

Management and Operational Reports

FINANCE DEPARTMENT

INTRODUCTION

- 1 Section 46(2) of the Promotion of National Unity and Reconciliation Act (the Act) set out the financial duties of the Commission and provided for the appointment of a chief executive officer who would also act as the chief accounting officer¹. Thus the financial accountability for the Commission rested with the chief executive officer.
- 2 Section 46(5) of the Act required that the Commission prepare an estimate of revenue and expenditure for each year of its operation, using a format to be determined in consultation with the Audit Commission.²
- 3 Section 9(1) of the Act directed the Commission to determine remuneration allowances in consultation with the Ministries of Finance and Justice, as well as terms and conditions of employment of staff members who were not state employees.
- 4 Section 36(1) of the Act determined that “the Commission be independent and separate from any party, government, administration or other functionary or body directly or indirectly representing the interest of any such entity.”
- 5 Thus, a certain number of fairly unusual financial measures applied to the Commission. Although it was intended that the Commission should enjoy a degree of financial independence from normal state financial structures, there were a number of procedural and regulatory ambiguities in the setting up of the Commission.
- 6 First, there were questions about the applicability of State Expenditure regulations (the Treasury Instructions) and State Tender Board regulations.
- 7 Second, there was a six-week delay from the time that the Commissioners were appointed until operations could be set up. This was because these appointments came into operation on 15 December 1995, immediately before the holiday season, at a time when most services and equipment providers close down for the year.
- 8 Third, the Commission had to set up operations very rapidly and did not have time to comply with all the procedures of the State Tender Board. The executive commissioners took a proactive decision to the effect that the Commission would procure its own goods and services.
- 9 The mandate of the Commission was also such that it required a number of specialised sets of equipment, goods and services for its operational activities, for example:
 - a the establishment of an Investigation Unit with all its personnel and logistical support (section 28(1) of the Act);
 - b the conducting of Commission hearings in public (section 33(1) of the Act);
 - c the provision of legal representation (section 34(1) of the Act);
 - d the establishment of a limited witness protection programme (section 35(1) of the Act);
 - e the provision of measures to allow victims to communicate in the language of their choice (section 11(f) of the Act);

f special provisions for dealing with victims (section 11 of the Act).

- 10 The Commission's own methodology³ had to be developed, and its decision to hold hearings in communities where gross violations of human rights had taken place required extensive travel requirements and logistic support.
- 11 In complying with the financial mandate as directed by the Act and interpreted by the Commission, the chief executive officer delegated responsibility to the director of finance. One of the first tasks of the director was to assist the Commission by preparing an estimate of revenue and expenditure.

p OPERATIONS

- 12 The national Finance Department consisted of a financial director, a financial manager, a facilities manager, two bookkeepers, four administrative clerks, two facilities clerks and a senior administrative secretary.
- 13 Each regional office employed a bookkeeper, whose job description was later upgraded to that of administrator.
- 14 The national financial director reported to the Commission's chief executive officer.
- 15 The financial director's activities were diversified to include support services, and the description of the portfolio changed to director of finance and support services. At a later stage, human resources were added to the portfolio.

p EXPENDITURE

- 16 In the early stages of the Commission, before most of its management and operational staff were in place, it was extremely difficult to conceptualise all of the areas of expenditure the Commission might encounter. The approach taken was that the Commission would operate on a quasi-judicial basis and that its operations would be directed around this concept.
- 17 It was clear from the beginning that the Commission would be a people-intensive organisation and that staff costs would form the bulk of its expenditure. Thus, the first major tasks were to design and develop an organisational structure that would meet the Commission's mandate and determine its staffing requirements.
- 18 The design and development of the organisational plan was a particularly difficult challenge. After extensive consultation with, amongst others, the vice-chairperson of the Commission, the human resources director and consultants, the first major substantive organisational plan was compiled over a weekend in late February 1996.

Determination of salaries

- 19 After the appointment of the commissioners, the vice-chairperson, Dr Alex Boraine, asked a personnel consultant to assist in setting up the staffing structure. Dr Boraine provided the consultant with a draft organisational design and a proposed salary outline, which originated in the Department of Justice. The organisational design and salary structure were based on a formula incorporating state grades, ranks and salary scales. The consultant also studied the salary structures of the Constitutional Assembly to obtain some guidance in developing salary structures for the Commission's staff.
- 20 Because the Commission would only have a short lifespan, it opted for a simple and straightforward 'cash package' approach, with salaries offered as a package with no benefits attached.
- 21 The human resources director, the financial director and the Commission's consultants assisted in developing a staffing plan and salary structure. The job evaluation and remuneration structure was based on the Paterson plan.
- 22 Remuneration specialists provided information on market-related salaries for the appropriate job classifications using the Paterson Job Evaluation Plan. A September 1995 survey of national median remuneration packages (according to the Paterson Job Evaluation System) was used for reference. Other factors taken into consideration in establishing the salaries were that no benefits were to be offered and that staff would effectively be employed on short-term contracts.

- 23 As a result of this work, detailed job descriptions were compiled and an appropriate remuneration package prepared. The median salaries and the staffing plan were then incorporated into the staffing budget of the Commission.
- 24 In negotiations with Commission staff members, the budgeted salaries were used as a median guideline, and actual salaries were determined according to professional qualifications, experience and ability. This resulted in certain people being offered salaries above the median mark and others below.

Capital outlay

- 25 The next major item of expenditure was the Commission's projected capital outlay. It was clear that the Commission would not be able to fulfil its mandate without an extensive information management system. The Commission entered a contract with an international expert on information management from the American Association for the Advancement of Science. The consultant, together with the Commission's head of information systems, conceptualised and developed the database and laid the groundwork for the necessary hardware and support infrastructure.

Travel and accommodation arrangements

- 26 The Commission was necessarily a highly mobile organisation and as such required extensive travel arrangements. To meet its needs, it called for limited tenders for discounted air travel, hotel accommodation and car hire facilities. The Commission also established its own in-house travel agency, which was contracted out on the basis of limited tenders.
- 27 Commission staff, particularly investigation and logistics support staff, had extensive transport requirements. Thus, the Commission entered into extensive contracts with an international motor vehicle dealership to purchase over fifty motor vehicles.

Space, furniture and office equipment

- 28 Offices were obtained for the various regions, and furniture and office equipment were procured locally, using a limited tender process.

Security arrangements

- 29 Because of its high political profile, the Commission faced unique security risks. As a result of this, extensive security arrangements, equipment and infrastructure were put in place in order to safeguard premises, assets and lives.
- 30 Also on a limited tender basis, surveillance equipment, x-ray machines, bomb scanners, security disks and access control systems were acquired and installed at the Commission's national and regional offices. The expertise of consultants from the South African Police and other state security services was extensively utilised.

Translation and interpretation services

- 31 The Commission also set the precedent for a fairly new concept in South African governmental structures: the introduction of a simultaneous interpretation service. The founding Act provided for persons to be able to use the language of their choice when accessing the Commission. This presented an interesting challenge to the Commission, given South Africa's eleven official languages. Special equipment was imported from

Belgium, and a special team of simultaneous interpreters was recruited and trained. After a limited tendering process, the University of the Free State Language Facilitation Program was engaged to provide this very specialised service.

Internal communication facilities

- 32 One of the keys to the success of the Commission was effective communication. To achieve this, the Commission installed fax machines and e-mail on its computer systems. Cellular telephones were acquired and played a strategic role in facilitating the work of the Investigation Unit and the Witness Protection Unit. A local cellular telephone service provider also assisted the Commission with free use of eighteen cellular telephones.

Contracted services

- 33 Other operating expenditure was budgeted for after wide consultation with various other organisations. In particular, the Commission looked at the operating costs of legal practices to get a reasonable idea of the type and extent of the expenditure it might incur.
- 34 The Commission subcontracted the Legal Aid Board, which already had the necessary infrastructure, to provide legal aid services on its behalf.

Revenue

- 35 The Commission's revenues were allocated as a separate line item in the Department of Justice's budget, which was voted on and approved by Parliament.
- 36 In addition, many international donor countries expressed an interest in the Commission and offered their financial assistance to add value to the process. The Commission was initially under the impression that it could accept donations directly. Legal opinion provided by the state legal advisers, however, indicated that all donations received by the Commission had to be formally approved by the Department of State Expenditure through the Reconstruction and Development Fund.
- 37 These bureaucratic procedures resulted in a number of delays in the launching of projects for which the Commission had obtained donor funding. The net result of these delays was that the Commission was not able to extract optimum value from the various projects funded by donors. The various donations and their purposes are set out in an attached schedule (Appendix 3).
- 38 National economic challenges and priorities meant that the Commission operated under strained financial conditions virtually all the time. The Commission was originally allocated a budget of R8 million for the 1995/1996 fiscal year and a budget of R29 million for the 1996/1997 fiscal year. After completing the required estimates of income and expenditure, it was abundantly clear that this budget was inadequate. The projected budget requirement for the 1996/1997 fiscal year was in fact R79 million. This meant that the Commission had to approach the Treasury Committee for additional funding.
- 39 There was strong resistance from the Treasury Committee to making further funding available. After much negotiation and a line-by-line budget item evaluation, the Treasury Committee agreed to make a total of R69.419 million available for the 1996/1997 fiscal year.
- 40 At the same time, the Treasury Committee indicated that the total budget available for the 1997/1998 fiscal year would not exceed R50 million. The Commission's budget requirements, however, (based on its

operating levels at the time) were in the region of R82 million. This meant that the Commission had to downscale its operations much earlier than envisaged and step up its requests for donations.

41 As the Commission's work progressed, it also became clear that it would not be able to complete all its work within the prescribed eighteen-month period, or even after a further six months' extension. After consultations with the Ministry of Justice, the Commission's lifespan was extended by an additional four months in order to give it enough time to complete all its work. In order to fund this extension, an additional R15.716 million was made available to the Commission for the 1997/1998 fiscal year and R21.904 million for the 1998/1999 fiscal year.

42 At the time of drafting this report, the audit for the 1996/1997 fiscal year had just been completed, and the Commission had remained within its approved budget of R69.419 million. Financial statements for the completed fiscal periods 1995/1996 and 1996/1997 are attached as appendices 1 and 2.4

p APPENDIX 1

THE TRUTH AND RECONCILIATION COMMISSION

Chief Executive Officer's Report

FOR THE PERIOD 15 DECEMBER 1995 TO 31 MARCH 1996

The Chief Executive Officer hereby presents his report and submits the first annual financial statements for the period ended 31 March 1996.¹

p GENERAL REVIEW

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. During this first financial period the Truth and Reconciliation Commission commenced starting up operations which involved the setting up of its head office in Cape Town as well as three offices in Gauteng, the Eastern Cape and Kwazulu-Natal. The financial activities of the Truth and Reconciliation Commission for the above period were essentially dominated by this set up phase and the results thereof are clearly reflected in the attached financial statements and may be summarised as follows: -

Operating Surplus for the period	R 3 758 562
Capital Expenditure	R 4 683 480
Net Cash Flow Deficit	R 924 918

The Cash Flow Deficit represents an over expenditure in relation to funds received from the Department of Justice and other interest and Commission earnings. This is to be funded out of the 1996/1997 budget.

p CHIEF EXECUTIVE OFFICER AND SECRETARIES

In terms of S46(1) of the Promotion of National Unity and Reconciliation Act 34 of 1995 the following appointments have been made:-

Chief Executive Officer..... Dr B S V Minyuku

Date of Appointment: 1 March 1996

Secretary to the Reparation and

Rehabilitation Committee..... B Watson

Date of Appointment: 1 May 1996

The following positions are still vacant:-

Secretary to the Human Rights Violations Committee

Secretary to the Amnesty Committee

p FINANCIAL STATEMENTS

The Chief Executive Officer acknowledges his responsibility for the fair presentation in the financial statements of the financial position and results of operations in conformity with generally accepted accounting practice.

CHIEF EXECUTIVE OFFICER

14 April 1997

BALANCE SHEET AS AT 31 MARCH 1996
1996

BALANSSTAAT SOOS OP 31 MAART

Notes			Aant.	1995-96
			R	
Capital employed			Kapitaal aangewend	
Accumulated fund		3,758,801	Opgehoopte fonds	
		3,758,801		
Employment of capital			Aanwending van kapitaal	
Fixed assets	4	4,663,976	Vaste bates	
Net current liabilities		905,175	Netto bedryfslaste	
Current assets		1,271,234	Bedryfsbates	
Accounts receivable	5	647,704	Agterstallige inkomste	
Bank and cash balances		623,530	Bank en kontantsaldo's	
Less: Current liabilities		2,176,409	Min: Bedryfslaste	
Accounts payable	6	2,116,409	Agterstallige uitgawes	
Provisions		60,000	Voorsienings	
		3,758,801		

B. S. V. MINYUKU,

Date • Datum, 01/04/97.

Accounting Officer • Rekenpligtige Beampptes.

INCOME STATEMENT • INKOMSTESTAAT

FOR THE YEAR ENDED 31 MARCH 1996 • VIR DIE JAAR GEËINDIG 31 MAART 1996

Notes			Aant.	1995-96
			R	
Income		8,037,319	Inkomste	
State and other contributions		8,000,000	Staats- en ander bydraes	
Other income	7	37,319	Ander inkomste	
Expenditure		4,278,518	Uitgawes	
Salaries		2,182,880	Salarisse	
Other operating expenditure	8	2,095,638	Ander bedryfsuitgawes	
Retained income		3,758,801	Onaangewende inkomste	

AANTEKENINGE BY DIE FINANSIËLE

31 MARCH 1996 • 31 MAART 1996

AANTEKENINGE BY DIE FINANSIËLE

31 MARCH 1996 • 31 MAART 1996

(continued/vervolg)

3. Kontantvloeistaat en vergelykende syfers

Geen kontantvloeistaat en
vergelykende syfers is voorgelê
nie aangesien hierdie die eerste

of operation of the Commission.

bedrywighe is.

1995-96

4. Vaste bates

		Cost price Kosprys	Accumulated depreciation Opgehoopte waarde- vermindering	Book value Boek- waarde				
		R	R	R				
Computer equipment		310,549	7,502	303,047	Rekenaartoerusting			
and fittings	1,718,461	11,813	1,706,648	Meubels en uitrusting	Office equipment	163,345	1,954	161,391
Kantoortoerusting					Motor vehicles	2,358,852	49,496	2,309,356
					Motorvoertuie			
					Leasehold improvements	191,260	7,726	183,534
					Huurverbeterings			
	4,742,467	78,491	4,663,976					

NOTES TO THE FINANCIAL STATEMENTS
STATE

• AANTEKENINGE BY DIE FINANSIËLE

31 MARCH 1996 • 31 MAART 1996

(continued/vervolg)

1995-96

R

5. Accounts receivable**5. Agterstallige inkomste**

Value Added Tax (VAT) refund	519,798	Terugbetaling van Belasting op Toegevoegde Waarde (BTW)
Refundable deposits paid on leased premises	17,200	Terugontvangbare deposito's op gehuurde geboue
Prepaid expenses	81,161	Vooruitbetaalde uitgawes
Interest receivable	15,424	Agterstallige rente
Commission receivable	14,121	Agterstallige kommissie

647,704**6. Accounts payable****6. Agterstallige uitgawes**

Accruals for accounts payable	2,101,950	Voorsienings vir rekeninge betaalbaar
Travel management fees	14,459	Reisbestuursfooie

2,116,409**7. Other income****7. Ander inkomste**

Interest	21,062	Rente
Discount received	3,870	Korting ontvang
Commission	12,387	Kommissie

37,319

NOTES TO THE FINANCIAL STATEMENTS

AANTEKENINGE BY DIE FINANSIËLE

STATE

31 MARCH 1996 • 31 MAART 1996

*(continued/vervolg)***1995-96****R**

8. Other operating expenditure		8. Ander bedryfsuitgawes
Audit fees	60,000	Ouditfooie
Bank costs	1,011	Bankkoste
Communication	2,979	Kommunikasie
Conferences and workshops	32,851	Konferensies en werksinkels
Consulting fees	90,367	Konsultasiefooie
Consumables	16,794	Verbruikbare items
Depreciation	78,491	Waardevermindering
Entertainment, teas and refreshments	16,609	Onthaal, tee en verversings
Insurance	4,262	Versekering
Legal costs	6,737	Regskoste
Maintenance	17,037	Onderhoud
Equipment	1,230	Toerusting
Premises	6,391	Persele
Motor vehicles	9,416	Motorvoertuie
Postage	1,124	Posgeld
Printing	8,407	Drukwerk
Publications and subscriptions	5,554	Publikasies en subskripsies
Rentals	137,037	Huur
Equipment	4,109	Toerusting
Offices	132,928	Kantore
Staff recruitment	601,674	Werwing van personeel
Stationery	80,073	Skryfbehoeftes
Telefaxes	2,096	Telefakse
Telephones	117,255	Telefone
Telkom	86,893	Telkom
Cellular	30,362	Sellulêr
Transport	8,713	Vervoer
Freight	5,615	Vraggeld
Motor vehicle expenses	2,898	Motorvoertuiguitgawes
Use of private motor vehicles	200	Gebruik van private voertuie
Training	45,700	Opleiding
Travel and subsistence	746,408	Reis en verblyf
Travel management costs	14,459	Reisbestuurskoste

2,095,638

n APPENDIX 2

THE TRUTH AND RECONCILIATION COMMISSION

Chief Executive Officer's Report

FOR THE YEAR ENDED 31 MARCH 1997

The Chief Executive Officer hereby presents his report and submits the first annual financial statements for the year ended 31 March 1997.¹

n GENERAL REVIEW

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. During this fiscal year, the Truth & Reconciliation Commission started to operate on a full functional basis which also saw its first hearings being held during April and May of 1996. As an evolving organisation adaptations had to be made on the run. In addition to this and in recognition of national priorities, stringent fiscal control resulted in the approved budget of the Commission being limited to R70 million. The additional operating expenditure required by the Commission to make a meaningful contribution to national healing and reconciliation was facilitated through extremely generous foreign donors. In particular we wish to recognise the European Community, the Royal Danish Embassy, the Royal Netherlands Embassy, the Swedish International Development Agency, USAID, the Flemish Community, the Norwegian Embassy, the Austrian Government as well as the Belgian Government.

