1976

Chair: VILJOEN, G.

Ref: RP 78/1976

1976 Commission of Inquiry into Matters relating to the Coloured Population Group

Mandate: To inquire into, consider, and report on-

- a) progress of the coloured population group since 1960 in –
 - i) the social sphere, including housing and health conditions, community development, education, and all matters relevant hereto;
 - ii) the economic field, including commerce and industrial development, agricultural development, general economic development, occupational participation, and all matters relevant hereto;
 - iii) the constitutional field and all matters relevant hereto;
 - iv) local government and all matters relevant hereto;
 - v) the sports and cultural fields and all matters relevant hereto;
- b) hindrances in the different fields which constitute obstacles;
- c) any other relevant matter within the scope of the designated field of inquiry which may come to the attention of the Commission and which in its opinion necessitates inquiry.

Date of Report: 9 April 1976

Chair: THERON, E.

Ref: RP 38/1976 [Also a white paper on the report of the Commission of Inquiry into Matters relating to the Coloured Population Group, W.P.D./77; and an Interim Memorandum stating provisional comments by the government on the recommendations of the Commission of Inquiry into Matters relating to the Coloured Population: W.P.S./76]

1979-90 Commission of Inquiry into Labour Legislation

Mandate: To inquire into, report on and make recommendations in connection with the following matters:

- a) Industrial Conciliation Act, 1956
- b) Bantu Labour Relations Regulation Act, 1953
- c) Wage Act, 1957
- d) Factories, Machinery and Building Work Act, 1941
- e) Shops and Offices Act, 1964
- f) Apprenticeship Act, 1944
- g) Training of Artisans Act, 1951
- h) Bantu Building Workers Act, 1951
- i) Electrical Wiremen and Contractors' Act, 1939
- j) Workmen's Compensation Act, 1941
- k) Unemployment Insurance Act, 1966
- l) Registration for Employment Act, 1945

The mandate was extended to include:

- m) Mines and Works Act, 1956 or any other act administered by the Department of Mines.

Date of Report: 1979/1990

The report was made in six parts (see separate references below)

Chair: WIEHAHN, N.E.

Ref: Part 1: RP 47-79 (E&A)

Part 2: RP 38-80 (E&A)

Parts 3 & 4: RP 82-80 (E), RP 87-80 (A)

Part 5: RP 27-81(E&A)

Part 6: RP 28-81 (E&A).

1978-79 Commission of Inquiry into Alleged Irregularities in the Former Department of Information

Mandate: To evaluate and make findings and recommendations on certain evidence of alleged irregularities in the former Department of Information which had come to light through other authorities and through the press; and [for the supplementary report] to extend the inquiry into new facets and areas brought to light in the course of the Commission's first inquiry.

Date of Report: 1978, supplementary report 1979

Chair: ERASMUS, R.P.B.

Ref: RP 63/1979 (supplementary report)

1979 Commission of Inquiry into the Riots at Soweto and Elsewhere from 16 June 1976 to 28 February 1977

Mandate: To inquire into and report on the riots at Soweto and other places in the Republic during June 1976, and their causes.

Date of Report: 1979

Chair: CILLIÉ, P.M.

Ref: RP 55/1980 (E), RP 106/1979 (A)

1980-81 Commission of Inquiry on the Constitution

Mandate: To inquire into and report on the introduction of a new Constitution for the Republic of South Africa

Date of Report: Interim Report: 6 May 1980

Final Report: 4 February 1981

Chair: SCHLEBUSCH, A. L.

Ref: Interim Report: RP 68/1980

Final Report: RP 23/1981

1980 Commission of Inquiry into Reporting of Security Matters regarding the South African Defence Force and the South African Police Force

Mandate: To inquire into and make recommendations on -

- a) the delimitation of, on the one hand, the interests of the news media and the public's right to be informed on affairs of the state and, on the other hand, the interests of the state and of its citizens as entrenched by section 118 and other provisions of the Defence Act of 1957 and the Police Act of 1958, which require that newsworthy information should sometimes not be made known;
- b) ways of reconciling these interests and any changes that might be needed to the Defence Act of 1957 and the Police Act of 1958.

Date of Report: 1980

Chair: STEYN, M.T.

