Volume **ONE** Chapter **EIGHT**

The Destruction of Records

þ INTRODUCTION

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

þ CONTEXT OF THE ENQUIRY

2 The focus of the Commission's enquiry into the destruction of records must be considered within the framework of its need to access documents pertaining to gross human rights violations in the period under review. While an enormous number of records was destroyed, not least as South Africa moved towards democratic rule, many crucial documents survived. These included Cabinet minutes and minutes of the State Security Council. Notable amongst those that could not be traced were the records of the National Security Management System (NSMS), a substructure of the State Security Council.

3 The story of the Commission's quest to locate these records cannot be fully told in the pages that follow. The correspondence between the Commission's investigators, researchers and others on the one hand, and nodal points in the various departments of government and security structures on the other, provides a limited insight into some of the difficulties involved in the retrieval process. This correspondence is now in archival custody along with the remainder of the correspondence attached to the retrieval exercise.

4 Extensive requests were made for records in the keeping, especially, of the South African National Defence Force (SANDF), the South African Police Services (SAPS) and the National Intelligence Agency (NIA). These ranged from requests for the personnel files and financial records of the Civil Co-operation Bureau (CCB) and Teen Rewolutionere Inligtings Taakspan (TREWITS) to requests for information on military and police operations inside and outside the country and a range of other activities. There were, for example, investigations into: the East Rand uprisings; train violence; necklace murders; vigilante groups in the Western Cape; the *Ama-Afrika* movement in Uitenhage and Port Elizabeth; the conflict between the United Democratic Front (UDF) and the Azanian People's Organisation (AZAPO) or the Azanian Youth Union (AZANYU) in the Eastern Cape; the A-team in Chesterville; the Midlands war, and the conflicts between the African National Congress (ANC) and the Inkatha Freedom Party (IFP) in KwaZulu-Natal and the ANC and the Pan Africanist Congress (PAC) in exile.

5 While some of this documentation was located and made available, many specific documents were not found. Sometimes this was because the reference numbers of documents identified by Commission staff did not correspond to the index numbers in the inventories of records made available by the SAPS, SANDF, NIA and the South African Secret Service (SASS). In some cases, documents were traced to the inventories of other departments of government although, even where individual files were located, either in hard copy or in electronic form, there were often large gaps. At times, the files contained no more than a single document. Sometimes they were completely empty.

6 The Commission was frequently informed, both by local police station commanders and regional military personnel as well as by nodal (liaison) points in the SANDF and SAPS, that specific documents or whole series of files had been destroyed. At a higher level, for example, General George Meiring is on record as stating that, after the completion of the work of the Kahn Commission of Enquiry into Special Secret Projects, files relating to a number of covert operations were destroyed – providing that no auditing irregularities had been involved. He also said that all files that impacted on the safety of individual persons (which would have included intelligence sources) were destroyed in terms of a 1993 State Security Council (SSC) decision. General Meiring added that Justice van der Walt, who was appointed arbitrator between members of the SANDF and CCB, authorised the disposal of the CCB's personnel and financial plans.[1]

7 Although, initially, the quest for files related to particular incidents, it became clear that a more systematic scrutiny of SANDF, SAPS, NIA and SASS files was necessary for purposes of general research and investigation. It also became apparent that the nature and extent of the destruction of documentation for purposes of concealing violations of human rights required further investigation. The Harms and Goldstone commissions of enquiry and the Goniwe inquest had already revealed substantial evidence of this phenomenon and the Currin court case, discussed later in this chapter, indicated that there had been ongoing destruction of documentation. An investigation into the destruction of documents was, in any case, required in terms of the Act.

8 It was initially extremely difficult to obtain access to files in the possession of the SANDF for purposes of systematic research and investigation, due to a number of perceived legal restrictions governing files in the possession of Military Intelligence and other structures within the SANDF. This had a serious impact on the research and investigative work of the Commission which, in turn, significantly affected the outcome of aspects of the findings of the Commission. The Commission also experienced difficulties in initiating an enquiry into the destruction of documentation by the former SADF.

9 The intervention of the chairperson and the vice-chairperson of the Commission, and that of the Minister and Deputy Minister of Defence eventually resulted in some progress. However, the difficulties were only adequately overcome in the later part of 1997, very late in the life of the Commission. This limited the extent to which military documentation could be scrutinised and restricted the enquiry into the destruction of documents by the military, while indicating that there were significant archives which were not adequately examined.

