

# Special Investigation into Secret State Funding

## ■ INTRODUCTION

- 1 The use of secret funding to promote the policies of the former state and to fund operations directed against the opponents of apartheid came to the attention of the Commission shortly after its inception. A copy of the reports of the Advisory Committee on Special Secret Projects, chaired by Professor Ellison Kahn, as well as the report of the Secret Services Evaluation Committee, chaired by Mr Amie Venter, were received from the President's office on 16 October 1996.
- 2 Former President FW de Klerk provided the Commission with a briefing document giving a background to his investigations into covert activities and funding. He also made available the report of the Ministers' Committee on Special Projects, chaired by the former Minister of Justice, Mr HJ (Kobie) Coetsee.
- 3 Members of the Commission subsequently met with the senior staff of the office of the Auditor-General and requested that the Auditor-General, Mr Henri Kluever, assist the Commission in obtaining an understanding of the nature and extent of covert accounts conducted by the former government. The Commission has not received information on the specific nature of the activities undertaken by the recipients of covert funding, nor did it investigate the actual use made of the funding. It is, however, clear that there were funds in secret bank accounts at the time of the Kahn Committee. Furthermore, the Auditor-General reported that a total of more than R2.75 billion was expended through the Secret Services Account between 1978 and 1994. This does not, however, constitute the full amount spent by state departments on secret and other sensitive projects. As is clear in the Auditor-General's report, a vast number of projects would not have been formally registered as secret projects but were undertaken within departmental line functions. The Special Defence Account, for example, was used to fund 'sensitive line function projects' and the Department of Foreign Affairs funded projects designed to counter sanctions and other activities – as reported later in this chapter.
- 4 The need clearly exists for the President to appoint an appropriate committee to enquire further into covert funding – not least with a view to ensuring that, where possible, funds in covert accounts were paid back to the treasury. Where such funding continues to be absolutely necessary, clear guidelines need to be put in place and the nature and extent of such funding reported to Parliament on a regular basis. This requires an evaluation of existing structures and regulations governing the use of secret funds.

## OVERVIEW OF STATE SECRET PROJECTS

- 5 An overview is provided below of certain projects undertaken by the South African Defence Force (SADF), South African Police (SAP), National Intelligence Service (NIS), Department of Foreign Affairs and Department of National Education, as presented to the Kahn Committee, the Ministers' Committee on Special Projects and the Secret Services Evaluation Committee<sup>1</sup>.
- 6 Most projects appear to be related to the establishment of front organisations or actions aimed at counteracting the activities of the African National Congress (ANC) and its allies, primarily in the sphere of information, communication, disinformation, propaganda and counter-propaganda. Other projects were aimed at circumventing sanctions.
- 7 This is not a comprehensive list but aims to provide insight into the nature of some projects. The following constraints should be noted.
  - The mandate of the Kahn Committee apparently required the committee only to consider those projects placed before it by relevant departments.
  - Evidence suggests that not all existing projects were brought before the committee. It seems that some projects that were already being terminated were not referred to the committee.
  - As indicated earlier, a vast number of projects were not formally registered as secret projects but were undertaken within departmental line functions.

### South African Defence Force (SADF)

- 8 The SADF secret projects covered a range of activities such as publications, front organisations, and support to surrogate groups. Publications included *Special Despatch (Project Olive)*, the *Aida Parker Newsletter (Project Villa Marie)*, *Christians for Truth (Project Camara)* and *Stand To (Project Mediant)*, as well as a printing press and publications in Botswana such as *News Links Africa (Project Parker)*.
- 9 Secret projects concerned with contra-mobilisation included the establishment and support of conservative or 'moderate' organisations such as the Federal Independent Democratic Alliance (FIDA), known as *Project Capital*. FIDA had a head office in Johannesburg and thirteen regional bases, and is described in the report as "a moderate alliance of black organisations to combat violence and advance stability" that was "a very valuable source of information to the Defence Force on violence in black townships". Similarly, *Project Napper* covered the Eagles youth clubs, "another valuable source of information on violence in black townships", active in the Orange Free State, northern and western Cape, Vaal Triangle and southern Transvaal.
- 10 Other organisations include *Vroue vir Suid Afrika* (Women for South Africa – *Project Leafy*), *Jeugkrag* (Youth Power – *Project Essay*), the use of consultants in covert front organisations such as the South African Christian Cultural

Organisation (SACCO), the Eastern Cape Sports Foundation, the Lion Life Research Corporation (*Project Jetty*), Veterans for Victory (*Project Mediant*), Family Focus, and the Western Cape Council of Churches (*Project Camara*).

