

# Findings and Conclusions

## **p INTRODUCTION**

- 1 The Promotion of National Reconciliation and Unity Act (the Act) was a contested piece of legislation. Its passage through cabinet and Parliament and its final form mirror the many different interests, fears and perspectives in South African society (see further Volume One).
- 2 The new government settled on a compromise. Focusing not only on those violations committed by the former state, the Act chose instead to focus on violations committed by *all* parties to the conflict. It eschewed notions of vengeance or retribution, and instead created a mechanism for the granting of amnesty for politically motivated actions, providing full individual disclosure was made.
- 3 It is the view of the Truth and Reconciliation Commission (the Commission) that the spirit of generosity and reconciliation enshrined in the founding Act was not matched by those at whom it was mainly directed. Despite amnesty provisions extending to criminal and civil charges, the white community often seemed either indifferent or plainly hostile to the work of the Commission, and certain media appear to have actively sought to sustain this indifference and hostility. With rare individual exceptions, the response of the former state, its leaders, institutions and the predominant organs of civil society of that era, was to hedge and obfuscate. Few grasped the olive branch of full disclosure.
- 4 Even where political leaders and institutional spokespersons of the former state claimed to take full responsibility for the actions of the past, these sometimes seemed to take the form of ritualised platitudes rather than genuine expressions of remorse. Often, it seemed to the Commission, there was no real appreciation of the enormity of the violations of which these leaders and those under them were accused, or of the massive degree of hurt and pain their actions had caused.
- 5 In making its findings, the Commission drew on a wide range of evidence. Apart from over 21 000 statements on violations of human rights, it considered the evidence contained in numerous submissions, amnesty applications and other documents to which it had access.

### **Submissions to the Commission**

- 6 Political parties, institutions and sectors were asked to make submissions to the Commission about their role in the conflict and their motives and perspectives.
- 7 A number of party leaders, some prominent past politicians, and representatives of institutions of the former state – the South African Police (SAP) and the South African Defence Force (SADF) – made submissions to the Commission. The usefulness of these submissions varied widely, but they were generally disappointing and did little to further the work of the Commission. Frequently, they consisted of little more than recitations of the policies under which these groups operated and often unconvincing apologies for excesses committed.
- 8 The appearance before the Commission of former President FW de Klerk as spokesperson of the National Party (NP) perspective was a particular disappointment to the Commission. As one who had done so much

to turn the tide of South African history, his evasiveness and unwillingness candidly to acknowledge the full burden of the NP's responsibility seemed to the Commission to be a missed opportunity to take the reconciliation process forward.

- 9 Other former NP leaders were, however, more forthcoming. Former Foreign Minister 'Pik' Botha submitted responses to the Commission's questions that were rich in detail, while former Ministers Roelf Meyer and Leon Wessels frankly acknowledged the wrongs of the former ruling party's past. Mr Wessels cast doubt on the argument by members of the former cabinet and State Security Council (SSC) that they had been unaware of the excesses of the security forces. Wessels concluded with an apology rare in its eloquence and sincerity:

*I am now more convinced than ever that apartheid was a terrible mistake that blighted our land. South Africans did not listen to the laughing and the crying of each other. I am sorry that I had been so hard of hearing for so long.*

- 10 While some members of the former state displayed half-heartedness and reluctance to make full disclosure, others seemed intent on obstructing the work of the Commission. In this respect, the Commission refers particularly to former State President PW Botha.
- 11 The facts pertaining to the PW Botha case and his conviction are well known and require little comment. The irony in the fact that the man who took the state into the realms of criminality should have himself chosen to incur a criminal record at the hands of its democratic successor has not been lost on the Commission.
- 12 Much was made by Mr Botha's defence team of his willingness to co-operate with the Commission by way of written responses to questions. Despite this, it took ten months for his state-sponsored legal team to supply these answers, reflecting a disdain for the Commission and its work. Furthermore, although Mr Botha's answers were comprehensive and, at points, informative as to detail, they failed to engage frankly with the issues that had been raised.
- 13 Former generals of the SAP, under the banner of an organisation called the Foundation of Equality before the Law, submitted a lengthy submission to the Commission. While the submission provided extensive details about the atrocities allegedly committed by forces opposing the state, it did not even attempt to deal with those committed by the former SAP. It was left to scores of amnesty applicants to provide the details so clearly absent in the generals' submission.
- 14 The first submission by the SADF was so insubstantial that the Commission asked for a second, more comprehensive, submission. This too, however, reflected the enormous – perhaps unbridgeable – chasm between the perspectives of those who wielded power in the apartheid era and those who suffered at their hands. Nowhere was this more clearly illustrated than in the opening remarks of General Viljoen's submission on behalf of the SADF at the Commission's armed forces hearing:

*The former SADF was politically neutral whilst your Commission is highly politicised ... The governing party of the former government did not demonstrate interest in the former SADF. You really erred in your assumption, and the expectations you created in public, that the SADF was guilty of gross violation of human rights on a substantial scale.*

- 15 In the light of the Commission's findings that the security forces, including the SADF, were responsible for the commission of gross violations of human rights on a massive scale, this statement seemed to the

Commission to epitomise the overarching sense of denial which seems to have enveloped so many of those who were the leaders and beneficiaries of the former state.

- 16 In late 1996, a set of questions was submitted to the SADF. Only after considerable prodding did it respond – and then only in piecemeal fashion over a period of months. While some of the data relating to structural and organisational detail was useful, it demonstrated a studied determination to oppose the Commission's efforts to prise open the lid on the SADF's past.
- 17 The appearance of the African National Congress (ANC) national leadership before the Commission was marked by the fact that, in contrast to the National Party, it took collective responsibility for the human rights violations of its membership and dealt frankly with the Commission's questions. The ANC also made the reports of the various enquiries conducted into its alleged excesses at Quatro and elsewhere freely available to the Commission.
- 18 This spirit of openness was not, however, always translated into participation by other echelons, and frequently membership, of the ANC. The Commission received few statements from ANC leaders, past or present. Almost none of the ANC's senior leaders in exile came to the Commission to give first-hand details of what had led them into exile or of their experiences at the hands of cross-border intruders. No one who survived the raids at Matola, Maseru or Gaborone, or individual assassination attempts, made submissions on these experiences. Few Umkhonto weSizwe (MK) cadres or underground activists, aside from those who applied for amnesty, made statements to the Commission.
- 19 Thus, while the Commission tapped a rich seam of experience from rank and file supporters of the ANC, its knowledge of those who led and those who worked in its structures for lengthy periods of time is largely non-existent. This has severely constrained the Commission's capacity to provide the "full and complete" picture that the Act demands. Particularly regrettable was the non-appearance of those who are the remaining repositories of important historic details about the 1960s, on which very few submissions were made to the Commission. The Commission accepts that its framework may have been problematic to some. Many refused to regard themselves as victims. The consequence is, however, that the historical record of violations in this country and outside it has suffered grievous omissions, particularly in regard to the 1960s and, more broadly, in relation to torture.
- 20 One ANC member who did experience a close encounter with the Commission did not do so voluntarily. Ms Winnie Madikizela-Mandela's contempt not only for the Commission but for the notion of accountability was palpable to the millions who followed the hearing in which she appeared.
- 21 The Commission's experience of the ANC's major internal ally, the United Democratic Front (UDF) , was also unsatisfactory. The Commission erred in that it did not identify early enough the importance of soliciting a formal and separate submission from this grouping, which largely permitted the ANC to speak for it. The Commission's attempts to rectify this error were extremely frustrating, not least because the UDF was no longer in existence and its former leadership no longer constituted a coherent working body. Scarcely any former UDF regional or local leadership figures gave statements to the Commission. In some areas they were openly cynical. The UDF played a central role for a significant part of the 1980s, the period which saw a considerable intensification of conflict and abuses. Thus again, an important and crucial input has been denied to the Commission.
- 22 The Inkatha Freedom Party (IFP) made no pretence of co-operating with the Commission. Its submission to the Commission consisted largely of a lengthy exposition of how the president of the IFP had been 'vilified' by his political enemies over the years. It also included a list of IFP office-bearers who had allegedly been

killed by UDF/ANC members over the past fifteen years. It contained a muted apology, in little more than a sentence, for any hurt that Inkatha members may have caused others in the political conflict. Considering the overwhelming evidence that Inkatha/the IFP was the primary non-state perpetrator, and that it was responsible for approximately 33 per cent of all the violations reported to the Commission, its submission was singularly unforthcoming, evasive and defensive.

- 23 The IFP's very public opposition had the effect of dissuading thousands of ordinary IFP supporters from coming forward to the Commission. This had a number of consequences for the Commission and for the IFP. From the Commission's point of view, the consequence was that it received few first-hand accounts of violations committed against the IFP to draw on in the preparation of its report. It was thus forced to resort to secondary sources in an attempt to produce a balanced report on the virtual civil war that has raged in KwaZulu-Natal for many years.
- 24 The repercussions of the IFP's opposition to the Commission are even more serious for its own members. If and when financial reparation is made available by the government to those the Commission found to be victims of human rights violations, only those very few IFP members who flouted their party's opposition and made statements to the Commission will qualify. This may well exacerbate existing tensions between IFP and ANC members in the region and, ironically, contribute to more bloodshed and violence.
- 25 The Commission was further disturbed by the fact that high-ranking office-bearers of the IFP visited the party's members in prison to persuade them not to apply for amnesty, for fear that their applications would reveal collusion by senior IFP leaders in gross violations of human rights. The Commission finds it difficult to accept that the IFP appeared willing to allow certain of its members to remain in prison in order to protect the leadership.
- 26 Although refusing to participate in the process, the IFP nonetheless complained that the Commission appeared not to take seriously its claim that 400 of its office-bearers had been killed in the violence of recent years. In fact, the investigation into this list was one of the most intensive and exhaustive of the many investigations undertaken by the Commission.
- 27 Before leaving this question, the Commission wishes to put on record its disappointment at the flimsiness and lack of coherence displayed by the leadership of the Pan Africanist Congress (PAC) when it appeared before the Commission. The PAC's interaction with the Commission was characterised by, on the one hand, repudiation of the Commission and, on the other, its complaint that its members' amnesty applications were not being dealt with speedily enough.
- 28 The Commission also received submissions from organisations representing various sectors of civil society, such as media, health, business and the judiciary. While these varied in their openness and frankness, they were generally characterised by defensiveness and a failure to come to terms with the role these sectors had played in supporting the *status quo*, whether by commission or omission.

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As regards the Commission's hearings on the legal system, it must be noted with great regret that judges refused to appear before the Commission on the basis that this would negatively affect their independence and would harm the institution of the judiciary. The Commission fails to understand how their appearance would have undermined such independence. The Commission was a unique occurrence and therefore unlikely to create a precedent. Furthermore, when one considers the historic significance of the Commission and its envisaged role in the transformation of South African society into a caring, humane and just one, the judges' decision is all the more lamentable. In effect, the Commission was denied the opportunity to engage in debate with judges on how

the administration of justice could adapt to fulfil the tasks demanded of it in the new legal system. The intention was not to dictate or bind them in the future, but to underline the urgent need to re-evaluate the nature of the judiciary.

- 30 Similarly, few magistrates responded to the Commission's invitation. The Commission found this stance deplorable given the previous lack of formal independence of magistrates and their dismal record as servants of the apartheid state. Both they and the country lost an opportunity to examine their role in the transition from oppression to democracy.

### **Amnesty applications**

- 31 Given the difficulties and constraints in accessing information, the Commission relied, to a large extent, on a different form of submission – amnesty applications.
- 32 In reviewing its efforts to uncover the deeper truth behind the violations of the apartheid era, the Commission frankly acknowledges that much of its success is due to the fact that large numbers of security police members grasped at the possibility of amnesty in exchange for full disclosure. The Commission is not, however, so naïve as to believe that it was this alone that persuaded them to 'blow the whistle' on their past actions. The fact is that they would have preferred the cloak of silence. The ironic truth is that what brought them to the Commission was the fullness of the disclosures made by an individual often painted as the arch-villain of the apartheid era – Mr Eugene de Kock. Whatever his motives, the Commission acknowledges that it was largely he who broke the code of silence.
- 33 It is unfortunate, in the Commission's view, that a comparable 'whistle blower' did not emerge from the ranks of the SADF. Nevertheless, some of the information provided by former members of Military Intelligence (MI) and Special Forces helped the Commission to obtain a clear insight into the role played by the SADF in respect of cross-border target identification and operations, as well as providing a broader insight into the role of the SADF in the formulation of security policy.
- 34 The Commission received not a single amnesty application from members of the former National Intelligence Service (NIS). Former members of NIS consistently maintained that, although they had provided information about specific individuals and activists and had passed these on to operational units in the SAP and SADF, they were not responsible for the actions that arose as a result. The Commission rejects this position.
- 35 In line with its overall approach, the ANC and MK leadership applied for amnesty, accepting collective responsibility for the actions of members and operatives. Perhaps because of this, not all MK operatives applied for individual amnesty. This is unfortunate because it denied the Commission the kind of rich and specific detail about individual operations that it gleaned, for example, from Security Branch operatives. The bulk of ANC applications were for the post-1990 period and were received from former members of self-defence units (SDUs).
- 36 Most IFP amnesty applications were from people convicted of serious crimes committed with a political motive. In spite of pressure brought to bear on convicted prisoners by senior IFP office-bearers, a handful of key members did apply for amnesty, giving the Commission important insights into the workings of IFP hit squads, as well as details and names of senior IFP officials implicated in hit squad activities.
- 37 Most of the PAC and Azanian People's Liberation Army (APLA) applications related to their major period of activity – the post-1990s.

### **Accessing information from role-players**

- 38 Aside from submissions, the Commission required ongoing access to documentation and information held by primary role-players.
- 39 It needs to be stated at the outset that the former state deliberately and systematically destroyed state documentation in an attempt to ensure that a new democratic government would be denied access to incriminating evidence. Hundreds of thousands of classified records – literally scores of tons – were destroyed. Much of this documentation related to the inner workings of the security forces and intelligence agencies, covert projects, informer networks, personnel records of security force members, and material confiscated from institutions and individuals. The destruction of this documentation deprived the Commission and the country as a whole of a rich and valuable source of material for its investigation into the conflicts of the past. (See further Volume One.)
- 40 With regard to the former security forces, specific personnel were assigned to ‘nodal (liaison) points’ to respond to ongoing requests by the Commission. The SANDF nodal point was staffed entirely by former SADF members. In respect of the South African National Defence Force (SANDF) and the National Intelligence Agency (NIA), Commission staff were required to go through lengthy procedures of security clearance. Thus, despite the fact that the Act stipulated that the Commission should have access to whatever records and documentation were required, it was, in this respect, subjected to a series of filters and blocks rather than the free and open access envisaged by the Act.
- 41 Overall, the Commission concluded that the SANDF nodal point, rather than facilitating its work, appeared at times to act as gatekeeper to the SADF’s secrets and military archives for close on two years. Access was granted, in an extremely limited form, only towards the end of the time available for sustained research. Of even more concern to the Commission was the fact that the nodal point appears to have played a similar screening role when channelling the requests of its former members who wished to apply for amnesty. The Commission is aware of at least one case in which a former member of the Civil Co-operation Bureau (CCB), who in the Commission’s view should definitely have applied for amnesty, was advised not to do so.
- 42 The Commission is of the view that the role of the nodal point was decided at the highest (present and past) officer level. Appeals to the Minister and Deputy Minister of Defence for assistance bore little or no fruit and led the Commission to conclude that it had erred in not conducting a search-and-seizure raid on the archives.
- 43 The ANC established a ‘TRC desk’ that was intended to function as a point of reference both for its members and for the Commission. While the Commission is unable to comment on whether it performed a useful service for its own members, the desk was not always helpful to the Commission. To give just one example, not one of the 250 requests submitted by the Commission’s Johannesburg office received a response from the ANC TRC desk.

## **Legal challenges**

- 44 The Commission also faced a number of legal challenges, which it met successfully – with the exception of the matter brought against it by two former members of the security police (see further Volume One). In April 1996, Brigadier du Preez and Major General Nic van Rensburg sought to restrain the Commission from receiving or allowing any evidence during its hearings which might adversely affect them. The court ruled that the Commission had an obligation to furnish the applicants with sufficient facts and information to enable them to identify the events and incidents involved as well as the people proposing to lead detrimental evidence.

- 45 The Commission appealed against this decision to a full bench of the Cape High Court in June 1996. That Court held that, in the context of the objectives of the Commission 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 violations hearing. It did, however, stipulate that when a negative or detrimental finding against an implicated person was being contemplated, the implicated person had to be given prior warning and an opportunity to submit representations to the Commission. It also concluded that the Commission was obliged to supply the implicated person with the relevant evidence on which the contemplated finding was based, to enable him or her to answer the allegations.
- 46 In a further appeal to the Appellate Division in regard to this latter aspect, the Commission argued that the limitations imposed on it by the Cape Court would severely hamper its work. The Commission drew on arguments of such renowned international jurists as Sir Richard Scott and Sir Louis Blom-Cooper QC to the effect that there are fundamental and significant differences between enquiries and litigation, and the adversarial procedures adopted in the legal system were wholly inappropriate to an enquiry.
- 47 In his judgement, Chief Justice Corbett relied on common-law principles, requiring persons and bodies to observe the rules of natural justice. He ruled that implicated perpetrators were entitled to timeous notice of the allegations against them, details by way of witness statements or other documents to enable them to identify the person making the allegations, the date and place of the alleged incidents where appropriate, and the right to cross-examine witnesses at hearings.
- 48 The judgement imposed a huge administrative and logistic burden on the Commission, requiring it to employ further staff and allocate further resources to identifying and tracing implicated persons. In most instances, the alleged perpetrators were no longer in the same employment as previously, and their addresses were not easily available. In addition, the Commission had to contend with alleged perpetrators demanding to be heard at the same hearings as victims and demanding the right to cross-examine witnesses.
- 49 It was, however, only when the public hearings had been completed that the full impact of the judgement became clear. In order for the Commission to make detrimental findings against persons for inclusion in its final report, implicated persons had to be notified of the contemplated decision and afforded the opportunity to make written representations – a huge administrative task. In essence, the Corbett ruling obliged the Commission to give alleged perpetrators a prior view of its findings. Other commissions of enquiry in this country, such as the Goldstone Commission, were never hampered or restricted in this way.
- 50 In seeking to fulfil the Appellate Division's ruling, the Commission was obliged to delete from this report the names of a large number of alleged perpetrators, whose whereabouts were not known and who could not be traced. Consequently, the incidents or events in which they were allegedly involved are either not recorded or not fully described. In many instances, the Commission's report contains the names of fewer alleged perpetrators than are contained in recently published South African books on political and so-called third force violence.
- 51 In a final and supreme irony, the two original applicants, Van Rensburg and Du Preez, who effectively hamstrung the Commission in its work, applied for amnesty for the very act they had for so long succeeded in preventing the Commission from hearing about – the murder of political activist Siphwe Mthimkulu.

## **The Commission's shortcomings**

52 The Commission also wishes to acknowledge some of its own failings and constraints. Chief among these were the following:

*Its failure to identify early enough a number of areas to which it should have devoted more time and energy.*

53 In particular, the Commission failed to make significant breakthroughs in relation to violence in the 1990s. The events in question were extremely recent and few leads emerged from groups operating at the time. Thus few entry points for investigation were opened up and a great deal of further investigation is required.