Ref: RP 52-80

- 1981 Commission of Inquiry into Security Legislation**
Mandate: To inquire into, report and make recommendations on the necessity, adequacy, fairness and efficacy of legislation pertaining to the internal security of the Republic of South Africa.
Date of Report: 21 November 1981
Chair: RABIE, P.J.
Ref: RP 90-81
- 1982 Commission of Inquiry into the Monetary System and Monetary Policy in South Africa**
Mandate: To inquire into and report on the oversight on the monetary system and the monetary policy in South Africa.
Date of Report: November 1982
Chair: DE KOCK, G.P.C.
Ref: RP 93/1982
- 1982 Commission of Inquiry into the Mass Media**
Mandate: To continue with and build on the work of the Van Zijl Commission (1950-64), the Commission of Inquiry on Security Matters regarding the Defence Force and the Police Force (1979-80) and the Meyer Commission (1969-71), which investigated the desirability of establishing a television service.
Date of Report: 1982
Chair: STEYN, M.T.
Ref: RP 89/1981 (3 vol.)
- 1984 Commission of Inquiry into South African Council of Churches**
Mandate: To inquire into and report on –
a) the inception, development, objects and activities of the South African Council of Churches, including the way it functions and is managed;
b) the way in which the South African Council of Churches and individuals connected with it solicit or obtain money and assets (at present or in the past), the purpose for which these funds are used and the organisations and individuals from or through whom they are solicited or received.
c) any other matter pertaining to the South African Council of Churches, its present and past office bearers or officers and other persons connected with it, on which the Commission is of the opinion that a report should be made in the public interest.
Date of Report: 1984
Chair: ELOFF, C.F.
Ref: RP 74/1983
- 1984 Commission of Inquiry into Township Establishment and Related Matters**
Mandate: To inquire into, report on and make recommendations regarding –
a) methods and proposals for the accelerated provision of affordable new housing by giving particular attention to simplifying and expediting township establishment by, for instance, removing or streamlining any impeding legislation and regulations;
b) ways of transferring land to competent institutions, or any other measures in cases where township establishment does not proceed as desired;

- c) ways to facilitate efficient use of land, for example by relaxing some of the restrictions on the subdivision or the placing of more than one housing unit on an erf or holding; and
- d) any other methods which may promote the provision of sufficient residential erven and reduce their cost.

Date of Report: 29 March 1983

Chair: VENTER, A.A.

Ref: RP 20, 21 and 54/1984

First report: RP 20/1984.

Second report: RP 21/1984.

Third report: RP 54/1984.

1985 Commission Appointed to Inquire into the Incident which occurred on 21 March 1985 at Uitenhage

Mandate: To investigate the circumstances surrounding the incident on the date mentioned, in which people were killed and injured, and to submit an urgent report.

Date of Report: 4 June 1985

Chair: KANNEMEYER, D.D.V.

Ref: RP 74-85; S297/103

1985 Commission of Inquiry into the Violence which occurred on 29 October 1983 at the University of Zululand

Mandate: To inquire into and report on the circumstances surrounding the violence at the University of Zululand on 29 October 1983.

Date of Report: February 1985

Chair: MIDDLETON, A.J.

Ref: RP 80/1985

1988 Commission of Inquiry into alleged misappropriation of funds of the Lebowa Government Service

Mandate: To inquire into, report on and make recommendations on-

- a) the possible misappropriation of funds of the Lebowa Government Service by -
 - i) the financing of the erection of a house on the farm Majebaskraal and
 - ii) the granting of a loan to Kgosi L.C. Mothiba;
- b) the methods employed and malpractices committed in connection with any irregularities or advantage accorded anyone, or any misappropriation the Commission may find;
- c) steps to end such practices, and action to be taken against those involved.

Date of Report: 18 October 1988.

Chair: DEKKER, L.W.

Ref: RP 45-89; S291/141 (Bilingual)

1989 Commission of Inquiry into Certain Alleged Across-Border Irregularities

Mandate: To accept the findings made by the 'Alexander Commission' and to attempt to clear up alleged irregularities found but not fully investigated by that commission with regard to the processing and granting of gambling rights and related licences by Transkeian authorities.

First report: The Matter of S.G. Palazzolo-De Pontes.

Second report: Transkei Gambling Rights.

Date of Reports: 1989

Chair: HARMS, The Hon L.T.C.

Ref: Anns 11, 12/1989 or S297/145 (E)

1989 Commission of Inquiry into Allegations Concerning the Involvement of any Member of the Ministers' Council in the House of Delegates or any Member of the House of Delegates in any Irregularities

Mandate: As above.

Date of Report: 13 March 1989.

Chair: JAMES, N.

Ref: An 119-89 or S297/136 (E)

1990 Commission of Inquiry into the Death of Clayton Sizwe Sithole

Mandate: To investigate the circumstances surrounding the death in detention of Clayton Sizwe Sithole on 30 January 1990.

Date of Report: 20 February 1990

Chair: GOLDSTONE, R.J.

Ref: S297/143 (E)

1990 Commission of Inquiry into Certain Alleged Murders

Mandate: To inquire into and to report on certain alleged murders and other unlawful acts of violence committed in the Republic of South Africa (including self-governing territories). If such murders and acts of violence are found to have occurred, to investigate what bodies and organisations were responsible for these acts. The mandate was extended to include an investigation into and report on the allegation that one Anton Lubowski was a paid agent of the SADF: Military Intelligence Section.