- 11 Two of the more costly projects were *Pacman* and *Byronic*. Pacman was the code name for the International Freedom Foundation, which had offices in Johannesburg, Washington, London, Brussels and Bonn. Its objectives were described as the combating of sanctions and support to constitutional initiatives through publications, lobbying, conferences etc. It specifically supported Mr Jonas Savimbi and UNITA. Leading personalities in government circles in Europe and the USA were involved, with half of its funds coming from abroad. Pacman's annual budget for 1991/92 was listed as over R10 million. In late September 1991, the Minister of Finance agreed to a one-off payment of R7 million, approved by Minister of Defence, "to enable the country to withdraw from the enterprise". This payment was vested in a trust controlled by trustees appointed by SADF.
- 12 *Project Byronic* related to an international programme in favour of UNITA. Contracts concerning leading political and governmental figures were scheduled to continue until the September 1992 elections in Angola. In late September, the Minister of Finance approved a payment of R7 million into a trust similar to that of Pacman, to end South Africa's association with the enterprise. The project also involved the transport of goods to UNITA in Angola. A sub-project included the setting up and running of a commercial flight rental company, mainly to support UNITA, which was then to be closed with a R7 million payment to UNITA. The expenditure for the 1991/92 financial year was approximately R108.4 million, with a projected budget of R98 million for 1992/93.
- 13 *Projects Rooibos* and *Hardekool* provided "theological training for the independent churches ... with the object of inculcating a moderate religious conviction in support of current constitutional initiatives".
- 14 Other projects mentioned to the Kahn Committee in name only included Gezina, Liberal, Mapoly, Scottish, Choke, Brussels, Eikenhof, Concert, Boesman, Kerwer, Instigator and Steenbras.
- 15 *Project Marion* was not put before the Kahn Committee. It was reported to the Ministers' Committee on Special Projects in October 1992 as a project designed "to put Inkatha in a position to neutralise the assault by MK<sup>2</sup> against it" but having its mandate modified on 1 March 1990 "to maintain links with Chief Minister Buthelezi". It was reported that initial training took place in 1986 with sporadic contact and retraining until June 1989. Thereafter, Marion was meant only for financing travel costs and '*inligtingskakeling*' (intelligence links) until March 1991. The books for the period until November 1991 in the 1991/92 financial year reflect only travel expenses for two security briefings of Chief Buthelezi by SADF members. Elsewhere in the report of the Commission, *Project Marion* is shown to have contributed directly to the perpetration of gross human rights violations.
- 16 Other projects not disclosed to the Kahn Committee but raised with the Ministers' Committee on Special Projects in October 1992 include *Project Ogden*, *Project Friendship* (which established and funded a Directorate of Covert Collection front company, Longreach, to influence business people locally and overseas by means of a newsletter) and *Project Liberal* (the Quo Data research organisation which promoted Communications Operations (COMOPS) goals with certain media agents in Europe), all of which were being terminated in accordance with the State President's guidelines (see below).

## Department of Foreign Affairs

- 17 The key goals of the secret projects appear to have been related to the collection of information (such as *Toegang tot Afrika* – Entrance to Africa), building a positive image of South Africa, and sanctions busting (such as projects *Blue*, *Arcadia*, *Grail*, *Sixpack*, and *Opals*).
- 18 *Project Blue* established a financial trust, the *Taussig Familienstiftung* (Taussig Family Trust) registered in Liechtenstein, which acted as a conduit for secret transactions and through which secret projects could be managed. It guaranteed payment of debts owed by projects *Grail* and *Arcadia*. Transfers included R3 336 891.40 to Rothschilds Bank in November 1985, and R11.4 million to an unknown recipient through Credit Suisse Geneva in February 1986. Taussig guarantees issued to the Liechtenstein bank include one for 1,2 million pounds sterling for the purchase of major equipment for *Grail*, and another for 1,5 million pounds sterling plus interest regarding certain shares in Finlan Group PLC. The assets of the trust were estimated at around R20 million.
- 19 *Project Grail* was a sanctions-busting operation and was the code name of a large company in the United Kingdom, started around 1977 with help from Rothschilds Bank. It involved the buying and selling of computer equipment and the provision of equipment and services for disaster recovery of computer back-ups. "The true identity of the company is hidden by layers of trusts and holding companies, starting with a Jersey trust based on a deceased family trust, thereafter a holding company in Jersey, thereafter a holding company in the UK. South African associations are buried deep."
- 20 *Project Thurston* involved obtaining television material for the SABC via United Studios, Cablelink, Satlink, Filmtel and MGI/IMGC.
- 21 Front organisations and public relations companies organised visits to South Africa by prominent leading European personalities and United States business people and Congress leaders through projects such as *Acoda* and *Swart Sakelui* (Black Business People).
- 22 Individuals were paid to establish relationships and information flow, particularly in Africa. Mr John Coker, a British Broadcasting Corporation (BBC) journalist and specialist on Africa with connections to the Organisation of African Unity (OAU) was employed at an annual fee of R125 000 plus airfares to act as a source of information and convey information on South Africa's behalf. A similar arrangement existed with a French businessperson, Mr Jean Yves Ollivier, employed to advance South Africa's interests in francophone Africa.
- 23 *Project Swaziland* is described as follows. "Young King Mswati III took it for granted that, like his father, he would be furnished with the part-time services of an attorney at the expense of the South African government." Pretoria lawyer Mr Ernst Penzhorn was employed at an annual fee of around R50 000 to "advise the King generally, accompany him to conferences, draft speeches for him, persuade him not to act in undesirable ways, and protect him from the machinations of undesirable characters".