54 Further, while the Commission believes that it broke new ground in its probes into the SSC and the elimination of political opponents, the Chemical and Biological Warfare programme and the activities of the Caprivi-trained hit squad, its investigation into the role of MI and Special Forces in the target identification process was conducted too late for adequate follow-up.

*Its failure to call before it certain key actors, most notably Mangosuthu Buthelezi*

55 Following an invitation to the Commission, Chief Buthelezi made a submission and thereafter publicly stated that he had nothing more to add. Given its stance in regard to Mr PW Botha, the Commission is thus vulnerable to the charge of double standards. The only defence that can be offered is that the issue was intensely debated by the Commission, which ultimately succumbed to the fears of those who argued that Buthelezi's appearance would give him a platform from which to oppose the Commission and would stoke the flames of violence in KwaZulu-Natal, as indeed he himself promised. In retrospect, it was probably an incorrect decision.

*Its failure to spread wide enough its examination of civil society's complicity in the crimes and misdeeds of the past.*

56 The Commission should, for example, have investigated those who administered black municipal and local government structures of the apartheid period. Similarly, educational institutions (in particular universities) and state-funded research bodies such as the Council for Scientific and Industrial Research, the Human Sciences Research Council and the Medical Research Council should have been subjected to the same scrutiny as the business, legal and other sectors.

*Its failure to deal with significant geopolitical areas, and the violations that occurred in those areas, in sufficient detail.*

57 The substantial violations that were perpetrated, primarily by security force members, in areas such as Venda, Lebowa and Bophuthatswana are dealt with only cursorily. In short, the Commission did not have the resources or sufficiently qualified personnel to make a significant research or investigative impact in these regions. If one considers that the northern areas of the country included seven homelands, each with their own security forces and vigilante groupings, and were served by the modest resource capacity of the Johannesburg office of the Commission, the omission is understandable.

*The constraints imposed by its investigative capacity*

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The Commission recognised early on that it would not be able to investigate all the cases before it. It decided, therefore, to focus on specific 'window' cases – representative of a far larger number of violations of a similar type and involving the same perpetrator groupings.



- 59 One of the reasons for this decision was the necessity to corroborate and verify allegations made to the Commission by victims of gross human rights violations, particularly in the light of the decision to pay financial reparations. Payment could be made only to those who had been clearly verified by the Commission as being victims of gross violations of human rights. This left little time for proactive investigations into unsolved apartheid-era violations.
- 60 The Investigation Unit (IU) was also severely restricted in its inability to access military archives and classified records.
- 61 The Commission also acknowledges that, in view of its reliance on members of the police and the non-governmental organisation (NGO) and private sectors to make up the IU, it was difficult to develop, in a short space of time, the highly effective, closely knit unit required for the enormous task it faced. Divergent approaches led to tensions. Despite these drawbacks, the Unit functioned remarkably efficiently and can claim credit for large numbers of successful and high-profile investigations, not least the numerous exhumations of extra-judicially executed political activists.
- 62 The Commission can only plead that, when it began its work, it entered uncharted waters. Not only was it unique in this country's experience, but there were few international role models. Its entire existence was a steep learning curve and, even with the extensions to its life, there was insufficient time for all the things it should have done or wished to do.

### **How the findings were made**

- 63 It should be noted that the findings that follow focus largely on institutions or structures of society and in only a few cases on major political figures. A number of other findings – which are not repeated here and which deal with particular events or perpetrators – are to be found in Volumes Two, Three and Four. The names of those in respect of whom individual victim findings are made appear elsewhere in this volume. Further details on these will be available at a later stage.
- 64 Some of those in respect of whom the Commission has made adverse findings may complain of the untested nature of some of its evidence. The point to note here is that the Commission is not a court of law. It was set up as a commission of enquiry and, as such, was not bound by the same rules of evidence as are the courts. In order to make a finding, it had to operate within the framework of a balance of probabilities, which is the standard criterion used in civil litigation. Its conclusions are therefore findings rather than judicial verdicts.

### **The Commission's position on responsibility and accountability**

- 65 In evaluating the role played by those who were involved in the conflicts of the past, the Commission was guided, in particular, by section 4 of its enabling Act, the relevant portions of which read as follows:

*The functions of the Commission shall be to achieve its objectives, and to that end it shall –*

*(a) facilitate and where necessary initiate or co-ordinate, inquiries into ...*

*(iii) the identity of all persons, authorities, institutions and organisations involved in [gross violations of human rights]*

*(iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and*

*(v) accountability, political or otherwise, for any such violations.*

- 66 In the light of the above and of the evidence received, the Commission is of the view that gross violations of human rights were perpetrated or facilitated by all the major role-players in the conflicts of the mandate era. These include:
- a The state and its security, intelligence and law-enforcement agencies, the SAP, the SADF and the NIS.
  - b Groups and institutions which, to a greater or lesser extent, were affiliated or allied to the state in an official capacity. These include homeland governments and their security forces as well as groups and institutions informally allied to the state or receiving financial or logistic assistance from the state in order to oppose and/or withstand the liberation movements and their internal allies. Groups falling into this category include the IFP and conservative surrogate organisations and groupings like the *witdoeke*, *AmaAfrika* and the Eagles.
  - c White right-wing organisations which, while actively opposing the state, actively and violently took action to preserve the *status quo* in the 1990s. These include the *Afrikaner Weerstandsbeweging* (AWB), the *Afrikaner Volksfront* and the *Boere Bevrydingsbeweging*.
  - d Liberation movements and organisations which sought to bring about change through armed struggle and which operated outside South Africa and by covert and underground means inside the country.
  - e Organisations which sought to bring about change by non-violent means prior to and post-1990, including the United Democratic Front; and
  - f Non-state paramilitary formations such as the ANC's SDUs and the IFP's self-protection units (SPUs).
- 67 Evidence before the Commission indicates that all of the above were responsible for gross violations of human rights – including killing, attempted killing, torture and severe ill treatment – at different stages during the mandate period and that, to varying degrees, such violations entailed deliberate planning on the part of the organisations and institutions concerned, or were of such a nature that the organisations are accountable for them.
- 68 At the same time, the Commission is not of the view that all such parties can be held to be equally culpable for violations committed in the mandate period. Indeed, the evidence accumulated by the Commission and documented in this report shows that this was not the case. The preponderance of responsibility rests with the state and its allies.
- 69 Even if it were true that both the major groupings to the conflicts of the mandate era – the state and its allies and the liberation movements – had been equally culpable, the preponderance of responsibility would still rest with the state.
- 70 The mandate to investigate and report on violations committed by all parties to the conflict placed a responsibility on the Commission to work in a balanced and even-handed way. This is an issue with which the Commission grappled long and hard and in respect of which it has been repeatedly criticised. In attempting to develop a framework in which to exercise such a responsibility meaningfully, the Commission was guided by three broad principles:
- 71 In the first place, as argued in the chapter on *The Mandate*, the Commission followed the internationally accepted position that apartheid was a crime against humanity. Accordingly, it upheld and endorsed the liberation movements' argument that they were engaged in a just war. Further, the Commission was also guided by international humanitarian law, and specifically the Geneva Conventions, in its evaluation of the concept of a 'just war'. Just war does not legitimate the perpetration of gross violations of human rights in pursuit of a just end. Hence the Commission believes that violations committed in the course of a just war

should be subjected to the same rigorous scrutiny as violations committed by the former state. The Commission's position in this regard is clearly articulated in the chapter on *The Mandate*. A just cause does not exempt an organisation from pursuing its goals through just means. Moreover, the evidence shows that the perpetration of gross violations of human rights by non-state actors often took place in circumstances where they were acting in opposition to the official state ideology and the policy of apartheid. In this sense, it was the state that generated violent political conflict in the mandate period – either through its own direct action or by eliciting reactions to its policies and strategies.

- 72 Secondly, the Commission is of the view that the measures used to assess the actions of a legally constituted and elected government cannot be the same as those used in the case of a voluntary grouping of individuals who come together in pursuit of certain commonly agreed goals. A state has powers, resources, obligations, responsibilities and privileges that are much greater than those of any group within that state. It must therefore be held to a higher standard of moral and political conduct than are voluntary associations operating within its political terrain – particularly where they operate underground with limited communication and less-developed structures of accountability.
- 73 Third, the Commission has always been violation driven. Its task in this respect was to identify those responsible for gross human rights violations. Having identified the former state and the IFP as undoubtedly responsible for the greatest number of violations, the Commission directed its resources towards the investigation of those bodies.
- 74 It would, however, be misleading and wrong to assign blame for the gross violation of human rights only to those who confronted each other on the political and military battlefields, engaged in acts of commission. Others, like the church or faith groups, the media, the legal profession, the judiciary, the magistracy, the medical/health, educational and business sectors, are found by the Commission to have been guilty of acts of omission in that they failed to adhere or live up to the ethics of their profession and to accepted codes of conduct.
- 75 It is also the view of the Commission that these sectors failed not so much out of fear of the powers and wrath of the state – although those were not insignificant factors – but primarily because they were the beneficiaries of the state system. They prospered from it by staying silent. By doing nothing or not enough, they contributed to the emergence of a culture of impunity within which the gross violations of human rights documented in this report could and did occur.
- 76 These then are, in summary, the main findings of the Commission, while more specific findings appear in the body of the report. The Commission's case in regard to the primary actors to the conflicts of the past is developed below.

## **p Primary finding**

- 77 On the basis of the evidence available to it, the primary finding of the Commission is that:

THE PREDOMINANT PORTION OF GROSS VIOLATIONS OF HUMAN RIGHTS WAS COMMITTED BY THE FORMER STATE THROUGH ITS SECURITY AND LAW-ENFORCEMENT AGENCIES.

MOREOVER, THE SOUTH AFRICAN STATE IN THE PERIOD FROM THE LATE 1970S TO EARLY 1990S BECAME INVOLVED IN ACTIVITIES OF A CRIMINAL NATURE WHEN, AMONGST OTHER THINGS, IT KNOWINGLY PLANNED, UNDERTOOK, CONDONED AND COVERED UP THE COMMISSION OF UNLAWFUL ACTS, INCLUDING THE EXTRA-JUDICIAL KILLINGS OF POLITICAL OPPONENTS AND OTHERS, INSIDE AND OUTSIDE SOUTH AFRICA.

IN PURSUIT OF THESE UNLAWFUL ACTIVITIES, THE STATE ACTED IN COLLUSION WITH CERTAIN OTHER POLITICAL GROUPINGS, MOST NOTABLY THE INKATHA FREEDOM PARTY (IFP).

## **p Findings in respect of the state and its allies**

*I further do not believe the political defence of 'we did not know' is available to me because in many respects I believe we did not want to know. (Mr Leon Wessels, State Security Council hearing.)*

*The Security Forces will hammer them, wherever they find them. What I am saying is the policy of the government. We will not sit here with hands folded waiting for them to cross our borders. We shall carry out ongoing surveillance. We shall determine the correct targets and we shall settle the hash of those terrorists, their fellow-travellers and those who help them. (General Magnus Malan, Minister of Defence, parliamentary speech, 4 February 1986.)*

*All the powers were to avoid the ANC/SACP achieving their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts. (General Johan van der Merwe, former commissioner of police, armed forces hearing.)*

*There was never any lack of clarity about 'take out' or 'eliminate', it meant that the person had to be killed. (Brigadier Alfred Oosthuizen, former head of Security Branch intelligence section, armed forces hearing.)*

- 78 As previously stated, the Commission's evidence indicates that the state – in particular its security agencies and affiliated policy and strategy formulation committees and councils (such as the SSC) – was responsible for the greatest number of gross violations of human rights committed during the thirty-four-year mandate period.
- 79 The Commission concluded that, at a certain point in the mandate period, the state resorted to unlawful ways of dealing with challenges to its authority. The period during which the South African state ventured into the realm of criminal misconduct stretches from PW Botha's accession to power in 1978 into the early 1990s, including a part of the period in which his successor held office.
- 80 At the beginning of the mandate period, the system of government in the country was undoubtedly an unjust and discriminatory one, but it was still essentially a system of laws, albeit unjust laws. In the course of the first two decades of the mandate period, the rule of law was steadily eroded and the system of public administration purged of its remaining democratic substance. By the time President Botha took power, the system was characterised by severe repression. It had not yet, however, adopted a policy of killing its opponents.
- 81 This is not to suggest that prior to 1978 the state did not kill its opponents. Indeed, it had just recently killed hundreds in its suppression of the Soweto uprising. The mandate period itself began with a massacre of protesters at Sharpsville in 1960. These two sets of killings, and numbers of other routine killings of demonstrators, occurred in the course of the SAP's public-order policing policy involving, in the Commission's view, an unjustifiable use of deadly force.
- 82 Deplorable and racist though this security policy was (and the Commission has made a finding declaring it to have been a gross violation of human rights), it did not at that time involve the systematic targeting of certain categories of political activists for killing by high echelons of state. Evidence placed before the Commission indicates, however, that from the late 1970s, senior politicians – as well as police, national intelligence and defence force leaders – developed a strategy to deal with opposition to the government. This entailed, among other actions, the unlawful killing, within and beyond South Africa, of people whom they perceived as posing a significant challenge to the state's authority.

- 83 Killing is the most extreme human rights violation. Any legally constituted state that executes people outside of its own existing legal framework enters the realm of criminality and must, from that point on, be regarded as unlawful.

### **Findings on the SSC and the policy of elimination**

- 84 The basis for the following finding can be found in Volume Two of this report, in particular in the sections that deal with the killing of MK operatives and other political opponents. Because of the seriousness of this charge, a summary of the arguments and reasons for the adoption of the finding is included here.
- 85 Volume Two charts the intensification of the conflict during the 1980s, and the development of a 'total strategy' by senior politicians and security force personnel to meet what was considered a 'revolutionary onslaught'. It has been noted that, for the first five to seven years of the Botha administration, the security forces engaged in various forms of counter-revolutionary warfare with the states it perceived as a threat to the existence of that administration. With the intensification of conflict inside South Africa in the mid-1980s, tactics that had worked externally began to be applied on the domestic front.
- 86 The domestic application of an essentially military counter-revolutionary strategy was a significant landmark. Whereas the SADF had previously directed its military operations at external targets, it now began to play an increasing role in support of the SAP inside South Africa. The policing of internal resistance became militarised.
- 87 Military operations aim at eliminating enemy personnel, weaponry and bases. Hence, as a military approach to policing gained ascendancy inside South Africa from the mid-1980s, so too did the incidence of killing or 'eliminating' activists, which had already become an established practice outside the country.
- 88 This application of a more military-style approach to opposing internal dissent was the expressed policy of the SSC, perhaps the most influential body in South Africa at the time. Although the SSC was merely an advisory body to cabinet and had no executive powers of its own, its decisions were almost always accepted or adopted by cabinet. All the key cabinet ministers sat on the SSC, as did the leadership of the security forces. The SSC also formed the pinnacle of a vast network of joint security structures in the form of the National Security Management System (NSMS), which extended from national to local level. Thus the SSC carried enormous influence. Its decisions both reflected and influenced the perceptions and mindsets of senior politicians and security force personnel. Members of the security forces who participated in SSC- or NSMS-linked structures, and to whom decisions or policy were communicated, would have regarded those decisions as specific instructions or general authorisation.
- 89 It seems highly improbable to this Commission that the members of the SSC did not foresee the possible consequences of such a shift in counter-revolutionary strategy. Indeed, their increasingly strident language and rhetoric on both public platforms and in documents was laced with phrases such as:

*'elimineer vyandelike leiers'* (eliminate enemy leaders)

*'neutralise intimidators by using formal and informal policing'*

*'destroy terrorists'*

*'fisiese vernietiging – mense, fasiliteite, fondse, ens'* (physical destruction – people, facilities, funds, etc)

*'uithaal'* (take out),

*'neutraliseer'* (neutralise),

*'uitwis'* (wipe out),

‘verwyder’ (remove/ cause to disappear),

‘maak ’n plan’ (make a plan),

‘metodes ander as aanhouding’ (methods other than detention),

‘onkonvensionele metodes’ (unconventional methods).

- 90 This rhetoric made no distinction between persons engaged in military operations or acts of terrorism and those who opposed apartheid by lawful or peaceful means. The word ‘terrorist’ was used constantly, but never defined. Nor was a distinction drawn between activists and those who only supported or associated with them. All were lumped together as one target – a single category of persons to be killed. Whether one carried a gun, or only shared a bed or offered food and shelter to the combatant, seems to have been a matter of indifference to the total strategists. In the opinion of the Commission, the kind of rhetoric employed by politicians and SSC functionaries was reckless, inflammatory and an incitement to unlawful acts.
- 91 This led to a blurred distinction in the minds of the security forces between persons who posed a real danger to public safety and those who simply opposed the policies of the government, and consequently between those who might be legitimate targets of military action and those who were not. The sheer scale of resistance, the time-consuming and resource-intensive nature of prosecutions and the widespread reluctance of ordinary people to testify in courts of law resulted in a shift to unlawful methods of combating resistance. This shift was conceded by numerous high-ranking security force members, including former police commissioner Johan van der Merwe (see above quotation).
- 92 At the Commission’s hearings on the SSC, senior politicians and some senior military and intelligence heads argued emphatically that although what they referred to as “ambiguous language” might or could have been interpreted as authorising illegal conduct, it was not the intention of the SSC or the cabinet that any illegal acts or actions should be undertaken.
- 93 This view was in sharp contrast to that of security force operatives who said that the word ‘eliminate’ could, in certain circumstances, mean ‘kill’, or that they interpreted it as meaning ‘kill’. General Johan van der Merwe, himself a member of the SSC during his period of office as police commissioner, testified thus:
- If you tell a soldier “eliminate your enemy”, depending on the circumstances he will understand that means killing. It is not the only meaning, but it is specifically one meaning. (Armed forces hearing , transcript, p. 32.)*
- 94 He said that the use of this language at the SSC did cause security forces to take actions that resulted in the death of activists:
- Commission: ... *I am saying would you agree that that unfortunate use of that language, "vernietig", "uitroei", "uit te wis", "elimineer" [destroy, eradicate, to wipe out, eliminate] and so on, ... resulted in deaths, would you agree with that?*
- General van der Merwe: *Yes Mr Chairman. (Ibid, p. 34.)*
- 95 It is in this context that one must evaluate the use by the SSC of words such as ‘elimineer’, ‘neutraliseer’, ‘uitwis’, ‘verwyder’ in relation to steps to be taken against members of the ANC and their sympathisers.
- 96 Consequently, the Commission cannot accept that members of the security forces serving on the SSC, and ministers in charge of security portfolios, did not reasonably foresee that such words could be interpreted by members of the security forces as authorisation under certain circumstances to kill persons involved in resistance.
- 97 The Commission makes this assertion for a number of reasons:

a If the decisions or recommendations of the SSC and its plans were intended to authorise only lawful steps, as alleged by members like Mr de Klerk, General Magnus Malan and Dr LD (Niel) Barnard, these should have been explicitly spelt out. If the intention was to detain, restrict, arrest, ban or deport, it is incomprehensible that such words were not used rather than words such as *'elimineer'* and *'verwyder'*. It is also incomprehensible that senior politicians and other members of the SSC did not, where they considered the instructions vague or imprecise, alter any of the documents submitted to them and replace them with words whose meaning was perfectly clear.

b Words such as *'elimineer'* and *'neutraliseer'* are used in earlier SSC documents with the unambiguous meaning of 'kill' or 'assassinate'.

c All military and police structures operate on a basis of clear and precise instructions and have conventions of service writing that stress the necessity of operatives knowing and understanding exactly what is required and expected of them.<sup>1</sup> Given that the SSC was central to an essentially militarily driven strategy, one must conclude that these words were intended to mean exactly what they said.

d The Commission does not believe it possible that senior politicians and generals in charge of the security forces could be so out of touch with the mindsets and discourses of the period that they did not anticipate, understand and foresee the consequences of the decisions they took in the SSC. The Commission's view is that they must have foreseen that security police and SADF operatives would interpret expressions as 'take out', 'wipe out', 'eradicate' and 'eliminate' as meaning 'kill'. Indeed, it is the Commission's view that SSC documents represent a perfect illustration of the notion of plausible deniability. The Commission rejects attempts by politicians to phrase instructions in a way that causes their subordinates to take responsibility for acts of which the politicians are the intellectual authors.

e A further basis for concluding that members of the SSC did foresee that the use of words such as 'eliminate' would result in deaths is that there is no evidence of any attempt by the SSC to set in motion any substantive or comprehensive investigation into the killing of political opponents once this began to happen. Although there were police investigations after each killing, these were often manifestly inadequate and often took the form of cover-ups. Neither did the SSC at any stage issue any statement or directive clarifying its orders and strategies to the effect that they should under no circumstances be interpreted as authorisation for illegal activities. This failure is aggravated by the fact that Dr Niel Barnard, former head of NIS and a member of the SSC, did draw to the attention of the chairperson of the SSC, Mr PW Botha, that he had received information that there were 'misunderstandings' by the security forces and that he was concerned that they might be engaged in unlawful activities.