10 On the other hand, the co-operation of the Minister of Safety and Security, the secretariat of the SAPS, the Commissioner of Police and other ranking officials in police structures allowed for a more extensive investigation into records management by the SAPS. Co-operation was also received from the Deputy Minister for Intelligence and the structures of the civilian intelligence services, as well as those who

facilitated the enquiry into the records of Correctional Services and the Department of Justice. This ensured a very adequate, though due to time and logistic constraints, necessarily selective enquiry into the record keeping of these departments.

11 The Act specifically required that the Commission "determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective" (section 4(d)). Sections 29 and 32 of the Act gave the Commission wide-ranging powers (to secure, examine and copy articles; to gain entrance to, inspect and search premises; and to seize and remove articles) of vital importance to fulfilling this mandate.

12 This task was both complex and extensive in scope, posing a number of interrelated questions:

a How to determine the motive behind an individual's destruction of a particular document, especially when the content of the document was unknown and related documents had not been located?

b How could the Commission even determine the existence of a particular record when it had been destroyed, together with all documentation that pointed to its existence?

c How was the Commission to investigate, comprehensively and impartially, the record-keeping practices of private individuals, businesses, non-governmental organisations (NGOs), trade unions, liberation movements, other structures of civil society, political parties, three levels of government and other state structures over more than three decades?

13 Given the constraints imposed by time and resources, such a task was not feasible and more narrowly defined parameters had to be identified. Therefore, the investigation was limited to the destruction of *state* records for a number of reasons. First, their status as public records accords them a high level of public interest. Second, statutory regulation of record keeping by state structures provides a comprehensive measure against which to judge the management of records, including their authorised and unauthorised destruction. Third, state records constitute by far the largest coherently defined aggregate of records. Fourth, scrutiny of state records offers a high level of insight into the system that gave rise to so many of the gross human rights violations under the spotlight of the Commission. And finally, the destruction of state documentation probably did more to undermine the investigative work of the Commission than any other single factor.

14 Given the complexity and extent of the former state, however, adequate coverage even of *all* state structures and records systems proved impossible. It was therefore decided to limit the investigation to the records of government structures that were governed by national archival legislation2. This excluded parastatals, statutory bodies that had not voluntarily submitted to the operation of the Archives Act, 'privatised' bodies and 'homeland' structures.

15 Homelands were responsible for the management of their own records, sometimes governed by their own archival legislation. While some state documentation originating in the homelands has been incorporated in the record systems of the post-apartheid state, the Commission could not reasonably undertake a systematic enquiry into record keeping or destruction of documents by the homelands.

16 There was one exception to the decision to focus on state records. The Commission decided to investigate the destruction of huge volumes of non-public records confiscated by the state from individuals and organisations opposed to the system.

17 It is, of course, true that the state destroyed many other non-public records in the course of its raids and bombings of the structures and premises of liberation movements both inside and outside the country.

This, however, is a story that remains to be told elsewhere. Also of significance was the impact of apartheid on the record-keeping practices of anti-apartheid organisations, many of which were reluctant to commit certain kinds of information to paper. Many also destroyed records rather than allow them to fall into the hands of state operatives.

18 During the conceptualisation of the investigation, the possibility of addressing the record-keeping practices of the liberation movements was considered. However, given the dispersal of these movements across many countries, and the distortions imposed on their record keeping (alluded to above), this task was clearly beyond the capacity of the Commission. Its inclusion would also have severely undermined the investigation's rationale as outlined in the preceding paragraphs - not least because these holdings were not subject to national archival legislation. In the light of this decision, the records of other political groupings and parties were also not investigated.

19 In the initial stages of the investigation, Commission researchers studied relevant legislation, state record-keeping procedures, professional literature and media reports. They also engaged intensively with the State Archives Service (SAS) – the body responsible for the proper management of state records, including the authorisation for their destruction and the investigation of unauthorised destruction. Numerous meetings were held with SAS officials, and SAS documentation of the destruction processes was carefully studied.