The results of the activities of the Commission are clearly reflected in the attached Financial Statements and may be summarised as follows:

Operating Surplus for the year	R12,483,372
Capital Expenditure	R10,804,671
Net Cash Flow Surplus	R 4,768,649

The Cash Flow Surplus represents an under expenditure in relation to funds received from the Department of Justice, approved donations, interest and Commission earnings.

n CHIEF EXECUTIVE OFFICER SECRETARIES

AND

In terms of S46(1) of the Promotion of National Unity and Reconciliation Act 34 of 1995 the following appointments have been made:-

Chief Executive Officer Dr B S V Minyuku

Date of Appointment: 1 March 1996

Secretary to the Reparation and
Rehabilitation Committee B Watson

Date of Appointment: 1 May 1996

Secretary to the Human Rights
Violations Committee Dr R Richards

Date of Appointment: 1 September 1996

Secretary to the Amnesty Committee L Matshaka

Date of Appointment: 13 February 1997

Subsequent to the year end the Executive Secretary of the Reparation and Rehabilitation Committee and the Executive Secretary to the Amnesty Committee resigned. The position of the Executive Secretary of the Amnesty Committee has been filled but the Reparation and Rehabilitation Committee position is still vacant.

n FINANCIAL STATEMENTS

The Chief Executive Officer acknowledges his responsibility for the fair presentation in the financial statements of the financial position and results of operations in conformity with generally accepted accounting practice.

CHIEF EXECUTIVE OFFICER

21 November 1997

TRUTH AND RECONCILIATION COMMISSION • WAARHEIDS- EN VERSOENINGSKOMMISSIE

BALANCE SHEET AS AT 31 MARCH 1997 • BALANSSTAAT SOOS OP 31 MAART
1997

Notes

R

R

1996-97 Aant. 1995-96

Capital employed			Kapitaal aangewend		
Accumulated fund	16,241,934		3,758,562		Opgehoopte fonds
	R16,241,934		3,758,562		
Employment of capital			Aanwending van kapitaal		
Fixed assets	11,473,285	4	4,683,480		Vaste bates
Net current assets/(liabilities)	4,768,649		(924,917)		Netto bedryfsbates/(laste)
Current assets	19,557,049		1,268,872		Bedryfsbates
Sundry debtors	1,582,387	5	645,342		Diverse debiteure
Bank and cash balances	17,974,662		623,530		Bank en kontantsaldo's
Less: Current liabilities	14,788,400		2,193,789		Min: Bedryfslaste
Sundry creditors	4,401,092	6	2,133,790		Diverse krediteure
Unapproved donations	10,313,347		-		Ongemagtigde donasies
Provisions	73,960		60,000		Voorsienings
	R 16,241,934		R 3,758,563		

Cape Town • Kaapstad
Date • Datum, 14/10/97.

B. S. V. MINYUKU,
Accounting Officer • Rekenpligtige Beamptes.

INCOME STATEMENT • INKOMSTESTAAT

FOR THE YEAR ENDED 31 MARCH 1997 • VIR DIE JAAR GEËINDIG 31 MAART 1997

				Notes	
				1996-97	Aant.
				R	1995-96
					R
Income	74,383,577		8,031,416	Inkomste	
State and other contributions	70,042,034		7,996,105	Staats- en ander bydraes	
Donations	2,336,221		-	Skenkings	
Other income	2,005,323	7	35,311	Ander inkomste	
Expenditure	61,900,205		4,272,854	Uitgawes	
Salaries	31,746,636		2,183,180	Salarisse	
Other operating expenditure	30,153,569	8	2,089,674	Ander bedryfsuitgawes	
the year	12,483,372		3,758,562	Onaangewende inkomste	Retained income for
				vir die jaar	
Retained income at beginning of the year	3,758,562		—	Onaangewende inkomste	
				aan begin van die jaar	
Retained income at end of the year	R 16,241,934		R 3,758,562	Onaangewende inkomste	
				aan die einde van die jaar	

CASH FLOW STATEMENT • KONTANTVLOEISTAAT

FOR THE YEAR ENDED 31 MARCH 1997 • VIR DIE JAAR GEËINDIG 31 MAART 1997

			Notes Aant.	1996-97 R
Cash flows from operating activities				Kontantvloei uit bedryfsaktiwiteite
Cash generated from operations	A	26,354,785		Kontant uit bedrywighede voortgebring
Interest received		1,617,546		Rente ontvang
Interest paid		(23,805)		Rente betaal
Net cash inflow from operating activities		27,948,525		Netto kontantinvloei uit bedryfsaktiwiteite
Cash flows from investing activities				Kontant vloei uit beleggingsaktiwiteite
Additions to equipment		(10,804,671)		Aankoop van toerusting
"Sale" of fixed assets		207,277		"Verkope" van vaste bates
Net cash outflow from investing activities		(10,597,394)		Netto kontantuitvloei uit beleggingsaktiwiteite
Net increase in cash and cash equivalents		17,351,132		Netto toename in kontant en kontantekwivalente
Cash and cash equivalents at beginning of period	B	623,530		Kontant en kontantekwivalente aan die begin van die tydperk
Cash and cash equivalents at end of period	B	R 17,974,682		Kontant en kontantekwivalente aan die einde van die tydperk

NOTES TO THE CASH FLOW STATEMENT**• AANTEKENINGE BY DIE****KONTANTVLOEISTAAT**

31 MARCH 1997 • 31 MAART 1997

A. Reconciliation of net surplus to cash generated from operations			A. Rekonsiliasie van netto surplus met kontant uit bedrywighede voortgebring	
		Net surplus	12,483,372	Netto surplus
Adjustments for:		Aansuiwerings vir:		
Depreciation	3,817,576	Depresiasie		
Investment income	(1,617,546)	Beleggings inkomste		
Interest expense	23,805	Rentekoste		
Profit on disposal of assets	(9,988)	Wins op bates afgeskryf		
Operating profit before working capital changes	14,697,219	Bedryfs surplus voor bedryfskapitaal veranderings		
Working capital changes		Bedryfskapitaalveranderings		
Increase in accounts receivable	(937,045)	Toename in diverse debiteure		
Increase in accounts payable	12,594,611	Toename in diverse krediteure		
Cash generated from operations	26,354,785	Kontant uit bedrywighede voortgebring		
B. Cash and cash equivalents		B. Kontant en kontantekwivalente		
Cash and cash equivalents consist of cash on hand and balances with banks.		Kontant en kontantekwivalente bestaan uit kontant voorhande en saldo's by banke.		
Cash and cash equivalents included in the cash flow statement comprise the following amounts:		Kontant en kontantekwivalente wat by die kontantvloeistaat ingesluit is, bestaan uit die volgende balanstaatbedrae:		balance sheet
Cash and cash equivalents with banks	17,974,662	Kontant voorhande en saldo's by banke		

TRUTH AND RECONCILIATION COMMISSION

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WAARHEIDS- EN VERSOENINGSKOMMISSIE

NOTES TO THE FINANCIAL STATEMENTS
STATE

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AANTEKENINGE BY DIE FINANSIËLE

31 MARCH 1997 • 31 MAART 1997

(continued/vervolg)

(continued/vervolg)

			1996-97	1995-96
			R	R
5. Sundry debtors				5. Diverse debiteure
Commission receivable	89,332	10,379	Agterstallige kommissie	
Income receivable	63,754	-	Inkomste ontvangbaar	
Interest receivable	158,559	15,424	Agterstallige rente	
Prepaid expenses	329,266	89,419	Vooruitbetaalde uitgawes	
Refundable deposits paid on leased premises	43,272	17,200	Terugontvangbare deposito's op gehuurde geboue	
Salary advances	69,906	-	Salarisvoorskotte	
Value Added Tax (VAT) refund	828,298	512,920	Terugbetaling van Belasting op Toegevoegde Waarde (BTW)	
	1,582,387	645,342		
6. Sundry creditors				6. Diverse krediteure
Accruals for accounts payable	4,401,092	2,119,331	Voorsienings vir rekeninge betaalbaar	
Travel management fees	-	14,459	Reisbestuursfooie	
	4,401,092	2,133,790		
7. Other income				7. Ander inkomste
Interest	1,617,546	21,062	Rente	
Discount received	13,508	3,870	Korting ontvang	
Profit on Assets written off	8,428	-	Wins op bates afgeskryf	
Commission	365,840	10,379	Kommissie	
	2,005,323	35,311		

NOTES TO THE FINANCIAL STATEMENTS
STATE

AANTEKENINGE BY DIE FINANSIËLE

31 MARCH 1997 • 31 MAART 1997

(continued/vervolg)

	1996-97	1995-96	
8. Other operating expenditure			8. Ander bedryfsuitgawes
Audit fees	109,610	60,000	Ouditfooie
Bank costs	57,030	1,022	Bankkoste
Communication	2,952,863	3,396	Kommunikasie
Conferences and workshops	275,724	32,560	Konferensies en werkswinkels
Consulting fees	330,861	80,907	Konsultasiefooie
Consumables	313,201	17,391	Verbruikbare items
Diginet lines	107,714	-	Diginetlyne
Depreciation	3,817,576	78,491	Waardevermindering
Entertainment, teas & refreshments	114,046	16,609	Onthaal, tee en verversings
Exhumation costs	12,677	-	Opgrawingskoste
Hearings costs	939,322	-	Verhoringskoste
Insurance	419,788	11,165	Versekering
Interest paid	23,805	-	Rente betaal
Legal costs	36,455	6,738	Regskoste
Legal aid	122,615	-	Regshulp
Maintenance	154,765	17,026	Onderhoud
Computers	3,802	-	Rekenaars
Equipment	21,726	1,209	Toerusting
Premises	26,757	6,391	Persele
Motor vehicles	102,480	9,426	Motorvoertuie
Postage	22,878	1,124	Posgeld
Printing	348,573	8,407	Drukwerk
Publications and subscriptions	125,841	5,655	Publikasies en subskripsies
Relocation costs	179,363	-	Hervestigingskoste
Rentals	3,597,814	124,449	Huur
Equipment	3,084	4,109	Toerusting
Offices	3,594,730	120,340	Kantore
Staff recruitment	831,198	603,374	Werwing van personeel
Stationery	402,437	80,073	Skryfbehoeftes
Telephones	2,175,609	105,521	Telefone
Telkom and Faxes	1,354,044	75,159	Telkom en fakse
Cellular	821,565	30,362	Sellulêr
Transport	848,556	3,532	Vervoer
Freight	90,676	434	Vraggeld
Motor vehicle expenses	538,859	2,898	Motorvoertuiguitgawes
Use of private motor vehicles	219,021	200	Gebruik van private motorvoertuie
Training	17,728	45,700	Opleiding
Transcription costs	145,843	-	Transkripsiekoste
Translation costs	3,228,313	-	Vertalingskoste
Travel and subsistence	7,985,643	772,075	Reis en verblyf
Travel management costs	347,004	14,459	Reisbestuurskoste
Witness protection program	108,717	-	Getuiebeskermingsprogam
	30,153,569	2,089,674	

DONATIONS RECEIVED BY THE TRUTH & RECONCILIATION

COMMISSION UP TO MAY 1997

Danish Government	R 490 000.00	
Dedicated to various forms of research		
Government of Sweden		Contribution to salary of
Special Advisor to the Vice-Chair	R1 527 280.00	
Contribution to salary of Executive Assistant to the Vice-Chair		
Computer hardware, software and database development		
Amnesty Committee Extension	R4 475 000.00	
Netherlands Government		Specific research assignment
to be undertaken by the Institute	R 167 240.00	
for Southern Africa in the Netherlands and Kairos.		
To be paid at the completion of the work	R 41 785.00	
Netherlands Government - 2nd donation	R 163 020.00	
Computer software to be utilized by the Investigation work.		Department in crime analysis
Netherlands Government - 3rd donation	R 368 545.00	
Specific research assignment to be undertaken by the Institute and Kairos.		for Southern Africa in the Netherlands
Austrian Government		For general use
For general use	R 583 720.00	R 634 678.00
Flemish Government	R1 629 480.00	
To be used to fund the Designated Statement Taker Program		
European Community	R7 907 218.97	
Secondment of European investigators		
dedicated to research work		
Interpretation and translation services equipment		
Interpreters' salaries and costs		
Contingent expenditure		

Human Sciences Research Council Research purposes.	R 31 750.00	
<hr/>		
USAID		
Communications, R&R Workshops and Think-Tanks, Briefers' Training, Accommodation and Car Hire, R&R Air Travel	\$ 400 000.00	Technical Assistance,
Final Report Writing, Special Investigations, Close Down Process,		Legal Challenges \$ 250 000.00
Radio Coverage, Video Recordings of Hearings, Fieldworker Project, and Inquiries Desk Project, (Database Cleanup and Findings Analysing Amnesty Applications		Rehabilitation and Reparation Notification Finishing the Work of the Commission Report Summaries), Investigating and
	\$ 750 000.00	
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Norwegian Embassy		
SABC Radio Broadcast	R2 586 017.09 R1 946 000.00	
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Local Donation - Justice in Transition Towards Communication Budget	R 99 000.00	
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Belgian Donation	R 253 659.92	
Visit by Commission Delegation to Rwanda Visit by Rwandan Delegation to Commission		

Management and Operational Reports

HUMAN RESOURCES DEPARTMENT

p INTRODUCTION

- 1 The tasks of the Human Resources Department were:
 - a policy development, implementation and maintenance
 - b recruitment and selection of staff
 - c administration and maintenance of salary structures, procedures and systems
 - d staff management
 - e strategic planning and implementation plans to release contracted staff in line with the Commission's roll out plan
 - f office planning
 - g written and verbal reporting at various levels within the Commission and in response to parliamentary requests on staff-related matters
- 2 At its peak, the national staff complement was 438 and reflected the diversity of the population. In order to address the previous imbalances in South African employment practices, the policy of affirmative action was applied in making all appointments.

p POLICY AND PLANNING

- 3 The human resources function was considered by the Commission to be central to the operations of what was to become a people-intensive organisation. One of the first appointments made by the commissioners, therefore, was that of director of the Human Resources Department D before even the chief executive officer took up his position or offices had been established. The role of the director was to develop strategies and draw up policies and practices.
- 4 Thus, from February to June 1996, the unit focused on developing systems, structures, policies and procedures. Office planning was based on the principle of providing workstations for each staff member and providing appropriate space for the Commission's various functions.
- 5 Although the view was expressed that the procedures adopted were lengthy (given the short time frame of the Commission), they were founded on the legal principles of equity and justice and reflected the victories of the long struggle by the marginalised workforce of South Africa. These formed the cornerstone of equity in the working relationship of employee and employer.

p STAFF RECRUITMENT AND MANAGEMENT

- 6 In view of its two-year life span, the Commission needed to hire staff with existing skills and competency. The emphasis of recruitment policy could not, therefore, be on staff development. Speed and sometimes extreme haste were necessary, with the result that competence, skill and compatibility were also sometimes compromised for availability.