98 There was extensive coverage of the deaths of prominent anti-apartheid activists in both the international and local media and, in many instances, strong suspicion was directed at the security forces. Despite this, there was a consistent failure to devote sufficient attention to this information or to heed the protests of persons drawing attention to abuses by the security forces. This is summed up in the words of a former Minister of Law and Order, Mr Leon Wessels, to the effect that 'we did not wish to know'.

99 It is on these grounds that the Commission finds in relation to members of the SSC, that:

Certain members of the SSC (the State President, Minister of Defence, Minister of Law and Order, and heads of security forces) did foresee that the use of words such as 'take out', 'wipe out', 'eradicate', and 'eliminate' would result in the killing of political opponents. They are therefore responsible for deliberate planning which caused gross violations of human rights [in terms of section 4(a)(iv) of the Act].

The Commission therefore finds them to be persons involved in the gross violations of human rights which did occur and, furthermore, that the SSC was an institution involved in gross violations of human rights [in terms of section 4(a)(iii) of the Act].

CERTAIN MEMBERS OF THE SSC (PARTICULARLY THOSE NOT DIRECTLY INVOLVED IN SECURITY MATTERS) DID NOT FORESEE THAT THE USE OF THESE WORDS WOULD RESULT IN KILLINGS, BUT NEVERTHELESS REMAIN POLITICALLY AND MORALLY ACCOUNTABLE FOR THE DEATHS THAT OCCURRED [IN TERMS OF SECTION 4(A)(V) OF THE ACT] FOR THE FOLLOWING REASONS. THEY FAILED TO EXERCISE PROPER CARE IN THE WORDS THEY USED; THEY FAILED PROPERLY TO INVESTIGATE KILLINGS THAT OCCURRED AND THEY FAILED TO HEED COMPLAINTS ABOUT ABUSE. THROUGH THEIR USE OF MILITANT RHETORIC, THEY ALSO CREATED A CLIMATE WHERE VIOLATIONS OF HUMAN RIGHTS WERE POSSIBLE. THEY ARE THEREFORE GUILTY OF 'OFFICIAL TOLERANCE' OF VIOLATIONS AND ARE ACCOUNTABLE FOR SUCH VIOLATIONS.

## **Findings on the state and unlawful activities**

100 This finding forms a major part of the Commission's overall conclusion that the South African state in the 1980s and early 1990s engaged in or undertook a range of unlawful activities. Other evidence to support this assertion is, in brief:

- a The admission by both senior security force officers and security police operatives that they were ordered by either the then State President or senior members of the government to:
  - commit criminal acts of sabotage by blowing up such public facilities as the diplomatic mission of the ANC in London, the offices of the South African Council of Churches (SACC – Khotso House), the South African Catholic Bishops' Conference (Khanya House) and the Congress of South African Trade Unions (COSATU);
  - undertake a 'false-flag' operation in the form of the placing and uncovering of an arms cache in order to provide a pretext for the state's armed forces to attack targets in an independent neighbouring state, in a clear violation of international law.
- b Evidence presented to the Commission that certain sections of the security police, such as the Soweto Intelligence Unit, undertook illegal acts such as sabotage and arson, within and outside the country, in order to give credibility to their agents.
- c Evidence from security police members that, in the latter 1980s, they sometimes deliberately circumvented what they saw as negative or adverse court decisions by, for example, killing alleged political activists acquitted in political trials.
- d Evidence presented to the Commission under oath and by way of amnesty applications that, on the instruction of their senior officers, security police members abducted MK cadres, executed them when they refused to co-operate and buried them secretly on farms owned or rented by the police.
- e Evidence presented under oath to the Commission by the former secretary of a state structure, the Joint Management Centre (JMC), that he was instructed by a senior police officer to arrange and facilitate the attack on a suspected UDF house in which eleven people were killed.
- f Evidence presented under oath to the Commission that the South African government authorised and financed the formation of a clandestine security force unit (the CCB) whose objective was to "inflict maximal damage to the enemy"<sup>1</sup> including, among other actions, the killing of political opponents.
- g Evidence made available to the Commission that, after 1990, MI devised an official plan to abduct and/or assassinate Mr Chris Hani and Mr Bantu Holomisa.
- h Evidence presented to the Commission of covert assistance given by the SADF to the IFP to establish, train, arm and pay an offensive unit or hit squad to be deployed against mutual enemies of the state and the IFP.
- i Evidence in the possession of the Commission that it was state policy to foster division between communities and organisations, and that security force and state officials gave material and other



support to conservative groupings which frequently engaged in violent attacks on political opponents of the government.

- j Evidence made available to the Commission that the South African government armed, trained, financed and in other ways assisted foreign nationals to undertake military operations against neighbouring governments in violation of international law and the sovereignty of those states; and further that these domestically generated foreign wars and military operations resulted in the gross violation of the human rights of non-South African nationals on a vast scale.
- k Evidence presented under oath to the Commission that the weapons used in a state-planned massacre of alleged government opponents were given over to a state corporation (ISCOR) for smelting in order to destroy the evidence of a crime.
- l Evidence presented under oath to the Commission that high-ranking members of a state corporation (ESKOM) attempted to make available or sell a portion of its armoury to a political party engaged in a civil war – in the knowledge that those weapons could or would be used against alleged ANC supporters. This was authorised and done with the knowledge of the commissioner of police. The ESKOM deal formed only a small part of a wider practice of covert shipment of arms by state operatives to groups engaged in violent activities against opponents of the government.
- m Evidence presented under oath to the Commission that air hostesses of the state carrier, South African Airways, were required or put under pressure to eavesdrop on passengers' conversations and to report those of a suspicious nature to the security police.
- n Evidence made available to the Commission that state or public vehicles, such as ambulances, were used to transport weapons supplied by the state to surrogates for use against opponents of the state.
- o Evidence presented under oath to the Commission that members of the security police placed explosives in cinemas showing the film *Cry Freedom*, thus committing serious criminal offences. Earlier, the state had tried unsuccessfully to obtain a ruling from another state body prohibiting the screening of the film. This action reflects an attitude that the security police would not be impeded by the law in the pursuit of their objectives.
- p Evidence presented under oath to the Commission that on a number of occasions, and usually at the behest of their superiors, members of the security forces presented false testimony at court inquests, including those dealing with the deaths in detention of Mr Stanza Bopape and Mr Steve Biko, as well as to trials of alleged political offenders and state commissions like the Harms Commission. The Commission also received evidence of deliberate falsification and/or destruction of evidence.
- q Evidence presented under oath by former Minister of Law and Order Adriaan Vlok, and in other amnesty applications, that strategic communication (Stratcom) activities transgressed the law.
- r Evidence presented to the Commission of a widespread system of covert funding of secret operations, involving the expenditure of more than R2.75 billion in the period 1978–94. Though the funding system was not illegal in terms of existing statutory law, there is evidence that portions of those funds were used in the pursuit of unlawful activities, such as those undertaken by the CCB. In a report submitted to the Commission on secret state funding, the Auditor-General stated that certain secret projects of the SADF were never subjected to a full audit. Access to the operational files of the CCB was consistently denied by its so-called managing director, who was a high-ranking Special Forces officer. The Commission regards the following statement made to the Commission by the Auditor-General as significant:

*The Office has always maintained and has publicly reported that the audit assurance obtained from auditing secret funds is lower than would normally be the case. It is with regret that, because of the inherent limitations of any audit as well as the particular circumstances set out earlier, the Office must accept that expenditure audited by it may have been incurred, or assets may have been acquired, from the relevant secret funds for the purpose of committing gross violation of human rights.*

This Commission believes it can be more emphatic than the Auditor-General in asserting that some of these funds were used for unlawful activities. The CCB is a clear instance. Project Echoes involved the spreading of disinformation about ANC and MK leaders in the post-1990 period and amounted in large part to an exercise in criminal defamation.

**101 Arising from the above, and from evidence presented in Volume Two of this report, the Commission makes the following findings in respect of the state's involvement in gross violations of human rights during the period 1960–94:**

THE COMMISSION ENDORSES THE POSITION IN INTERNATIONAL LAW THAT APARTHEID AS A FORM OF SYSTEMATIC RACIAL DISCRIMINATION AND SEPARATION CONSTITUTED A CRIME AGAINST HUMANITY.

WITHIN THIS CONTEXT, THE COMMISSION FINDS THAT:

- THE STATE – IN THE FORM OF THE SOUTH AFRICAN GOVERNMENT, THE CIVIL SERVICE AND ITS SECURITY FORCES – WAS, IN THE PERIOD 1960–94 THE PRIMARY PERPETRATOR OF GROSS VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA, AND FROM 1974, IN SOUTHERN AFRICA.
- IN THE APPLICATION OF THE POLICY OF APARTHEID, THE STATE IN THE COMMISSION'S MANDATE PERIOD WAS INCREASINGLY AUTHORITARIAN IN NATURE AND INTOLERANT OF DISSENT. THIS WAS MANIFESTED, *INTER ALIA*, IN A HOST OF LEGISLATIVE MEASURES WHICH SEVERELY ABRIDGED THE PRINCIPLES OF THE RULE OF LAW AND LIMITED THE RIGHT OF THE PEOPLE OF SOUTH AFRICA TO FREE POLITICAL ACTIVITY.
- THE DEVELOPMENT OF AN AUTHORITARIAN POLITICAL ORDER IN THE MANDATE PERIOD WAS FACILITATED BY A CULTURE OF IMPUNITY WHICH EMERGED AS A RESULT OF LEGISLATIVE AND OTHER MEASURES BY THE STATE, AND BY THE FAILURE, LARGELY AS A CONSEQUENCE OF STATE PRESSURE, OF ORGANS OF CIVIL SOCIETY – POLITICAL PARTIES, THE MASS MEDIA, FAITH, BUSINESS, LEGAL, MEDICAL AND OTHER GROUPS – TO OBSERVE AND ADHERE TO THE CODES AND STANDARDS OF CONDUCT INTEGRAL TO THEIR PROFESSIONS.
- IN THE APPLICATION OF THE POLICY OF APARTHEID, THE STATE IN THE PERIOD 1960–90 SOUGHT TO PROTECT THE POWER AND PRIVILEGE OF A RACIAL MINORITY. RACISM THEREFORE CONSTITUTED THE MOTIVATING CORE OF THE SOUTH AFRICAN POLITICAL ORDER, AN ATTITUDE LARGELY ENDORSED BY THE INVESTMENT AND OTHER POLICIES OF SOUTH AFRICA'S MAJOR TRADING PARTNERS IN THIS PERIOD. A CONSEQUENCE OF THIS RACISM WAS THAT WHITE CITIZENS IN GENERAL ADOPTED A DEHUMANISING POSITION TOWARDS BLACK CITIZENS, TO THE POINT WHERE THE RULING ORDER OF THE STATE CEASED TO REGARD THEM AS FELLOW CITIZENS AND LARGELY LABELLED THEM AS 'THE ENEMY'. THIS CREATED A CLIMATE IN WHICH GROSS ATROCITIES COMMITTED AGAINST THEM WERE SEEN AS LEGITIMATE.

AS A CONSEQUENCE OF THESE FACTORS, THE COMMISSION FINDS THAT THE STATE PERPETRATED, AMONG OTHERS, THE FOLLOWING TYPES OF GROSS VIOLATIONS OF HUMAN RIGHTS IN SOUTH AND/OR SOUTHERN AFRICA:

- TORTURE, INCLUDING NOT ONLY THE INTENTIONAL INFLECTION OF PAIN BUT ALSO DETENTION WITHOUT TRIAL AND SOLITARY CONFINEMENT;
- ABDUCTION, INVOLVING THE FORCIBLE AND ILLEGAL REMOVAL OR CAPTURE OF PEOPLE, OFTEN FROM BEYOND THE BORDERS OF SOUTH AFRICA;
- SEVERE ILL TREATMENT INCLUDING SEXUAL ASSAULT, ABUSE OR HARASSMENT, THE IMPOSITION OF RESTRICTIONS ON INDIVIDUALS IN THE FORM OF BANNING AND BANISHMENT ORDERS, THE DELIBERATE WITHHOLDING OF MEDICAL ATTENTION, FOOD AND WATER, THE DESTRUCTION OF HOMES OR OFFICES THROUGH ARSON OR SABOTAGE, AND THE MUTILATION OF BODY PARTS;
- THE UNJUSTIFIED USE OF DEADLY FORCE IN SITUATIONS WHERE LESSER MEASURES WOULD HAVE BEEN ADEQUATE TO CONTROL DEMONSTRATIONS OR DETAIN OR ARREST SUSPECTS;

- THE DELIBERATE MANIPULATION OF SOCIAL DIVISIONS IN SOCIETY WITH THE INTENTION OF MOBILISING ONE GROUP AGAINST ANOTHER, RESULTING, AT TIMES, IN VIOLENT CLASHES;
- THE ARMING, FUNDING AND TRAINING OF FOREIGN NATIONALS FOR MILITARY OPERATIONS AGAINST SOVEREIGN GOVERNMENTS IN THE REGION;
- INCURSIONS ACROSS SOUTH AFRICA'S BORDERS WITH THE INTENTION OF KILLING OR ABDUCTING OPPONENTS LIVING OUTSIDE OF SOUTH AFRICA;
- JUDICIAL KILLINGS, INVOLVING THE EXECUTION OF OPPONENTS FOR OFFENCES OF A POLITICAL AND NOT A CRIMINAL NATURE;
- EXTRA-JUDICIAL KILLINGS IN THE FORM OF STATE-PLANNED AND EXECUTED ASSASSINATIONS, ATTEMPTED KILLINGS, DISAPPEARANCES, ABDUCTIONS AND SO-CALLED 'ENTRAPMENT KILLINGS', WHERE INDIVIDUALS WERE DELIBERATELY ENTICED INTO SITUATIONS;
- THE COVERT TRAINING, ARMING OR FUNDING OF OFFENSIVE PARAMILITARY UNITS OR HIT SQUADS FOR DEPLOYMENT INTERNALLY AGAINST OPPONENTS OF THE GOVERNMENT.

## **Finding on former President PW Botha**

102 Mr PW Botha presided as executive head of the former South African government (the government) from 1978 to 1984 as Prime Minister, and from 1984 to 1989 as Executive State President. Given his centrality in the politics of the 1970s and 1980s, the Commission has made a finding on the role of former the State President:

DURING THE PERIOD 1978–1989, ACCORDING TO SUBMISSIONS MADE TO, AND FINDINGS MADE BY, THE COMMISSION, GROSS VIOLATIONS OF HUMAN RIGHTS AND OTHER UNLAWFUL ACTS WERE PERPETRATED ON A WIDE SCALE BY MEMBERS OF THE FORMER SOUTH AFRICAN POLICE (SAP) AND THE FORMER SOUTH AFRICAN DEFENCE FORCE (SADF), AMONG OTHERS. SUCH VIOLATIONS INCLUDED:

- THE DELIBERATE UNLAWFUL KILLING, AND ATTEMPTED KILLING, OF PERSONS OPPOSED TO THE POLICIES OF THE GOVERNMENT, WITHIN AND OUTSIDE SOUTH AFRICA;
- THE WIDESPREAD USE OF TORTURE AND OTHER FORMS OF SEVERE ILL TREATMENT AGAINST SUCH PERSONS;
- THE FORCIBLE ABDUCTION OF SUCH PERSONS WHO WERE RESIDENT IN NEIGHBOURING COUNTRIES;
- COVERT LOGISTICAL AND FINANCIAL ASSISTANCE TO ORGANISATIONS OPPOSED TO THE IDEOLOGY OF THE ANC AND OTHER LIBERATION MOVEMENTS BOTH WITHIN AND OUTSIDE OF SOUTH AFRICA, ENABLING THOSE ORGANISATIONS TO COMMIT GROSS HUMAN RIGHTS VIOLATIONS ON A WIDE SCALE WITHIN AND BEYOND THE BORDERS OF THIS COUNTRY;
- ACTS OF ARSON AND SABOTAGE AGAINST THE PROPERTY OF PERSONS AND ORGANISATIONS OPPOSED TO THE GOVERNMENT, WITHIN AND OUTSIDE OF THE COUNTRY.

DURING THE PERIOD 1979–89, MR PW BOTHA CHAIRED THE STATE SECURITY COUNCIL (SSC), ESTABLISHED TO ADVISE THE GOVERNMENT ON NATIONAL SECURITY ISSUES WHICH WERE, OR WERE PERCEIVED TO BE, A THREAT TO THE GOVERNMENT. UNDER HIS LEADERSHIP, THE SSC –

- PLACED GREAT PRESSURE ON THE GOVERNMENT'S SECURITY FORCES TO ENGAGE ROBUSTLY AGAINST ORGANISATIONS AND PERSONS OPPOSED TO THE GOVERNMENT, IN THEIR PERCEIVED ONSLAUGHT AGAINST THE GOVERNMENT;
- USED LANGUAGE IN ITS MEETINGS AND RECOMMENDATIONS THAT WAS HIGHLY AMBIGUOUS AND WAS INTERPRETED BY PERSONS WITH ACCESS TO THE MEETINGS, THEIR MINUTES AND RECOMMENDATIONS, AS AUTHORISING THE KILLING OF PEOPLE;
- FAILED TO RECOMMEND TO THE GOVERNMENT THAT APPROPRIATE STEPS BE TAKEN AGAINST MEMBERS OF THE SECURITY FORCES WHO WERE INVOLVED IN OR WHO WERE SUSPECTED OF BEING INVOLVED IN GROSS VIOLATIONS OF HUMAN RIGHTS, THUS CONTRIBUTING TO THE PREVAILING CULTURE OF IMPUNITY;

- RECOMMENDED THAT THE GOVERNMENT IMPOSE STATES OF EMERGENCY, UNDER WHICH GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED AGAINST PERSONS OPPOSED TO THE GOVERNMENT INCREASED, AND ASSISTED THE GOVERNMENT IN THE IMPLEMENTATION OF THE STATES OF EMERGENCY;
- RECOMMENDED THE ADOPTION OF PRINCIPLES OF COUNTER-REVOLUTIONARY WARFARE WHICH LED TO THE INCREASED DEPLOYMENT OF SPECIAL UNITS OF THE SADF IN SUPPORT OF THE SAP IN SOUTH AFRICA, RESULTING IN A SHIFT OF FOCUS IN POLICING FROM ARRESTING AND CHARGING OPPONENTS OF THE GOVERNMENT TO ELIMINATING OPPONENTS AND THEIR BASES;
- RECOMMENDED THAT THE GOVERNMENT SUPPORT COVERT PROJECTS AIMED AT OPPOSING AND DESTABILISING THE GOVERNMENTS OF NEIGHBOURING COUNTRIES WHICH WERE SUPPORTIVE OF LIBERATION MOVEMENTS;
- RECOMMENDED THAT THE GOVERNMENT SUPPORT COVERT PROJECTS TO HELP DESTABILISE AND OPPOSE ORGANISATIONS AND PEOPLE OPPOSED TO THE GOVERNMENT.