20 Through this process, researchers were able to identify 'hot spots': that is, structures that had attracted a number of allegations that they had destroyed records without authorisation from the SAS. These 'hot spots', all within the security establishment, were thoroughly researched and subjected to the scrutiny of joint investigative teams, composed of representatives of the structure under investigation, the Commission, the Human Rights Commission and the National Archives3. The destruction of records by the following bodies was investigated:

a the Security Branch of the South African Police (SAP);

b government civilian intelligence bodies (including the internal and external divisions of the National Intelligence Service (NIS), intelligence services of the former homelands governments, the State Security Council, and other structures of the National Security Management System under the control of the NIS);

c the South African Defence Force (SADF), particularly Military Intelligence;

d the Department of Prison Services;

e the Security Legislation Directorate of the Department of Justice.

21 Even within the parameters defined for the investigation, and despite using all the investigative procedures provided for in sections 29 and 32 of the Act, it remained beyond the capacity of the Commission to gain more than a broad outline of the process of state records management. Some of the general investigations, however, resulted in more detailed case studies.

22 Owing to constraints of time and resources, all possible deceptions relating to records-management could not be explored. The joint investigative teams simply had to rely on the integrity of those appointed

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

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

þ THE LEGAL FRAMEWORK AND ITS MANIPULATION

Apartheid and official secrecy

24 Perhaps all governments are, to a greater or lesser extent, uncomfortable with the notion of transparency, preferring to operate beyond the glare of public scrutiny. In apartheid South Africa, government secrecy was a way of life. The fundamental guideline governing public access to state records was provided in section 9(6) of the 1962 Archives Act. This established that access was a privilege to be granted by bureaucrats, except where specific legislation recognised the right of access to specific categories of records. The number of record categories covered by such legislation was limited to, for instance, records older than thirty years in the custody of SAS and deceased estate files in the custody of Masters of the Supreme Court.

25 The discretionary power enjoyed by bureaucrats was, in turn, severely circumscribed by a range of laws containing secrecy clauses. These included, amongst others, the Official Secrets Act, the Protection of Information Act, the Statistics Act, the Nuclear Energy Act, the Petroleum Products Act, the Criminal Procedure Act, the Disclosure of Foreign Funding Act, the Inquests Act and the Internal Security Act. Thus, information on business, foreign trade and sanctions, capital punishment, conscientious objection to military service, corruption and fraud, detention without trial, liberation movements, mental health institutions, military action (particularly beyond South Africa's borders), nuclear power and weapons, oil supplies and reserves, police involvement in repression, prisons, the territorial 'consolidation' of homelands and weapons procurement and development was, in varying degrees, circumscribed.

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

Destruction of state records: parameters and processes

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

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

28 The Archives Act provided the SAS with wide-ranging powers over the management of state records from the moment of their creation or acquisition. Other provisions of the Archives Act elaborated on specific aspects of records management: the physical care of records; their classification according to an approved system; their conversion into microform, and their accessibility, inspection and ultimate disposal.[5] In comparison with the archival legislation of other countries, the effective powers enjoyed by the SAS over the active records of the state were amongst the most extensive of any national archive service in the world.

29 The legal disposal of state records involved either their transfer into the custody of an SAS repository or their destruction in terms of a disposal authority. Until 1979, it was the responsibility of the Archives Commission, a statutory body appointed by the government minister responsible, to authorise the destruction of state records. While this authority had been vested in the Archives Commission since 1926, by the 1960s it appears to have become a 'rubber-stamp' for recommendations made by the Director of Archives. A 1979 amendment to the Archives Act recognised the *de facto* situation by empowering the Director of Archives to authorise the destruction of documents. Section 12 of the Act made it a criminal offence to damage a state record wilfully, or to remove or destroy such a record otherwise than in terms of the Archives Act or any other law.

Challenging the ambit of the Archives Act

30 The authority of the Archives Act over specific categories of state records was regularly challenged by state structures. These challenges are crucial to understanding what constituted 'unauthorised destruction', and some of them defined the terrain on which the mass destruction described later in this chapter took place.

31 As soon as the Archives Act had been passed, it was challenged from several quarters. In 1962, there were four challenges, two of which were to prove highly significant. In that year, the Department of Justice argued that 'non-prescribed' records kept by magistrates were 'from their nature' not subject to the operation of the Archives Act. In the same year, a public service inspector argued that active or current records in government offices were similarly excluded 'from their nature'. State legal opinions rejected these arguments and confirmed the applicability of the Act to state records from the moment of their creation or acquisition.