- 7 Various agencies recruited staff. Ongoing recruitment for new and vacated positions continued throughout the life of the Commission.
- 8 Personnel (or human resource) policies and procedures integrated public and private sector practices with the requirements of the Commission's founding legislation, and were constantly amended and updated in line with new legislation or the Commission's requirements.
- 9 Job descriptions were developed for each function. These were constantly amended and updated in response to changing requirements.
- 10 Because the Human Resources Department was based in the national office, the regional managers were empowered and mandated to perform general human resource functions in the regions, including recruitment and selection.
- 11 The Commission's staff formed regional staff associations, each of which reflected different concerns. The regional associations aligned themselves into a unified, although neither permanent nor structured, national staff association. Their concerns ranged from normal worker/employer conflicts to legislated Commission benefits.
- 12 Industrial relations policies and procedures were used to resolve disputes, some of which were referred for resolution to the Commission for Conciliation, Mediation and Arbitration and to the Department of Labour.
- 13 As the Commission approached the end of its mandate, a four part staff roll out plan was put in place. The plan made the following provisions:
 - a by 31 July 1997, approximately 22 per cent of staff would leave the Commission's employ;
 - b by 30 September 1997, another approximately 22 per cent of staff would leave;
 - c by 30 December 1997, approximately 43 per cent of staff would leave;
 - d finally, by 14 March 1998, another approximately 13 per cent of staff should leave the Commission.
- 14 The plan provided that the remaining few staff members remain until the Commission completed its work at the end of June 1998. It was agreed that the very last group would remain to wind down the Commission's assets, to facilitate the presentation of the Commission's last audit report, and to switch off the lights on 31 December 1998.
- 15 However, as the Commission's work programme progressed, it became clear that it would not be able to complete all its work within the prescribed eighteen-month period. The Commission's lifespan was extended, initially by six months and then through to October 1998. The amendments to the Act allowing for this extension also made provision for the Amnesty Committee to continue until its work was completed. The staff roll out plan was adjusted accordingly.

Management and Operational Reports

INFORMATION MANAGEMENT

p INTRODUCTION

- 1 The electronic infrastructure of the Commission was put in place as soon as office space became available. Equipment was procured within extremely tight deadlines (the whole network had to be functional within weeks) and was achieved before substantial organisational structures were in place.
- 2 Potential vendors of computer hardware and software supplies were shortlisted. Companies selected were required to have: a national presence; a proven track record; a reputation for delivery; the technical capacity to implement the proposed solutions; cost-effectiveness and a commitment to affirmative action. Vendors who met the criteria were asked to put together proposals for the system, including costs and time frames. These proposals, followed by face-to-face discussions with likely candidates, were used to make the final appointments, which were ratified by the Commission.
- 3 The Commission appointed DCE Networking to supply the hardware, Zervos (Pty) Ltd to install and support the network, Microsoft to supply the software for office administration and Oracle Corporation to supply software for the database.

p NETWORK CONFIGURATION

- 4 Each of the four regional offices had a local-area network (LAN), consisting of Compaq Prolinea workstations that ran Microsoft Windows 95 and were connected together by a 10-Base T Ethernet network. Each workstation was loaded with a copy of Microsoft Office, providing staff members with a word-processor, a spreadsheet and e-mail facilities. A computer officer in each of the Commission's four regional offices provided training and support.
- 5 At the centre of each LAN was a Compaq Proliant file server running Microsoft NT. The file server provided centralised file storage and hosted the regional copy of the Commission's database.
- 6 The LANs in each of the four regional offices were connected together to create the Commission's wide-area network (WAN). Each office was connected to its two nearest neighbours by means of a 64KB Diginet line, leased from Telkom. These lines carried the inter-office e-mail and shared the data between the regional copies of the database, using the X21 transport protocol.
- 7 For security reasons, there was no direct connection between the WAN and the Internet. Use of the Internet in the four regional offices was through a free-standing computer with no network connection. See diagram 1.1 below.

DIAGRAM 1.1

THE TRC
WIDE-AREA
NETWORK

Diagram 1.1 shows a sample of three workstations. One of these is a free-standing machine connected to the Internet.

n THE DATABASE

- 8 The Commission's database was the backbone of the information flow. All human rights violations statements and amnesty applications were loaded onto the database.
- 9 The database was designed and built from scratch by a small team consisting of consultants from Oracle Corporation, the information systems manager and a researcher. It was based on a design by a consultant from the American Association for the Advancement of Science, who specialises in the recording of human rights violations data. The design also drew on the work done by the Human Rights Documentation and Information System (Huridocs).
- 10 The database was designed on the assumption that any narrative description of human rights violations could be broken up into a series of time- and place-specific acts of violence, succinctly summed up in the phrase 'who did what to whom'. For example, an activist may have had his or her house burnt down, then been detained in solitary confinement before being subjected to electric shock treatment. These would be recorded as three separate violations - arson, detention and torture - as opposed to recording the incidents as a composite violation ('the harassment and torture of Mrs X').
- 11 This positivist approach allowed for more complex quantitative analyses to be carried out, to supplement the normal qualitative analysis to which narrative data are usually subjected. For example, by recording detention separately from torture, one could analyse the incidence of torture in the context of detention. If a strong correlation was shown to exist, this in turn informed policy recommendations about detention, to prevent a recurrence of the circumstances or conditions that give rise to the torture of prisoners.
- 12 The approach of breaking up the data into logical components lent itself to implementation on a relational database, which was why Oracle software was chosen. Once the logical model of the database was finalised, it was built in record time (it took exactly one month from the start of the design phase until it was ready for use by the Commission's data capturers).
- 13 The central part of the database design was a tabular list called 'Acts', which recorded the actual substance of the violation: the victim, the place, the date and time, the nature of the violation and the human rights violation category into which it fell (for example, attempted killing, torture, abduction, severe ill-treatment). Each violation committed by one or more perpetrators was recorded in a separate table called 'Perpetrators'. An act that could have been witnessed by one or more people was also recorded in the 'Witnesses' table.
- 14 The Commission's database was an advance on other such models because it allowed for people to be victims, perpetrators and witnesses at the same time. People were only defined as victims, witnesses or perpetrators in the context of the violation itself. This is illustrated in the diagram below, where the personal

details of people (names, identification numbers, addresses) appear together in a separate table called 'Persons'. By searching the table for a name, users were able to find the person irrespective of whether they were a victim, a witness or a perpetrator. This represented the real South African context much more realistically, since it was entirely possible that an individual could have been victimised and then perpetrated an act of violence in revenge and, thus, could have been both a victim and perpetrator.

DIAGRAM 2.1

UNDERLYING LOGICAL MODEL OF THE TRC DATABASE

- 15 The database was enhanced to add new functions as needs arose. For example, facilities were added to record the corroboration carried out by the Investigation Unit as, for instance, in the registration of victims.
- 16 The database was the primary repository of data for all three of the Commission's standing committees. By integrating the data in this way, powerful cross-checks between amnesty information and human rights violations data was possible, while the identity of victims and details of the harm they suffered were immediately available to the Reparation and Rehabilitation Committee.
- 17 In addition to its original role as the source of all the raw data needed by the Research Department to write the final report, the database was integrated with the investigative software used by the Investigation Unit to provide a huge data bank of corroborative material for investigations.

Management and Operational Reports

INVESTIGATION UNIT

p INTRODUCTION

- 1 One of the unique features of the Truth and Reconciliation Commission (Commission) was that, unlike commissions elsewhere in the world, it retained a permanent Investigation Unit as an integral component. Indeed, central to the endeavour of the Commission was its capacity to probe, enquire into and unravel the truth about the conflicts of the past. It is therefore not surprising that the Commission's founding Act made provision not only for the establishment of an Investigation Unit, but also provided a number of investigative powers to be used by the Commission in fulfilling the terms of its mandate.

p STRUCTURE AND COMPOSITION OF THE INVESTIGATION UNIT

- 2 The Investigation Unit was made up as follows:
 - a the head of the Unit, who was a commissioner
 - b a civilian component consisting of investigative journalists, researchers, human rights lawyers and members of non-governmental organisations (NGOs)
 - c a trained police personnel component consisting of secondments from the South African Police Service (SAPS) and the National Intelligence Agency (NIA)
 - d an international component consisting of trained police personnel, information technology specialists (using *Kortex* and *Analyst Notebook*) and human rights lawyers.
- 3 The national director was directly accountable to the chief executive officer in respect of all managerial matters, and to the head of the Investigation Unit in respect of policies, strategies and their implementation. In addition, from March 1997, all investigations, including proactive amnesty investigations, were nationally co-ordinated by a deputy national director.
- 4 The regional heads oversaw staff, resources, communication, planning and operations. In these matters, the regional head's primary line of responsibility was to the national director. The regional heads, however, were also required to keep regional management properly informed of matters relating to the effective functioning of the region.
- 5 The Unit staff included: current and former members of the police, magistrates, former members of the National Intelligence Service, former journalists and researchers, advocates, attorneys, public prosecutors, human rights specialists (including NGO workers, monitors and researchers) and international specialists. Thus, the Unit had a broad range of skills and expertise at its disposal.
- 6 The total staff component for the Investigation Unit was initially set at sixty members, excluding the national director and administrative assistant. It was envisaged that the staff complement would comprise forty-eight locally employed members and twelve international investigators (finally, sixteen international experts assisted the Unit). Staffing levels were determined on the basis of broad budget criteria and not in accordance with any assessment of staffing needs in any of the regions.

- 7 Of the sixty members of staff, forty-eight went to the regions. Each regional unit consisted of a regional head, nine local and two international investigators. Twelve staff members were assigned to the national office. These included four international and eight local investigators (five special investigators and three analysts, including an amnesty co-ordinator). There were also investigators from neighbouring countries.
- 8 The Investigation Unit, however, only reached its full staff complement at a later stage. In July 1996, it was at 85 per cent of its strength, with fifty-one persons appointed and an additional five SAPS members seconded.
- 9 When funding from the European Union became available in April 1997, the Investigation Unit was restructured and extended. Provision was made for the employment of twenty-seven corroborative assistants to accommodate the ever-increasing volume of work in the Commission. The principle behind the appointment of staff was to ensure a broadly representative balance, so that the Unit reflected the broad spectrum of South African society with the requisite skills and knowledge. Where advertisements had failed to secure an appropriate body of prospective employees, efforts were made to elicit applications from different sectors of the population and from persons with a range of political backgrounds.
- 10 In order to achieve the requisite staff mix, it was necessary to obtain the secondment of members from the SAPS. This process proved cumbersome, however, and many logistic support problems were encountered. There was a lack of interest from certain sections of the SAPS, as evidenced by the relatively small number of applications to the Investigation Unit. The process of secondment presented a number of problems.
- 11 In addition, it was decided at an early stage that the Investigation Unit's staff should comprise both formally trained investigators drawn from the SAPS and persons with other skills and expertise. It was felt that a 'civilian component' would provide not only a multi-disciplinary skills base, but would also lend a greater degree of credibility to the investigative process. This approach accorded with the Commission's overall commitment to be accessible and sensitive to the victims of gross human rights violations.
- 12 A number of European governments provided support and assistance to the Commission in the form of seconded staff. The Commission benefited from the expertise of personnel from the Netherlands, Norway, Denmark, Sweden, Ireland, Germany and Switzerland.
- 13 The international component of the Unit consisted of persons with a great deal of investigative and general police experience drawn from foreign police agencies. Invariably, the governments who provided assistance seconded very senior police officers whose expertise was not restricted to investigative work. In this regard, the internationals provided valuable input.

p METHODS OF WORK AND CRITERIA

- 14 A code of conduct was drafted as a basis upon which the behaviour of staff could be evaluated. In general, members maintained high levels of discipline and conducted themselves in a committed and dedicated fashion.
- 15 For official identification purposes, all investigators had to have some form of authentic identification when accessing documents and information from other agencies or institutions. Investigators also had a duty to produce identification to any witnesses they approached. There were, however, delays in the issuing of identity cards by the Safety and Security Committee.
- 16 Where required, members of the Investigation Unit received 'top secret' security clearance from the NIA.
- 17 The Investigation Unit adopted guidelines requiring that investigations show at least one of the following:
 - a a high level of authorisation

- b involvement of particular institutions or organisations
 - c a systematic pattern of abuse or particular forms of abuse
 - d an international element (for example, cross-border raids)
 - e the possibility of an organised counter-response (for example, an attempt to conceal information or undermine an investigation).
- 18 The planning of all investigations involved staff from the regional office concerned as well as the national office.

Workshops and training

- 19 At the outset, it was firmly believed that the Unit would be able to identify and appoint investigators with the skills to begin investigations without training. This approach was a response to the major time constraints imposed on the Commission. Regrettably, identification of skilled investigators was not always possible, and as a consequence, regional units had to conduct individual training sessions for investigators and corroborative assistants to meet the standards required.
- 20 National and regional workshops, arranged by the national director, identified the focus and type of investigative work to be done.
- 21 Strategic planning workshops were held in each of the regions with the objective of developing a framework to govern the work of the Unit. These workshops resulted in a much broader picture of the objectives in the regions, the strengths and weaknesses of the teams, and the major issues and priorities. The workshops also served as initial orientation and training exercises for newly appointed staff.
- 22 Time and workloads prevented any extensive training. Since the Unit (together with the rest of the Commission) was organised to function in a computer-assisted environment, the lack of computer skills proved problematic. However, on-the-job coaching and training and more formal training sessions improved computer skills levels dramatically.
- 23 As far as investigative skills were concerned, the Unit attempted to ensure that the more experienced investigators interacted with their less experienced colleagues, so that skills would develop through practice.

p FUNCTIONS AND RESPONSIBILITIES

- 24 The Act envisaged the establishment of an investigation unit as one of four critical components of the Commission. It was, however, silent on the specific functions to be performed by the Unit and on its relationship to the three standing committees.
- 25 Chapter 6 of the Act established the legislative framework within which investigative activities of the Commission were to be carried out. This chapter defined the fact-finding process of the Commission and provided a useful starting point for examining the process the Commission would use to make its findings and recommendations.
- 26 The role and functions of the Investigation Unit were developed and refined during the first year of operation. Between March and August 1996, the Investigation Unit grew to a staff of approximately fifty people. In this period, its function was largely to service wave after wave of public hearings held by the Commission throughout the country.

- 27 Between September 1996 and February 1997, the Investigation Unit reformulated its approach and reorganised itself in keeping with the general recognition within the Commission of the need to focus resources not only on public hearings, but also on processing the large numbers of statements received. And again, once the amnesty application deadline date had passed and the extent of work in amnesty matters became apparent, the Investigation Unit adapted and organised itself to serve these new needs.

p DEVELOPING PROCESSES AND PHASES OF WORK

- 28 To begin with, the Unit was decentralised internally into a national unit and four regional units: one in each of the Commission's four centres. Regional heads were responsible for the management of the regional units and reported to the national director. The Investigation Unit interacted with other components of the Commission within this framework. An internal communication system was designed in an attempt to ensure the exchange of information and reporting.
- 29 To facilitate the management function of the Investigation Unit, day-to-day contacts were established with the chief executive officer and the Finance, Human Resources and Research Departments.
- 30 As seen above, the work undertaken by the Investigation Unit fell into a series of phases, each characterised by shifts in policy and emphasis in the Commission's work. The Unit underwent constant development as it responded to changing conditions in the Commission. Although structural changes were introduced, the management framework that had been put in place remained largely the same throughout. In terms of this framework, areas of responsibility were assigned to the different components of the Unit, governed by both internal and external lines of communication.

p FIRST PHASE: GETTING STARTED

- 31 Mr Dumisa Ntsebeza was named as the commissioner in charge of the Investigation Unit. The national director was appointed in March 1996, marking the beginning of a phase which came to an end in September/October 1996, when the Commission and its senior management conducted a two-day *bosberaad* to assess and plan the way forward.
- 32 In the early months, the Unit concentrated on setting up structures and policies to guide its work. In order to achieve this and meet the challenge posed by round after round of public hearings, it was decided to appoint sufficient staff in each regional office to service the immediate needs of the Commission, and then attend to the completion of the staff component.
- 33 The fact that public hearings were launched in mid-April 1996, before the Investigation Unit was fully established and prior to the formulation of any policy regarding the selection of matters for public hearings, caused some difficulties.
- 34 Another problem was the fact that investigative tasks were formulated on the basis of statements which would feature at public hearings. In many instances, the process of selecting statements for public hearings, often at the last minute, meant that little or no investigative work could be done prior to hearings. However, investigators and researchers succeeded to some extent in providing background material, tracing witnesses and taking further statements from persons wishing to provide evidence to the Commission. The lack of policy at this stage also made post-hearing investigative work extremely difficult.