AS A CONSEQUENCE, THE SSC CREATED A POLITICAL CLIMATE THAT GREATLY FACILITATED THE GROSS VIOLATION OF HUMAN RIGHTS, AND IN WHICH SUCH VIOLATIONS OCCURRED ON A WIDE SCALE.

MR BOTHA WAS RESPONSIBLE FOR ORDERING FORMER MINISTER OF LAW AND ORDER ADRIAAN VLOK AND FORMER POLICE COMMISSIONER JOHAN VAN DER MERWE UNLAWFULLY TO DESTROY KHOTSO HOUSE IN JOHANNESBURG, (A BUILDING OCCUPIED BY ORGANISATIONS CONSIDERED BY BOTHA TO BE A THREAT TO THE SECURITY OF THE GOVERNMENT), THEREBY ENDANGERING THE LIVES OF PEOPLE IN AND AROUND THE BUILDING. THIS DECISION GREATLY ENHANCED THE PREVAILING CULTURE OF IMPUNITY AND FACILITATED THE FURTHER GROSS VIOLATION OF HUMAN RIGHTS BY SENIOR MEMBERS OF THE SECURITY FORCES.

FOR THE REASONS SET OUT ABOVE AND BY VIRTUE OF HIS POSITION AS HEAD OF STATE AND CHAIRPERSON OF THE SSC, BOTHA CONTRIBUTED TO AND FACILITATED A CLIMATE IN WHICH THE ABOVE GROSS VIOLATIONS OF HUMAN RIGHTS COULD AND DID OCCUR, AND AS SUCH IS ACCOUNTABLE FOR SUCH VIOLATIONS.

## **Finding on former State President FW de Klerk**

### **Findings on the destruction of documents by the former state**

105 Reference has already been made to the extensive destruction of documents by the former state (see Volume One). The following is a summary of the Commission's finding with regard to this issue:

THE FORMER GOVERNMENT DELIBERATELY AND SYSTEMATICALLY DESTROYED STATE DOCUMENTATION OVER A NUMBER OF YEARS. THIS PROCESS BEGAN IN 1978, WHEN CLASSIFIED RECORDS WERE ROUTINELY DESTROYED, SUPPOSEDLY IN ORDER TO SAFEGUARD STATE SECURITY. BY THE 1990S THE PROCESS OF DESTRUCTION OF RECORDS AND DOCUMENTS HAD BECOME A CO-ORDINATED ENDEAVOUR, SANCTIONED BY THE CABINET, WITH THE AIM OF DENYING A NEW GOVERNMENT ACCESS TO INCRIMINATING EVIDENCE AND SANITISING THE HISTORY OF THE APARTHEID ERA.

THE DESTRUCTION PROCESS TOOK PLACE AS FOLLOWS:

- IN 1978, THE THEN PRIME MINISTER ORDERED THE DESTRUCTION OF CLASSIFIED RECORDS OF THE SAP AND THE SADF. THIS TOOK PLACE OVER A TEN-YEAR PERIOD, FOLLOWING GUIDELINES LAID DOWN BY THE PRIME MINISTER, WHICH WERE UPDATED IN 1984 AND WERE LATER CHANNELLED TO THE STATE SECURITY COUNCIL AS A BASIS FOR GOVERNMENT-WIDE DESTRUCTION OF RECORDS.
- IN 1988, THE BULK OF THE CLASSIFIED RECORDS OF THE SOUTH WEST AFRICA TERRITORY FORCE WERE DESTROYED.
- IN 1991, THE NATIONAL INTELLIGENCE SERVICE (NIS) BEGAN A SYSTEMATIC DESTRUCTION PROGRAMME WHICH CONTINUED UNTIL LATE IN 1994.
- IN NOVEMBER 1991, THE NIS ATTEMPTED TO COLLECT ALL NATIONAL SECURITY MANAGEMENT SYSTEM (NSMS) RECORDS, IN ORDER TO IMPLEMENT SELECTIVE DESTRUCTION.

- IN 1992, THE SECURITY BRANCH OF THE SAP BEGAN A SYSTEMATIC DESTRUCTION PROGRAMME WHICH CONTINUED INTO 1993.
- ON 3 JULY 1992, THE MINISTER OF JUSTICE AND THE NIS AUTHORISED THE DESTRUCTION OF NIS FINANCIAL AND RELATED RECORDS BEYOND THE PARAMETERS LAID DOWN BY THE TREASURY.
- ON 2 JUNE 1993, CABINET APPROVED GUIDELINES FOR THE DESTRUCTION OF 'STATE SENSITIVE' RECORDS ACROSS ALL GOVERNMENT DEPARTMENTS. THE GUIDELINES WERE SUBMITTED TO CABINET BY THE SSC AND INCORPORATED THE PRINCIPLES OF THE 3 JULY 1992 AUTHORISATION REFERRED TO ABOVE. THE SADF AND OTHER GOVERNMENT STRUCTURES IMMEDIATELY BEGAN SYSTEMATIC DESTRUCTION PROGRAMMES.
- IN JULY 1993, THE SECURITY SECRETARIAT ADVISED GOVERNMENT OFFICES TO DESTROY CERTAIN CATEGORIES OF CLASSIFIED RECORDS. WIDESPREAD IMPLEMENTATION FOLLOWED.

THE MASS DESTRUCTION OF RECORDS OUTLINED ABOVE HAS HAD A SEVERE IMPACT ON SOUTH AFRICA'S SOCIAL MEMORY. VAST AMOUNTS OF OFFICIAL DOCUMENTATION, PARTICULARLY AROUND THE INNER WORKINGS OF THE STATE'S SECURITY APPARATUS, HAVE BEEN OBLITERATED. MOREOVER, THE APPARENT COMPLETE DESTRUCTION OF ALL RECORDS CONFISCATED FROM INDIVIDUALS AND ORGANISATIONS BY THE SECURITY BRANCH OF THE SAP HAS REMOVED FROM SOUTH AFRICA'S HERITAGE A VALUABLE DOCUMENTATION OF EXTRA-PARLIAMENTARY OPPOSITION TO APARTHEID.

THE WORK OF THE COMMISSION HAS SUFFERED AS A RESULT OF THIS WHOLESALE DESTRUCTION. NUMEROUS INVESTIGATIONS OF GROSS VIOLATIONS OF HUMAN RIGHTS WERE SEVERELY HAMPERED BY THE ABSENCE OF DOCUMENTATION. ULTIMATELY *ALL* SOUTH AFRICANS HAVE SUFFERED THE CONSEQUENCES, IN THAT THE PROCESS OF RECONCILIATION AND HEALING THROUGH A DISCLOSURE OF THE PAST HAS BEEN DELIBERATELY CURTAILED.

THE COMMISSION FINDS THE FOLLOWING OFFICIAL BODIES RESPONSIBLE FOR THE DESTRUCTION OF DOCUMENTS: THE CABINET OF THE FORMER GOVERNMENT, THE NIS, THE SECURITY BRANCH OF THE SAP, AND THE SADF.

## **b Findings on the role of allies of the state**

### **The homelands**

- 106 As has been stated above, the state was not acting alone in its strategies involving gross human rights violations. It had the active and passive support of numerous other elements in society. One of these was the white electorate which returned the National Party to power in one election after another. Others were the institutional creations of the apartheid system and the political parties that operated largely within these creations. The homeland or bantustan system gave rise to a set of semi-autonomous security and law-enforcement structures and such political groupings as the Inkatha Freedom Party.
- 107 So-called independent and semi-autonomous homelands emerged on the political landscape of South Africa in the 1970s and 1980s. From the outset, they were sites of steadily escalating resistance and repression. All forms of human rights abuse (torture, extra-judicial killings, unjustifiable use of deadly force etc) which occurred within so-called white South Africa were also found in the homelands arena. Indeed, such factors as a lack of public attention or scrutiny, little media interest and weak civil society structures, created an environment in the homelands that was even more conducive to gross violations of human rights than the wider South African society.
- 108 In consequence, human rights were grossly violated on a vast scale. The great majority of those who suffered human rights abuses in South Africa in the mandate period were the victims of black perpetrators, acting in many cases as surrogates for the South African government. Nowhere is this more true than in Natal and KwaZulu. It is for this reason that the IFP is the only homeland-based party and the KwaZulu Police (KZP) the only homeland security structure singled out by the Commission for specific findings.

## 109 Before focusing on those two entities, the Commission has made the following general finding on the homelands system:

THE FORMER STATE'S POLICY OF ESTABLISHING ETHNICALLY SEPARATE RESERVATIONS LAY AT THE CORE OF ITS POLICY OF TERRITORIAL AND POLITICAL SEPARATION ON THE BASIS OF RACE. THE POLICY WAS AN EXTENSION OF A COLONIALY ESTABLISHED PRACTICE OF 'DIVIDE AND RULE' AND HAD THE DUAL AIM OF SEEKING TO INHIBIT OR DIVERT THE STRUGGLE BY AFRICANS FOR DEMOCRATIC RIGHTS INSIDE SOUTH AFRICA WHILE SIMULTANEOUSLY PROTECTING AND PRESERVING THE ECONOMIC AND SOCIAL PRIVILEGES OF THE WHITE MINORITY.

THE ADMINISTRATIONS AND GOVERNMENTS THAT PRESIDED OVER THE VARIOUS HOMELANDS WERE, ACCORDINGLY, A CORNERSTONE OF THE STATE'S POLICY OF APARTHEID IN THAT THEY PURPORTED TO GRANT FULL POLITICAL, SOCIAL AND ECONOMIC RIGHTS TO BLACK CULTURAL AND LINGUISTIC GROUPINGS, BUT ONLY WITHIN DEFINED LIMITED GEOGRAPHIC AND ETHNICALLY EXCLUSIVE ENCLAVES. ECONOMICALLY, THEY REMAINED NON-VIABLE, WHICH LEFT THEM LITTLE CHOICE BUT TO COLLABORATE WITH THE SOUTH AFRICAN STATE ON SECURITY AND RELATED MATTERS, AND FUNCTION AS EXTENSIONS OF THAT STATE AND AS INSTRUMENTS OF ITS SECURITY FORCES. THIS DOES NOT, HOWEVER, EXONERATE THEM OR THEIR LEADERS FROM RESPONSIBILITY FOR THE GROSS VIOLATION OF HUMAN RIGHTS PERPETRATED IN THE HOMELANDS.

HOMELAND GOVERNMENTS IMPLEMENTED SYSTEMS OF RURAL LOCAL GOVERNMENT AND ADMINISTRATION WHICH LED TO WIDESPREAD ABUSES AND GROSS VIOLATIONS OF HUMAN RIGHTS, AS DID THE IMPLEMENTATION OF CIVIL CODES BY CHIEFS AND HEADMEN.

HOMELAND GOVERNMENTS WERE RESPONSIBLE FOR THE ESTABLISHMENT OF POLICE FORCES AND, IN THE CASE OF THE 'INDEPENDENT' HOMELANDS SUCH AS TRANSKEI AND CISKEI, DEFENCE FORCES CHARACTERISED BY INCOMPETENCE, BRUTALITY, AND POLITICAL BIAS. IN PARTICULAR, THEY –

- DISPLAYED BIAS AND PARTIALITY TOWARDS MEMBERS AND SUPPORTERS OF THE HOMELAND GOVERNMENTS, BOTH THROUGH ACTS OF COMMISSION, WHEN THEY WORKED OPENLY WITH PRO-HOMELAND GOVERNMENT VIGILANTES AND/OR COVERT ARMED GROUPS, AND THROUGH ACTS OF OMISSION WHEN THEY FAILED TO PROTECT OR SERVE THOSE WHO DID NOT SUPPORT THE HOMELAND GOVERNMENTS;
- WERE RESPONSIBLE FOR LARGE NUMBERS OF KILLINGS AND ATTEMPTED KILLINGS AS WELL AS ACTS OF INCITEMENT AND CONSPIRACY TO KILL, SEVERE ILL TREATMENT, ABDUCTION, TORTURE AND ARSON, THE VICTIMS OF WHICH WERE ALMOST EXCLUSIVELY NON-SUPPORTERS OF HOMELAND GOVERNMENT;
- WERE INVOLVED IN COVERING UP CRIMES COMMITTED BY SUPPORTERS OF THE HOMELAND GOVERNMENTS. THESE PRACTICES INCLUDED NEGLECTING BASIC INVESTIGATIVE PROCEDURES AND DELIBERATELY TAMPERING WITH EVIDENCE.

IN KWAZULU SPECIFICALLY, THE HOMELAND GOVERNMENT AND POLICE FORCE (KZP) WERE RESPONSIBLE FOR:

- ENSURING THAT SUSPECTS IN MATTERS OF POLITICAL VIOLENCE WERE CONCEALED, OFTEN FOR LENGTHY PERIODS, IN SADF AND OTHER TRAINING CAMPS;
- ISSUING FALSE POLICE CERTIFICATES AND IDENTITY DOCUMENTS TO SUPPORTERS OF THE HOMELAND GOVERNMENTS WHO WERE INVOLVED IN POLITICAL VIOLENCE, IN ORDER TO PREVENT THEIR ARREST AND CONVICTION AND TO FACILITATE THEIR CONTINUED CRIMINAL ACTIVITY;
- TAKING PART IN KILLINGS AND PURPORTING TO INVESTIGATE THE VERY CASES IN WHICH THEY HAD BEEN INVOLVED AS PERPETRATORS;
- COLLABORATING WITH MEMBERS OF THE SAP'S SECURITY BRANCH AND SADF MILITARY INTELLIGENCE (MI) SECTION IN COVERT ACTIVITIES AND PROJECTS AIMED AT DESTABILISING POPULAR OPPOSITION TO STATE AND HOMELAND GOVERNMENT AUTHORITY.

THE COMMISSION FINDS THE HOMELAND SECURITY FORCES ACCOUNTABLE NOT ONLY FOR THE GROSS HUMAN RIGHTS VIOLATIONS PERPETRATED BY THEIR MEMBERS BUT ALSO FOR THOSE PERPETRATED BY MEMBERS AND SUPPORTERS OF THE HOMELAND GOVERNMENTS' RULING PARTIES, AS A RESULT OF THE SECURITY FORCES' FAILURE TO ACT AGAINST SUCH MEMBERS AND SUPPORTERS. THAT FAILURE ENGENDERED A CLIMATE OF IMPUNITY THAT FACILITATED SUCH GROSS VIOLATIONS OF HUMAN RIGHTS.

AT A POLITICAL LEVEL, THE COMMISSION FINDS THAT ACCOUNTABILITY FOR THE GROSS HUMAN RIGHTS VIOLATIONS CITED ABOVE RESTS JOINTLY WITH THE SOUTH AFRICAN GOVERNMENT AND THE GOVERNMENTS OF THE HOMELANDS.

## Findings on the Inkatha Freedom Party

110 As stated above, gross violations of human rights occurred in all the homelands. In some, like Bophuthatswana, Ciskei, Transkei and KwaZulu, they occurred on a vast scale. There is, however, one significant difference between KwaZulu and the other three. In the latter, the perpetrators were almost invariably members of the homeland security forces. This was not the case in KwaZulu. Whilst the KwaZulu homeland's security arm, the KZP, committed large numbers of human rights violations, a far larger number of violations was committed by members, supporters and office-bearers of the IFP itself. It is for this reason that the IFP has been singled out for special attention.

111 The IFP was the only one of the various homeland political parties to develop a substantial mass base, and whereas in other homelands it was the governments and their security forces that dominated the political landscape, in KwaZulu it was Inkatha, renamed in 1990 to the Inkatha Freedom Party. The IFP dominated the KwaZulu government – both its executive and its bureaucracy – to the extent that the government and the IFP became interchangeable concepts. The organisation effectively ruled KwaZulu as a one-party state. It further used KwaZulu government resources and finances to fund its party political activities as well as actions constituting gross violations of the human rights of non-Inkatha persons.

112 Both South African government officials and IFP politicians regularly failed to distinguish between the KwaZulu government and the IFP. Vice Admiral Andries Putter, former chief of staff intelligence of the SADF told the Commission:

*As far as I can remember, I never myself drew a distinction between Inkatha and the KwaZulu government. In practice ... I did not realise that one could not distinguish between Inkatha and the KwaZulu government. It was basically the same organisation.*

113 Former IFP National Council member, Mr Walter Felgate, told the Commission:

*The interests of Inkatha and the KwaZulu government were indistinguishable. There was never a conflict of interest. I can bring to mind no conflict between Inkatha and the KLA (KwaZulu Legislative Assembly) on any matter of principle, any matter of strategy. They were just one amalgam with operating bases and nexuses of people.*

114 A former member of a KZP hit squad, now serving a number of life sentences for murder, told the Commission:

*There was no difference between the KwaZulu Police, the IFP and the KwaZulu government. In my opinion they were one entity. I received instructions [to kill people] from Captain Langeni (KZP), Mr MZ Khumalo (KwaZulu government) and [Mr Daluxolo] Luthuli (IFP).*

115 As early as 1982, Inkatha began to foster the concept of paramilitary training, particularly among its youth movement. This led to a process by which violence became institutionalised in KwaZulu, with the result that Inkatha supporters turned inexorably to violence and militaristic methods. In the period after July 1990, IFP violence spread to other regions, particularly the Transvaal. The Commission received evidence from thousands of people about attacks and massacres perpetrated by IFP supporters over the twelve-year period from April 1983, the date of the killing of Mr Msizi Dube by hired Inkatha hit-men, to the 1994 pre-election killing by an IFP headman of seven members of the Independent Electoral Commission for handing out pamphlets on how to vote.