32 Although unsuccessful, these challenges exposed the vulnerability of the Archives Act to divergent interpretations of the words 'from their nature'. It is not clear what the Act's drafters intended to exclude by these words although, in a speech to the Senate on 31 January 1962, the Minister of Education, Arts and Science indicated that the words were designed to accommodate the management of secret records.[6] It was a loophole that would later be ruthlessly exploited by state bodies seeking to avoid the strictures imposed by the Archives Act.

33 In 1978, all government departments received guidelines, signed by the Prime Minister, for the protection of classified information (EM9-12). The guidelines empowered department heads to authorise destruction outside the ambit of the Archives Act. The guidelines did not explicitly challenge the authority of the Archives Act; they simply authorised destruction without mentioning the Archives Act at all.[7] The NIS updated the guidelines in 1984[8] under the State President's signature.

34 It is not clear how widespread or stringent the application of the guidelines was but, certainly within the security establishment, they were implemented rigorously. SAS, however, only became aware of their existence in 1991. This is confirmed in letters addressed to the Commission by four former directors of the SAS. The SADF had implemented similar guidelines from at least 1971. Like its civilian counterpart, the SADF Archives appear not to have been aware of the existence of the guidelines in question.

35 The more recent debate on the destruction of records was thrust on the nation with the widely publicised disclosure in 1991 that the NIS had destroyed the sound recording of the meeting between Nelson Mandela and PW Botha held in 1989. SAS challenged the legality of the destruction on the grounds that the Director of Archives had not authorised it. On 10 December 1991, the State President's Office secured a state legal opinion9 indicating that 'sensitive' documents – those requiring secrecy – were in their nature not 'archives' and therefore not subject to the Archives Act. Subsequently NIS also acquired a state legal opinion10, which not only confirmed the previous one but also argued that sound recordings, because they are not 'written' documents, are not in their nature 'archives'. These opinions had alarming implications: any state record regarded as 'sensitive' could be destroyed by the body holding it without even consulting with the Director of Archives.

36 A crucial development in the systematic destruction of 'sensitive' records occurred on 3 July 1992. Following the enquiry of the Kahn Commission into Special Secret Projects, the then Minister of Justice and National Intelligence, Mr Kobie Coetsee, authorised the destruction by the NIS of financial and related records outside of parameters laid down by Treasury.

37 According to guidelines for the disposal of 'state sensitive' records approved by Cabinet on 2 June 1993, all ministers were empowered to authorise similar destruction.[11] These guidelines had their origin in meetings of NIS top management in 1990 and 1991, where it was decided that the NIS's own destruction guidelines would be used as a point of departure for the preparation of government-wide guidelines. The proposal was taken to the State Security Council which subsequently secured Cabinet approval for the guidelines. In addition to the provision for financial records, the guidelines authorised departmental heads to destroy all categories of 'state sensitive' records that met certain loosely defined criteria.

38 It is difficult to assess the impact of these guidelines outside the security establishment. The evidence suggests that implementation was extremely uneven and was directly shaped by the relationship of individual offices with the coercive aspects of the previous administration.

39 In July 1993, all government departments were advised by the Security Secretariat to destroy classified records received by them from other sources, with the exception of those constituting authorisation for financial expenditure or 'other action'. Special mention was made of the need to destroy documentation related to the NSMS that had been developed in the 1980s.

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

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

41 SAS disputed the legal validity of the circular, but its attempts proved futile. However, when the resultant mass destruction of records was reported in the media, Mr Brian Currin, national director of Lawyers for Human Rights, challenged the circular's validity in the Supreme Court. He identified the respondents as the State President, the Minister of National Education, the Director of Archives and the Director-General of NIS. In his application, Currin argued that state legal opinions 299/1991 and 308/1991 were "wrong", and that the nature of 'sensitive' records, including classified material, did not exclude them from the operation of the Archives Act. On 27 September 1993, all the parties reached an agreement that, in future, no state records would be dealt with otherwise than in terms of the Act, "simply by virtue of the fact that they are classified, or they are classified into a category denoting some degree of confidentiality".[12]