- 35 By May 1996, a basic management framework and a number of internal strategic and operational policies were in place. In terms of these, the Investigation Unit was required to provide an investigative service to the Commission's committees (principally the Human Rights Violations and Amnesty Committees) and to initiate independent investigations as determined by the Commission.
- 36 The policy framework sought to ensure that the Unit provided a service to the committees in a regulated and systematic fashion. Although the implementation of this framework was not uniform across regions and was hampered by the slow development of related components in the Commission, it served as a point of reference for the Unit and provided a means of systematising the service it provided.
- 37 At this stage, the Unit was structured into four regional investigation units, each managed by a regional head, and a staff component based in the national office. It was composed of a head of special investigations, a team of investigators (some of whom were based in different regional offices), a small group of analysts and management and administrative staff.
- 38 The 'hearings-driven' nature of investigative work continued well into the year. It resulted in a backlog in the processing of statements unrelated to hearings.
- 39 It became apparent that the vast majority of statements received by the Commission would need to be dealt with by the Human Rights Violations Committee outside of public hearings. As a consequence, a distinction was drawn between those statements that would require only a minimum level of investigation to establish the veracity of a claim and those that would require a more thorough investigation of the contents. The former would be dealt with by a process of 'low level corroboration', while the latter would form the subject of 'investigations'.
- 40 At a strategic planning meeting convened by the Commission in September/ October 1996, it was recognised that more resources needed to be devoted to the process of making findings in respect of all the statements received. It was accepted that public hearings should be more focused and geared towards particular events or institutions. It was also agreed that there was a need to strengthen truth-seeking efforts by utilising the investigative powers of the Commission to encourage persons to apply for amnesty.

p SECOND PHASE: TACKLING THE BIG ISSUES

- 41 The second phase commenced in October 1996 and extended until May/June 1997. In order to be effective, the Investigation Unit had to develop the capacity to corroborate claims made by victims or witnesses, and then to launch a programme of investigative enquiries in each of the regions.
- 42 Stringent budget cuts made the necessary increases in the staff component difficult, and donor assistance was sought and eventually received. Because state expenditure regulations delayed the receipt of funds, it was not until March/April 1997 that regional offices began to have the capacity to corroborate claims. Once funding was available, regional investigation units were able to identify and employ staff to serve as corroborative assistants. In consequence, the work output of corroboration teams increased, and the Unit could begin to address the tremendous backlog that had developed.
- 43 The other major component of the Commission's shift in strategy involved the launching of a programme of investigative inquiries. The shift was motivated by the perception that the Commission should get tough on perpetrators and begin to provide answers to the many victims who had expressed a desire to know the truth about their own experiences. To achieve this, the Commission made use of powers granted in section 291 of the Act.

- 44 In November and December 1996, investigative inquiries commenced in each region. In early 1997, regional investigation units developed programmes based on investigations that were being conducted in the regions, as well as on scheduled special event hearings and institutional hearings convened by the regional offices.
- 45 By embarking on this strategy, the Unit was able to bring significant pressure to bear on potential amnesty applicants and thereby made significant breakthroughs in the Commission's understanding of the nature and extent of gross human rights violations committed during its mandate period.
- 46 As the Commission began to confront the challenge of delivery to victims and to the public at large, it was forced to resolve a number of key strategic and policy issues. In a similar vein, the Unit was forced to examine its own internal structures in order to determine whether they could be refined and improved.
- 47 It was at this stage, for example, that the national special investigation team was decentralised, and its members and resources were reallocated to regional investigation units. Regional units became responsible for investigations in their regions and reported results to the deputy director, who had to oversee the integration of material provided and to advise and co-ordinate the 're-tasking' of investigators.

p THIRD PHASE: AMNESTY AND THE EXTENSION OF THE COMMISSION

- 48 The third phase began after the amnesty deadline had passed. In August/ September 1997, the chief executive officer, assisted by the executive secretary of the Human Rights Violations Committee, drafted a report and the extent of the outstanding work was assessed. It was established that the committee had received more than 7 500 applications, and that more than 1 500 of those needed to be heard in public. It was at this stage that the Commission decided to approach the government to extend its life until April 1998.
- 49 The Investigation Unit was under great pressure to ensure that its corroborative work could be completed. The Unit was operating under a policy injunction determined in August 1997 that resources should be allocated to two areas of work: corroboration of statements and amnesty-related investigations. All other work, including the 'special' human rights violations investigations, was brought to completion as rapidly as possible.
- 50 Given these pressures and the obvious need to provide some basis upon which amnesty investigations could be conducted, a reorganisation of the Investigation Unit was proposed and approved by the Commission. Central to this new *modus operandi* was a far more direct line of communication between investigators and amnesty evidence leaders, as well as clearly defined and specific investigative instructions. To give effect to this, it was decided to allocate a number of investigators to the Amnesty Department to work in small teams to prepare matters for amnesty hearings. The Amnesty Department took over management responsibility for these investigators.
- 51 At the same time, it was recognised that the *de facto* regional control of the corroboration teams represented the most efficient way of organising the regionally-based findings process. It was decided to formalise this situation by transferring management responsibility for the corroboration teams to the regional representatives of the Human Rights Violations Committee.
- 52 The Investigation Unit's national office was left with a residual function and was responsible for the analysis of information in conjunction with the Research and Information Departments. Provision was also made for the resurrection of a special investigations team, comprising ten investigators (including international experts), to complete outstanding investigations into human rights violations.

p FOURTH PHASE: REORGANISATION AND RESTRUCTURING

- 53 The fourth phase involved the redeployment of twenty-four of the investigators to the Amnesty Committee with a view to adding value to 'hearable' amnesty applications. Six of the twenty-four investigators were assigned back into the Investigation Unit in order to complete the remaining investigations into human rights violations and special investigations. This phase was in line with the Commission's staff roll out and close down plans.
- 54 This phase also involved the redeployment of approximately sixty low level corroborators from the Investigation Unit to the Human Rights Violations Committee, appropriately spread between the four regional offices in line with the population density and demographics of the areas they covered.

p ACTIVITIES OF THE INVESTIGATION UNIT: PATTERNS AND THEMES

Human rights violations investigations

- 55 The Investigation Unit facilitated this activity on behalf of the Human Rights Violations Committee.

Amnesty applicants investigations

- 56 Amnesty applications were co-ordinated from the national office in Cape Town with the units in the four regions. The co-ordinator liaised with and reported to the Amnesty Committee and channelled investigations to the appropriate regions. The co-ordinator was also responsible for perusing applications that might assist in the linking of applications, extracting applications which might help complete human rights violations investigations, and identifying general patterns which would not necessarily be apparent if applications were sent directly to the regions.
- 57 The Investigation Unit handled amnesty applications as follows. First, the evidence analysts made an initial investigative request to the amnesty co-ordinator. The amnesty co-ordinator perused the application and referred it either to the head of the Investigation Unit in the appropriate region(s) for investigation or back to the evidence leader if the application was not ready for investigation or there was some other problem. Next, the Investigation Unit examined the application and request and assigned a specific investigator to deal with the matter. Finally, the investigative report was completed and sent to the evidence analyst co-ordinator, who examined the report and directed it to the relevant evidence leader. If the evidence leader was satisfied with the report, the necessary logistic steps were taken to organise a hearing.

THE ANALYSIS FUNCTION²

- 58 The analysis function was established as a component of the national Investigation Unit in order to create a capacity for ongoing processing and analysis of information gathered.
- 59 It was envisaged that a small group of analysts could provide support to investigators engaged in fieldwork, and compile general, overall analyses of trends and patterns, for example, in gross human rights violations or in perpetrator or victim groupings.
- 60 Whereas the original concept of the analysis function was based on the notion of a crime analysis support unit - used by criminal investigation departments in most foreign (and more recently in South African) police departments - it was not possible to create such a structure. First, the nature of the investigative work being

conducted by the Unit differed considerably from routine police work, and second, the scale of the Commission's work made it impossible to provide dedicated analytical and intelligence support to investigators in the field.

- 61 The analysis function was seen rather as a mechanism whereby the information gathered by investigators could be centrally processed and analysed in line with broad themes in order to identify trends or patterns. In this way, general support was provided.
- 62 The purpose of the analysis function was to establish whether there were any patterns, trends or common features in the types of cases being referred to the Investigation Unit, and to provide cross-referencing and analysis which would serve as the basis for national feedback to regional units and the Research Department. Further, analysts had to explain how gross human rights violations occurred, who the perpetrators were and on what authority they had acted; they had to discover the identity and affiliations of the victims, and they also had to assess the consequences of these gross human rights violations.
- 63 A small group of staff was assigned this task and provided with access to advanced computer equipment and sophisticated software (the *Kortex* and *Analyst Notebook* systems). The project was initiated in the second half of 1996. The group comprised three members and was later expanded to seven (including members of the NIA and international experts who were seconded to assist with the development of this capacity).
- 64 The analysis function was headed by a co-ordinator. Restructuring of the function led to the creation of three subsections: Data Capturing and Documentation, Research and Analysis, and Intelligence Gathering and Information Security Management. Each of these subsections had a co-ordinator with specific functions.
- 65 A group of analysts was engaged to examine documents, to assist investigations and to contribute to a broader understanding of specific events. They were most effective and efficient when there was a clear task coming from client departments, whether from the Human Rights Violations Committee, the Research Department or the Amnesty Committee. Basic documents used in this regard were reports from regional units; records from the Research Department, the Human Rights Violations Committee and the Amnesty Committee, and other documents, such as inquests and reports from the Goldstone Commission and the Harms Commission.
- 66 The investigators dealt with strategic, statistical and general analysis, and cross-referenced on a daily basis to deliver added value to investigations taking place in the regions. They gave responses to regional units through both qualitative and quantitative analyses of reports that had been processed. They reported to the national director on progress made.
- 67 One area of work that proved very valuable was statistical analysis based on the data available in the Commission's database. It represented one of the largest databases recording occurrences of gross human rights violations in the world. As such, it offered tremendous scope for analysis to determine patterns, trends and links between perpetrator groups and types of violations. This formed a significant part of the analysis function, notwithstanding the fact that it did not immediately assist the investigative process. In this way, the analysis function was able to play a broader support role within the Commission.
- 68 The analysis function served to identify prevailing trends and patterns of gross human rights violations based on case studies (the so-called 'window cases') and evaluate the correlation between political developments and gross human rights violations, if that could be established. The primary sources were the database, section 29 interviews, victim and perpetrator statements to the Commission, political party and

other institutional and individual submissions, amnesty applications, investigation reports and research notes.

- 69 The aim of the analysis was to paint a broader picture of gross human rights violations both at the national and regional levels, establishing patterns such as types of abuses, levels of authority, methods used, institutions and personalities involved and links between events.
- 70 In addition to the collation of material, the Analyst Notebook software assisted investigators with complex amnesty applications. This proved to be the area in which the analysis function was most effective. The use of programmes like the Analyst Notebook and IAS augmented the performance of the analysts, but did not decide the analytical results, which were determined by the analysts themselves.

p STRUCTURES IN THE INVESTIGATION UNIT

Regional units

- 71 Because the Commission required only a relatively low level of corroboration of the violations alleged in the statements before it, the Investigation Unit structured the regional units in a way that would ensure that they had the capacity to conduct corroborative inquiries in a rapid and efficient manner.
- 72 In order to build a low level corroboration capacity, it was anticipated that the units would need to employ personnel who would liaise with various institutions to gather information to test facts raised in statements and with the national office, to obtain and share information, to access the databases when available and to manage the corroborative process.
- 73 There were, however, different understandings and conceptions as to what was meant by the term 'low-level' corroboration. It was not clear exactly what level of information the Commission needed in order to make a finding that a person was a victim of a gross human rights violation as described in the Act. The initial development of some corroboration 'pointers' and training were introduced to overcome this problem.

Database

- 74 The timely development of a comprehensive database, based on the information gathered from statements made by victims and their relatives, was central to the successful implementation of the information management system. There were, however, delays in setting up the database in the early stages.

p LINKS WITH OTHER STRUCTURES

- 75 Access to information from government and non-government agencies was an important part of the investigative process, and from an early stage, the Investigation Unit made efforts to establish lines of communication with a variety of agencies and institutions.
- 76 Early discussions between members of the Commission and various government ministries resulted in the establishment of nodal points – an approach preferred by the SAPS and the Department of Defence.
- 77 Nodal points consisted of appointed officials whose function it was to facilitate communication and access to information sought by the Commission. All requests and responses were to be channelled through these nodal points.

- 78 The rationale for this approach was founded on the notion that the government department was best placed to utilise its internal communication systems to access the necessary information and respond appropriately. In the case of the police and the military, the documentary holdings were vast and not necessarily sufficiently well organised to allow for easy access. In addition, certain holdings contained information which was irrelevant to the work of the Commission or not for public disclosure.
- 79 This nodal system generated a great deal of tension, as there were real concerns in the Investigation Unit that the Commission's access to information was being 'managed'. Indeed, the Investigation Unit's initial experiences suggested an attitude of non-co-operation from sections of the SAPS and the South African National Defence Force (SANDF). The Commission, however, continued to rely upon these structures, and as the Commission became a fact of South African life, many initial obstacles were overcome. In addition, Commissioners and senior members of the Investigation Unit worked relentlessly and persistently to open doors.
- 80 Structures with which the Investigation Unit developed lines of communication included:

The South African Police Service

- 81 By agreement with the Ministry of Safety and Security, a nodal point for facilitation of communication between the police and the Commission was established. Although its initial function was to deal with the secondment of police to the Commission, it was recognised that it would play a broader role in facilitating access to information required by the Commission.
- 82 It was agreed that the Commission's investigators would request dockets and documentation held by the police from the police facility which had originally dealt with the matter. If the information was not available or a concern was raised regarding the Commission's access to the information, the matter would be considered by a regional liaison officer appointed in the office of the regional Commissioner of Police. Only if the matter could not be finalised at that level would the national nodal point be activated.
- 83 Implementation of this agreement proved very difficult. At various stages, the police chose to ignore the agreement and in some regions adopted differing approaches. In the Gauteng region, for example, the sheer volume and type of information requested resulted in a very slow rate of response to the requests. In this region, the police insisted that requests be directed via the national nodal point office, which further complicated relations and resulted in long delays.
- 84 In view of difficulties experienced, the regional investigation units (in accordance with the agreement) adopted a direct approach and sought information from individual police stations after having informed the nodal points of their request. Whilst this occasionally resulted in tensions between the Unit and the police, it proved the most effective means of obtaining the information needed to conduct investigations.
- 85 Notwithstanding problems experienced by the Unit as a whole, regions experienced different and varying degrees of co-operation from the SAPS. In some regions, investigators enjoyed total co-operation and assistance, while elsewhere the work of the investigators was made onerous by an overly bureaucratic and uncooperative attitude.

The South African National Defence Force

- 86 The Commission met with the Ministry of Defence to facilitate communication between the Defence Force and the Commission and to establish a nodal point for this purpose. It was agreed that all requests would be directed through this nodal point. The Commission, nevertheless, retained its right to proceed by way of executing a search warrant if it decided that such a step was appropriate.
- 87 The nodal point structure never operated smoothly, and a measure of suspicion and mistrust dogged the relationship between the Commission and the SANDF. Ultimately, these difficulties were communicated to the Ministry, and alternative arrangements were made.

National Intelligence Agency

- 88 A meeting was held with the Deputy Minister for Intelligence and senior members of the NIA, the South African Secret Services and the National Intelligence Co-ordinating Committee. In consequence of this, a nodal point to facilitate communication between the NIA and the Commission was established.
- 89 In the light of the general assistance that the NIA offered to the Commission, liaison was handled jointly by the director of research and the director of investigations. This communication took place at a national level, and very little contact occurred regionally.
- 90 In respect of certain information held by the NIA, it was necessary to restrict access to persons who had been granted an appropriate security clearance or classification. Members of the national office of the Investigation Unit and members of the Research Department were appointed for this purpose. Their function was to evaluate the material in order to determine whether it was relevant to the Commission's work.
- 91 The question of security clearances generated considerable tensions within the Investigation Unit and indeed in the Commission as a whole, and a clear system was never implemented.

Attorneys-General

- 92 In terms of the Act, the Commission was required to conduct its activities with due regard to the interests of the administration of justice. This injunction presented unique challenges to the Commission in view of the fact that attorneys-general were active in the investigation and prosecution of matters which clearly fell within the mandate of the Commission.
- 93 In particular, the establishment of a Special Investigation Unit prior to the establishment of the Commission, under the direction and auspices of Dr Jan D'Oliviera, Attorney-General of Gauteng, necessitated communication between it and the Commission's Investigation Unit. Tensions emerged in respect of what was perceived as interference in investigative work, a lack of co-operation regarding information or dockets available and a perceived slow progress in investigations. Most of the problems were experienced over the many matters being investigated by both the Commission and the D'Oliviera unit.
- 94 Communication channels were also established with other attorneys-general and regional units were encouraged to establish contact with offices in their areas. Essentially, these channels were established to enable regional units to obtain access to material to assist with the corroboration work being conducted in the regions and to enable consultation to occur in respect of the conduct of investigative inquiries in terms of section 29 of the Commission's founding Act.

Other institutions and organisations

- 95 The Investigation Unit established sound relations with the Investigative Task Unit in KwaZulu-Natal. A procedure for obtaining access to information held by the Investigative Task Unit was established, and numerous meetings were held to facilitate proper co-ordination of activities.
- 96 Relations were also maintained with numerous NGOs, human rights organisations and political parties with the purpose of obtaining access to information both to facilitate corroboration work and as part of an information-gathering strategy.