116 These included:

- a the killing by Inkatha members in Hambanathi of members of the Hambanathi Residents Association in August 1983;
- b the killing of UDF supporters from 1983–89 by members of the Inkatha-supporting Chesterville 'A Team' vigilante group;

- c the killing of four students at the University of Zululand in October 1983 (the so-called Ngoye massacre) by some 500 Inkatha Youth Brigade members;
- d the killing of fourteen people by Inkatha supporters at the Umlazi Cinema memorial service for Victoria Mxenge in August 1985;
- e the establishment in early 1986 of a covert, offensive paramilitary unit trained, armed and paid by MI, and their deployment throughout KwaZulu until September 1990, during which the 'Caprivi trainees' killed large numbers of people and permanently altered the political landscape in the areas in which they were deployed (see separate finding below);
- f the December 1988 joint Inkatha-SAP operation in Trust Feeds which resulted in the death of eleven people;
- g the killing of over 100 people and the destruction of 3 000 houses in the March 1990 armed incursion by IFP supporters into the Edenvale area near Pietermaritzburg in what is referred to as the Seven Day War (see finding in regional profile, Volume Three);
- h the killing of thirty-four people in two armed attacks by IFP supporters in Bruntville township, Mooi River, in November and December 1990;
- i the deployment of a joint KZP-IFP hit squad in Esikhawini township in 1990, and the resultant killing of over 100 people (see separate finding below);
- j the deployment of the IFP-based 'Black Cats' hit squad in Wesselton and Ermelo in 1990, and the resultant killing of large numbers of people;
- k the Sebokeng massacres of July and September 1990, in which seventy-seven people in all were killed by Inkatha supporters;
- l the Alexandra night vigil massacre of March 1991, in which fifteen people were killed by Inkatha supporters;
- m the Swanieville massacre of May 1991, in which twenty-seven people were killed by Inkatha supporters;
- n The Boipatong massacre of June 1992, in which forty-five people were killed by armed groups which included Inkatha supporters;
- o the Phola Park and Kathlehong massacres in August 1990, in which forty people were killed by Inkatha supporters;
- p the Sebokeng massacre of January 1991, in which forty-five people were killed by IFP supporters;
- q the joint IFP/AWB attack and killing at the Flagstaff police station in 1993;
- r the 1994 pre-election killings by an IFP Youth League leader in A Section, KwaMashu and an Inkatha headman in Mahlabatini.

117 The above incidents represent iconic events over the past twelve years in which IFP office-bearers, members and supporters were involved in acts of serious political violence. They do not purport to be a complete list of such incidents. However, the most devastating indictment of the role of the IFP in political violence during the Commission's mandate period is to be found in the statistics compiled by the Commission directly from submissions by victims of gross human rights violations. These established the IFP as the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990–94 period. Indeed, IFP violations constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period, and over one-third of the total number of gross human rights violations committed during the thirty-four-year period of the Commission's mandate. The statistics also indicate that



IFP members, supporters and office-bearers in KwaZulu and Natal were responsible for more than 55 per cent of all violations reported to the Commission's Durban office for the period between July 1993 and May 1994.

- 118 Other statistics derived from the Commission's database show that Inkatha/the IFP was responsible, in the mandate period, for some 3 800 killings in the Natal and KwaZulu area compared with approximately 1 100 attributed to the ANC and some 700 to the SAP. The IFP remains the major perpetrator of killings on a national scale, being allegedly responsible for over 4 500 killings compared to 2 700 attributed to the SAP and 1 300 to the ANC. These statistics suggest that the IFP was responsible for approximately 3.5 killings for every one killing attributed to the ANC. A graph included in the Natal regional profile (Volume Three) illustrates that in 1987–88 the IFP exceeded even the SAP in terms of numbers of people killed by a single perpetrator organisation.
- 119 It must be noted here that, for much of the period in which the Commission was able to accept human rights violations statements, the IFP discouraged its members and supporters from making submissions to the Commission. The result is that only about 10 per cent of all statements taken in KwaZulu-Natal came from people linked to the IFP. *The significant point is that the statistics derived from the Commission's database do not diverge from those published by other national and international bodies. All of these are consistent in identifying the IFP as the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994.*
- 120 The description of the KwaZulu government and the IFP as state allies derives largely from the covert collaboration of senior Inkatha/IFP office-bearers with senior members of the SAP Security Branch and SADF Military Intelligence. This factor distinguished the IFP from other homeland-based perpetrators, particularly in the 1990s. At a time when it portrayed itself nationally and abroad as a liberation movement, the IFP, through the intervention of its senior members, was receiving direct financial and logistical assistance from the highest echelons of the apartheid state's security apparatus. Evidence before the Commission indicates that Inkatha's opposition to the South African government's policies had changed to covert collaboration by the latter half of the 1980s, and the two had united against a common enemy, the UDF/ANC and their affiliates.
- 121 The formal finding of the Commission in regard to the IFP is set out below:

DURING THE PERIOD 1982–94, THE INKATHA FREEDOM PARTY, KNOWN AS INKATHA PRIOR TO JULY 1990 (HEREINAFTER REFERRED TO AS "THE ORGANISATION") WAS RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE FORMER TRANSVAAL, NATAL AND KWAZULU AGAINST :

- persons who were perceived to be leaders, members or supporters of the UDF, ANC, South African Communist Party (SACP) and COSATU;
- persons who were identified as posing a threat to the organisation;
- members or supporters of the organisation whose loyalty was doubted.

It is a further finding of the Commission that such violations formed part of a systematic pattern of abuse which entailed deliberate planning on the part of the organisation.

The Commission based this finding on the following actions of the IFP:

- speeches by the IFP president, senior party officials and persons aligned to the organisation's ideology, which had the effect of inciting supporters of the organisation to commit acts of violence;

- arming the organisation's supporters with weapons in contravention of the Arms and Ammunition, and Explosives and Dangerous Weapons Acts;
- mass attacks by supporters of the organisation on communities inhabited by persons referred to above, resulting in death and injury and the destruction and theft of property;
- killing of leaders of the political organisations and persons referred to above;
- collusion with the South African government's security forces to commit the violations referred to above;
- entering into a pact with the SADF to create a paramilitary force for the organisation, which was intended to and did cause death and injury to the persons referred to above;
- establishing hit squads within the KZP and the special constable structure of the SAP to kill or cause injury to the persons referred to above;
- under the auspices of the self-protection unit project, training large numbers of the organisation's supporters with the specific objective of preventing, by means of violence, the holding of elections in KwaZulu-Natal in April 1994, under a Constitution which did not recognise the organisation's demands for sovereignty. In order to achieve this objective, the KwaZulu government and its KwaZulu Police structures were subverted;
- conspiring with right-wing organisations and former members of the South African government's security forces to commit acts which resulted in loss of life or injury in order to achieve the objective referred to above;
- creating a climate of impunity by expressly or implicitly condoning gross human rights violations and other unlawful acts committed by members or supporters of the organisation.

Chief MG Buthelezi served simultaneously as President of the IFP and as the Chief Minister of the KwaZulu government and was the only serving Minister of Police in the KwaZulu government during the entire thirteen-year existence of the KwaZulu Police. Where these three agencies are found to have been responsible for the commission of gross human rights, Chief Mangosuthu Buthelezi is held by this Commission to be accountable in his representative capacity as the leader, head or responsible Minister of the parties concerned.

### **Other findings related to the IFP and/or KwaZulu government**

122 The Commission also made comprehensive findings with regard to a number of key incidents involving members of the IFP in KwaZulu-Natal, all of which are dealt with in more detail in the Natal regional study in Volume Three of this report. The Commission has also made a finding on the KZP, which has been dealt with in the chapter on *Homelands* in Volume Two.

### **Operation Marion**

THE COMMISSION FINDS THAT IN 1986, THE SADF CONSPIRED WITH INKATHA TO PROVIDE THE LATTER WITH A COVERT, OFFENSIVE PARAMILITARY UNIT (OR "HIT SQUAD") TO BE DEPLOYED ILLEGALLY AGAINST PERSONS AND ORGANISATIONS PERCEIVED TO BE OPPOSED TO BOTH THE SOUTH AFRICAN GOVERNMENT AND INKATHA. THE SADF PROVIDED TRAINING, FINANCIAL AND LOGISTICAL MANAGEMENT AND BEHIND-THE-SCENES SUPERVISION OF THE TRAINEES, WHO WERE TRAINED BY THE SPECIAL FORCES UNIT OF THE SADF IN THE CAPRIVI STRIP.

THE COMMISSION FINDS FURTHERMORE THAT THE DEPLOYMENT OF THE PARAMILITARY UNIT IN KWAZULU LED TO GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING, ATTEMPTED KILLING AND SEVERE ILL TREATMENT.

THE COMMISSION FINDS THE FOLLOWING PEOPLE, AMONG OTHERS, ACCOUNTABLE FOR SUCH VIOLATIONS; MR PW BOTHA, GENERAL MAGNUS MALAN, CHIEF MANGOSUTHU BUTHELEZI, MR MZ KHUMALO, MR PIETER GROENEWALD, VICE ADMIRAL ANDRIES PUTTER, MR LOUIS BOTHA, MR CORNELIUS VAN NIEKERK AND MR MIKE VAN DEN BERG.

## Esikhawini hit squad

IT IS THE FINDING OF THIS COMMISSION THAT IN 1990, SENIOR MEMBERS OF THE IFP CONSPIRED WITH SENIOR MEMBERS OF THE KZP TO ESTABLISH A HIT SQUAD IN ESIKHAWINI TOWNSHIP, TO BE DEPLOYED ILLEGALLY AGAINST PERSONS PERCEIVED TO BE OPPOSED TO THE IFP. THE HIT SQUAD CONSISTED OF 'CAPRIVI TRAINEES' AND MEMBERS OF THE KZP, AND ITS MEMBERS TOOK INSTRUCTIONS FROM SENIOR MEMBERS OF THE IFP AND OF THE KZP, FOR THE ELIMINATION OF POLITICAL ACTIVISTS AFFILIATED TO THE ANC AND COSATU AS WELL AS MEMBERS OF THE SAP WHO WERE NOT SEEN TO BE SUPPORTIVE OF THE IFP. THE DEPLOYMENT OF THE HIT SQUAD LED TO GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING, ATTEMPTED KILLING, ARSON AND SEVERE ILL TREATMENT. THE PERSONS ACCOUNTABLE FOR SUCH VIOLATIONS INCLUDE: PRINCE GIDEON ZULU, MS LINDIWE MBUYAZI, MR BB BIYELA, CAPTAIN L LANGENI, MR MZ KHUMALO, MR ROBERT MZIMELA, MR NKOSI MATHABA AND MR ROBERT MKHIZE.

## The Mlaba self-protection unit camp

THE COMMISSION FINDS THAT DURING THE PERIOD 1993–94, THE INKATHA SELF-PROTECTION UNIT (SPU) PROJECT, BASED PRIMARILY AT MLABA CAMP, PROVIDED TRAINING FOR 5 000 TO 8 000 PEOPLE. ALTHOUGH OFFICIALLY PLACED WITHIN THE AMBIT OF THE PEACE ACCORD AND CONTAINING AN ELEMENT OF SELF-PROTECTION, THE PROJECT WAS ALSO INTENDED TO FURNISH THE IFP WITH THE MILITARY CAPACITY TO PREVENT THE CENTRAL GOVERNMENT/INDEPENDENT ELECTORAL COMMISSION BY FORCE FROM HOLDING ELECTIONS WHICH DID NOT ACCOMMODATE THE IFP'S DESIRES FOR SELF-DETERMINATION. SUCH ARMED RESISTANCE WAS TO ENTAIL THE RISK OF UNLAWFUL DEATH AND INJURY TO PERSONS AND THUS CONSTITUTED A CONSPIRACY TO COMMIT GROSS VIOLATIONS OF HUMAN RIGHTS.

CONSEQUENTLY IT IS THE FINDING OF THIS COMMISSION THAT THE SPU PROJECT CONSTITUTED A GROSS VIOLATION OF HUMAN RIGHTS IN AS FAR AS IT ENTAILED DELIBERATE PLANNING ON THE PART OF THE INKATHA FREEDOM PARTY AND MEMBERS OF THE THEN KWA-ZULU GOVERNMENT AND POLICE FORCE. THE FOLLOWING INDIVIDUAL MEMBERS ARE ACCOUNTABLE FOR THE VIOLATIONS ARISING FROM THE SPU CAMP: MR PHILIP POWELL, CHIEF MG BUTHELEZI, GENERAL SM MATHE, CAPTAIN LEONARD LANGENI AND MEMBERS (NOT INDIVIDUALLY IDENTIFIED) OF THE KWAZULU LEGISLATURE AND CABINET WHO KNEW OF THE PROJECT'S UNLAWFUL AIMS AND SUPPORTED IT.

## Right-wing opposition groups

123 In the late 1980s and early 1990s, a number of Afrikaner right-wing groups became active in the political arena. They operated in a loose coalition intent on securing the political interests of conservative Afrikaners through a range of activities seemingly intent on disrupting the negotiations process then underway. Operating both within and outside of the negotiations process, members of these groups undertook actions which constituted gross violations of human rights.

124 In regard to these groups, the Commission makes the following findings:

THE COMMISSION FINDS THAT THE *AFRIKANER VOLKSFRONT* AND STRUCTURES OPERATING UNDER ITS BROAD UMBRELLA WERE RESPONSIBLE, BETWEEN APRIL 1993 AND MAY 1994, FOR GROSS VIOLATIONS OF THE HUMAN RIGHTS OF PERSONS PERCEIVED TO BE SUPPORTERS AND LEADERS OF THE ANC, SACP, UDF, PAC, NATIONAL PARTY AND OTHER GROUPS PERCEIVED NOT TO SUPPORT THE CONCEPT OF AFRIKANER SELF-DETERMINATION OR THE ESTABLISHMENT OF A *VOLKSTAAT*. TO THAT END, THE MOVEMENT'S POLITICAL LEADERS AND MILITARY GENERALS ADVOCATED THE USE OF VIOLENCE IN PURSUIT OF THE MOVEMENT'S AIMS AND/OR IN AN ATTEMPT TO MOBILISE FOR AN INSURRECTION.

THE COMMISSION BASED THIS FINDING ON:

- speeches and orders by the movement's senior leaders which had the effect of inciting its supporters to commit acts of violence against individuals and institutions perceived to be the enemy of the Afrikaner;
- the arming of supporters with weapons in contravention of the law;
- random attacks by members on black persons;

- clandestine collusion with members of the security forces and/or the IFP either to commit the violations cited above or to train paramilitary forces to commit acts which resulted in death or injury;
- the training of supporters to undertake violent actions designed to prevent elections from being held in 1994;
- the establishment of a *Volksleër* and other paramilitary groupings to threaten insurrection and revolution with a view to derailing the democratic process.

BY VIRTUE OF THEIR LEADERSHIP POSITIONS IN THE MOVEMENT, THE COMMISSION FINDS THE FOLLOWING TO BE ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS VIOLATIONS COMMITTED BY SUPPORTERS OF THE MOVEMENT: GENERAL CONSTAND VILJOEN, GENERAL PIETER GROENEWALD AND MR EUGENE TERREBLANCHE.

125 Broadly similar findings are made against three other groupings, namely, the *Orde van die Boerevolk*, the *Boere Weerstandsbeweging* and the *Afrikaner Weerstandsbeweging* (AWB).

### **Finding on the 'third force'**

126 The early 1990s saw unprecedented levels of violence: more people died in political conflict during this time than for the whole of the earlier mandate period. Numerous allegations were made that a 'hidden hand' or 'third force' was involved in orchestrating and fomenting such violence in order to derail the negotiation process. This 'third force' was seen to involve covert units of the security forces acting in concert with other individuals or groupings, such as the IFP and various right-wing paramilitary structures.

127 Regarding security force involvement in 'third force'-type activities, the Commission found evidence of –

- a involvement by members of the security forces in the provision of weapons and training to the IFP;
- b a cover-up, following the arrest of Transvaal IFP youth leader Themba Khoza with weapons on the scene, of the identity of perpetrators of the Sebokeng massacre;
- c the involvement by MI operatives and structures in destabilisation in the homelands, including the development of a plan to invade the Transkei;
- d an official plan by MI to abduct and/or assassinate Mr Chris Hani and Mr Bantu Holomisa in the Transkei;
- e the existence of SAP hit-squads;
- f sustained efforts to conduct disinformation campaigns both against the liberation movements generally and against particular individuals;
- g the activities of high-level security branch sources such as the ANC's Sifiso Nkabinde and the IFP's David Ntombela, who were deeply implicated in violence in the Richmond and Pietermaritzburg areas respectively.

128 In addition, the Commission found some evidence regarding the involvement of security force operatives and IFP members in train violence and in right-wing agendas and structures, possibly including the establishment of some right-wing groupings; the involvement of an MI source, Prince Gobingca, as a key player in several sites of violence in the western and eastern Cape; and the existence of alliances between certain security force operatives, the right-wing and sectors of the IFP, who clearly believed they were arming and training people for a full-scale war.

129 While little evidence exists of a centrally directed, coherent and formally constituted 'third force', on the basis of the above:

THE COMMISSION FINDS THAT A NETWORK OF SECURITY AND EX-SECURITY FORCE OPERATIVES, OFTEN ACTING IN CONJUNCTION WITH RIGHT-WING ELEMENTS AND/OR SECTORS OF THE IFP, FOMENTED, INITIATED, FACILITATED AND ENGAGED IN VIOLENCE WHICH RESULTED IN GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING RANDOM AND TARGETED KILLINGS.

THE COMMISSION FINDS THAT SUCH NETWORKS HAD ESTABLISHED 'PARTNERSHIPS' DURING THE 1980S WITH PRO-GOVERNMENT INDIVIDUALS OR GROUPS AT A LOCAL LEVEL WHICH THEN ACTED IN CONCERT TO PERPETRATE SUCH VIOLATIONS. THE COMMISSION FINDS FURTHER THAT THE SANCTION OF ILLEGAL ACTIVITIES BY SECURITY FORCE OPERATIVES DURING THE 1980S PROVIDED THE BASIS FOR THEIR CONTINUATION IN THE 1990S.

THE COMMISSION FINDS THAT SUCH NETWORKS, AT TIMES, FUNCTIONED WITH THE ACTIVE COLLUSION AND/OR KNOWLEDGE OF SENIOR SECURITY FORCE PERSONNEL, AND THAT THE FORMER GOVERNMENT, EITHER DELIBERATELY OR BY OMISSION, FAILED TO TAKE SUFFICIENT STEPS TO PUT AN END TO SUCH PRACTICES.

THE COMMISSION ALSO FINDS THAT THE SUCCESS OF 'THIRD FORCE' ATTEMPTS TO GENERATE VIOLENCE WAS AT LEAST IN PART A CONSEQUENCE OF EXTREMELY HIGH LEVELS OF POLITICAL INTOLERANCE, FOR WHICH BOTH THE LIBERATION MOVEMENTS AND OTHER STRUCTURES SUCH AS THE IFP ARE HELD TO BE MORALLY AND POLITICALLY ACCOUNTABLE.

## **p The liberation movements**

- 130 This section includes the Commission's findings on the ANC, PAC, UDF and on ANC national executive member, Ms Winnie Madikizela-Mandela.
- 131 In reviewing the activities of the ANC and PAC, the Commission endorsed the position in international law that the policy of apartheid was a crime against humanity and that both the ANC and PAC were internationally recognised liberation movements conducting legitimate struggles against the former South African government and its policy of apartheid.
- 132 Nonetheless, as indicated previously, the Commission drew a distinction between a 'just war' and 'just means' and has found that in terms of international conventions, the ANC and its organs (the National Executive Council, the National Working Committee, the Revolutionary Council, the Secretariat and its armed wing, MK, as well as the PAC and its armed formations Poqo and APLA, committed gross violations of human rights in the course of their political activities and armed struggles, for which they are morally and politically accountable.
- 133 The Commission also wishes to note that the fact that the Commission makes a more detailed finding and comments more extensively on the ANC than on the PAC should not be interpreted as suggesting that the Commission finds it to have been more responsible for gross violations of human rights than the PAC. This is not the case. Instead, what it reflects is the far greater degree of openness to the Commission of the ANC than the PAC. The ANC made two full submissions to the Commission, answered its questions on the exile camps and made available to the Commission its various enquiry reports into alleged human rights abuses in exile. By contrast, the PAC offered very little by way of information on any of its activities, including exile abuses, and supplied no documentation.
- 134 The Commission has taken note that of the three main parties to the armed struggle – the state, the ANC and the PAC – only the ANC signed the Geneva Convention in regard to the conduct of wars of national liberation, and made the most conscious effort to conduct its armed struggle within the framework of international humanitarian law. While actions were undertaken which violated the ANC's guidelines – and the Commission has made adverse findings on them – the Commission acknowledges that it was in general not ANC policy to target civilians. By contrast, the PAC consciously targeted certain categories of civilians, and whites in general, and the Commission has made findings in this regard.