42 The settlement had not, however, incorporated Currin's broader arguments, and the state quickly showed its intention to find reasons (other than the fact of classification) to exclude 'sensitive' records from the ambit of the Archives Act. An inter-departmental working group prepared a draft circular to government departments providing advice on which records fell outside the ambit of the Act. Through the Director-General of National Education, the SAS sought a state legal opinion on the validity of the circular. This opinion[13] did not refer to the Currin settlement and reaffirmed the findings of opinion 299/91, thus reviving the option of destroying 'state sensitive' records without reference to the Archives Act. The opinion did, however, contain the assertion that decisions on destruction should not be left to individual department heads and recommended that an advice mechanism ('*adviesmeganisme*') be created. This was never done. As late as November 1994, the NIS issued Guidelines for the Protection of Classified Information to government offices. These guidelines empowered the heads of offices to destroy classified records because they were classified, without authorisation from the Director of Archives. This was a direct violation of the Currin settlement. The Director of Archives challenged the NIS and the Guidelines were revised and re-released in February 1995. These were, *de facto*, an updated version of the earlier guidelines distributed in 1978 and again in 1984, both authorised by the head of state. It could be argued that the failure by the NIS explicitly to withdraw the 1984 guidelines in the wake of the Currin settlement also constituted a violation of the settlement.

43 With the April 1994 general election looming, and despite the destruction of records which had been taking place, the government of the day clearly became anxious about which state records the new

government would inherit. Late in 1993, the President's office requested an opinion from the Chief State Law Advisor as to whether representatives of his government could retain custody of certain records after April 1994. A draft memorandum preceding the formal request indicated that one of the motivations was to "keep this information out of the hands of future co-governors".[14] The records referred to were '*gebruiksdokumentasie*' (documents in use), including cabinet minutes, and the minutes of cabinet committees, ministers' committees and the State Security Council. At the time, none of these records had been transferred into the custody of the SAS, on the grounds that their 'sensitive nature' excluded them from the operation of the Archives Act. The Chief State Law Adviser indicated (207/1993 of 22 December 1993) that such records could not be removed from the state's custody after the election in April 1994. Also in December 1993, President De Klerk referred the same question to Advocate SA Cilliers for an opinion. Advocate Cilliers responded on 13 January 1994[15], confirming the Chief State Law Adviser's opinion. Indeed, he went further, disagreeing with opinion 299/91 and its affirmation of the legality of the destruction of 'state sensitive' records on the authorisation of department heads. Subsequently cabinet and cabinet committee records were transferred to the SAS, albeit with a cabinet-imposed ten-year embargo on access.[16] In March/April 1995, some State Security Council and related records were also transferred to SAS from offices of the former NIS. And, in December 1997, Mr Johan Mostert, general manager of the National Intelligence Co-ordinating Committee (NICOC), transferred additional material to the National Archives.

Moratoria on record destruction

44 It was the ANC Commission on Museums, Monuments and Heraldry that first mooted a moratorium on the destruction of state records in March 1992. The idea was subsequently elaborated by the ANC Commission's Archives Sub-committee, the ANC's Conference on Culture and Development (1993) and the Arts and Culture Task Group (1995). In June 1995, NICOC introduced a moratorium on the destruction of all 'intelligence documents'. On 29 November 1995, Cabinet imposed a moratorium on the destruction of all records of the state - irrespective of their age and of whether or not the Director of Archives had authorised their destruction. Initially the moratorium was intended to remain in place until the passing of the National Archives of South Africa Act. When the Act was passed in October 1996, however, Cabinet extended the moratorium until the completion of the Truth and Reconciliation Commission's work.

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

þ CHALLENGING THE AMBIT OF THE ARCHIVES ACT: A CHRONOLOGY

1962:

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

Rejected.

1962:
A public service inspector argues that current records are excluded.

Rejected.

1978:
The Prime Minister authorises government-wide guidelines for the routine destruction of classified records.

1984:
Guidelines for the routine destruction of classified records are updated with the approval of the State President.

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

1992:
The Minister of Justice and National Intelligence authorises the destruction of financial and related NIS documents.

2 June 1993:
Cabinet approves guidelines for government offices to destroy 'state sensitive' records.

July 1993:
The Security Secretariat advises government offices to destroy certain categories of classified records.

27 September 1993:
Mr Brian Currin challenges the Security Secretariat advice, which leads to a settlement whereby all parties agree that classified records are not excluded from the operation of the Archives Act simply because they are classified.