Management and Operational Reports

LEGAL DEPARTMENT

p INTRODUCTION

- 1 The Legal Department had the following functions:
 - a overall responsibility on a national level for all legal matters regarding the Commission;
 - b drafting legal opinions and advice for all the Commission's committees and its Investigation Unit;
 - c reviewing all legal documents and contracts and drafting contracts between the Commission and other interested parties;
 - d preparing legal matters and instructing the State Attorney in these matters;
 - e liaising with state attorneys and advocates with regard to legal actions brought by and against the Commission;
 - f leading evidence at section 29 hearings;
 - g handling legal aspects of human resources up to and including representing the Commission at the Commission for Conciliation, Mediation and Arbitration at the Labour Court;
 - h responding to all legal enquiries from legal representatives of witnesses and amnesty applicants involved in the Commission's legal processes;
 - i liaising with the Department of Justice and with Parliament's portfolio and select committees on justice regarding proposed amendments to the Promotion of National Unity and Reconciliation Act (the Act);
 - j drafting and settling responses to complaints to the Public Protector;
 - k co-ordinating the provision of legal aid, as required by section 34 of the Act, through the Legal Aid Board;
 - l monitoring criminal prosecutions based on charges laid by the Commission.

p STAFFING

- 2 Although the Commission initially budgeted for one national legal officer and four regional legal officers, it was decided early on not to employ regional officers. A regional legal officer was appointed to the East London office in June 1996, but was transferred first to the national office in December 1996 and then to the Amnesty Committee in January 1998, where he served as an evidence leader until replaced by another attorney. The Legal Department, then, consisted of the national legal officer, an additional legal officer and a senior secretary.

p LEGAL MATTERS DEFENDED BY THE COMMISSION

- 3 The Legal Department represented the Commission in the following legal cases.
- 4 Azanian People's Organisation (AZAPO), the Biko, Mxenge and Ribeiro families v State President, Minister of Safety and Security and the Truth and Reconciliation Commission (Constitutional Court Case No CCT17/96).

In their application, AZAPO and the Biko, Mxenge and Ribeiro families asked the Constitutional Court to declare the Act establishing the Commission as unconstitutional, or alternatively, to declare as unconstitutional those sections that dealt with the granting of amnesty (sections 20(7), 20(8) and 20(10)). The Court dismissed the application and declared the relevant sections not unconstitutional.¹
- 5 Azanian People's Organisation (AZAPO), the Biko, Mxenge and Ribeiro families v the Truth and Reconciliation Commission and Others (Case No 4895/96). In this application, AZAPO and the Biko, Mxenge, and Ribeiro families applied to the High Court (Cape Provincial Division) for an order staying the Commission from granting amnesty, pending the outcome of their application to the Constitutional Court. The High Court dismissed their application in a judgement dated 9 May 1996.
- 6 The National Party v Desmond Tutu, Alex Boraine, the Truth and Reconciliation Commission, the Minister of Justice and the State President (Case No 8034/97). Following alleged public criticism by the chairperson of the Commission of the evidence presented by the National Party (NP) to the Commission, the NP applied to the High Court (Cape Provincial Division) for an order declaring that he had behaved in a manner unbecoming of a chairperson of the Commission; that the vice-chairperson be held to be unfit to be a commissioner, and that the Commission should conduct its investigations impartially. The chairperson was away when the application was made. His return coincided with the appointment of the new leader of the NP. At that time, both parties expressed an eagerness to settle, which led to a meeting on the 19 September 1997. The matter was settled², each party bearing its own costs.
- 7 Gerber v Amnesty Committee, Truth and Reconciliation Commission (Case No 21544/96) and Van Wyk v Amnesty Committee, Truth and Reconciliation Commission (Case No 16602/97).

In two separate cases, individuals asked the High Court (Transvaal Division) to review and set aside the Amnesty Committee's decisions to refuse their amnesty applications. Gerber's application was dismissed with costs. Van Wyk's application was still pending at the time of finalising this report.
- 8 Leonard Veenendal v Minister of Justice, the Truth and Reconciliation Commission and the Government of Namibia (Case No 24709/96) and DG Stopforth v the Minister of Justice, the Truth and Reconciliation Commission, the Government of Namibia and the Minister of Safety and Security (Case No 25042/96).

In these two related cases, former members of the security forces applied to the High Court (Transvaal Division) for an order staying the Minister of Justice's decision to have them extradited to face criminal charges in Namibia, pending the outcome of their amnesty applications to the Commission. Although the Commission was cited as the second respondent, it did not oppose the application but simply undertook to abide by the court's decision. The High Court dealt with the two cases as one and dismissed the applications with costs.
- 9 Gideon Nieuwoudt v the Truth and Reconciliation Commission (Case No 1136/96).

Mr Nieuwoudt was a former member of the South African Police security forces. He applied to the High Court (Port Elizabeth) for an order interdicting the Commission from hearing public evidence that would implicate him in any human rights violation until and unless he had been given proper, reasonable and timeous notice. He also asked that the Commission be required to furnish him with copies of documents relevant to the incidents raised in the evidence. It was agreed, amongst other things, that the Commission would not allow the presentation of evidence implicating an

applicant without prior notice being given to that applicant. The case was settled on 5 June 1996, and the application was withdrawn.

10 **Gideon Nieuwoudt v the Truth and Reconciliation Commission and Others (Case No 1253/96).**

Mr Nieuwoudt brought contempt of court proceedings against the Commission and those commissioners who sat on the panel during the Human Rights Violations hearing in Port Elizabeth. He contended that the Commission was in contempt of the rule *nisi* obtained under case number 1136/96 (above). The case was settled to the satisfaction of both parties and the settlement was made an Order of Court³.

p CASES BROUGHT BY THE COMMISSION

11 **TRC v Coleman and 37 others (case no 3729/98).**

The Commission brought an application to establish legal certainty on a decision by the Amnesty Committee to grant amnesty to thirty-seven members of the African National Congress (ANC). Before the lodging of the application, the NP applied to the High Court (Cape Provincial Administration) for an order to review, set aside or correct the decision of the Amnesty Committee to grant amnesty to the respondents. The Commission lodged an application for an order to void or to review and set aside the decision and to direct the Amnesty Committee to consider the applications afresh. The matter was settled, and the court ruled in favour of the Commission.

12 The Commission also brought an application for the recovery of the salary paid to the former regional head of investigations employed in the East London office, based on his fraudulent misrepresentation. The application was still pending at the time of finalising the report.

p HUMAN RESOURCES-RELATED LEGAL MATTERS

13 The Legal Department also handled human resources-related legal matters such as staff contracts and discipline.⁴

p THE LEGAL AID BOARD

14 Section 34 of the Act, quoted above, set out the Commission's obligations regarding the funding of legal representatives.

15 Special meetings were held with the Legal Aid Board leading to agreements on the set forms that people would use when applying to the Commission for legal assistance and on the form of letters approving or refusing applications for legal assistance. The Commission prepared a manual on its statutory obligations in terms of section 34.

16 In consultation with the Legal Aid Board and the Department of Justice, the Commission promulgated the tariff of fees payable to legal practitioners who provided legal assistance in terms of section 34 of the Act.⁵
Leading Evidence at Commission Hearings

17 The Legal Department was directly involved in the preparation and the leading of evidence at hearings on the ANC, the Mandela United Football Club and the PW Botha hearing. In respect of the latter, only preparation work was done as Mr PW Botha did not attend the hearing and criminal action by the attorney-general was still pending at the time of reporting.

p LEGAL ASSISTANCE

18 Section 34 of the Act provided that:

Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative.

The Commission may appoint a legal representative, at a tariff to be prescribed, to appear on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative.

- 19 The Commission created a scheme to provide for the granting of legal assistance to those who qualified. The Legal Aid Board in Pretoria administered the larger part of this scheme on behalf of the Commission.

p LEGAL AID BOARD-RELATED CASES

- 20 In a few instances, lawyers who worked for the Commission through the Legal Aid Board disputed the tariff paid. The Legal Department represented the Commission in these cases.⁶

p LEGAL DOCUMENTATION AND CONTRACTS

- 21 The Commission referred most of its contracts, including leases for the rental of premises, to the Legal Department for vetting and/or drafting. These included: staff contracts; a contract with the University of the Free State for the provision of translation services; a contract with Giant Video Screens for the leasing and usage of technical equipment to record hearings proceedings; a contract with the South African Broadcasting Corporation (SABC) for radio broadcasts of the Commission's hearings, and contracts of leases with the various owners of the premises being rented by the Commission.

p COMPLAINTS TO THE PUBLIC PROSECUTOR

- 22 The Legal Department responded to complaints to the Public Protector from the Inkatha Freedom Party (IFP) and from certain former South African Defence Force (SADF) generals.
- 23 The IFP had complained that the Commission had shown bias in its conduct towards the IFP, violating the party's constitutional rights, impairing its dignity and contradicting the Commission's own statutory objectives.
- 24 Certain former SADF generals also complained to the Public Protector that the Commission had prejudged the former SADF and that the Commission's approach bordered on a political vendetta or witch-hunt.

p DRAFTING PROPOSED AMENDMENTS AND REGULATIONS

- 25 In some instances, the Legal Department drafted regulations or made recommendations to the government for amendments to the Act, including the promulgation of a tariff of fees for legal practitioners, regulations on reparation and rehabilitation, amendments to the Act, and amendments to the Constitution extending the 'cut-off date'. The Department monitored these amendments as they progressed through the various stages of the legislative process.

p CRIMINAL CHARGES

26 In four cases, the Commission instituted criminal charges against individuals. These included:

a **State v Godfrey Matiwane.**

In this case, a witness who perjured himself was convicted and sentenced to one year's imprisonment in terms of section 39 of the Act.

b **State v Loyiso Mpumlwana.**

In this case a charge of fraudulent misrepresentation was laid against a former employee of the Commission's East London office. The matter was still pending at the time of reporting.

c **State v PW Botha.**

In this case, a criminal charge was laid against former state president Mr PW Botha following his refusal to appear before the Human Rights Violations Committee. The matter was still pending at the time of reporting.

d **State v Bennet Sibaya.**

In this case, a charge of perjury was laid with the attorney general on the recommendation of Judge Goldstone. The matter was still pending at the time of finalising the report.

p CONCLUSION

27 For a full discussion of details and consequences of legal challenges to the Commission, see chapter on *Legal Challenges*.

Management and Operational Reports

MEDIA & COMMUNICATIONS DEPARTMENT

p INTRODUCTION

- 1 From the outset, the Commission identified the mass media as critical in drawing all South Africans into the Commission process. It resolved, in particular, that one way of helping to restore the dignity of victims of violations of human rights - and of reporting to the nation such violations and victims - would be to promote maximum publicity for the Commission's activities, and in particular its hearings, by opening them fully to both broadcast and print media.
- 2 In addition, advance publicity was given in the media of workshops, public meetings, and opportunities for victims to make statements and of hearings (both human rights violations and amnesty hearings) which victims and members of the public could attend.
- 3 Particular attention was also paid to the use of radio to ensure that the proceedings and activities of the Commission were covered in all the country's official languages.
- 4 The Commission drew a distinction between the communication of its own messages, which it controlled (and usually paid for), and the distribution of news and information through journalists in the print and broadcast media which, by definition, resulted in publicity over which the Commission had no final control. This was reflected in a distinction in the structural operation of the media and communications functions during the first year of operation.
- 5 The Commission's communications work was summarised in an article written by Archbishop Tutu for the *Sunday Times* in December 1996:

One of our most substantial achievements, however, has been to bring events known until now only to the immediately affected communities – and sometimes to the small readership of alternative newspapers – into the centre of national life.

Millions of South Africans have heard the truth about the apartheid years for the first time, some through daily newspapers but many more through television and, especially, radio.... Black South Africans, of course, knew what was happening in their own local communities, but they often did not know the detail of what was happening to others across the country. White South Africans, kept in ignorance by the SABC and some of their printed media, cannot now say they do not know what happened.

p MEDIA LIAISON

- 6 Media liaison was made a high priority from the first meeting of the Commission on 16 December 1995. The volume of news which the Commission's activities promised made this essential. It was also clear that if the Commission could meet the demands of the media for newsworthy material, this would help it fulfil its mandate to report to the nation on human rights violations and allow it to do so on a continuous basis throughout the life of the Commission.
- 7 The public image of the Independent Electoral Commission in 1994 gave warnings of the pitfalls that would lie ahead. The Commission had an enormous task; it could not begin to deliver on all expectations, and there was considerable potential for journalists to focus on areas that the Commission would not be able to cover. The Commission began operating on the premise that the fundamental task of the media liaison officers was to ensure that the Commission's public image reflected the reality of what the Commission was and did. The objective was, thus, not to manipulate the Commission's image, but to project accurately the challenges, the successes and the difficulties.
- 8 In implementing media liaison policy, the Commission attempted to adhere to the following principles.

Transparency

- 9 While the chairperson, the vice-chairperson and the chief executive officer were appointed the Commission's only spokespersons on matters of policy and implementation, the media had direct access to all commissioners and portfolio heads on matters that lay within their individual jurisdiction. The media liaison office was not used as a means of filtering inquiries or providing a 'public relations front' for the Commission. The Commission held that, if journalists were to inform the public accurately, they needed to speak directly to those who made and implemented decisions in the organisation. Thus, the media liaison office's task was to provide strategic and technical advice to the Commission on how best to convey news and to provide support for and be constantly available to journalists when Commissioners were unable to respond to media inquiries.

Proactive Release of Information

- 10 The Media Liaison Office promoted the pre-emptive release of news, whether it reflected well or badly on the Commission. The office also sought to encourage the simultaneous release of information to all the media in an attempt to achieve circumstances conducive to an early, single, full and thorough explanation of what the Commission was doing. The following extracts from reports of the Media Liaison Office during September and October 1996 illustrate the approach which the Commission attempted to follow:

The need for speed and flexibility needs to be stressed: when the Commission hesitates for too long before releasing news, it often trickles out bit by bit to individual journalists. This reduces the interest of other journalists, who do not like to carry late, second-hand news. It also forces us into a reactive position, where those with interests other than those of the Commission make the running in how the news is presented.

It goes without saying that anonymous leaks of important information by individuals acting without a mandate destroy our capacity to present the information in a co-ordinated, proactive way. They need to be avoided if we are to avoid constantly being caught on the back foot. At the same time it needs to be said that the longer we delay in releasing important information, the more we are held hostage by the agendas of those responsible for leaks.

It is strongly recommended that the Commission should run its media liaison operation in a manner which draws the public into its decision making. Thus, the Commission should constantly give consideration to releasing draft documents indicating proposals under discussion before they are finalised. This does involve risks, such as public perceptions being influenced by ideas which are not eventually adopted. But the exposure of proposals to public debate before decisions are taken enhances the credibility of the final decisions.

- 11 The following extracts, also from the media liaison reports, concerning problems the Commission was facing in 1996 also illustrate the approach of the Department:

We discuss our intentions instead of announcing our actions, or at least too far ahead of implementing our intentions, leading to days and weeks of questions from the media about when we are going to act, and to allegations that we talk and don't act. And when unexpected developments delay the gap between the declaration of an intention and implementation, we lose credibility.

Through our failure to think through the release of news thoroughly enough, we do not give journalists comprehensive enough briefings, and misunderstandings and distortions arise. Journalists who do not regularly cover the Commission misunderstand developments, especially when they do not have written statements.

- 12 The sensitivity - even explosiveness - of information at the disposal of the Commission led to constant consideration as to when information should be released. This involved balancing a number of factors:
 - a the right of victims of gross violations of human rights to early access to information;
 - b the right of those implicated to their detriment to information in advance of its publication by the Commission;
 - c the right of the public to information about violations;
 - d the potential of the publication of information to prejudice ongoing Commission investigations into the violations.
- 13 At various times in the life of the Commission, it was criticised from all sides over the timing of the release of information.

p MEDIA COVERAGE

- 14 The print and broadcast media devoted extensive coverage to the Commission. Hearings, in particular, generated probably as much coverage as Parliament during the main periods of activities of the Commission.
- 15 Many newspapers appointed specialist correspondents to cover the Commission, virtually on a full-time basis. Among these were *Beeld*, *Business Day*, *City Press*, *Rapport*, the *Sowetan* and *The Star* in Johannesburg, *The Cape Argus* and *The Cape Times* in Cape Town and the *Daily News* in Durban. The appointment of journalists who built up a specialist knowledge of the workings of the Commission meant that there was a high quality of reportage of Commission activities, informed by a detailed understanding of the processes, and that a close watch was kept on the Commission's internal operations. *Business Day* carried regular, often lengthy and informed editorial comment; the *Sowetan* carried extensive features as well as news coverage, and *The Star* carried a weekly feature on the Commission, devoting most of its editorial page to activities of the Commission. The *Mail and Guardian* regularly carried probing material on the Commission, including incisive commentaries or editorial features by the poet Antjie Krog.
- 16 The South African Broadcasting Corporation (SABC) Radio appointed a pool of journalists to ensure that the activities of the Commission were covered in all languages. Between April 1996, when hearings commenced, and September 1996, extensive news and current affairs coverage was supplemented by a weekly 'wrap-up' of Commission activities on all language stations, as well as live coverage of hearings on Radio 2000.
- 17 Financial constraints forced cancellation of the weekly summary programmes and the live coverage from 1 October 1996. However, the Commission secured a grant from the Norwegian government which enabled it to contract SABC Radio to restore these two features on a full-time basis from June 1997. An essential element of the agreement between the Commission and the SABC was full recognition of the latter's editorial independence. The Commission had no control whatsoever over the contents of the SABC's programming. In 1997, the SABC Radio 'TRC team' won the Pringle Medal for outstanding services to South African journalism.
- 18 The reasons for focusing on radio were outlined in the Department's business plan:

In considering the best means of making sure that as many South Africans as possible are enabled and empowered to participate in the life and work of the Commission, it has judged radio the most effective communication medium for its proceedings to the widest number of people. Radio listenership figures far outstrip newspaper readership. In addition, radio broadcasts penetrate all corners of the country in the home languages of the majority of South Africans. For example, SABC radio stations have 3.3 million Zulu listeners, 1.6 million Xhosa listeners, 1.5 million seSotho listeners, one million seTswana listeners, almost 700,000 Afrikaans listeners, 450,000 listeners in English and 116,000 Venda listeners.