- 135 The Commission acknowledges the comparative restraint with which the ANC conducted its armed struggle, at least in terms of its identification of targets, and the fact that the ANC leadership instructed its MK cadres to abandon the landmine campaign when it became clear that innocent civilians were being killed and hurt by it.

### **Findings on the African National Congress**

*Our conference itself will be remembered by our people as a council of war that planned the seizure of power by these masses, the penultimate convention that gave the order for us to take our country through the terrible but cleansing fires of revolutionary war to a condition of peace. (OR Tambo, Tambo Speaks.)*

*To the extent that the Motsuenyane Commission found that some detainees were maltreated and recommended that the ANC should apologise for these violations of their human rights, the ANC does so without qualification, within the context of the standards it sets for itself – standards it wishes our country to attain and maintain, now and in the future. (First ANC first submission to the Commission.)*

*‘The political and operational leadership of the movement is ready to accept collective responsibility for all operations of its properly constituted offensive structures, including operations ... that might have been outside of the established norms. (Mr Thabo Mbeki, Ibid.)*

### **Violations committed in the course of the armed struggle**

- 136 The ANC has accepted responsibility for all actions committed by members of MK under its command in the period 1961 to August 1990. In this period there were a number of such actions – in particular the placing of limpet and landmines – which resulted in civilian casualties. Whatever the justification given by the ANC for such acts – misinterpretation of policy, poor surveillance, anger or differing interpretations of what constituted a ‘legitimate military target’ – the people who were killed or injured by such explosions are all victims of gross violations of human rights perpetrated by the ANC. While it is accepted that targeting civilians was not ANC policy, MK operations nonetheless ended up killing fewer security force members than civilians.

WITH REGARD TO ACTIONS COMMITTED DURING THE ARMED STRUGGLE, THE COMMISSION MAKES THE FOLLOWING FINDINGS:

WHILE IT WAS ANC POLICY THAT THE LOSS OF CIVILIAN LIFE SHOULD BE ‘AVOIDED’, THERE WERE INSTANCES WHERE MEMBERS OF MK PERPETRATED GROSS VIOLATIONS OF HUMAN RIGHTS IN THAT THE DISTINCTION BETWEEN MILITARY AND CIVILIAN TARGETS WAS BLURRED IN CERTAIN ARMED ACTIONS, SUCH AS THE 1983 CHURCH STREET BOMBING OF THE SAAF HEADQUARTERS, RESULTING IN GROSS VIOLATIONS OF HUMAN RIGHTS THROUGH CIVILIAN INJURY AND LOSS OF LIFE.

IN THE COURSE OF THE ARMED STRUGGLE THERE WERE INSTANCES WHERE MEMBERS OF MK CONDUCTED UNPLANNED MILITARY OPERATIONS USING THEIR OWN DISCRETION, AND, WITHOUT ADEQUATE CONTROL AND SUPERVISION AT AN OPERATIONAL LEVEL, DETERMINED TARGETS FOR ATTACK OUTSIDE OF OFFICIAL POLICY GUIDELINES. WHILE RECOGNISING THAT SUCH OPERATIONS WERE FREQUENTLY UNDERTAKEN IN RETALIATION FOR RAIDS BY THE FORMER SOUTH AFRICAN GOVERNMENT INTO NEIGHBOURING COUNTRIES, SUCH UNPLANNED OPERATIONS NONETHELESS OFTEN RESULTED IN CIVILIAN INJURY AND LOSS OF LIFE, AMOUNTING TO GROSS VIOLATIONS OF HUMAN RIGHTS. THE 1985 AMANZIMTOTI SHOPPING CENTRE BOMBING IS REGARDED BY THE COMMISSION IN THIS LIGHT.

IN THE COURSE OF THE ARMED STRUGGLE THE ANC, THROUGH MK, PLANNED AND UNDERTOOK MILITARY OPERATIONS WHICH, THOUGH INTENDED FOR MILITARY OR SECURITY FORCE TARGETS, SOMETIMES WENT AWRY FOR A VARIETY OF REASONS, INCLUDING POOR INTELLIGENCE AND RECONNAISSANCE. THE CONSEQUENCES IN THESE CASES, SUCH AS THE MAGOO’S BAR AND DURBAN ESPLANADE BOMBINGS, WERE GROSS VIOLATIONS OF HUMAN RIGHTS IN RESPECT OF THE INJURIES TO AND LOSS OF LIVES OF CIVILIANS.

WHILE THE COMMISSION ACKNOWLEDGES THE ANC’S SUBMISSION THAT THE FORMER SOUTH AFRICAN GOVERNMENT HAD ITSELF BY THE MID-1980S BLURRED THE DISTINCTION BETWEEN MILITARY AND ‘SOFT’ TARGETS BY DECLARING BORDER AREAS ‘MILITARY ZONES’ WHERE FARMERS WERE TRAINED AND EQUIPPED TO OPERATE AS AN EXTENSION OF MILITARY STRUCTURES, IT FINDS THAT THE ANC’S LANDMINE CAMPAIGN IN THE PERIOD 1985–87 IN THE RURAL AREAS OF THE NORTHERN AND EASTERN TRANSVAAL CANNOT BE CONDONED, IN THAT IT

RESULTED IN GROSS VIOLATIONS OF THE HUMAN RIGHTS OF CIVILIANS, INCLUDING FARM LABOURERS AND CHILDREN, WHO WERE KILLED OR INJURED. THE ANC IS HELD ACCOUNTABLE FOR SUCH GROSS VIOLATIONS OF HUMAN RIGHTS.

INDIVIDUALS WHO DEFECTED TO THE STATE AND BECAME INFORMERS AND/OR MEMBERS WHO BECAME STATE WITNESSES IN POLITICAL TRIALS AND/OR BECAME ASKARIS WERE OFTEN LABELLED BY THE ANC AS COLLABORATORS AND REGARDED AS LEGITIMATE TARGETS TO BE KILLED. THE COMMISSION DOES NOT CONDONE THE LEGITIMISATION OF SUCH INDIVIDUALS AS MILITARY TARGETS AND FINDS THAT THE EXTRA-JUDICIAL KILLINGS OF SUCH INDIVIDUALS CONSTITUTED GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT, IN THE 1980S IN PARTICULAR, A NUMBER OF GROSS VIOLATIONS OF HUMAN RIGHTS WERE PERPETRATED NOT BY DIRECT MEMBERS OF THE ANC OR THOSE OPERATING UNDER ITS FORMAL COMMAND, BUT BY CIVILIANS WHO SAW THEMSELVES AS ANC SUPPORTERS. IN THIS REGARD, THE COMMISSION FINDS THAT THE ANC IS MORALLY AND POLITICALLY ACCOUNTABLE FOR CREATING A CLIMATE IN WHICH SUCH SUPPORTERS BELIEVED THEIR ACTIONS TO BE LEGITIMATE AND CARRIED OUT WITHIN THE BROAD PARAMETERS OF A 'PEOPLE'S WAR' AS ENUNCIATED BY THE ANC.

### **Gross violations of human rights committed by the ANC in exile**

137 The Commission has studied the reports of the Stuart, Skweyiya, Sachs and Motsuenyane commissions of enquiry appointed by the ANC, as well as that of the Douglas Commission, into various forms of human rights abuse in exile. It also took evidence both from alleged victims of abuse in the camps and from those in positions of command or authority. The Commission has also heard evidence from the ANC on persons executed in exile for a variety of different offences.

ON THE BASIS OF THE EVIDENCE AVAILABLE TO IT, THE COMMISSION FINDS THAT THE ANC, AND PARTICULARLY ITS MILITARY STRUCTURES RESPONSIBLE FOR THE TREATMENT AND WELFARE OF THOSE IN ITS CAMPS, WERE GUILTY OF GROSS VIOLATIONS OF HUMAN RIGHTS IN CERTAIN CIRCUMSTANCES AND AGAINST TWO CATEGORIES OF INDIVIDUALS, NAMELY SUSPECTED 'ENEMY AGENTS' AND MUTINEERS.

THE COMMISSION FINDS THAT SUSPECTED 'AGENTS' WERE ROUTINELY SUBJECTED TO TORTURE AND OTHER FORMS OF SEVERE ILL TREATMENT AND THAT THERE WERE CASES OF SUCH INDIVIDUALS BEING CHARGED AND CONVICTED BY TRIBUNALS WITHOUT PROPER ATTENTION TO DUE PROCESS, SENTENCED TO DEATH AND EXECUTED. THE COMMISSION FINDS THAT THE HUMAN RIGHTS OF THE INDIVIDUALS SO AFFECTED WERE GROSSLY VIOLATED. LIKEWISE, THE COMMISSION FINDS THAT THE FAILURE TO COMMUNICATE PROPERLY WITH THE FAMILIES OF SUCH VICTIMS CONSTITUTED CALLOUS AND INSENSITIVE CONDUCT.

THE COMMISSION ALSO FINDS THAT ALL SO-CALLED MUTINEERS WHO WERE EXECUTED AFTER CONVICTION BY MILITARY TRIBUNAL, IRRESPECTIVE OF WHETHER THEY WERE AFFORDED PROPER LEGAL REPRESENTATION AND DUE PROCESS OR NOT, SUFFERED A GROSS VIOLATION OF THEIR HUMAN RIGHTS.

WITH REGARD TO ALLEGATIONS OF TORTURE AND SEVERE ILL TREATMENT, THE COMMISSION FINDS THAT ALTHOUGH TORTURE WAS NOT WITHIN ANC POLICY, THE SECURITY DEPARTMENT OF THE ANC ROUTINELY USED TORTURE TO EXTRACT INFORMATION AND CONFESSIONS FROM THOSE BEING HELD IN CAMPS, PARTICULARLY IN THE PERIOD 1979–89. THE COMMISSION HAS TAKEN NOTE OF THE VARIOUS FORMS OF TORTURE DETAILED BY THE MOTSUENYANE COMMISSION, NAMELY THE DELIBERATE INFLECTION OF PAIN, SEVERE ILL TREATMENT IN THE FORM OF DETENTION IN SOLITARY CONFINEMENT, AND THE DELIBERATE WITHHOLDING OF FOOD AND WATER AND/OR MEDICAL CARE, AND FINDS THAT THEY AMOUNTED TO GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FURTHER FINDS THAT ADEQUATE STEPS WERE NOT TAKEN IN GOOD TIME AGAINST THOSE RESPONSIBLE FOR SUCH VIOLATIONS.

### **Gross violations of human rights committed by the ANC after its unbanning**

138 While the Commission accepts that the violent conflict which consumed the country in the post-1990 period was neither initiated by nor in the interests of the ANC, the ANC must nonetheless account for the many hundreds of people killed or injured by its members in the conflict. While the ANC leadership has argued that its members were acting in self-defence, it is the Commission's view that at times the conflict assumed local dynamics in which proactive revenge attacks were carried out by both sides. This situation was exacerbated by high levels of political intolerance among all parties, including the ANC. Further, the

Commission contends that the leadership should have been aware of the consequences of training and arming members of SDUs in a volatile situation in which they had little control over the actions of such members.

THE COMMISSION THEREFORE FINDS THAT IN THE PERIOD 1990–94, THE ANC WAS RESPONSIBLE FOR:

- KILLINGS, ASSAULTS AND ATTACKS ON POLITICAL OPPONENTS INCLUDING MEMBERS OF THE IFP, PAC, AZAPO AND THE SAP;
  - CONTRIBUTING TO A SPIRAL OF VIOLENCE IN THE COUNTRY THROUGH THE CREATION AND ARMING OF SELF-DEFENCE UNITS (SDUS).
- WHILST ACKNOWLEDGING THAT IT WAS NOT THE POLICY OF THE ANC TO ATTACK AND KILL POLITICAL OPPONENTS, THE COMMISSION FINDS THAT IN THE ABSENCE OF ADEQUATE COMMAND STRUCTURES AND IN THE CONTEXT OF WIDESPREAD STATE-SPONSORED OR -DIRECTED VIOLENCE AND A CLIMATE OF POLITICAL INTOLERANCE, SDU MEMBERS OFTEN ‘TOOK THE LAW INTO THEIR OWN HANDS’ AND COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION TAKES NOTE THAT THE POLITICAL LEADERSHIP OF THE AFRICAN NATIONAL CONGRESS AND THE COMMAND STRUCTURE OF UMKHONTO WESIZWE HAS ACCEPTED POLITICAL AND MORAL RESPONSIBILITY FOR ALL THE ACTIONS OF ITS MEMBERS IN THE PERIOD 1960–94 AND THEREFORE FINDS THAT THE LEADERSHIP OF THE ANC AND MK MUST TAKE RESPONSIBILITY, AND BE ACCOUNTABLE, FOR ALL GROSS VIOLATIONS OF HUMAN RIGHTS PERPETRATED BY ITS MEMBERSHIP AND CADRES IN THE MANDATE PERIOD.

## Findings in regard to Mrs Winnie Madikizela-Mandela and the Mandela Football Club

THE COMMISSION FINDS THAT MS MADIKIZELA-MANDELA WAS CENTRAL TO THE ESTABLISHMENT AND FORMATION OF THE MANDELA UNITED FOOTBALL CLUB, WHICH LATER DEVELOPED INTO A PRIVATE VIGILANTE UNIT OPERATING AROUND MS MADIKIZELA-MANDELA AND FROM HER HOUSES IN BOTH ORLANDO WEST AND DIEPKLOOF. THE COMMISSION FINDS THAT THE COMMUNITY ANGER AGAINST MS MADIKIZELA-MANDELA AND THE FOOTBALL CLUB MANIFESTED ITSELF IN THE BURNING OF THE MANDELA HOME IN ORLANDO WEST IN JULY 1988, WHICH LED TO POLITICAL, COMMUNITY AND CHURCH LEADERS REQUESTING THAT SHE DISBAND THE FOOTBALL CLUB.

THE COMMISSION FURTHER FINDS THAT THE MANDELA UNITED FOOTBALL CLUB WAS INVOLVED IN A NUMBER OF CRIMINAL ACTIVITIES INCLUDING KILLING, TORTURE, ASSAULTS AND ARSON IN THE COMMUNITY. IT IS THE COMMISSION’S VIEW THAT MS MADIKIZELA-MANDELA WAS AWARE OF THE CRIMINAL ACTIVITY AND THE DISQUIET IT CAUSED IN THE COMMUNITY, BUT CHOSE DELIBERATELY NOT TO ADDRESS THE PROBLEMS EMANATING FROM THE FOOTBALL CLUB. THE COMMISSION FINDS THAT THOSE WHO OPPOSED MS MADIKIZELA-MANDELA AND THE MANDELA UNITED FOOTBALL CLUB, OR DISSENTED FROM THEM, WERE BRANDED AS INFORMERS, AND KILLED. THE LABELLING BY MS MADIKIZELA-MANDELA OF OPPONENTS AS INFORMERS CREATED THE PERCEPTION THAT THEY WERE LEGITIMATE TARGETS. IT IS THE FINDING OF THIS COMMISSION THAT MS MADIKIZELA-MANDELA HAD KNOWLEDGE OF AND/OR PARTICIPATED IN THE ACTIVITIES OF CLUB MEMBERS, AND/OR THAT THEY WERE AUTHORISED AND/OR SANCTIONED BY HER.

THE COMMISSION FINDS THAT MS MADIKIZELA-MANDELA FAILED TO ACCOUNT TO COMMUNITY AND POLITICAL STRUCTURES. FURTHER THAT SHE IS ACCOUNTABLE, POLITICALLY AND MORALLY, FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY THE MANDELA UNITED FOOTBALL CLUB. THE COMMISSION FINDS FURTHER THAT MRS MADIKIZELA-MANDELA HERSELF WAS RESPONSIBLE FOR COMMITTING SUCH GROSS VIOLATIONS OF HUMAN RIGHTS.

## Findings in regard to the Pan Africanist Congress

*The enemy of the liberation movement of South Africa and of its people was always the settler colonial regime of South Africa. Reduced to its simplest form, the apartheid regime meant white domination, not leadership, but control and supremacy. The pillars of apartheid protecting white South Africa from the black danger, were the military and the process of arming of the entire white South African society. This militarisation, therefore, of necessity made every white citizen a member of the security establishment. (Brigadier Mofokeng, armed forces hearing)*

139 Within the context of the international position on apartheid and the recognition of the PAC as a liberation movement, the Commission makes the following findings:

*Violations committed by POQO in the early 1960s*



WHILE THE COMMISSION TAKES NOTE OF THE EXPLANATION TENDERED BY THE PAC THAT ITS ACTIVITIES IN THE EARLY 1960S NEED TO BE UNDERSTOOD IN THE CONTEXT OF THE 'LAND WARS OF THE TIME', IT NEVERTHELESS FINDS THAT THE PAC AND POQO WERE RESPONSIBLE FOR THE COMMISSION OF GROSS VIOLATIONS OF HUMAN RIGHTS THROUGH POQO'S CAMPAIGN TO LIBERATE THE COUNTRY. THIS UNLEASHED A REIGN OF TERROR, PARTICULARLY IN THE WESTERN CAPE TOWNSHIPS. IN THE COURSE OF THIS CAMPAIGN, THE FOLLOWING GROUPS SUFFERED GROSS VIOLATIONS OF THEIR HUMAN RIGHTS:

- MEMBERS OF THE POLICE, PARTICULARLY THOSE LIVING IN BLACK TOWNSHIPS;
- THE SO-CALLED 'KATANGESE', DISSIDENT MEMBERS OF THE PAC WHO OPPOSED THE CAMPAIGN AND WERE SUBJECTED TO PHYSICAL ATTACKS AND ASSASSINATIONS BY OTHER POQO MEMBERS;
- REPRESENTATIVES OF TRADITIONAL AUTHORITY IN THE HOMELANDS, THAT IS, CHIEFS AND HEADMEN;
- WHITE CIVILIANS IN NON-COMBAT SITUATIONS.

THE COMMISSION FINDS THE PAC ACCOUNTABLE FOR SUCH VIOLATIONS.

### ***Gross violations of human rights committed by the PAC during its armed struggle***

140 While the PAC proclaimed a military strategy of a protracted people's war, which involved the infiltration of guerrillas into the country to conduct rural guerrilla warfare and attacks in the townships, in actuality the primary target of its operations were civilians. This was especially so after 1990 when, in terms of its 'Year of the Great Storm' campaign, the PAC/APLA targeted whites at random, and white farmers in particular.

THE COMMISSION FINDS THAT THE TARGETING OF CIVILIANS FOR KILLING WAS NOT ONLY A GROSS VIOLATION OF HUMAN RIGHTS OF THOSE AFFECTED BUT A VIOLATION OF INTERNATIONAL HUMANITARIAN LAW. THE COMMISSION NOTES BUT REJECTS THE PAC'S EXPLANATION THAT ITS KILLING OF WHITE FARMERS CONSTITUTED ACTS OF WAR FOR WHICH IT HAS NO REGRETS AND APOLOGIES. TO THE CONTRARY, THE COMMISSION FINDS PAC ACTION DIRECTED TOWARDS BOTH CIVILIANS AND WHITES TO HAVE BEEN A GROSS VIOLATION OF HUMAN RIGHTS FOR WHICH THE PAC AND APLA LEADERSHIP ARE HELD TO BE MORALLY AND POLITICALLY RESPONSIBLE AND ACCOUNTABLE.