Date of Report: September 1990

Chair: HARMS, L.T.C.

Ref: RP 108-90 (A); RP 109-90 (E); S297/151 (A); S297/152 (E).

1990 Commission of Inquiry into the Salvage on the 'An Hung No. 1' and Related Matters

Mandate: To investigate and report on the effectiveness of existing measures and their application with regard to the salvage of the stranded fish trawler 'An Hung No. 1' and its cargo, and to make recommendations accordingly.

Date of Report: 2 October 1990

Chair: DE BEER, J.

Ref: RP 104/1990

1990 Commission of Inquiry into the Incidents at Sebokeng, Boipatong, Lekoa, Sharpsville and Evaton on 26 March 1990

Mandate: To investigate all the factual circumstances around the violent incidents at Sebokeng, Boipatong, Lekoa, Sharpsville and Evaton on 26 March 1990 during which people were killed or injured, and to report urgently.

Date: 27 June 1990

Chair: GOLDSTONE, R.J.

Ref: G68 E2 15/90

1992-93 Commission of Inquiry into the 1986 Unrest and Alleged Mismanagement in KwaNdebele

Mandate: To inquire into and report on any mismanagement that has occurred in the governmental department of KwaNdebele, the KwaNdebele National Development Corporation or the KwaNdebele Utility Company, with special reference to -

- a) any malpractices or irregularities in the above-mentioned department, corporation and company; and to any irregular favouring of individuals or institutions;
- b) any abuse of authority or position by persons in the board of such a corporation or company;
- c) any losses suffered by a department or organisation as a result of misallocation of funds;

and to determine steps to be taken to halt such mismanagement or to prevent their recurrence, in order to ensure that funds put at the disposal of KwaNdebele are used to the best advantage of KwaNdebele and its inhabitants.

The mandate was extended in *Government Gazette* No 13586 (25 October 1991) to include any such matters irrespective of whether they occurred before or after 28 November 1988.

Date of Report: see below

Chair: PARSONS, B.J.

Ref(s):

Report 1: RP 119-92 [topic and date not available];

Report 2: Concerning police functions of the Department of Law and Order as one of the Departments of Government of KwaNdebele; RP 120/1992; 19 May 1992

Report 3: --- [not available]

Report 4: Concerning the Department of Water Affairs and Public Works; RP 91/93; 10 March 1993

Report 5: Concerning the Department of Civil Relations and Information; RP 137/1993; 24 August 1993

Report 6: Concerning the KwaNdebele National Development Corporation and the KwaNdebele Utilities Company; RP 146/1993; 9 November 1993

1992-95 Commission of Inquiry regarding the Prevention of Public Violence and Intimidation

Mandate: The chairperson and members of the Commission were appointed for three years to investigate the issue of public violence and intimidation in South African society. With regard to specific incidents of violence, the Commission's approach was to inquire into paradigm situations where, on the face of it, the symptoms were common to other areas of violence. The Commission's major aim with these investigations was to act as a catalyst in the process of transforming the police force into a body that had the confidence, respect and co-operation of the vast majority of the people of South Africa.

Dates of Reports: Reports spanned a number of topics and were given at various points between 1992 and 1995. The final report was submitted in October 1994.

Chair: GOLDSTONE, R.J.

Ref: The references are different for the different reports of the Commission, which were being processed at the Parliamentary Library, Cape Town, at the time of writing. (See appendix)

**1995 Commission of Inquiry into Unrest in Prisons -
Appointed by the President on 27 June 1994**

Mandate:

- 1) To inquire into, consider and report on the causes, course and consequences of the unrest that occurred in South African prisons during the period 26 April 1994 to 13 June 1994;
- 2) to investigate the circumstances and causes of any deaths or injuries which occurred in the said unrest;
- 3) to recommend steps that can be taken to prevent the future occurrence of such unrest or to minimise its risk; and
- 4) to inquire into and report to the President on any matter which seems to the Commission to be relevant to the proceedings.

Date of Report: February 1995

Chair: KRIEGLER, J. C.