The view in the Commission is that the broadcast of its work in a wide range of languages is of paramount importance. Radio provides access to South Africans across-the-board: for the many who listen to radio as well as watch television, for those without television, for those who are not literate and for those in rural areas.

- 19 The Commission's decision to allow cameras in hearings was one of the most important factors in creating the high public profile it enjoyed. The Commission was not a court and did not intend to run its hearings like court hearings, particularly the hearings organised by the Human Rights Violations Committee. Still, the Commission sought to ensure that the hearings had the dignity and decorum of court proceedings. Courts in most parts of the world do not allow cameras to cover their proceedings, and members of the Amnesty Committee, in particular, shared the instinctive reservations of judges on this issue. Because of these concerns, the Commission sought guidance from broadcasters in the United States, Canada and the United Kingdom in the drawing up of guidelines for cameras in hearings. The Commission was particularly grateful to the BBC in London, supported financially by the British High Commission in South Africa, which sent the Commission a senior producer who had been involved in the making of documentary programmes on Scottish court cases. The Commission developed the guidelines with the assistance of broadcasters, and especially the BBC consultant. (It should be noted that, as people participating in hearings became more accustomed to the presence of cameras, the guidelines were relaxed in some instances.)
- 20 A difficulty never fully resolved was the unhappiness of 'stills' photographers from the press. Stills photographers were excluded from hearings because, as they move around, they are potentially more disruptive than television camera operators, who are confined to fixed positions. This meant that television cameras could follow every step of proceedings, while stills photographers could not. This appears to be a difficulty wherever video cameras are permitted in hearings.
- 21 The images relayed to the nation through television news bulletins and the SABC-TV weekly programme 'TRC Special Report' were probably the single most important factor in achieving a high public profile for the Commission. Repeatedly throughout the Commission process, hearings provided compelling images for those South Africans who watch television.
- 22 Commission hearings and activities featured frequently on television news bulletins during the first year of the Commission's work. When multiple hearings were held every week, Commission-related news formed up to one-third of the main evening news bulletins.
- 23 SABC-TV demonstrated a similar commitment to that of the SABC Radio in relaying to South Africans the untold stories of their past in its weekly documentary, 'TRC Special Report'. In 1996, the programme won a special award from the Foreign Correspondents' Association.

p COMMUNICATIONS

- 24 The communications framework was developed early in 1996.
- 25 One of the Department's first tasks was to advertise for and receive presentations from advertising and communications agencies. The Commission selected Herdbuoys as its advertising agency and Siyakha Communications as its communications agency.
- 26 The Commission's logo was chosen from seven designs presented by Herdbuoys. Herdbuoys also designed and produced a series of posters and stationery using the logo.
- 27 Herdbuoys also produced a series of radio advertisements during 1996, comprising a generic Commission advertisement, an advertisement for the Human Rights Violations Committee, an advertisement for the Amnesty Committee and an advertisement encouraging people to make amnesty applications. The radio advertising campaign ran from July to December 1996.
- 28 A number of other proposals were developed with the advertising agency, including taxi advertising, a commemorative stamp, tactical press advertising, a train ticket advertisement, an outdoor campaign and a Christmas advertising campaign. These initiatives, however, were not pursued as a consequence of budgetary constraints.
- 29 Materials developed in conjunction with Siyakha included:
- a Advertisements announcing the setting up of the Commission's offices were placed in regional and national newspapers;
 - b a generic leaflet on the Commission in the eleven official languages;
 - c booklets on the Human Rights Violations Committee, the Reparation and Rehabilitation Committee and the Amnesty Committee, translated into all languages but published only in English as a result of budgetary constraints;
 - d a manual, with transparencies and flip-charts, to conduct explanatory workshops on the Commission and its activities;
 - e co-ordinated workshops in various regions of the country;
 - f posters advertising a statement-taking campaign and posters advertising the new amnesty application deadline date in early 1997;
 - g a poster on the Commission for use in high schools.
- 30 Other proposals explored with Siyakha included a public participation programme, an updated pamphlet, a comic book, a radio drama and a paid magazine radio programme. However, again, the development of these proposals was curtailed by budgetary constraints.
- 31 In the earlier stages of the Commission's life, an annual communications budget of R14 million was proposed. However, during negotiations with the government, this was scaled down to R6 million in the 1996/97 fiscal year and to R2 million in the 1997/98 fiscal year (excluding donor funding subsequently raised). The financial limits on communication initiatives led to, amongst other things, the consolidation of the Commission's Media and Communications Departments into one department. It also led to criticism, particularly from organisations and lobby groups representing the interests of victims who argued, understandably, that the Commission had done too little to communicate directly with the public and with victims and survivors of human rights violations, particularly in South Africa's remote areas.

- 32 After the rationalisation and reconfiguration of the two departments into one early in 1997, the Commission's paid communications were placed very much in 'maintenance mode'.
- 33 During 1997, the posters that had begun to be developed late in 1996 - advertising a statement-taking campaign and the new deadline date for amnesty applications - were produced and distributed.
- 34 Also during 1997, a radio advertising campaign in support of and linked to the statement-taking project was implemented. In conjunction with this, more than 400 000 leaflets calling for victims and survivors to come forward and make statements were distributed. These were distributed particularly in areas where the Commission's regional offices felt that not enough statements had been gathered. In addition, in 1998 the Commission published a booklet in all official languages whose purpose was to report to victims, survivors and organisations on the Commission's reparation and rehabilitation proposals to government.
- 35 The Commission also published an occasional newsletter, *Truth Talk*. This was aimed particularly at its partner organisations in the community, especially non-governmental organisations (NGOs) and community-based organisations. The last two issues of *Truth Talk* were also sent to those who made statements to the Commission.
- 36 During 1997, it was decided to inform students in secondary schools about the structure and work of the Commission. In conjunction with Siyakha Communications, the Media and Communications Department developed an information chart to be used by teachers when addressing classes about the Commission. The chart, generally referred to as the 'Teacher Insert', was inserted in a magazine called *The Teacher*, which is distributed to a wide range of schools throughout the country.
- 37 In July 1997, the Department contracted a 'stills' photographer to capture images of the Commission at work in the four regional offices and at hearings. The materials were to be used for *Truth Talk*, for a proposed in-house pictorial publication, *Moments of the TRC at Work*, published as a limited historical edition and for the final report.
- 38 During August 1997, the Department developed and produced a letter of acknowledgement¹ for organisations and individuals who had assisted the Commission with the designated statement taker programme. Certificates of recognition were also produced² and presented to all staff members as they came to the end of their employment contracts with the Commission.
- 39 In response to a number of inquiries from South Africa's foreign missions, the Media and Communications Department prepared a special information package for use by diplomatic missions. The package was also made available to both domestic and foreign institutions, including visitors to the Commission's national office in Cape Town.
- 40 The strategy of the Media and Communications Department during the winding-down phase was to convey the core message that the Commission wished to leave with the public as its work ended. To achieve this, in April 1998, the Department published a reparation and rehabilitation policy and proposals handbook. The handbook was published in eleven languages and had a print run of 60 000 copies. It was felt that this was one of the last opportunities for the Commission to communicate directly with victims and survivors, partner organisations in the NGO sector, the public generally and the international community and that the Commission owed them a report-back on its work.

p STRUCTURES AND STAFFING

- 41 The Media and Communications Committee was established as one of the 'functional' committees of the Commission. It was composed of commissioners and, initially, committee members from each of the main,

statutory committees of the Commission. The chief executive officer also sat on the committee, which was responsible for overseeing the work of the Department. During 1996, the committee was chaired by Dr Fazel Randera and, thereafter, by Advocate Denzil Potgieter.

Media Liaison

- 42 An embryonic media liaison function was started during the week before the establishment of the Commission and was developed into a Media Liaison Department between the first meeting of the Commission on the Day of Reconciliation (16 December) 1995 and the move into the national offices in Cape Town in February 1996. A Communications Department was established later, after the chief executive officer, the financial director and human resources director had been appointed and formal Commission structures began to emerge.
- 43 Following the resignation of the director of communications in 1996 and reductions in the projected communications budget for 1997, the Commission decided early in 1997 to rationalise and consolidate the two departments into one, while keeping the media liaison and communications functions separate to a degree.
- 44 The media liaison function of the Commission was carried out under the control of the departmental director and staff for most of the life of the Commission.
- 45 The staff initially comprised four media liaison officers, who were all senior and experienced professional journalists, and two administrative staff.
- 46 The media liaison officers were attached to each of the four regional offices of the Commission. Their primary responsibilities were co-ordinating media arrangements for public hearings for the Commission and liaising between journalists on the one hand, and commissioners and senior staff members of the Commission on the other. The primary task of the administrative staff involved the control, development and operation of news distribution and monitoring systems.
- 47 Apart from supervising the activities of the Department, the director performed a media liaison function for the chairperson, the vice-chairperson and the chief executive officer, to the degree that this was necessary, and attended Commission and committee meetings and hearings with a view to making recommendations on media coverage.

Communications

- 48 Because of the size of the task of building structures and recruiting staff for the Commission, there were delays in the establishment of a Communications Department. However, a suitably qualified director was employed and began work in May 1996. The director, assisted by a secretary in the national office, managed the relationship between the Commission and advertising and communications agencies and oversaw the work of the communications officers based in each of the Commission's four regional offices.
- 49 The tasks of the communications officers were to obtain, help distribute and communicate promotional material and news of Commission events to the public. Another important function of communications officers was liaison with NGO, community-based and non-profit organisations.
- 50 After the resignation of the communications director in December 1996, the Communications Department was merged with the Media Liaison Department. The director of media liaison oversaw the combined departments. A communications and marketing manager was appointed to supervise the relationship with advertising and communications agencies and to liaise with regional communications officers.

Management and Operational Reports

MENTAL HEALTH UNIT

INTRODUCTION

- 1 The almost complete lack of reference to the issue of psychological support in the Promotion of National Unity and Reconciliation Act created some ambivalence with issues relating to psychological support services remaining an ongoing source of debate throughout the life of the Commission.
- 2 This dynamic was most demonstrably played out in the development of the statement-taking process. Initially, statements took the form of personal story telling to empathetic listeners, who recorded what was being said in a relatively informal manner. Due to the huge volume of statements, however, the process evolved into a more formalised fact-finding effort. In order to capture, process and corroborate each statement, a standard (but comprehensive) form was used to record victims 'stories'. This could be used even where no 'listener' was available.
- 3 It must be acknowledged that this compromised the healing potential of the encounter. It took away much needed emotional space. This affected the experience of making a statement and denied statement takers the opportunity to make broad assessments and, where necessary, refer people to appropriate support services.

THE NATURE OF TRAUMA

- 4 The people who suffered most from traumatic episodes fell into five categories: the victim, the perpetrator, their families and dependants, the community and, in a different way, Commission personnel. Commission personnel and some dependants and family members formed a distinct group in that their traumatic experience was often of a vicarious nature. However, all groups vicariously or directly shared classic symptoms of post-traumatic stress syndrome. Symptoms included lowered self-esteem, depression, emotional blunting, avoidance behaviour, impulsiveness, uncontrollable anger, substance abuse, paranoia, relationship difficulties (social and interpersonal), complicated bereavement and sleep disturbance. Often such symptoms had become a part of life for the sufferer and were so deeply entrenched in the individual that they had to be viewed as part of that person and not merely a passing crisis.
- 5 It was important not to generalise or simplify diagnosis or, indeed, understanding of treatment. Often the trauma that individuals presented had been complicated by a range of socio-economic and medical problems and was also affected by the time that had elapsed since the traumatic event. Often living conditions caused a new range of emotional difficulties that conflated with previous ones, resulting in a complicated traumatic cocktail that demanded more than a mere therapeutic or healing intervention. The mental health of a person could not be seen or understood in isolation from socio-economic realities.

p SUPPORT FOR WITNESSES AT HEARINGS

- 6 Support for witnesses at human rights violations hearings was the most visible part of the work undertaken by the Mental Health Unit. The public perception was of a briefer giving solace to a witness who had found the process of giving testimony deeply upsetting. This essentially 'snap shot' perception gave an impression of short-term interest and solace on the part of the Commission and did not reflect the interventions made by the Commission both before and after the hearings.
- 7 Such interventions included the preparation and briefing of witnesses before hearings, the containment and advocacy of witnesses during hearings and, after the hearings, the debriefing and referral of witnesses to regionally appropriate service providers who had a knowledge of local resources and who followed up accordingly.
- 8 The development of the Commission's witness support strategy could best be described as the quest to bridge the gap between the need for and the provision of emotional support.
- 9 Although constrained by the limitations of the Act and overwhelmed by witnesses' understandably high expectations of direct and immediate service delivery, the Commission, on the whole, managed to navigate a path that went some way towards restoring human dignity and facilitating the delivery of support.
- 10 The witness support strategy represented a creative and successful response to the problem of service delivery for witnesses in need of urgent follow up. During hearings, the Commission's briefers provided direct support to witnesses. Outside of hearings, they tried to perform a co-ordinating role, auditing regional support services, enlisting the involvement of community briefers, training them in debriefing skills and monitoring the referral process. Community briefers also assumed the critical task of supplying longer-term support to people in need. As local service providers, community briefers endeavoured to ensure that people received the sustained interest and support that they required, although they met with different levels of success. The ability to provide ongoing support to those in need of counselling was ultimately, however, beyond the resources of the Commission.

p MAKING STATEMENTS

- 11 People who gave public testimony represented only a small percentage (about 10 per cent) of those who approached the Commission. The more usual route was by making a statement, a process that could take from thirty minutes to three hours.
- 12 Three kinds of people made statements: direct victims, family members and witnesses. Each approached the Commission for a range of different reasons. All imagined there would be some benefit in doing so. People's reasons for participating included: contributing to national reconciliation, finding out why family members had disappeared, requesting financial assistance to pay for expenses incurred as a result of human rights violations, and demanding that the perpetrator pay or account to the public in person.
- 13 Statement takers reported that the mental state of deponents varied greatly and that often there was little time to enquire more fully into the state of a deponent's mental health, let alone to make any kind of accurate assessment. The encounter between the statement taker and deponent was always powerful and often painful: full of promise for the deponent and, for the statement taker, often a question of managing

expectations and the re-emergence of trauma. The degree to which the deponent was able to benefit from the experience depended on the statement taker's ability to handle the encounter.

- 14 Statement takers reported that often, for the deponent, the statement taker was the Commission and embodied all the Commission stood for. Bonds formed while taking a statement often continued, as the statement taker came to be seen as the only conduit through which the statement giver could follow up with the Commission.
- 15 By the same token, the length of time it took for information and reparations to reach the deponent was often a cause of frustration, and undermined what had begun as a relationship of trust. This was also frustrating for the statement taker who felt helpless at being unable to feed back the required information.
- 16 Making a statement to the Commission brought relief to some. The experience itself helped to break an emotional silence, started the process of integrating experiences that had been repressed or shut out for years, alleviated feelings of shame and, in an atmosphere of acceptance, began to restore dignity and self-respect. The experience initiated more than it closed, however, except perhaps where the statement was made at the end of a process of healing. In the majority of cases, making a statement represented a brave confrontation with something deeply painful. The result was often the re-emergence of trauma that, without an appropriate intervention, might have been 'managed' historically through negative coping behaviour - which would have been counter productive and served to repress traumatic and psychological realities.
- 17 On occasion, individuals were referred to briefers for onward referral to support services. However, by and large the only way (barring final reparations) that the deponents' needs could be identified was through the screening of their statements - particularly the information they provided on the consequences of their experiences, their means of coping and their expectations. The quality of this information varied, depending on the statement taker's ability to probe, as well as the deponent's readiness to articulate a need.
- 18 Support services were given free of charge and depended on the good will of those organisations that had made a commitment to bridge the gap between people's immediate needs and the delivery of final reparations.

p THE EXPERIENCE OF FAMILIES

- 19 In its endeavour to capture the experience of the individual through personal testimony, the Commission often could not gauge the impact of gross human rights violations on the family system. Family members often gave testimony on behalf of their deceased loved ones without articulating their own suffering. This was especially true of the mothers whose children had been killed. Although the family was often a powerful support system in the event of trauma, the focus on the primary victim drew attention away from the trauma experienced by family members. The Act made provision for this, describing victims as "such relatives or dependants of victims as may be prescribed". However, dependants or relatives only received supportive intervention in cases of urgency, which were picked up in consultation at case conferences or at the urgent interim stage.

p AMNESTY APPLICANTS

- 20 Although the amnesty process was a fundamental part of the Commission's work, it was distinct from the Human Rights Violations and the Reparation and Rehabilitation committees, because it used very different

processes and procedures. Amnesty applicants seldom encountered the Commission on an interpersonal level. Their association was through written applications and subsequent hearings. As the content of applications was wholly concerned with making full disclosure on the perpetration of gross human rights violations, applications were analysed by lawyers and judges on a strictly legal basis. Legal representatives usually accompanied amnesty applicants, and information about family situations and reactions, if known at all, was restricted to these parties.