### ***Gross violations of human rights committed by the PAC against its own members***

THE COMMISSION FINDS THAT NUMBERS OF MEMBERS OF THE PAC WERE EXTRA-JUDICIALLY KILLED IN EXILE, PARTICULARLY IN CAMPS IN TANZANIA, BY APLA CADRES ACTING ON THE INSTRUCTIONS OF ITS HIGH COMMAND, AND THAT MEMBERS INSIDE THE COUNTRY BRANDED AS INFORMERS OR AGENTS, AND THOSE WHO OPPOSED PAC POLICIES, WERE ALSO KILLED. ALL SUCH ACTIONS CONSTITUTED INSTANCES OF GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE PAC AND APLA ARE HELD TO BE RESPONSIBLE AND ACCOUNTABLE.

## **Findings in regard to the United Democratic Front (UDF)**

*Having looked at this question long and hard among us, we conceded that the language used by some of us from time to time could have provided the reasonable basis for some of our members to infer that violence or even killing was acceptable. (Mr Azhar Cachalia, UDF appearance before the Commission.)*

*... we accept political and moral responsibility. We cannot say these people have nothing to do with us. We organised them, we led them. (Mr Murphy Morobe, UDF appearance before the Commission.)*

141 The UDF, launched in August 1983, was a loose federation which brought together a large number of social, civic and political organisations of differing class backgrounds, racial constituency and political orientation. The UDF was intended as a vehicle to bring together under a single umbrella the various political opponents of race-based government reforms. It sought to achieve a non-racial, democratic and unitary South Africa. Although its founding document stated that it was not a front for banned liberation movements, the UDF was increasingly supportive of the ANC.

142 Because of its organisationally based membership, the UDF was the rallying point for a wide range of affiliates comprising youth and civic organisations, scholar and student organisations, church and welfare

societies, trade unions, sporting and cultural organisations, and political and quasi-political organisations. It was able to mobilise very large groups of people for rallies and meetings, which were characterised by powerful oratory and wide-ranging demands for political change.

- 143 From 1985, the UDF sought to dismantle government and security force control and administration. It further sought to promote and enact the concept of 'people's power', which envisaged administrative, welfare and judicial functions in the townships being assumed by community-based and sectoral organisations. This included the establishment of forums to administer civil and criminal justice through 'people's courts'.

- 144 The Commission makes the following findings in respect of the UDF:

THE COMMISSION ACKNOWLEDGES THAT IT WAS NOT THE POLICY OF THE UDF TO ATTACK AND KILL POLITICAL OPPONENTS, BUT FINDS THAT MEMBERS AND SUPPORTERS OF UDF AFFILIATE ORGANISATIONS OFTEN COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS IN THE CONTEXT OF WIDESPREAD STATE-SPONSORED OR -DIRECTED VIOLENCE AND A CLIMATE OF POLITICAL INTOLERANCE.

THE UDF FACILITATED SUCH GROSS VIOLATIONS OF HUMAN RIGHTS IN THAT ITS LEADERS, OFFICE-BEARERS AND MEMBERS, THROUGH THEIR CAMPAIGNS, PUBLIC STATEMENTS AND SPEECHES, ACTED IN A MANNER WHICH HELPED CREATE A CLIMATE IN WHICH MEMBERS OF AFFILIATED ORGANISATIONS BELIEVED THAT THEY WERE MORALLY JUSTIFIED IN TAKING UNLAWFUL ACTION AGAINST STATE STRUCTURES, INDIVIDUAL MEMBERS OF STATE ORGANISATIONS AND PERSONS PERCEIVED AS SUPPORTERS OF THE STATE AND ITS STRUCTURES. FURTHER, IN ITS ENDORSEMENT AND PROMOTION OF THE 'TOYI-TOYI', SLOGANS AND SONGS THAT ENCOURAGED AND/OR EULOGISED VIOLENT ACTIONS, THE UDF CREATED A CLIMATE IN WHICH SUCH ACTIONS WERE CONSIDERED LEGITIMATE. INASMUCH AS THE STATE IS HELD ACCOUNTABLE FOR THE USE OF LANGUAGE IN SPEECHES AND SLOGANS, SO TOO MUST THE MASS DEMOCRATIC AND LIBERATION MOVEMENTS BE HELD ACCOUNTABLE.

THE COMMISSION FINDS THAT FACTORS REFERRED TO IN THE PARAGRAPH ABOVE LED TO WIDESPREAD EXCESSES, ABUSES AND GROSS VIOLATIONS OF HUMAN RIGHTS BY SUPPORTERS AND MEMBERS OF ORGANISATIONS AFFILIATED TO THE UDF. THESE ACTIONS INCLUDE:

- THE KILLING (OFTEN BY MEANS OF 'NECKLACING'), ATTEMPTED KILLING, AND SEVERE ILL TREATMENT OF POLITICAL OPPONENTS, MEMBERS OF STATE STRUCTURES SUCH AS BLACK LOCAL AUTHORITIES AND THE SAP, AND THE BURNING AND DESTRUCTION OF HOMES AND PROPERTIES;
- THE VIOLENT ENFORCEMENT OF WORK STAY AWAYS AND BOYCOTTS OF, AMONG OTHERS, PRIVATE AND PUBLIC TRANSPORT AND PRIVATE RETAIL SHOPS, LEADING TO KILLING, ATTEMPTED KILLING, AND SEVERE ILL TREATMENT;
- POLITICAL INTOLERANCE RESULTING IN VIOLENT INTER-ORGANISATIONAL CONFLICT WITH AZAPO AND THE IFP, AMONG OTHERS;

THE UDF AND ITS LEADERSHIP:

- FAILED TO EXERT THE POLITICAL AND MORAL AUTHORITY AVAILABLE TO IT TO STOP THE PRACTICES OUTLINED ABOVE, DESPITE THE FACT THAT SUCH PRACTICES WERE FREQUENTLY ASSOCIATED WITH OFFICIAL UDF CAMPAIGNS SUCH AS CONSUMER BOYCOTTS OR CAMPAIGNS AGAINST BLACK LOCAL AUTHORITIES. IN PARTICULAR, THE UDF AND ITS LEADERSHIP FAILED TO USE THE FULL EXTENT OF SUCH AUTHORITY TO BRING AN END TO THE PRACTICE OF NECKLACING, COMMITTED IN MANY INSTANCES BY ITS MEMBERS OR SUPPORTERS.
- FAILED TO TAKE APPROPRIATELY STRONG OR ROBUST STEPS OR MEASURES TO PREVENT, DISCOURAGE, RESTRAIN AND INHIBIT ITS AFFILIATES AND SUPPORTERS FROM BECOMING INVOLVED IN ACTION LEADING TO GROSS VIOLATIONS OF HUMAN RIGHTS, AS REFERRED TO ABOVE;
- FAILED TO EXERT SANCTIONS OR DISCIPLINARY ACTION ON MEMBER ORGANISATIONS WHOSE MEMBERS WERE INVOLVED IN THE GROSS VIOLATIONS OF HUMAN RIGHTS DESCRIBED ABOVE, OR FAILED TO URGE SUCH MEMBER ORGANISATIONS TO TAKE APPROPRIATE ACTIONS AGAINST THEIR MEMBERS

THE COMMISSION NOTES THAT THE POLITICAL LEADERSHIP OF THE UDF HAS ACCEPTED POLITICAL AND MORAL RESPONSIBILITY FOR THE ACTIONS OF ITS MEMBERS. ACCORDINGLY THE UDF IS ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN ITS NAME AND AS A CONSEQUENCE OF ITS FAILURE TO TAKE THE STEPS REFERRED TO ABOVE.

### Finding in respect of IFP office-bearers

- 145 The IFP submitted a list of over 400 alleged office-bearers who, according to the IFP, had been deliberately targeted and killed by structures of the ANC and its affiliates. The IFP's submission made it clear that it believed that the killings were part of a deliberate pattern of behaviour on the part of the ANC – or in the words of the IFP, “serial killing”. The Durban office of the Commission conducted an intensive investigation into those incidents that occurred in former Natal and KwaZulu and produced an extremely detailed and comprehensive report.
- 146 A significant percentage of the incidents on the list fell outside of the Commission's mandate, in that they occurred after the cut-off date of April 1994, and the Commission was thus not able to investigate these. However, it would be safe to assume, from the nature of the information supplied by the IFP, that the trends and patterns with regard to these incidents would be similar to those which the Commission was able to investigate. As indicated above, those incidents occurring in the Transvaal also fell outside of the scope of this investigation, owing to a limited investigative capacity.
- 147 The Commission investigated 289 incidents. Of these it was unable to corroborate 136. In many of these cases, despite searches of inquest court records, police dockets and government departments supplying birth and death certificates, no trace whatsoever of the individuals could be found. In each of these cases, further information was sought from the IFP, without any success.
- 148 With regard to the remaining 153 incidents, the Commission did not verify as to whether the deceased were, in fact, office-bearers of the IFP, and accepted the *bona fides* of the IFP in this regard. However, in a small number of incidents, death certificates show that the deceased were children, and were patently not office-bearers.
- 149 The Commission was able to identify the perpetrators or their political allegiance, or both, in ninety of the 289 incidents.
- a UDF/ANC-aligned paramilitary structures were implicated in the killing of thirty-nine IFP office-bearers.
  - b UDF/ANC community members or youth were implicated in the killing of thirty IFP office-bearers. These killings took place within the context of the ongoing IFP/ANC conflict.
  - c MK cadres were implicated in the killing of seven IFP office-bearers.
  - d UDF/ANC-aligned extra-judicial tribunals (people's courts) were implicated in the killing of eight IFP office-bearers. The primary reasons found for these killings concerned matters such as witchcraft, personal relationships and crime.
  - e Members of the SAP were implicated in the killing of four IFP office-bearers, in the course of confiscating illegal weapons.
  - f IFP members were implicated in the killing of six IFP office-bearers due to internal rivalry within the IFP.
  - g Non-political criminals were implicated in the killing of four IFP office-bearers, in the course of ordinary criminal activities such as burglary.
  - h In three incidents, the deceased died in motor vehicle accidents or as a result of personal/domestic disputes.
  - i In four incidents, investigations proved that the ‘deceased’ were not in fact dead.
- 150 Accordingly, investigations reveal that ANC, UDF or MK structures were responsible for the killing of seventy-six IFP office-bearers during the period 1985 to 1994. In only two of the incidents did the perpetrators hold leadership positions in the UDF, ANC or MK. In eight of the incidents, the killings were administered by people's courts and it was not possible to establish whether IFP members had been

targeted because of their IFP membership. However, given the history of the conflict, it would seem safe to assume that membership of the IFP would have been a factor.

THE COMMISSION FINDS THAT, IN SEVENTY-SIX INCIDENTS, THE DECEASED WERE DELIBERATELY TARGETED BECAUSE OF THE FACT THAT THEY HELD POSITIONS WITHIN THE IFP. THE KILLINGS OF THE IFP OFFICE-BEARERS AMOUNT TO A SYSTEMATIC PATTERN OF ABUSE, ENTAILING DELIBERATE PLANNING, AND CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE RESPECTIVE LOCAL STRUCTURES OF THE UDF, ANC AND MK ARE HELD ACCOUNTABLE.

## **p Civil society**

*It is therefore not only the task of the security forces to examine themselves and their deeds, it is for every member of the society which we served to do so. Our weapons, ammunition, uniforms, vehicles, radios, and other equipment were all developed and provided by **industry**. Our finances and banking were done by bankers who even gave us covert credit cards for covert operations. Our chaplains prayed for our victory, and our **universities** educated us in war. Our propaganda was carried by the **media**, and our **political masters were voted back in power time after time with ever-increasing majorities**. (Mr Craig Williamson, armed forces hearing.)*

- 151 The Commission sought and received a number of submissions from organisations representing specific sectors of civil society. These sectors, while generally not directly involved in gross violations of human rights, were structurally part of an overall system designed to protect the rights and privileges of a racial minority. Many, such as the media and organised religion, exerted immense influence, not least of which was their capacity to influence the ideas and morals of generations of South Africans. In a society organised not only along lines of race but of class as well, professional bodies representing lawyers and doctors were frequently seen to be the custodians of scientific knowledge and impartiality. As such, their failure to oppose the injustice around them vociferously and actively, contributed in no small way to an ethos and climate that supported the *status quo* and isolated those who did oppose injustice.
- 152 It should be noted that in almost every sector, complicity relates both to the continuing perpetuation of race-based systems and structures and to a failure to speak out against the gross violations of human rights occurring throughout the society.
- 153 The Commission also notes that within these sectors, there were pockets of individuals, sometimes organised into formal structures, that did indeed resist apartheid and other injustices, and sometimes paid dearly for their stance. Many of these structures were isolated by the mainstream bodies and were frequently cast as ‘fringe’ elements. There were not many who chose this path. Had their number been greater, and had they not been so harassed and isolated by both government and the professions, the moral bankruptcy of apartheid would have been more quickly and starkly exposed. To their credit, most representatives of the various civil society sectors who appeared before the Commission acknowledged their omissions and failures and apologised for them.
- 154 The following are the main findings of the Commission in respect of the health, faith, media and judicial sectors. It should be noted that more comprehensive and specific findings are contained in the various sector reports in Volume Four. Finally, the Commission had neither the time nor the resources to explore the area of civil society exhaustively. As indicated earlier, a number of crucial sectors, such as education, were not subjected to scrutiny. Many of the findings set out below apply in general terms to such sectors.

### **The health sector**

- 155 Little evidence was found of the direct involvement of health professionals in gross violations of human rights. However, the health sector, through apathy, acceptance of the *status quo* and acts of omission,

allowed the creation of an environment in which the health of millions of South Africans was neglected, even at times actively compromised, and in which violations of moral and ethical codes of practice were frequent, facilitating violations of human rights.

THE COMMISSION THUS FINDS THAT:

THE FORMER GOVERNMENT, AND MORE SPECIFICALLY THE DEPARTMENT OF HEALTH, FAILED TO PROVIDE ADEQUATE HEALTH CARE FACILITIES TO BLACK SOUTH AFRICANS.

THE DEPARTMENT OF HEALTH, THE SADF, THE SAP AND PRISONS SERVICE FAILED TO PROVIDE ADEQUATE TRAINING, SUPPORT AND ETHICAL GUIDANCE TO HEALTH CARE PROFESSIONALS IN THEIR EMPLOY, THUS FREQUENTLY SUBJUGATING THE INTERESTS OF THE PATIENT/CLIENT TO THOSE OF THE STATE OR THE EMPLOYER.

PROFESSIONAL MEDICAL BODIES AND ASSOCIATED STRUCTURES FAILED TO FULFIL THEIR PROFESSIONAL DUTY AND STATED AIM OF PROTECTING THE HEALTH OF PATIENTS, BY NEGLECTING TO DRAW ATTENTION, AMONGST OTHER THINGS, TO THE EFFECTS OF THE SOCIO-ECONOMIC CONSEQUENCES OF APARTHEID ON THE HEALTH OF BLACK SOUTH AFRICANS.

*SEGREGATED HEALTH CARE AND UNEQUAL BUDGETARY ALLOCATIONS WERE DETRIMENTAL TO THE PROVISION OF HEALTH CARE IN QUANTITATIVE AND QUALITATIVE TERMS AND RESULTED IN GROSS INEQUALITIES IN TERMS OF FACILITIES, RESOURCES AND TRAINING.*

*SOLITARY CONFINEMENT IS A FORM OF TORTURE, AND DETENTION HAD A SEVERE IMPACT ON THE HEALTH OF CHILDREN DETAINEES. THE MEDICAL PROFESSION FAILED TO TAKE A SUFFICIENTLY ROBUST STAND AGAINST SUCH PRACTICES.*

THE STATUTORY COUNCILS AND PROFESSIONAL BODIES REPRESENTED ALMOST EXCLUSIVELY THE WHITE MALE MINDSET, THUS IGNORING THE NEEDS AND INTERESTS OF MILLIONS OF SOUTH AFRICANS. NO ATTEMPT WAS MADE TO ADDRESS THIS PROBLEM AND IMPROVE REPRESENTIVITY.

STATUTORY COUNCILS AND PROFESSIONAL BODIES FAILED TO CONDUCT PROPER INVESTIGATIONS INTO ALLEGATIONS OF MISCONDUCT BY DOCTORS AND NURSES AGAINST POLITICAL PRISONERS AND DETAINEES.

DISTRICT SURGEONS, WITH FEW EXCEPTIONS, FAILED TO RECORD COMPLAINTS AND/OR REPORT ALLEGATIONS AND EVIDENCE OF TORTURE AND ABUSE OF POLITICAL DETAINEES, THUS ENABLING SUCH PRACTICES TO CONTINUE UNABATED FOR YEARS.

TERTIARY INSTITUTIONS RESPONSIBLE FOR THE EDUCATION OF HEALTH PROFESSIONALS FAILED, WITHOUT EXCEPTION, TO ENSURE THAT STUDENTS ENGAGED WITH AND INTERNALISED ISSUES OF ETHICS AND HUMAN RIGHTS IN HEALTH CARE.

THE LIMITATION OF THE COUNCILS' ABILITY TO INSTIGATE PROACTIVE INVESTIGATIONS INTO MISCONDUCT OFTEN ENABLED SUCH MISCONDUCT TO CONTINUE UNCHECKED. NO ATTEMPT WAS MADE TO CONFRONT THIS PROBLEM.

## Faith communities

THE COMMISSION FINDS THAT CHRISTIANITY, AS THE DOMINANT RELIGION IN SOUTH AFRICA, PROMOTED THE IDEOLOGY OF APARTHEID IN A RANGE OF DIFFERENT WAYS THAT INCLUDED BIBLICAL AND THEOLOGICAL TEACHING IN SUPPORT OF APARTHEID; ECCLESIASTICAL APARTHEID BY APPOINTING MINISTERS TO CONGREGATIONS BASED ON RACE, AND THE PAYMENT OF UNEQUAL STIPENDS; A FAILURE TO SUPPORT DISSIDENT CLERGY WHO FOUND THEMSELVES IN CONFRONTATION WITH THE STATE; AND A FAILURE TO PROVIDE ECONOMIC SUPPORT TO THOSE MOST SEVERELY AFFECTED BY APARTHEID.

THE FAILURE OF RELIGIOUS COMMUNITIES TO GIVE ADEQUATE EXPRESSION TO THE ETHICAL TEACHING OF THEIR RESPECTIVE TRADITIONS, ALL OF WHICH STAND IN DIRECT CONTRADICTION TO APARTHEID, CONTRIBUTED TO A CLIMATE WITHIN WHICH APARTHEID WAS ABLE TO SURVIVE. THE FAILURE OF THE CHURCHES IN THIS REGARD CONTRIBUTED TO THE PERPETUATION OF THE MYTH, PREVALENT IN CERTAIN CIRCLES, THAT APARTHEID WAS BOTH A MORAL AND CHRISTIAN INITIATIVE IN A HOSTILE AND UNGODLY WORLD.