2 November 1993:
State legal opinion 220/93 confirms the view that 'state sensitive' records fall outside the ambit of the Archives Act.

December 1993:
State President's office attempts unsuccessfully to secure legal sanction for certain categories of state record to be withheld from a new government.

November 1994:
The NIS reissues its Guidelines for the Protection of Classified Information which authorise the destruction of classified records without any reference to the Currin settlement.

February 1995:
The NIS revises and again reissues its Guidelines after the Director of Archives challenges these.

þ ENQUIRIES INTO THE DESTRUCTION OF RECORDS BY THE SECURITY ESTABLISHMENT

46 In order to enquire into the destruction of records, the Commission appointed a series of joint investigative teams to conduct probes into the various structures. In order to ensure optimum professionalism and impartiality, the Commission proposed in each case that, in addition to its own staff, personnel from the Human Rights Commission, the National Archives and representatives of the body under consideration should form part of the investigative team. This arrangement was agreed to in all cases by all parties.[17] The scope and duration of the investigations varied according to specific circumstances, but each probe included on-site inspections of records and records management facilities. Throughout this complex process, the Commission received outstanding support and assistance from the National Archives.

Security Branch of the South African Police

47 The joint investigative team enquiring into the SAP decided to focus its investigation on two categories of Security Branch records. The first category consisted of operational files, especially those documenting the surveillance of individuals and organisations, Security Branch investigations, and the detention of individuals; the second consisted of records confiscated from individuals and organisations. In addition, the investigation focused on Security Branch operations in six areas: Pretoria/national, Johannesburg, Pietersburg, Port Elizabeth/Cradock, Durban and Cape Town. The SAPS supplied twelve investigators (two for each area) to conduct on-site investigations on behalf of the team. These were appointed after consultation and a selection process that involved the joint team. Subsequently, all areas in which the Security Branch had operations were drawn into the ambit of the investigation on the written instructions of the National Commissioner of the SAPS. Established in March 1997, the team completed its work in November 199718. Subsequently, a smaller joint team made up of Commission and Safety and Security Secretariat members conducted an exhaustive examination of the records located during the investigation. This was finalised in February 1998.

48 Throughout the period covered by the mandate of the Commission, SAS had been of the view that all Security Branch records were fully subject to the Archives Act. With the approval of the Director of Archives, the Security Branch managed their records in terms of records classification systems approved by the director for use throughout the SAP, but in physically separate record sets classified as secret or confidential. Standing SAP instructions indicated that no secret or confidential records could be destroyed without written authorisation from the Director of Archives. In the period 1960 – 1994, no such authorisations were given.

49 It emerged, however that, throughout this period, Security Branch records were routinely destroyed in accordance with internal arrangements for retention or disposal. In the main, this seems to have applied to support functions rather than operational records. Huge volumes of operational records were generated at head office, regional and local levels. To cope more effectively with them, a microfilming project was initiated in the 1970s. Originals of microfilmed records were apparently destroyed, but not on a systematic basis. From 1983, a computerised database of operational records was implemented. Again, it appears as if certain original documents were destroyed after the core data had been captured on the database.

50 In March 1992, an instruction emanating from head office ordered the destruction of all operational records, including records confiscated from individuals and organisations. The Commission was unable

to determine either the precise source of this instruction or its exact content. The evidence suggests that a verbal instruction was received at both regional and local levels, following receipt by the SAP from the NIS of the December 1991 state legal opinions exempting 'state sensitive' records from the operation of the Archives Act. The instruction embraced paper-based originals, microfilms and the computerised database, and required the destruction not only of records but also of all documentation relating to the records.

51 The investigation revealed that, in the months following the issuing of the instruction, massive and systematic destruction of records took place. In some cases, records were removed to head office for destruction. In other cases, destruction took place on-site. In other instances, the facilities of private companies like Nampak and Sappi were utilised.