- 21 Essentially, therefore, the Commission did not examine the effects *on the perpetrator* of committing a gross human rights violation. This was understandable, as this was not part of its mandate.
- 22 It should be noted, however, that the Mental Health Unit identified the mental health of perpetrators as an essential concern in respect of the wider goals of national reconciliation. Pursuing this, however, would have resulted in further pressure on limited resources and services available to victims. In addition, there was the danger of creating a public perception of bias and inequity.
- 23 Nevertheless, a commitment to reconciliation and healing means that the psychological plight of individuals who were involved in the perpetration of gross human rights violations and their families should be acknowledged. Like victims, perpetrators need to be given space to examine their emotional reactions and to reintegrate what has probably been disassociated from their emotional life. Simply declaring that one has committed an act does not constitute coming to terms with oneself emotionally. Perpetrators share with their victims the potential for and experiences of post traumatic stress disorder. Significantly, there is a commonality of psychological fall-out involved in a traumatic episode that can form the basis of reconciliatory programmes.

p COMMUNITIES

- 24 It was acknowledged that the sheer pace of the Commission's hearings programme had counterproductive effects. Perhaps the most significant of these was the perception that the Commission was failing to follow up and consolidate the truths it had uncovered. Although the Commission was unable to provide adequate follow-up meetings in some regions, acknowledgement of the problem led to the development of well thought out strategies and planning which were used in a number of follow-up workshops.

p POST HEARING FOLLOW-UP MEETINGS

- 25 Post hearings workshops attempted to involve all significant stakeholders in communities, including those individuals who had made statements to the Commission but who did not testify at public hearings. On the surface, these workshops aimed at encouraging communities to assess the impact of gross human rights violations and of the hearing process, and to formulate initiatives to promote reconciliation. In many ways, however, the underlying goal of these workshops was to hand the truth and reconciliation process back to communities and to define clearly the limitations of the Commission itself. Post-hearing follow-up workshops went a long way towards consolidating the process, adding value to the development of reparations policy, and acknowledging the unique problems of different communities.

p COMMISSION STAFF

- 26 Research indicated that Commission staff, in varying degrees, were vulnerable to suffering vicarious trauma because of the material and personalities to which they were exposed. The *material* (or the narrative content of the statements) was of an emotionally challenging nature. It could challenge the staff member's belief systems and that individual's ability:
- a to stay focused on the task;
 - b to work within the constraints of the legislation;
 - c to integrate her or his own experience as a South African into the emerging truths about past conflicts.
- 27 The Commission engaged with *personalities*, ranging from victims to perpetrators, who encompassed every shade of trauma, from unconstrained expression to dispassionate denial. Failure to acknowledge this would have increased the likelihood of a destructive and negative working dynamic developing in the Commission, with symptoms becoming repressed and eventually finding their expression in a variety of negative coping mechanisms - both at a personal and at an organisational level.
- 28 Using the analogy of a therapeutic relationship, it was the responsibility of Commission staff to be, above all, emotionally and psychologically healthy to ensure that their interventions were appropriate, considered and, as far as possible, unclouded by their own defensive processes.
- 29 As far as the professional encounter was concerned, maintaining emotional and psychological health required:
- a preparedness
 - b knowledge of the emotional and psychological terrain
 - c ongoing appraisal of the staff member's own emotional, psychological and cognitive (thinking) responses
- 30 Only then did interventions have the best chance of being therapeutic and useful to the victim or perpetrator.
- 31 Commission personnel, in varying degrees, represented the first phase in providing responsible and reconciliatory interventions. Failure to provide staff with the necessary support (in terms of criteria a, b and c above) would have undermined both the work and those doing it. For this reason, the Commission acknowledged the need to provide staff with ongoing support groups and allocated one and a quarter work hours a week for this purpose.
- 32 A six-week pilot project in Gauteng initiated the first staff support group, which was facilitated by the mental health specialist (a trained group therapist). Following this, staff support groups were introduced in all the regions. Three group facilitators were employed to work with support groups in the other regions. Regional group facilitators were responsible for making individual referrals on behalf of Commission staff. Services were offered at reduced rates and were paid for by Commission staff themselves.
- 33 The support group's function was to provide a space where Commission staff could express, discuss, share and receive support on matters relating to the emotional effects of working within the Commission and their exposure to traumatic material and traumatised individuals. On the surface, the groups served a dual purpose: debriefing and general support. The respective focuses varied according to exposure levels.
- 34 The groups also worked on maintaining staff members' psychological health: their preparedness, knowledge of the emotional and psychological terrain and ongoing appraisal of their own emotional, psychological and cognitive responses. The facilitator performed a supervisory and a didactic role, offering alternative coping strategies and outlining indications of trauma.

- 35 Finally, bearing in mind that staff was based in the same office, facilitators attempted to keep discussions focused on psychological issues and steered consideration of practical issues to other fora, such as staff meetings.
- 36 An initial assessment was undertaken by the mental health consultant to determine what constituted 'necessary' support for Commission personnel. The method used was arrived at through a series of meetings with various staff groups.
- 37 The support groups did not follow any hierarchical structure, but dealt with issues (for example, traumatising material or personalities) which affected the particular group at any particular moment.

p CONCLUSION

- 38 The extent of trauma experienced by victims of the policies of the former state is incalculable, reaching far beyond those who approached the Commission. This trauma is part of the legacy of apartheid and it will be many years before its effects are eradicated from society. The best that the Commission could provide was to attempt to cater for the immediate needs of victims and, where possible, to refer them for further help. However, because of the extreme paucity of mental health services in South Africa, the mental health of the many victims of apartheid – and indeed of all South Africans – will depend on the ability of the new government to work towards the provision of adequate services.

Management and Operational Reports

RECORDS MANAGEMENT DEPARTMENT

p DOCUMENTS USED BY THE COMMISSION

- 1 The activities of the Commission resulted in the creation, use and distribution of volumes of documentation. These ranged from vital confidential documents such as amnesty applications and gross human rights violation statement forms, to Commission newsletters, posters and pamphlets. Such documentation also included research and special reports, transcripts of the Commission's hearings, confidential, secret and top secret records of the security forces, the National Intelligence Agency and the National Archives, computer generated database records and audio and video tapes. A documentation officer was made responsible for the management of records in each region.

p INTRODUCTION OF A RECORDS MANAGEMENT POLICY

- 2 Initially, the methods employed to manage records varied regionally, as did the type of records collected, with the exception of the human rights violation statements. Furthermore, various committees, units and departments within the Commission operated fairly independently. The lack of uniformity or set policy on classification and storage systems and management and care of the Commission's records resulted in less than adequate record management. This needed to be remedied.
- 3 A better records management policy was subsequently developed and introduced by the Commission. This provided a uniform system of records management and improved the security and care of confidential records kept within the Commission as potential assets of the nation.
- 4 Furthermore, the Commission's records management policy ensured that the Commission's records could be retrieved for the writing of the final report. To this end, all the Commission's records were transferred to the national office to facilitate the writing of the report and a smooth handover process.
- 5 The Minister of Justice indicated that, while the Commission's records were the property of the Department of Justice, they should be located in the National Archives under his protection and made available to the public as he, in consultation with the National Archivist, saw fit.¹ The National Archives assisted the Records Management Department in developing a records management policy to facilitate this transfer.

p METHOD OF WORK

- 6 The documentation classification system and records management policy was developed and approved by the Commission in consultation with the National Archives.

- 7 A documentation officer in each region was responsible for the proper implementation of this policy and reported progress to the national office on a monthly basis. Each documentation officer was required to present and explain the policy to regional staff and all other units and departments in order to ensure that the proposed systems were being implemented.

Management and Operational Reports

RESEARCH DEPARTMENT

INTRODUCTION

- 1 The primary functions of the Research Department were to:
 - a assess and add value to information before the Commission
 - b provide an understanding of the historical context within which alleged gross human rights violations referred to by the Commission occurred
 - c facilitate the writing of the report submitted to the President in October 1998.
- 2 This, by definition, meant that the work of the Department impacted on a range of activities.
- 3 The work of the Department began with a series of workshops held during the first months of the Commission in the geographic areas covered by the Cape Town, Durban, East London and Johannesburg regional offices. These events brought together a range of community-based people, historians, journalists, human rights activists and others.
- 4 The purpose in each case was to identify gross violations of human rights that occurred in the area, moments of liberation and significant occasions of resistance – including events both well-known and documented, as well as lesser known events in danger of being lost to public memory.
- 5 The outcome of these workshops was the beginning of a national chronology and four regional chronologies.¹ These early workshops and chronologies provided a preliminary overview of the thirty-four years under review by the Commission.
- 6 The chronologies (often disparate in form and substantially developed as a result of statement taking, human rights violations hearings and amnesty applications) provided a framework for the information gathering work of the Commission, the corroboration and investigative phase of its work and the findings process.

RESEARCH THEMES

- 7 The early chronologies were carefully scrutinised and analysed in a joint workshop involving the Research Department and the Investigation Unit. This resulted in the preliminary identification of fourteen strategic research themes:
 - a Normative and moral questions, conceptual issues and causal/social analyses.
 - b The Commission in historical context (1960 – 1994).
 - c The development of the security establishment.
 - d The judiciary and the legal system.
 - e Imprisonment and detentions.

- f The 'homelands'.
- g KwaZulu-Natal.
- h Liberation movements.
- i Opposition groupings inside South Africa.
- j White right wing extremism in South Africa.
- k Vigilantes.
- l Gender concerns.
- m Children and youth.
- n The health sector.

- 8 These themes were researched on the basis of available material to provide a context within which the primary data of the Commission could be understood and interpreted, as information became available. The appropriateness of the themes was subsequently confirmed on the basis of primary data available to the Commission and, in some instances, adjustments were made to the themes.
- 9 Hypotheses were established largely on the basis of secondary material and the lived experience of the Commission, and the primary data were interrogated on the basis of the questions arising from these hypotheses. In the process, the questions asked of the database were often modified. This dialectical encounter between primary and secondary material provided an enriched understanding of the cases under scrutiny by the Commission.
- 10 The integrity of the Commission was dependent as much on its *process* or *methodology* as on its actual *findings*. Each of the statutory committees of the Commission (the Amnesty, Human Rights Violations and Reparation and Rehabilitation Committees) devised appropriate structures to promote their work. The Research Department sought to service the Commission at the levels of data gathering, the verification or corroboration of data and the findings process – which phases are outlined in the chapter on the methodology of the Commission. (See chapter on *Methodology and Process*)

Contracted assignments

- 11 The work of the Research Department was greatly facilitated by the contributions of a range of scholars and others with specific areas of expertise. In each case this work was carefully assessed and integrated, where appropriate, into other aspects of the Commission's work.
- 12 Contracted assignments included the following:
 The conflict between the African National Congress (ANC) and the United Democratic Front (UDF) in KwaZulu-Natal; apartheid as a crime against humanity; apartheid legislation; Bonteheuwel Military Wing; the Caprivi trainees (the Caprivi trainees, who were trained by the South African Defence Force (SADF) and deployed as a covert paramilitary force in KwaZulu-Natal in 1986); commissions of enquiry in South Africa; the medical and social consequences of gross human rights violations; detention in the KwaZulu-Natal region; gender relations; historical overview: 1960-1994; history of conflict in KwaZulu-Natal; homelands policy and development; hostel violence; international human rights law; medical services: 1960-1994; conflict in the Natal Midlands; the Pan Africanist Congress (PAC) in historical context; political prisoners and detainees in South Africa; the 1960 Pondoland Rebellion (which took place in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands); public order policing; the SADF in Namibia and Angola; the 1990 Seven Days War (which resulted from Inkatha Freedom Party

(IFP)-ANC clashes in the Pietermaritzburg area); State Archives and records management; the Black Consciousness Movement; homelands security forces; legal and judicial system; Moutse/KwaNdebele homeland incorporation conflict; the South African broadcasting corporation and print media; the white right wing; torture in South Africa; torture in the Western Cape; warlords in KwaZulu-Natal; legal structures; the motives and perspectives of perpetrators.

p DATA GATHERING

- 13 Data were received from a number of different sources.
- 14 Researchers aimed to read each statement taken with a view to providing an initial check on the information captured on the database, inserting the political context within which the particular event occurred and tagging the statement to the relevant chapter in the report. The large numbers of tasks undertaken by the Research Department prevented its staff from reading each of the statements. This meant that the checking of the database was left to others, while the primary data of the Commission (including the hand-written statements) were given priority attention by researchers in the drafting of the report.
- 15 Another major source of data came from submissions made to the Commission by political parties and liberation movements, the South African National Defence Force (SANDF), the South African Medical Services, non-governmental organisations (NGOs), research institutions and a range of individuals within state structures and civil society. The majority of these came from within the country, but some came from organisations and persons outside South Africa. These submissions were analysed and, in many instances, executive summaries were made. The Commission used this information as the basis for questioning political parties and members of the former liberation movements at hearings and, where appropriate, to question alleged or possible perpetrators in section 29 hearings. The submissions were also used extensively in the report.
- 16 The Research Department undertook extensive work for 'special event' hearings on a number of issues: the health sector, the media, business, the judiciary, gender issues and children and youth, and for hearings on specific incidents. These latter included:
 - a The 1976 Soweto student uprising.
 - b The 1986 Alexandra six-day war that followed attacks on councillors.
 - c The KwaNdebele/Moutse homeland incorporation conflict.
 - d The killing of farmers in the former Transvaal.
 - e The 1985 Trojan Horse ambush by the security forces in the Western Cape.
 - f The 1986 killing of the 'Gugulethu Seven', following security force infiltration of ANC structures in the Western Cape.
 - g The 1990 Seven-Day War, resulting from IFP-ANC clashes in the Pietermaritzburg area.
 - h The Caprivi Trainees, who were trained by the SADF and deployed in KwaZulu-Natal as a covert paramilitary force in KwaZulu-Natal in 1986.
 - i The 1960 Pondoland Rebellion, in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands.
 - j The 1992 Bisho Massacre (which took place in response to an ANC national campaign for free political activity in the homelands).

- 17 Amnesty applications were scrutinised by researchers. This material was employed, amongst other things, in the questioning of political parties and others appearing before the Commission and, specifically, in the special hearings on the armed forces and on state security policy. When it became clear that the Commission would not be able to hear all amnesty applications prior to closure on 14 March 1998, the Research Department became responsible for the co-ordination of 'Operation Capture'. This involved reading all amnesty applications with a view to categorising these into themes and identifying and accessing relevant material for the final report.
- 18 The transcripts of *in camera* Section 29 hearings provided a further source of information.
- 19 The researchers and others conducted a number of in-depth interviews. These included interviews with perpetrators representing the different political groupings involved in the conflict and with present and former politicians and security force operatives. Information on state security policy and operations obtained through these interviews provided important information for the research initiative. Special attention was given in these interviews to understanding the motives and perspectives of both perpetrators and victims of gross human rights violations.
- 20 Secondary material provided a further source of research information. Research staff consulted the writings, documentation and databases of specialist researchers, investigative journalists and others who had worked for a long time on issues falling under the mandate of the Commission. Databases on human rights violations recorded by other organisations were reviewed and tested against the criteria used in the corroboration and findings process. A small number of these was considered sufficient to provide a sound basis for making findings. Others were used only as a more general research tool and, in some instances, as a basis for corroborating the Commission's information.

p CORROBORATION

- 21 Researchers assisted in the scrutiny of statements by deponents. To this end, they consulted police records, the databases of human rights organisations, newspaper reports, the records of government departments and archival material as well as amnesty applications. Information received from submissions made to the Commission by political organisations and other bodies was also pertinent to this process, as was the archival material identified above. Where necessary and possible, individual witnesses were interviewed, and organisations of the state and civil society consulted.

p DOCUMENTATION RETRIEVAL

- 22 Material was retrieved from the National Archives, as well as the National Intelligence Agency (NIA), the South African Police Service and the SANDF archives. Cabinet minutes, minutes of the State Security Council and its substructures and other forms of state documentation were scrutinised by researchers and Investigation Unit personnel, who obtained top secret clearances from the NIA for this purpose.
- 23 The Research Department was also assigned the responsibility of investigating the unauthorised destruction of the records of state departments. The destruction of documents is described in a separate chapter of the report (see chapter on the *Destruction of Documents*).

p WORKSHOPS

- 24 A number of *ad hoc* workshops was held with resource people outside of the Commission on research-related topics. These included workshops on children and youth, the health sector, the military and security, the homelands, the white right wing and the media. Several regional workshops were also held in each of the Commission's designated regions where and when this was regarded as necessary. In addition, seven national research workshops were held. A number of additional *ad hoc* meetings were held to deal with specific matters of concern.

p STAFFING AND CONTRACT WORK

- 25 In addition to a director of research, two researchers were appointed to the national office and three to each of the regional offices. Several additional part-time researchers were appointed on a contract basis to work in the various offices of the Commission. A number of interns augmented the work of the Department. In the final phase, further staff was contracted in to assist with the final edit and layout of the report.
- 26 A number of specialist researchers were contracted and made significant contributions. These included researchers located in different academic institutions, research institutes and NGOs – both inside the country and abroad. The European Union and the Danish government funded much of the contract research inside the country. Some researchers contributed work on a voluntary basis.
- 27 This work was received strictly as *information only*. The insights gained, views expressed and information submitted were all assessed in the first instance by the Research Department and ultimately by the Commission, which takes full responsibility for all information and findings included in the report.
- 28 The internship programme was designed to expose both post-graduate students and young professionals to the work of the Commission as a basis for empowerment and as a means of facilitating the work of the Commission.
- 29 European Union funding also made possible the employment of paid South African interns from educationally underprivileged backgrounds.
- 30 Overseas applicants showed extensive interest in the internship programme. Many of those who participated in the programme received academic and/or professional credit for the internship in their home countries.

p THE REPORT

- 31 The Research Department was centrally involved in facilitating the drafting of the report. In order to arrive at an outline for the report, a series of regional and national planning workshops was held, involving researchers and others. The Commission adopted the outline, together with a proposal for the drafting process. Beginning in June 1997, regular Commission workshops were held to discuss the report, and the Commission spent the entire month of July 1998 working through the various chapters to be included in the report. In some instances a series of collaborative exercises was undertaken to produce drafts, notably in the case of chapters on regional profiles and those dealing with the various role players in the process that resulted in the gross violation of human rights. In other instances, individuals were given the responsibility of drafting chapters. In each case, however, the Commission as a whole was required to give its imprimatur to the various chapters.
- 32 The exercise was the responsibility of the Research Department which, in addition to drafting the report, co-ordinated the editorial, layout and printing process.