- 24 R100 000 per annum was paid for several years to the South African Traditional Healers' Council whose leading figures were allegedly "held in high esteem in many African countries for the independent advice they give" and whose connections brought valuable information.

### **South African Police**

- 25 The SAP initiated certain special secret projects from November 1985, as directed by the SSC on 16 November 1985. From that year, *Project Aristotle* ran the National Students' Federation, which was financed through a business trust until press disclosures led to its dissolution, with compensation paid to two agents who suffered losses resulting from their exposure as agents. *Project Einstein* ran a similar programme in the black tertiary education sector.
- 26 *Project Romulus* was aimed at combating organisations and individuals, mainly among the youth in the Eastern Cape and Western Transvaal, who disrupted public order through intimidation and violence. It encompassed several sub-projects, one of which was the youth project *Operation Gordian*, which had offices in Port Elizabeth and Durban and cost a total of R222 820. Further sub-projects included *Operation Voltaire*, *Operation Ukumelana* (to oppose), and the Alliance for Free South Africans.
- 27 Further SAP projects include:
- 28 *Project Bismarck*, dating back to around 1985, which was a cover for operational activities and the canalisation of state funds to fronts, and provided a cover legend to SAP members involved in STRATCOM projects.
- 29 *Project Polemos* was "a front to combat radical propaganda in the Eastern Cape".
- 30 *Project Cicero* aimed "to undermine the power base of radical youth organisations".
- 31 *Project Buye* (Returned) aimed "to show members of Umkhonto weSizwe who have returned from overseas that violent actions to reach political goals are not acceptable".

### **National Intelligence Service**

- 32 The STRATCOM projects of the NIS, as reported by the Kahn Committee, relate mainly to projects in the religious sector aimed at bolstering and building a conservative religious approach and to combat liberation theology. These included, for example, *Project Delectus*, to implement former President de Klerk's initiative regarding peace and justice through the creation of a Coalition for Christian Action by means of a network of writers.

### **Department of National Education**

- 33 A single secret project undertaken by the Department of National Education concerned the payment of income tax due on fees paid to the visiting English cricket team in the 1989–90 cricket season. After a meeting with the South African Cricket Union, the "Minister of National Education asked the Minister of Finance to cause the payment of the income tax of each of the players to be effected through a fund that had been created from the Secret Services

Account for secret projects of the Department of National Education". This required an amount of R535 825.15. It was explained that if the English players were to do this favour for the South African Cricket Union, they should be given the maximum financial reward to help them through the lean years that would follow, since the tour was bound to result in reprisals and losses for the English players.