Ref: R 125/1994

1995 Commission of Inquiry into Alleged Arms Transactions between Armscor and one Eli Wazan, and other Related Matters

Mandate:

- 1) To inquire into, consider and report on-
 - a) all aspects and surrounding circumstances of the transaction/s between Armscor and one Eli Wazan for the sale of weapons, arms components and related materials;
 - b) the facts relating to other arms deals and other transactions relating to arms components and related material since 2 February 1990, with a view to identifying any possible similarities between such other transactions and the transaction/s referred to in paragraph (a) above;
 - c) the identity of all persons, parties and/or countries involved in such transactions and their antecedents;
 - d) whether there was any connection between such transactions and any other matter;
 - e) whether such transactions violated-
 - i) any law and/or
 - ii) any international embargo;
 - f) whether *prima facie* evidence exists indicating that any person committed-
 - i) a criminal offence; or
 - ii) serious misconduct, negligence or impropriety.
- 2) To comment, in the context of South Africa's national and international obligations and responsibilities, on the appropriateness of-
 - a) South Africa's current trade policy with regard to weapons, arms components and related materials; and
 - b) decision-making processes with regard to such trade.
- 3) To submit an interim report (and further interim reports) as soon as possible.

Date of Report:

First Report: 15 June 1995

Second Report: 20 November 1995

Chair: CAMERON, E

Ref: First Report: S 297/208

Second Report: S 297/215

■ APPENDIX

REPORTS OF THE COMMISSION OF INQUIRY REGARDING THE PREVENTION OF PUBLIC VIOLENCE (GOLDSTONE COMMISSION)

- First Interim Report (Jan 1992)
- Interim Report: Violence at Mooi River, Natal (Feb 1992)
- Further Interim Report on Mooi River (Feb 1992)
- Report: Incidents at President Steyn Gold Mine, Welkom (Feb 1992)
- Report: Press statement by IFP on 24 March 1992 (Apr 1992)
- Second Interim Report (Apr 1992)
- Report: Conduct of members of 32 Battalion in April 1992 (Jun 1992)
- First Interim Report: Violence in the taxi industry (Jun 1992)
- Second Interim Report: Violence in the taxi industry (Jul 1992)
- Interim Report: Train violence (Jul 1992)
- Interim Report: Violence in hostels (Sept 1992)
- Report: Preliminary inquiry into the Bisho incident on 7 September 1992 (Sept 1992)
- Report: Allegations of planning or instigation of acts of violence by the SAP in the Vaal area (Oct 1992)
- Report: Violence in Tokoza (Nov 1992)
- Third Interim Report: Taxi violence (Dec 1992)
- Report: Presence of Renamo soldiers in KwaZulu (Dec 1992)
- Third Interim Report (Dec 1992)
- Final Report: Violence at Mooi River, Natal (Dec 1992)
- Report: Regulation of gatherings (Jan 1993)
- Fourth Interim Report: Taxi violence in Groblersdal and surrounding areas (Feb 1993)
- Interim Report: APLA (Mar 1993)
- Final Report: Regulation of gatherings (Apr 1993)
- Final Report: Train violence (May 1993)
- Report: Allegations published in the *Vrye Weekblad* dated 30 October 1992 concerning a third force (May 1993)
- Report: Allegations concerning front companies of the SADF, the training by the SADF of Inkatha supporters in 1986 and the 'Black Cats' (Jun 1993)
- Report by the committee appointed to hold a workshop to consider events after the assassination and during the funeral of Mr. Chris Hani (Jun 1993)
- Report of the multi-national panel to inquire into the curbing of violence before, during and after the forthcoming election (Aug 1993)
- Fifth Interim Report: Taxi violence in the Western Cape and in general (1993)
- Report: Illegal importation, distribution and use of firearms, ammunition and explosive devices (Oct 1993)
- Report: Crossroads (Cape) during March to June 1993 (Nov 1993)
- Report: Incidents of violence at Mossel Bay: July 1993 (Oct 1993)
- Fourth Interim Report (Dec 1993)
- Report: Incidents in Katlehong on 9 January 1994 (Jan 1994)
- Interim Report: Criminal political violence by elements within the SAP, the KwaZulu Police and the Inkatha Freedom Party (Mar 1994)
- Interim Report: Wallis Committee - causes of the incidents between IFP and ANC (Mar 1994)
- Second Interim Report: Wallis Committee - specific matters (Mar 1994)
- Final Report: Attacks on members of the SAP (Apr 1994)
- Report: Preliminary inquiry into the shooting incidents which took place in the centre of Johannesburg on 28 March 1994 (Apr 1994)
- Report: Preliminary inquiry into the attempted purchase of firearms by the KwaZulu government from Escom (Apr 1994)
- Report: Attack on the Power Park squatter camp on 27 July 1993 (May 1994)
- Fifth Interim Report (May 1994)
- Sixth Interim Report: Violence in the taxi industry in the King William's town area (Jul 1994)
- Seventh Interim Report: Violence in the taxi industry in the Queenstown area (Aug 1994)
- Report: The effects of public violence and intimidation on children (Oct 1994)
- Final Report by the Commission (Oct 1994)

NOTE: All these reports can be found in the Parliamentary Library in Cape Town (not yet catalogued as of July 1997).