Management and Operational Reports

SAFETY AND SECURITY

p HISTORICAL BACKGROUND

- 1 After consultation between the South African Police Service (SAPS) and the chairperson of the Truth and Reconciliation Commission, security was provided for the first meeting of the Commission on 16 December 1995. The meeting took place at Bishops court in Cape Town.
- 2 Superintendent Victor of the VIP Unit informed the chairperson and vice-chairperson that, on the instruction of Commissioner Fivaz, static and personnel protection would be provided to them for the duration of the Commission.
- 3 The Director-General of the Department of Justice requested that SAPS provide protection to the Truth and Reconciliation Commission for its next meeting on 13-14 February 1996. The protection was co-ordinated by Superintendent Naicker of the National Protection Service, Parliament, and Superintendent Victor.
- 4 The management of the National Protection Service, Cape Town, decided that it was necessary to hold discussions with the Commission before its next meeting in order to address the protection needs of the Commission and to eliminate *ad hoc* requests.
- 5 Subsequently, Superintendent Rhoo de and Superintendent Victor were appointed by the National Commissioner as the national co-ordinators for all aspects of security relating to the Commission.
- 6 On 12 February 1996, the National Protection Service of SAPS and the National Intelligence Agency (NIA) jointly briefed the commissioners on personal security and information security. The briefing was held at the Commission's national office in Cape Town.
- 7 The Security Advisory Service of the National Protection Service conducted a survey of all commissioners' residences, except that of Mr Wynand Malan, who requested that no survey be conducted of his residence.
- 8 By instruction of the Head: Operational Function of National Protection Service, protection was given to the chairperson and the vice-chairperson of the Commission. The National Protection Service was also to guard the Commission's national office in Cape Town.
- 9 The two co-ordinators were requested to work out guidelines for the protection of the Commission and also to set up national structures for better co-ordination in respect of the Commission's activities.

p SETTING UP

- 10 Initially, safety and security structures were set up only in KwaZulu-Natal, Gauteng and the Eastern Cape. The *modus operandi* was for the Commission to send requests to the SAPS representative in that particular province to arrange the necessary protection. However, the first public hearing with its attendant problems forced the co-ordinators to re-examine the structure.
- 11 At that stage, the newly appointed chief executive officer of the Commission, Dr B Minyuku, established a safety and security committee whose mandate was to determine structures for and policy on safety and

security matters. This committee decided that a proper national structure should be set up and that the National Protection Service should be requested to second the two national co-ordinators to the Commission. This request was turned down by National Protection Service management, which proposed instead that a 'nodal point' be established. The safety and security committee agreed to this.

p STRUCTURES

- 12 The Commission's safety and security structure functioned at two critical levels, namely at the strategic (policy formation) level and at the operational (day to day) level.

Strategic level

- 13 The safety and security standing committee oversaw policy formation and national co-ordination. It had thirteen members, including the two national co-ordinators of SAPS and the national nodal point commander. This committee reported to the chief executive officer who was responsible for overseeing the safety and security efforts of the Commission.

Operational level

- 14 The co-ordination of operational safety and security occurred on three levels.
- a The first level involved day to day, tactical safety and security issues and national co-ordination. A separate, 'functional' safety and security committee was established to deal with this. It consisted of nine members, including the national co-ordinators and the national nodal point commander, and was chaired by the chief executive officer.
 - b The second level was regional co-ordination. This involved a partnership between the regional managers, the appointed provincial co-ordinators of SAPS and the national nodal point commander.
 - c The third level was area co-ordination. This involved a partnership between the Commission's logistic officers, the assigned provincial area co-ordinators of SAPS and the national nodal point commander.
- 15 The above structure was established after a national 'brain storm' involving the chief executive officer, the national safety and security co-ordinators, the nodal point commander, representatives of SAPS in all nine provinces, the four regional managers of the Commission and their logistic and support officers.

p THREATS

- 16 Threats to the Commission were not unexpected and, from its inception, precautionary measures were put in place to protect both personnel and assets.
- 17 These measures included: lectures to staff on personal security; security surveys of buildings and the commissioners' and committee members' residences, and continued threat analysis in respect of commissioners, committee members and the Commission as a whole by the SAPS Internal Security Division and the NIA.
- 18 Verbal and written threats were registered against the following members and events of the Commission:
- a Archbishop Desmond Tutu (Chairperson)
 - b Dr Alex Boraine (Vice-Chairperson)
 - c Revd Dr Khoza Mgojo (Commissioner)

- d Dr Wendy Orr (Commissioner)
 - e Mr Dumisa Ntsebeza (Commissioner and Head of the Investigation Unit)
 - f Ms Kate Pitt (Staff member)
 - g Ms Virginia Gcabashe (Human Rights Committee member, Durban)
 - h the Commission's first hearing in the Eastern Cape
 - i the Commission's first Western Cape hearing
 - j Archbishop Tutu at the Commission's Bloemfontein hearing.
- 19 Another security issue concerned security of information. Each commissioner and staff member was required to take either an oath or affirmation of secrecy. Despite this precaution, there were a number of information leaks that were investigated by the functional safety and security committee. These included: two leaks relating to amnesty applications, one relating to a section 29 investigative enquiry and two from meetings of the Commission.

p PROCEDURES

- 20 Superintendents Victor and Rhooode set up standard operational procedures for hearings. They used principles based on communication, needs, purpose and outcome to define the procedures, which were adhered to by SAPS provincial co-ordinators and the Commission's provincial managers. There were initial teething problems arising from issues relating to line of command, small security breaches and territorial attitudes. These problems were effectively addressed.
- 21 The standard of performance of the provincial co-ordinators was high, and co-operation was excellent. Reports received from hearings, particularly in KwaZulu-Natal (where political instability was at times feared), showed that the Commission and SAPS established good relationships before, during and after hearings. Feedback from police sources proved that, in areas where hearings were conducted, the police, who were seen as perpetrators in the past, moved closer to their communities and vice versa. Positive and genuine attitudes were expressed toward the Commission process, and the police experienced general feelings of relief and freedom from political pressure.
- 22 As the aims and goals of the Commission became clear, owing to widely published and televised reports, the concept and process became more acceptable to police personnel.
- 23 Generally, the task of the Commission was made easier through the assistance of the police in various ways. During the initial stages of the Commission's investigations, police provided protection to statement takers working in volatile regions. The police assisted with investigations to corroborate statements and with the delivery of documents and case dockets. The Commission was given access to police archives, and commissioners were protected when engaged in briefing and pre-hearings activities during the Commission's community awareness programmes. Police expertise and technology were made available to the Commission in exhuming bodies, helping with evidence and logistics, protecting witnesses and protecting perpetrators in custody and in transit, and generally ensuring that the process ran smoothly.
- 24 Initially, permanent VIP protection was provided only to Archbishop Tutu and Dr Boraine. This was extended to Mr Ntsebeza after he received threats to his life and also given the nature of his portfolio. *Ad hoc* VIP protection was extended to the Revd Dr Mgojo, Ms Gcabashe and Dr Orr.
- 25 The SAPS, the National Protection Service, and the VIP Units performed these functions in Cape Town, Gauteng and Durban. However, given the nature of the Commission's mandate, these functions were also performed by the respective provincial protection units in the other provinces.

Management and Operational Reports

WITNESS PROTECTION PROGRAMME

p INTRODUCTION

- 1 The Promotion of National Unity and Reconciliation Act required that protection be made available to any person giving evidence, before, during and after any Commission hearing. This included any member of a witness's family who had been placed in danger as a result of his or her evidence. The Commission's witness protection programme was to be set up in terms of regulations prescribed by the President, and a witness protector appointed. Pending the promulgation of these regulations, the Minister of Justice would be responsible for the establishment of the programme using, as an interim measure, the criminal justice system witness protection programme.
- 2 As a result, in late 1995 the Minister of Justice appointed a broadly representative task group to formulate a witness protection programme for the Commission. Advocate RC Macadam, a Deputy Attorney-General in KwaZulu-Natal, was appointed to lead the task group in producing a draft set of regulations and an implementation plan. The task group identified a number of problems with the existing legislation on witness protection, and concluded that the Commission's programme would have to break new ground by establishing a programme unique to the work of the Commission.
- 3 The draft regulations and implementation plan were presented at the first meeting of the Commission in December 1995 and were unanimously accepted. The Commission's witness protection programme was instituted on 1 May 1996. The original programme was subsequently refined due to lack of available funds. The new regulations were finally promulgated on 20 December 1996.

p METHOD OF WORK

- 4 The regulations provided for a three tier personnel structure, including the Commissioner in charge of the Investigation Unit, the witness protector and security officers.
- 5 The task of the security officers was to receive applications for protection, to grant temporary protection and to investigate the circumstances surrounding each application. The task of the witness protector was to evaluate all applications for protection in terms of the requirements, to enter into agreements with witnesses and to manage the programme. The task of the Commissioner in charge of the Investigation Unit was to confirm all decisions made by the witness protector in consultation with the Commission's chief executive officer and to represent the programme at Commission level.
- 6 Owing to delays in setting up the programme, witnesses began applying for protection long before either budget or staff was in place. In the interim, the cases were attended to and the costs paid by the Department of Justice. From May to July 1996, the witness protector attended to each case personally, paying for and being remunerated for the costs of the operation. By August 1996, however, the programme was operational.
- 7 Given the limited budget, it was clear that witnesses could only be placed under protection as a last resort. Rigorous admission criteria were set, requiring a thorough investigation of a witness's case and allowing for admission to the programme only on evaluation by and recommendation of the witness protector, and finally confirmed by the Commissioner in charge of the Investigation Unit. This procedure protected the programme from abuse by persons who were either offering untruthful evidence or were in no danger.
- 8 Once a witness had met the admission criteria, a further evaluation was conducted in order to determine the nature of the risk. Persons assessed as low risk were placed in community-based projects, and only persons assessed as medium- or high-risk were placed in safe houses.
- 9 In order to maintain a community base, the project used non-governmental organisations involved in combating crime in their communities, community police forums and visible policing structures. This method of protecting witnesses, which had not been previously attempted in South Africa, proved highly successful and had the following advantages:
 - a the witness's life was not disrupted and the attendant problems of loneliness, boredom, alienation and potential loss of employment were avoided;
 - b the police, previously viewed as enforcers of the apartheid system, now became the protectors of victims, thus helping place the relationship between communities and the police on a better footing;
 - c witness protection officials were free to devote their attention to cases which warranted protection;
 - d the notion of the need to protect witnesses was promoted in communities.
- 10 Another innovative concept involved assigning VIP protectors to protect witnesses in their own homes. This saved the costs of obtaining safe houses and ensured that witnesses' lives were not disrupted.
- 11 Where there was justification for placing witnesses in safe houses, the witness protector persuaded various state organisations to make accommodation available free or at reduced cost.
- 12 In the regions, contact was made with persons in each area who could, at no cost to the Commission, deal with emergencies in their communities until the regional official became available. This kept staff appointments to a minimum. For example, a single officer was appointed in Cape Town to cover a region extending as far as Upington, Kimberley and Port Elizabeth.

- 13 Unofficial nodal points were established to assist in the gathering of intelligence. These included the National Intelligence Agency, the D'Oliviera investigative unit (a special unit set up by the Gauteng Attorney-General), the Investigation Task Unit and the Department of Justice witness protection programme. In addition, security officers were encouraged to maintain contact with their former units and dip into their informer networks.
- 14 At the outset, requests for protection came from three sources: first, victims who were being terrorised by vigilante groups linked to various political parties; second, potential witnesses who feared for their safety and security should they disclose what they knew or had done, and third, confidence tricksters who, often motivated by financial enrichment, wished to mislead the Commission by falsely professing knowledge of cases under investigation. Such misrepresentation was easily achieved because of the media publicity accorded to such cases over the years, the absence of independent eyewitnesses and the destruction of official documentation. It is a tribute to the calibre of the security officers that the confidence tricksters were identified without compromising the programme. In one extreme case, the culprit was prosecuted on a charge of making a false statement to the Commission, convicted and sentenced to a year's imprisonment.
- 15 Geographically, most applications were received from the politically unstable KwaZulu-Natal region, followed by the former 'Vaal Triangle'. Because of this, an early decision was taken to transfer the East London officer to Durban, where one officer on his own could not be expected to cope with the demand.
- 16 By October 1996, the emphasis had changed. During this period, requests were received from potential amnesty applicants who feared reprisals when testifying at public hearings. The protection of persons at hearings was labour intensive and involved bringing together security officers from various regions. This process led to further public exposure of the programme. These ventures could not have succeeded but for additional assistance provided by the South African Police Services (SAPS) Special Task Force and public order policing units.
- 17 By this stage, the witness protection programme had succeeded in placing a large number of witnesses under protection, well within the allocated budget. In November 1996, the Commissioner in charge of the Investigation Unit decided that the Witness Protection Unit should also be used for investigation work. As the Unit's staff had long experience in the investigation and prosecution of political crimes, this decision was welcomed and regarded as a tribute to its success.
- 18 While maintaining its role as witness protector, the Unit achieved the following successes. A senior member of the security police compound at Vlakplaas was persuaded to make a complete disclosure. His statements, particularly as regards secret orders issued by generals, were passed on to the Investigation Unit and made a major impact on section 29 inquiries. As a direct and immediate result of this disclosure, a group of former security officers headed by an ex-director decided to 'come clean' and were debriefed by the Witness Protection Unit. In response to these developments, the Eastern Cape Security Branch, which had previously vehemently resisted the Commission's investigations, made direct contact with the Unit. Consequently, the following cases were solved: the disappearance and murder of Madaka and Mthimkulu; the 'PEBCO Three'; the 'Cradock Four'; Steve Biko; Kondile and Mkhuseleli Jack. Thereafter, the Unit extensively debriefed a significant number of members of the Directorate of Covert Intelligence of the South African Defence Force Military Intelligence. In addition, considerable low key assistance was given to regional investigation units.

p STAFFING

- 19 Six posts were created for security officers. Given the circumstances surrounding the setting up of the programme, a decision was taken to fill the posts with persons seconded from the SAPS. One officer was posted at each regional office of the Commission, and two additional national appointments were made.
- 20 The two national security officers were given the titles of VIP protector and intelligence officer. The former was required to attend to all high-risk cases where witnesses required twenty-four hour a day protection. The latter acted as a link between the regional officers and the witness protector and also conducted risk evaluations.
- 21 The VIP protector and the Cape Town officer cancelled their secondments shortly after their appointment and were replaced with secondments from the offices of the Commissioner of Police, Pretoria and the regional Police Commissioner in the Western Cape. In January 1997, the intelligence officer cancelled his secondment; the Johannesburg officer followed suit in July 1997. A member of the uniform branch of the SAPS at Brixton and a member of the Department of Correctional Services filled their posts in March 1998.
- 22 A senior secretary/administrator was appointed to assist the witness protector.