## ■ THE KAHN COMMITTEE

- 34 The Kahn Committee, consisting of Professor Ellison Kahn (in the chair), Mr Jan A Crafford, Mr James O McMillan and Mr SA Strauss, was announced by President de Klerk on 30 July 1991. It issued three interim reports and a final report on 19 November 1991. Its mandate was limited: the committee considered only such projects as were brought to its attention by the various state departments that were still operative – with a view to recommending the cancellation of covert activities wherever possible. Where the committee was of the opinion that projects should be allowed to continue, recommendations were to be made for the possible scaling down and, where necessary, adaptation of such projects. The committee was requested to ensure that projects did not benefit any particular political party or organisation.
- 35 Projects that were not terminated were to serve what was defined as "the national interest". Such activities were said to include the elimination of violence, intimidation, sanctions and international isolation.
- 36 Departments of state in receipt of covert funding were required to furnish the committee with documents setting out the nature of ongoing projects. The committee noted several additional projects that had already been terminated, as well as 'line function' secret projects carried out by the NIS, the SADF, the SAP and the Department of Foreign Affairs, with the recommendation that these be continued. Where termination of projects was recommended, financial obligations (both contractual and moral) to employees were to be honoured in order to avoid grievances that could result in sensitive information being revealed.
- 37 A list of covert projects, together with recommendations on each, was published in the committee's four reports. These included sixteen projects under the direction of the SADF, eleven under the Department of Foreign Affairs, nine under the SAP, seven under the NIS and one under the Department of National Education. The report does not contain any information on gross violations of human rights.
- 38 The Kahn Committee recommended that:
- certain secret projects that met the criteria stipulated by the then government should be continued;
  - certain projects should be terminated in accordance with a phasing-out process which involved the honouring of both contractual and moral financial obligations to those involved in the projects;
  - departments such as the NIS, the SADF and the SAP needed to continue certain covert activities as a part of their line functions;

- legislation should be introduced on the management of secret funds.

39 In a press statement on 19 September 1991, Mr de Klerk accepted all these recommendations, announcing that all contractual obligations suggested by the committee would be met.

### **The Ministers' Committee on Special Projects**

- 40 The Ministers' Committee on Special Projects was established to oversee the implementation of the recommendations of the Kahn Committee, chaired by Mr Kobie Coetsee. The committee monitored the implementation of the Kahn Committee recommendations until the Secret Services Account Amendment Act No 142 of 1992 came into effect on 1 April 1993.
- 41 The Ministers' Committee recommended that the reports of the Kahn Committee be made available to the Auditor-General for auditing, and established guidelines for exercising ministerial responsibility over secret projects. These included the need for ministers to be individually responsible for secret projects within departmental line functions and for department heads to be accountable for carrying out administrative regulations.
- 42 The final report of the committee dealt with a number of specific projects and allegations. It further indicated that:
- the recommendations of the Kahn Committee had been implemented;
  - the once sensitive matter of secret activities had been brought under control;
  - there was no reason for the continued existence of the committee, whose task would be taken over by the proposed Secret Services Evaluation Committee and the establishment of the Transitional Executive Committee of government.

### THE SECRET SERVICES EVALUATION COMMITTEE

- 43 The Secret Services Evaluation Committee consisted of Ministers Amie Venter (chairperson), DJ de Villiers, DL Keys and Professor SA Strauss, with Advocate MF Ackerman as secretary. It first met on 8 April 1993, in response to the 1992 Secret Services Account Amendment Act. The task of the Evaluation Committee was to –
- evaluate all proposed secret services of all government departments with the exception of the SADF and NIS<sup>3</sup>, with a view to determining whether their objectives and methods were in the national interest; and
  - undertake an annual review of all secret services of these departments, and determine, in the light of their objectives, whether they should be continued.

- 44 The committee further identified the nature of existing secret projects, establishing the name of each project, its aims, operational area, business details, *modus operandi*, financial details and time frame. It also enquired into the reason why the particular project needed to be of a *covert* nature, and whether its existence was in the national interest.
- 45 Like the Coetsee Committee, the Evaluation Committee recommended the continuation of certain projects, including initiatives undertaken by the SAP relating to the combating of crime. In other instances, it reported on the termination of projects as well as on new projects that the committee judged to be in the national interest.

## ■ THE REPORT OF THE AUDITOR-GENERAL

- 46 The Auditor-General was requested to provide the Commission with a report of the auditing of all secret funds utilised by the previous Government for the period 1960 to 1994. The report indicated that, in accordance with a decision of the Co-ordinating Intelligence Committee, dated 10 February 1994, all documentation on the completed auditing of secret funds had been returned to the departments concerned. This made it necessary for the Auditor-General to gain the co-operation of: the National Department of Defence; the NIS; the Department of Justice; the SAPS; the Department of Foreign Affairs; the South African Secret Service; the Department of State Expenditure; the Department of Arts, Culture, Science and Technology; the Department of Sports and Recreation, and the Department of Education.
- 47 A number of departments indicated that the audit documentation and working papers in question had been disposed of in terms of approved procedures, and that limited information was available.<sup>4</sup> The Departments of Justice and State Expenditure indicated that some documentation was still available. Because the Auditor-General reported on the basis of what information he had at his disposal, he was not able to provide an audit opinion.