CHAPLAINS, PROVIDED BY THE CHURCHES TO SERVE THE MILITARY, THE POLICE AND OTHER UNIFORMED SERVICES, WORE THE UNIFORMS OF THESE SERVICES, ENJOYED THE RANK OF ARMED PERSONNEL, AND SOME CARRIED SIDE ARMS. THEY WERE PART OF THE ILLEGAL CROSS-BORDER ACTIVITIES CARRIED OUT BY THE MILITARY, AND THEY ACCOMPANIED TROOPS INTO THE TOWNSHIPS AND OTHER INTERNAL SITUATIONS OF CONFLICT ON OCCASION. THEY WERE SEEN TO BE SUPPORTIVE OF THE OFFENSIVE STRUCTURES OF THE FORMER STATE.

CHURCHES MUST THEREFORE ACCEPT MORAL ACCOUNTABILITY FOR PROVIDING RELIGIOUS SANCTION AND THEOLOGICAL LEGITIMISATION FOR MANY ACTIONS OF THE ARMED FORCES.

IT IS THE FINDING OF THE COMMISSION THAT RELIGIOUS PROSELYTISING AND RELIGIOUS-BASED NATIONALISM HAVE NOT ONLY SOWN THE SEEDS OF INTER-RELIGIOUS SUSPICION, DISTRUST AND STRIFE, BUT THEY HAVE ALSO CONTRIBUTED DIRECTLY TO RELIGIOUSLY INSPIRED CONFLICT. RELIGIOUS COMMUNITIES MUST TAKE RESPONSIBILITY FOR THE ACTIONS OF THEIR FOLLOWERS IN THIS REGARD.

## **The business sector**

- 156 Business was central to the economy that sustained the South African state during the apartheid years. Certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies; the white agriculture industry benefited from its privileged access to land. Other businesses benefited from co-operating with the security structures of the former state. Most businesses benefited from operating in a racially structured context.

THE COMMISSION FINDS THAT:

THE DENIAL OF TRADE UNION RIGHTS TO BLACK WORKERS CONSTITUTED A VIOLATION OF HUMAN RIGHTS. ACTIONS TAKEN AGAINST TRADE UNIONS BY THE STATE, AT TIMES WITH THE COLLUSION OF CERTAIN BUSINESSES, FREQUENTLY LED TO GROSS VIOLATIONS OF HUMAN RIGHTS.

THE BUSINESS SECTOR FAILED, IN THE HEARINGS, TO TAKE RESPONSIBILITY FOR ITS INVOLVEMENT IN STATE SECURITY INITIATIVES, INCLUDING THOSE ASSOCIATED WITH THE NATIONAL SECURITY MANAGEMENT SYSTEM, SPECIFICALLY DESIGNED TO SUSTAIN APARTHEID RULE. SEVERAL BUSINESSES, IN TURN, BENEFITED DIRECTLY FROM THEIR INVOLVEMENT IN THE COMPLEX WEB THAT CONSTITUTED THE MILITARY INDUSTRY.

## **The media**

- 157 State restrictions on the freedom of the media played an important role in facilitating gross violations of human rights. These restrictions grew in intensity until more than 100 laws controlled the right to publish and broadcast. Although not themselves a gross violation of human rights, the restrictions denied South Africans the right to a free flow of information and ideas. At their worst, particularly during the successive states of emergency after 1985, the restrictions amounted to pre-publication censorship of information on state-inspired and state-sanctioned violations.

THE COMMISSION FINDS THAT:

THE MANAGEMENT OF THE MAINSTREAM ENGLISH LANGUAGE MEDIA OFTEN ADOPTED A POLICY OF APPEASEMENT TOWARDS THE STATE, ENSURING A LARGE MEASURE OF SELF-CENSORSHIP. THE ROLE OF THE NEWSPAPER PRESS UNION – NOT LEAST CONCERNING SECURITY MEASURES – REFLECTS A WILLINGNESS BY THE MAINSTREAM MEDIA NOT TO DEAL WITH MATTERS THAT EXPOSED THE ACTIVITIES OF THE SECURITY FORCES. THE AFRIKAANS MEDIA, WITH RARE EXCEPTIONS, CHOSE TO PROVIDE DIRECT SUPPORT FOR APARTHEID AND THE ACTIVITIES OF THE SECURITY FORCES, MANY OF WHICH LED DIRECTLY TO GROSS VIOLATIONS OF HUMAN RIGHTS.

THE RACISM THAT PERVADED MOST OF WHITE SOCIETY PERMEATED THE MEDIA INDUSTRY.

## **The judiciary**

- 158 The longevity of apartheid was in part due to the superficial adherence to the 'rule by law' by the National Party, whose leaders sought and relied on the aura of legitimacy which 'the law' bestowed on unjust apartheid rule. During the period 1960 to 1990, the judiciary and the magistracy and the organised legal profession collaborated, largely by omission, silence and inaction, in the legislative and executive pursuit of injustice. Furthermore there are examples where they and the legal profession actively contributed to the entrenchment and defence of apartheid through the courts. Examples of such acts include:

a Adherence to race-based systems as evidenced by the Pretoria Bar's refusal to admit black members and other bar councils' dishonourable stance towards black colleagues seeking chambers in 'white group areas' through a race-based permit system.

b Collusion with the police regarding the torture of detainees and those in police custody, as evidenced by: prosecutors who knowingly colluded with police who had been involved in torture of accused persons; judges and magistrates who routinely rejected evidence of assault and torture – even when this was supported by medical evidence – and accepted uncritically the evidence of police witnesses over that of the accused; judges and magistrates who uncritically accepted the evidence of police witnesses at inquests, and routinely found no one to be responsible for injuries and deaths in detention.

c Failure to take effective measures to make justice accessible to those who could not afford it and those who were involved in anti-apartheid activities, for fear of social ostracism or loss of lucrative commercial clients. This is contrasted by the willingness of advocates and attorneys to appear for the government in civil actions where some of the basic building blocks of apartheid, such as racial classification or influx control or group areas, were being attacked as the unreasonable and invalid exercise of executive discretion. Similarly, organised professional bodies were frequently obsequious in their attitudes to government policies, striking off and hounding those of their members who fell foul of the political system, or who chose to confront it.

d The participation of judges in producing the highest capital punishment rate in the 'western' world, an execution rate which impacted overwhelmingly on poor black male accused.

THE COMMISSION REJECTS THE ARGUMENT MADE PARTICULARLY BY JUDGES OF THEIR IMPOTENCE IN THE FACE OF THE EXERCISE OF LEGISLATIVE POWER BY A SOVEREIGN PARLIAMENT. THE COMMISSION REGARDS THIS AS A FLAWED ARGUMENT ON THE BASIS THAT PARLIAMENTARY SOVEREIGNTY AND THE RULE OF LAW WORK HAND IN HAND, AND ARE PREMISED ON A POLITICAL SYSTEM WHICH IS FUNDAMENTALLY REPRESENTATIVE OF ALL THE PEOPLE SUBJECT TO THAT PARLIAMENT. THIS SITUATION NEVER APPLIED IN SOUTH AFRICA, AND THE SITUATION THEREFORE REQUIRED SOMETHING MORE BY WAY OF RESPONSE FROM THE JUDICIARY AND THE LEGAL PROFESSION.

JUDGES HAD A CHOICE OTHER THAN THE ULTIMATE BUT HONOURABLE COURSE OF RESIGNATION FROM THE BENCH. THEY COULD HAVE RESISTED ENCROACHMENTS TO BASIC RIGHTS AND FAIRNESS, USING THE SKILLS AND KNOWLEDGE WHICH THEY POSSESSED, ARGUING FROM COMMON-LAW PRINCIPLES. A CONCERTED STAND BY A SIGNIFICANT NUMBER OF JUDGES COULD HAVE MOVED THE GOVERNMENT FORMALLY TO CURTAIL THE JURISDICTION OF THE COURTS, THEREBY LAYING BARE THE DEGENERACY OF ITS POLICIES MORE DEVASTATINGLY.

THE COMMISSION FINDS THAT BOTH THE JUDICIARY AND THE MAGISTRACY AS WELL AS THE ORGANISED LEGAL PROFESSION WERE LOCKED INTO AN OVERWHELMINGLY PASSIVE MINDSET WHICH CHARACTERISED THE JUDGEMENTS OF THE BENCH IN THE FACE OF INJUSTICES OF APARTHEID, AND THE REACTION OF THE PROFESSIONS TO SUCH INJUSTICES.

## **p Further findings**

### **Children and youth**

159 The Commission endorses the international position that children and youth under the age of eighteen are entitled to special protection from government and society. As the Commission's statistics have shown, the greatest proportion of victims of gross violations of human rights were youth, many of them under eighteen.

160 With regard to children and youth, the Commission finds that:

THE STATE, IN THE FORM OF THE SOUTH AFRICAN GOVERNMENT, THE SECURITY FORCES AND THE CIVIL SERVICES, WAS, IN THE PERIOD 1960–94, THE PRIMARY PERPETRATOR OF GROSS VIOLATIONS OF HUMAN RIGHTS AGAINST CHILDREN AND YOUTH IN SOUTH AFRICA AND SOUTHERN AFRICA.

THE POLICY OF APARTHEID RESULTED IN THE DELIVERY OF INFERIOR, INADEQUATE EDUCATION TO BLACK CHILDREN AND DEPRIVED THEM OF THE RIGHT TO DEVELOP IN MIND AND BODY. THIS DEPRIVATION CONSTITUTES A VIOLATION OF HUMAN RIGHTS.

THE BANNING BY THE GOVERNMENT OF STUDENT AND YOUTH ORGANISATIONS DENIED YOUNG PEOPLE AN AVENUE FOR DISCUSSION AND PROTEST AND RESULTED IN THE CRIMINALISATION OF LEGITIMATE POLITICAL ACTIVITY, THUS ENCOURAGING YOUTH TO TURN TO VIOLENT FORMS OF PROTEST. THE STATE IS FURTHER ACCOUNTABLE FOR THE POLITICAL REPRESSION WHICH FORCED YOUNG PEOPLE TO GO INTO EXILE, LEAVING THEIR FAMILIES AND COMMUNITIES. EXILE DISTORTED THE NORMAL SOCIALISATION OF YOUTH AND NORMAL FAMILY RELATIONSHIPS.

THE STATE IDENTIFIED AND TARGETED SCHOOLS AS CENTRES OF RESISTANCE. SCHOOLS WERE OCCUPIED, AND STUDENTS AND TEACHERS INTIMIDATED AND ARRESTED. THIS CREATED A CLIMATE WITHIN WHICH UNNECESSARY VIOLENCE OCCURRED. AS A RESULT, EDUCATION WAS SEVERELY DISRUPTED. MANY CHILDREN WERE UNABLE TO COMPLETE THEIR SCHOOLING AND/OR ADVANCE TO TERTIARY EDUCATION.

BLACK CHILDREN AND YOUTH WERE DEMONISED AS THE 'ENEMY' BY THE SECURITY FORCES IN PARTICULAR AND, MORE GENERALLY, THROUGH THE POLITICAL REPRESENTATION OF YOUTH AND CHILDREN AS PART OF 'A COMMUNIST ONSLAUGHT', THUS FACILITATING AND LEGITIMATING THE USE OF VIOLENCE AND FORCE AGAINST THEM. THE COMMISSION HAS FOUND THAT THE SECURITY FORCES UNNECESSARILY RESORTED TO LETHAL FORCE IN PUBLIC ORDER POLICING, WHERE ALTERNATIVE MECHANISMS OF CROWD CONTROL WOULD HAVE BEEN ADEQUATE TO CONTROL MARCHES, PROTESTS AND DEMONSTRATIONS. THE USE OF LETHAL FORCE AGAINST CHILDREN AND YOUTH IS PARTICULARLY SINGLED OUT AND CONDEMNED.

THE STATE WAS RESPONSIBLE FOR THE DETENTION WITHOUT TRIAL AND TORTURE, INCLUDING SOLITARY CONFINEMENT, OF CHILDREN AND YOUTH UNDER THE AGE OF EIGHTEEN. SUCH DETENTION INCLUDED DETENTION IN TERMS OF SECURITY LEGISLATION AS WELL AS THE ABDUCTION OF YOUTH AND THEIR FORCIBLE REMOVAL TO PLACES WHERE THEY WERE DETAINED ILLEGALLY AND TORTURED. THE STATE WAS RESPONSIBLE FOR THE SEVERE ILL TREATMENT IN CUSTODY OF CHILDREN AND YOUTH UNDER THE AGE OF EIGHTEEN, IN THE FORM OF HARASSMENT AND THE DELIBERATE WITHHOLDING OF MEDICAL ATTENTION, FOOD AND WATER.

THE STATE, THROUGH ITS SECURITY FORCES, EXPLOITED AND MANIPULATED DIVISIONS IN SOCIETY AND ENGAGED IN THE INFORMAL REPRESSION OF CHILDREN AND YOUTH BY IDENTIFYING YOUTH LEADERS, ISOLATING THEM AND, THROUGH VIOLENCE OR FINANCIAL INDUCEMENT, INDUCING THEM TO ACT AS INFORMERS OR VIGILANTES.

IN CERTAIN CASES, PROACTIVE MEASURES TAKEN BY THE SECURITY FORCES DURING THE 1980S INCLUDED INFILTRATING YOUTH AND STUDENT STRUCTURES, POSING AS MEMBERS OF THE LIBERATION MOVEMENTS, RECRUITING YOUNG PEOPLE FOR MILITARY TRAINING AND THEN KILLING THEM.

THE STATE IS RESPONSIBLE FOR THE MILITARISATION OF YOUNG WHITE MALES THROUGH CONSCRIPTION.

THE MASS AND LIBERATION MOVEMENTS MOBILISED AND, IN THE CASE OF THE LATTER, ARMED AND TRAINED CHILDREN AND YOUTH AS PART OF THEIR ARMED FORMATIONS. THE LIBERATION MOVEMENTS AND THE IFP ARE RESPONSIBLE FOR RECRUITING YOUTH INTO THE SDUS AND SPUS IN THE 1990S AND TRAINING THEM TO KILL, THUS DEHUMANISING AND DESENSITISING THEM.

THE WAR BETWEEN THE ANC AND THE IFP DISPLACED LARGE NUMBERS OF YOUTH, LEAVING THEM HOMELESS. IN THIS RESPECT, THE STATE, THE ANC AND IFP ARE RESPONSIBLE FOR THE COMMISSION OF GROSS VIOLATIONS OF HUMAN RIGHTS.

THE FAILURE BY THE ANC AND THE IFP AFTER 1994 TO REINTEGRATE YOUTH TO ENABLE THEM TO BECOME VALUED MEMBERS OF SOCIETY AND TO DEVELOP A SENSE OF SELF-ESTEEM, HAS LED TO THEIR CRIMINALISATION AND CREATED THE POTENTIAL FOR FURTHER GROSS VIOLATIONS OF HUMAN RIGHTS.

## Women

161 Many of the statements made to the Commission by women detail the violations inflicted on others – children, husbands, siblings and parents – rather than what they themselves suffered. Undoubtedly the violation of family members had significant consequences for women. However, women too suffered direct gross violations of human rights, many of which were gender specific in their exploitative and humiliating nature.

THE COMMISSION THUS FINDS THAT:



THE STATE WAS RESPONSIBLE FOR THE SEVERE ILL TREATMENT OF WOMEN IN CUSTODY IN THE FORM OF HARASSMENT AND THE DELIBERATE WITHHOLDING OF MEDICAL ATTENTION, FOOD AND WATER.

WOMEN WERE ABUSED BY THE SECURITY FORCES IN WAYS WHICH SPECIFICALLY EXPLOITED THEIR VULNERABILITIES AS WOMEN, FOR EXAMPLE RAPE OR THREATS OF RAPE AND OTHER FORMS OF SEXUAL ABUSE, THREATS AGAINST FAMILY AND CHILDREN, REMOVAL OF CHILDREN FROM THEIR CARE, FALSE STORIES ABOUT ILLNESS AND/OR DEATH OF FAMILY MEMBERS AND CHILDREN, AND HUMILIATION AND ABUSE AROUND BIOLOGICAL FUNCTIONS SUCH AS MENSTRUATION AND CHILDBIRTH.

WOMEN IN EXILE, PARTICULARLY THOSE IN CAMPS, WERE SUBJECTED TO VARIOUS FORMS OF SEXUAL ABUSE AND HARASSMENT, INCLUDING RAPE.

## Conscription

THE COMMISSION FINDS THAT:

THE STATE'S POLICY OF CONSCRIPTION WAS IMMORAL AND DENIED CONSCRIPTS THE RIGHT TO FREEDOM OF CONSCIENCE AND THE RIGHT TO REFUSE TO SERVE IN THE SADF.

THROUGH THE POLICY OF CONSCRIPTION, THE STATE AND THE SADF USED YOUNG MEN TO ASSIST, IMPLEMENT AND DEFEND THE POLICY OF APARTHEID, TO MAINTAIN THE ILLEGAL OCCUPATION OF NAMIBIA AND TO WAGE WAR AGAINST NEIGHBOURING COUNTRIES.

THE STATE'S VILIFICATION OF CONSCRIPTS WHO REFUSED TO SERVE IN THE SADF BY LABELLING THEM "COWARDS AND TRAITORS" CONSTITUTES A VIOLATION OF HUMAN RIGHTS.

SOME CHURCHES (IN PARTICULAR MAINSTREAM AFRIKAANS CHURCHES) OPENLY SUPPORTED THE POLICY OF CONSCRIPTION, THUS CREATING A CLIMATE IN WHICH GROSS VIOLATIONS OF HUMAN RIGHTS COULD TAKE PLACE.

## b Conclusion

- 162 The findings outlined above, to a greater or lesser extent, touch *all* the major role-players who were party to the conflict that enveloped South Africa during its mandate period. No major role-player emerges unscathed although, as already stated, a distinction must be made between those who fought for and those who fought against apartheid. There are many who will reject these findings and argue that they fail to understand the complexities and historical realities of the time, and of the motives and perspectives of those who perpetrated gross violations of human rights. In this regard it needs to be firmly stated that, while the Commission has attempted to convey some of these complexities and has grappled with the motives and perspectives of perpetrators in other sections of this report, it is not the Commission's task to write the history of this country. Rather, it is the Commission's function to expose the violations of all parties in an attempt to lay the basis for a culture in which human rights are respected and not violated.
- 163 It should also be noted – as will be obvious from the content above – that the Commission's findings have focused mainly on events and violations that occurred *inside* South Africa in the 1960–94 period. There are obvious and good reasons for that, but it represents something of a historical distortion. It is the view of the Commission that, in terms of the gross violations of human rights, most of these occurred not internally, but *beyond the borders* of South Africa, in some of the poorest nations of the world. It was the residents of the Southern African region who bore the brunt of the South African conflict and suffered the greatest number of individual casualties and the greatest damage to their countries' economies and infrastructure.
- 164 Finally, in the context of a society moving towards reconciliation, South Africans need to acknowledge this country's divided history and its regional burden; to understand the processes whereby all, citizens included, were drawn in and are implicated in the fabric of human rights abuse, both as victims and perpetrators – at times as both.

The primary task of the Commission was to address the moral, political and legal consequences of the apartheid years. The socio-economic implications are left to other structures – the Land Commission, the Gender Commission, the Youth Commission and a range of reform processes in education, social welfare, health care, housing and job creation. Ultimately, however, because the work of the Commission includes reconciliation, it needs to unleash a process that contributes to economic developments that redress past wrongs as a basis for promoting lasting reconciliation. This requires *all those who benefited* from apartheid, not only those whom the Act defines as perpetrators, to commit themselves to the reconciliation process.