### **Funding of secret services**

- 48 Before the establishment of the Foreign Affairs Special Account on 1 April 1967, various departments had been engaged in activities involving 'secrecy' such as the secret classification of documents, intelligence gathering and related matters. As a result of the growing foreign pressure on South Africa and the unstable situation within the country, certain departments, such as the SAP, the National Intelligence Agency (NIA) and the SADF, expressed the need for increased special funding in order to execute certain secret services. To facilitate this, the following special accounts were established via specific statutes:

#### **Special Defence Account**

- 49 The Defence Special Account Act No 6 of 1974, which came into effect on 6 March 1974, made provision for the establishment of the Special Defence Account. The Act allowed for funds in the account to be used, with the approval of the Minister of Finance, to defray expenditure incurred in connection with special defence activities (including secret services) as well as such purchases as the Minister of Defence deemed necessary.

#### **The Secret Services Account**



50 Until April 1993, and in terms of section 2(2)(a) of the Secret Services Account Act No 56 of 1978, the Minister of State Expenditure could, at the request of the minister concerned, transfer money from the Secret Services Account to the:

- Foreign Affairs Special Account;
- Information Service of South Africa Special Account;
- South African Police Special Account;
- Security Services Special Account;
- Special Defence Account.

51 In terms of section 2 of the various Special Account Acts, the money in these accounts was to be utilised in connection with services of a confidential nature, with the functional minister being able to approve secret projects subject to conditions and directions as deemed necessary.

52 Following the report of the Auditor-General on the affairs of the Civil Co-operation Bureau (CCB) and certain other irregularities within the SAP Special Account, the Government reviewed the funding of secret services during 1992. This resulted in the promulgation of the 1992 Secret Services Account Amendment Act, which established the Secret Services Evaluation Committee chaired by Mr Amie Venter (as reported earlier).

53 The amended Act provided for the evaluation and control of secret services, the establishment of an account for secret services, and related matters. The amendment deleted the provisions for the transfer of moneys to all the above-mentioned special accounts and the Special Defence Account, excluding the Security Services Special Account. All legislation creating different special accounts, except the Security Services Special Account Act No 81 of 1969 and the 1974 Defence Special Account Act, was also repealed.

54 In terms of section 2(2)(a) of the amended Secret Services Account Act, the Minister of State Expenditure was authorised, at the request of the responsible minister, to transfer funds from the Secret Services Account to the Security Services Special Account of the NIS. In the case of other departments, the Minister of State Expenditure was authorised, in terms of section 2(3)(a) of the Act, to make funds available for secret services.

55 As already indicated, the amended Act further determined (in section 3A(1)) that a committee, known as the Secret Services Evaluation Committee, be established. In terms of section 3A(6), the committee would evaluate –

*"all intended secret services in order to determine whether the object thereof and the modus operandi to achieve it, are in the national interest; and review all secret services annually with the said object in order to determine whether they may be continued."*

56 These amendments commenced on 1 April 1993.

57 Further refinements to the administration of secret services were effected as from 1 April 1994 and provided for the following:

- the establishment of the Joint Standing Committee on Intelligence;
- the creation of the post of an inspector-general of intelligence;
- the establishment of the National Intelligence Co-ordinating Committee (NICOC).

### **Audit limitations and risks**

58 Until the time of the information scandal in 1979, expenditure relating to secret services was not audited by the Auditor-General. The minister concerned could simply issue a certificate certifying that all funds involved had been spent for the purpose for which they were originally budgeted. Following the information scandal, Parliament decided that all secret services had to be audited by the Auditor-General.

59 The Exchequer and Audit Act No 66 of 1975 and the various Special Account Acts were appropriately amended to provide for such an audit. However, although the audits were nominally assigned to the Auditor-General, various limitations still existed which, in practice, limited the scope of the audit. The Auditor-General cited following examples:

- In the case of the Security Services Special Account (NIS) the minister concerned, after consultation with the then Auditor-General, stipulated that only his own internal audit division would execute audits and that the Auditor-General would, for the purpose of his audit, accept a certificate from the Prime Minister regarding the expenditure and the investment of the unspent balances in the Special Account.
- Section 42(7) of the Exchequer and Audit Act No 66 of 1975 made provision for the Minister of Finance to limit such audits:

When in view of the confidential nature of an account it appears desirable that such account be excluded from a detailed audit by the Auditor-General, the Minister of Finance may, after consultation with the Auditor-General, determine to what extent the audit thereof shall be carried out and what vouchers shall be made available to the Auditor-General.

- In terms of section 45(1A) of the Act, as it was then worded, the Minister of Finance could furthermore, after consultation with the State President and the Auditor-General, regulate reporting by the Auditor-General concerning aspects of secret accounts. In accordance with this provision, the most sensitive portions of the Special Defence Account were excluded entirely from external auditing for three financial years.

60 The *need-to-know* principle (that is, the auditing of small segments of the whole by specially selected members of the Auditor-General's staff, to prevent anyone outside from gaining an overall picture) constituted a further serious

constraint. This was eventually acknowledged by the SADF, who accepted the need for change, but the audit office lacked the necessary staff undertake the task.

- 61 By way of compromise, the Auditor-General agreed during 1981 to the contractual appointment to his department of a retired SADF general who, without disclosing to the Auditor-General the content of projects, would issue an audit certificate on his behalf concerning the Special Defence Account. (This stipulation of non-disclosure was later disputed by the SADF.) It was realised, however, that this arrangement was probably *ultra vires* and a new solution had to be sought.
- 62 Following consultations between the Auditor-General and the relevant interested parties in the Finance and Intelligence Departments as well as the SADF, and after having appraised the contents of a combined financial/operational file relating to a certain sub-project which amounted to R23 million in 1983–84, the Auditor-General accepted the SADF's proposals. This allowed specially selected members of the audit staff of the Auditor-General to audit ultra-sensitive portions of the Special Defence Account in terms of the 1986 agreement. Access was, however, limited to financial files. It did not extend to operational files. The SADF, however, assured the Auditor-General that he personally would at all times be granted absolute and unfettered access to all documentation. A better understanding later developed and the auditors concerned were able to gain access to operational files – with the exception of the CCB, in which case access to operational files was consistently denied by the managing director of the CCB.
- 63 After continued efforts by the Auditor-General to improve audit evidence, the entire Special Defence Account became 'open' for auditing, and sections 42(7) or 45(1A) of the Exchequer and Audit Act were not used again during the 1985–86 to 1988–89 financial years. Both sections were repealed by the Auditor-General Act No 52 of 1989 and replaced with section 6(3) of the latter Act as from 26 May 1989.
- 64 Although the 1989 Auditor-General Act stipulated the role and functions of the Auditor-General, that Act still contained the following limitation as far as the reporting phase of the audit was concerned: Section 6(3)(a) "shall limit such report to the extent which the Minister of Finance, in consultation with the State President and the Auditor-General may determine".
- 65 The office of the Auditor-General became increasingly concerned at the low level of assurance that accompanied its audit opinion. This resulted in a qualified audit opinion being given with effect from the 1990–91 financial year. The wording of the audit opinion reads as follows :

*As regards the auditing of the Secret Service Account and the Special Defence Account, it should further be noted that, owing to the nature of some of the income and expenditure and the circumstances in which it is incurred and recorded, as well as the utilisation of assets, the level of audit assurance that can be furnished will often be lower than is normally the case in ordinary audits.*

- 66 After obtaining legal opinion, it was decided to further qualify the audit opinion. As of the 1991–92 financial year, the Auditor-General's reports to Parliament contained the following qualification:

*As regards the basis of reporting in connection with the proviso to section 6(3) of the said Act, a legal opinion was obtained to confirm what actions constitute, for audit purposes, irregularities which must be reported. The legal opinion states, inter alia:*

*... that if the Auditor-General has performed all aspects of 'regularity auditing' [see below] as stated in the report, he has done his duty.*

*There is no obligation on him (the Auditor-General) to indicate culpable contravention of statutes, instructions or the common law unless he is of the opinion that, in the commission of such contravention, the scope of the authority to incur expenditure was exceeded. Finally it should be borne in mind that auditing is, in the first and last places concerned with compliance with financial authorisation, i.e. the authority to perform certain actions and to utilise public money for the performance of authorised actions. The (Auditor-General) Act does not concern itself with the penal nature of the actions nor with the 'moral reprehensibility' of the actions as such.<sup>5</sup>*

## **Current position of the Auditor-General**

- 67 Chapter 9 of the Constitution of the Republic of South Africa Act No 108 of 1996 provides for the establishment of a number of state institutions in support of constitutional democracy. In section 181(1)(e) the Auditor-General is listed as one of these institutions. Further provisions of this section also address the independence and protection of the powers and functions of these institutions. Section 188 of the 1996 Constitution Act further elaborates on the functions of the Auditor-General and continues to strengthen the constitutional authority of the Auditor-General's office.
- 68 The Auditor-General Act No. 12 of 1995, effective from July of that year, amended the 1989 Act to provide for more independent reporting by the Auditor-General. The Auditor-General now reports *after* consultation with the President, Minister of Finance and the responsible Minister and not *in* consultation as was required previously. Furthermore, the reports may not be limited as regards unauthorised expenditure or any other irregularity, except in respect of the disclosure of facts which will be to the detriment of the national interest.

## ■ SCHEDULE OF SECRET PROJECTS

- 69 The Auditor-General has provided the Commission with a schedule of secret projects received from eight government departments: the NIA; the Department of Justice; the South African Police Services (SAPS); the Department of Foreign Affairs; South African Secret Services; the Department of State Expenditure, the South African National Defence Force (SANDF) and the Department of Arts and Culture, Science and Technology.
- 70 This information was made available shortly before the termination of the work of the Commission. Code names and/or numerical references were used, rendering this information of limited value. The NIA, for example, identified 749 code-named projects with limited or no detail. Given the closure of investigative work by the Commission on 31 July, no opportunity existed for these matters to be pursued.<sup>6</sup>

## ■ AN OVERVIEW OF THE TYPE AND NATURE OF SECRET PROJECTS

- 71 The Commission had requested the Auditor-General to provide an in-depth analysis of ten to fifteen window cases illustrative of the type and nature of the secret projects under consideration. Due to the scarcity of information and documentation available this was, however, not possible.
- 72 There were only a few projects for which all the audit documentation needed for a proper window-case presentation was available. These are *Project Coast* (a programme involving chemical and biological warfare initiatives) and some projects of the Department of Foreign Affairs, although here too, little information was made available to the Commission. The audit of *Project Coast* is still to be completed, as is the Auditor-General's investigation into the fairness and reasonableness of the determination and/or calculation of the cancellation fee and the amounts paid to the then SADF for the shares and loan amounts of the companies involved. An investigation by the Office for Serious Economic Offences into the alleged irregularities has also not been completed, as stated in the Auditor-General's audit reports to Parliament. The Auditor-General was therefore unable to express an opinion on this project.
- 73 The projects instituted by the Department of Foreign Affairs were constituted mainly around sanctions-busting operations. They involved the setting up of financial trusts and various front companies and organisations in a number of countries around the world.<sup>7</sup>
- 74 According to information supplied, but not audited, the following amounts were transferred by the Treasury, and later the Department of State Expenditure, to departments in respect of secret funds between 1978 and 1994:

|                                    |                |
|------------------------------------|----------------|
| South African Information Services | R60 240 017    |
| Foreign Affairs                    | R79 434 205    |
| National Intelligence              | R2 279 261 995 |
| SADF                               | R15 285 000    |
| SAP                                | R289 907 000   |
| National Education                 | R8 768 841     |
| Bantu Administration               | R6 000         |
| Finance                            | R18 138 112    |

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**R2 751 041 170**

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- 75 The above amount of R15 285 000 does not reflect the amount that passed through the Defence Special Account. The Auditor-General has provided the Commission with a schedule that identifies a total amount of R49 648 737 969 passing through this account, with a further R586 501 609 being expended on 'sensitive line function projects' between the 1974–75 and 1994–95 financial years.

- 76 Similarly, information provided by the Auditor-General concerning amounts paid by Foreign Affairs 'for control of sanctions and disinvestment out of secret funds' lists a total of 417 projects with an expenditure of R210 087 535.32, including, for example, project No 35 with an expenditure of R25 million.

## CONCLUSION

- 77 From the limited information at its disposal, the office of the Auditor-General attempted to provide the Commission with as complete a picture as possible of the auditing of all secret funds. To the extent that information and documentation has been destroyed, and persons with the appropriate knowledge have left the relevant departments, the Auditor-General was not able to provide any assurance that the information was completely accurate or complete.
- 78 This report does, however, provide an insight into the environment in which the Auditor-General operated for almost the entire period under review. Whilst Parliament required the Auditor-General to provide audit assurance, state departments often gave access to information on a limited and reluctant basis. There is no evidence to suggest that the office of the Auditor-General did not seek to exercise its mandate to the best of its ability within the constraints of the law and the culture of secrecy that prevailed at the time. The Auditor-General is on record as saying:

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

### THE COMMISSION FINDS THAT:

- SECRET FUNDING WAS USED TO PROMOTE A POLITICAL CLIMATE THAT LED DIRECTLY AND INDIRECTLY TO GROSS HUMAN RIGHTS VIOLATIONS.
- BEFORE 1991, SECRET FUNDING WAS USED TO PROMOTE PARTY POLITICAL AND SECTARIAN POLITICAL INTERESTS.
- SECRET FUNDING WAS INADEQUATELY ADMINISTERED AND AUDITED – ALTHOUGH ATTEMPTS WERE MADE AFTER 1991, THROUGH THE KAHN COMMISSION, THE MINISTERS' COMMITTEE ON SPECIAL PROJECTS AND THE EVALUATION COMMISSION, TO REDRESS THIS SITUATION.
- INITIATIVES UNDERTAKEN BY THE AUDITOR-GENERAL'S OFFICE TO EXECUTE A MORE PRECISE AUDIT WERE HAMPERED BY LEGISLATIVE CONSTRAINTS AND A 'NEED-TO-KNOW' MILIEU WHICH PREVAILED IN STATE DEPARTMENTS, AS WELL AS BY THE REFUSAL OF SOME STATE OFFICIALS DEALING WITH SECRET FUNDS TO PROVIDE THE DOCUMENTATION AND OTHER INFORMATION NEEDED FOR AUDITING PURPOSES.
- AGENTS AND STATE EMPLOYEES WORKING ON SECRET PROJECTS RECEIVED FINANCIAL AND OTHER SETTLEMENTS WHEN SPECIFIC SECRET PROJECTS WERE TERMINATED, WHICH SHOULD BE REGARDED AT LEAST AS MORALLY QUESTIONABLE.
- FUNDING THROUGH THE SPECIAL DEFENCE ACCOUNT IN PARTICULAR WAS NOT SUBJECT TO ADEQUATE AUDITING UNTIL AT LEAST THE 1985–86 FINANCIAL YEAR.
- THE FUNDING OF CCB ACTIVITIES WAS AT NO TIME SUBJECTED TO AN ADEQUATE AUDIT.

THE KAHN COMMITTEE AND THE SUBSEQUENT BODIES DID NOT PROVIDE SUFFICIENT DETAIL REGARDING STATE SECRET FUNDING. PROJECT DESCRIPTIONS PROVIDE LIMITED INFORMATION. AN EXAMPLE CAN BE MADE OF *PROJECT ECHOES*, WHICH IS DESCRIBED AS "AN SADF ACTIVITY AIMED AT COMBATING VERBAL ATTACKS ON ITS DUTIES AND FUNCTIONS. ITS ACTIVITY RELATES TO THE ACQUISITION OF INFORMATION IN RESPECT OF MK MAINLY, AND PASSING THIS TO THE MEDIA." THE AUDITOR-GENERAL'S REPORT DESCRIBES IT AS "MAINTAINING A SA ARMY COMMUNICATION CAPABILITY TO WITHSTAND MILITARY AIMED PROPAGANDA ACTIONS". THE COMMISSION HAS INFORMATION THAT (INTENTIONALLY OR OTHERWISE) LINKS *PROJECT ECHOES* TO HUMAN RIGHTS VIOLATIONS, IN THAT AN ASSASSINATION ATTEMPT ON MR DIRK COETZEE WAS FACILITATED UNDER COVER OF *PROJECT ECHOES*. THIS INFORMATION CONFIRMS THE OBSERVATION OF GENERAL PIERRE STEYN IN HIS INVESTIGATION INTO THE STRUCTURES AND ACTIONS OF MILITARY INTELLIGENCE, THAT IN A NUMBER OF INSTANCES, DUBIOUS AND ILLEGAL ACTIVITIES HAD BEEN SUCCESSFULLY WOVEN INTO AUTHORISED AND OFFICIAL OPERATIONS, MAKING DETECTION MORE DIFFICULT.

- QUESTIONS REMAIN AS TO BOTH THE ACTIVITIES AND FINANCIAL RESOLUTION OF SEVERAL PROJECTS. IN PARTICULAR, THE ISSUE REGARDING THE USE MADE OF THE LARGE SUM OF MONEY LOCATED IN A FOREIGN TRUST ACCOUNT IS OUTSTANDING. IT IS SUGGESTED THAT THE ASSETS OF THE TRUST WERE IN THE VICINITY OF R20 MILLION, AFTER THE PAYMENT OF RECOMMENDED SETTLEMENTS.

THE COMMISSION FINDS THAT INSUFFICIENT INFORMATION IS PRESENTLY AVAILABLE TO DESCRIBE THESE PROJECTS ADEQUATELY AND RECOMMENDS THAT FURTHER RESEARCH AND INVESTIGATION BE DONE INTO THESE SECRET PROJECTS TO ESTABLISH A FULLER PICTURE OF THEIR RANGE OF ACTIVITIES.