52 It would appear that Security Branch offices implemented the instruction to destroy records to the letter. In fact, some offices destroyed most, if not all, support function as well as operational records. But there were exceptions. Certain operational records were not destroyed in the Ficksburg, Kimberley, Pietermaritz- burg, Pietersburg, Port Elizabeth, Potchefstroom, Rooigrond, Thaba Nchu, Thoyandou, Tzaneen and Welkom offices. The Ministry of Safety and Security secured these to the satisfaction of the joint investigative team. Several thousand files also survived in the SAPS head office, although most of them post-date 1990. Eleven back-up tapes of the head office computerised database were located. With the assistance of the SAPS Data Technological Services, the readability of seven of these tapes was confirmed and the tapes immediately secured. Contrary to the March 1992 instruction, the Port Elizabeth, Empangeni and Cape Town offices also kept lists of files forwarded to head office for destruction in terms of the instruction. These lists were also secured.

53 Security Branch records located by the investigation fell into three categories:

a General files, all post-dating 1990

b Computer data tapes containing data on anti-apartheid organisations. It appears that these data were captured in the 1980s

c Individual case records in eight sub-categories: contraventions of emergency regulations; dockets; detainees under security legislation; surveillance of individuals (both anti-apartheid and right wing); surveillance of right wing organisations; security incidents (post-dating 1990); applications for indemnity; and returning exiles.

54 Inventories of these records were made available. The Commission scrutinised the records and obtained copies of such documentation as was relevant to ongoing research and investigation. To facilitate this process, a significant number of files were transferred to the SAPS offices in Port Elizabeth at the request of the Commission's researchers.

Government civilian intelligence bodies

55 The joint investigative team responsible for this investigation worked from August 1997 to March 1998. Excellent support was received from the NIA and the SASS.

56 The Bureau of State Security (BOSS) was established in 1968. Its functions were taken over by the Department of National Security in 1978 and by the NIS in 1980. Three of the former 'homelands' -

Transkei, Venda and Bophuthatswana - established civilian intelligence services. As explained later in this chapter, the KwaZulu Intelligence Service was a NIS project that was terminated in 1991. From 1 January 1995, the four remaining services were amalgamated, together with the intelligence structures of the liberation movements, to form the NIA and the SASS.

57 For obvious reasons, the management of records in the NIS was tightly controlled. Comprehensive directives covered paper-based, microfilm and electronic systems, as well as the management responsibilities of head office and regional structures. NIS top management assumed that the records and records systems fell outside the ambit of the Archives Act. The first formal contact between NIS and SAS took place only in 1991 at the time of the controversy surrounding the destruction of the sound recording of the meeting between Nelson Mandela and PW Botha. Thereafter top management explicitly adopted the position that NIS records were exempt from the Act's operation. This position was defined by the two 1991 state legal opinions discussed earlier in this chapter.

58 Acting independently of the Archives Act, the regular, routine destruction of NIS records began at least as early as 1982.19 On 1 December 1982, top management adopted a set of guidelines (Directive 0/01) which authorised divisional heads and regional representatives to destroy records no longer of security relevance on an annual basis. However, in 1990 it was decided to replace this system with a far more rigorous re-evaluation process to be managed by an inter-divisional Standing Re-evaluation Committee. Guidelines were given to the Committee in October 1991. These required the destruction of paper-based records unless there were very good reasons for their retention. 'Security relevant' records were to be kept on microfilm or in electronic form, where they were most secure and easier to destroy or erase quickly. Continued retention was to be reviewed on an annual basis. In addition, documentation of covert operations was to be categorised according to sensitivity and security relevance criteria, with references to the most sensitive documentation to be removed from the electronic information retrieval system. None of this documentation was to be kept for longer than six years.

59 The new records management policy outlined above had not taken into account Treasury requirements for the management of financial records. In 1992, after conferring with the Auditor-General and the Director of Archives, the NIS Director-General requested ministerial approval for the destruction of financial authorisations, vouchers and related documentation. As indicated earlier, the Minister of Justice and National Intelligence, Mr Kobie Coetsee gave his approval on 3 July 1992.

60 Implementation of the policy gained momentum in 1992, but reached its most intense levels in 1993. At this time mass destruction of records took place, embracing all media and all structures. In a six to eight month period in 1993, NIS headquarters alone destroyed approximately forty four tons of paper-based and microfilm records, utilising the Pretoria Iscor furnace and the Kliprivier facility outside Johannesburg. The evidence suggests that many operatives took the opportunity to 'clean up' their offices, irrespective of the guidelines. Systematic destruction exercises continued until late in 1994. Many of the surviving minutes of chief directorate, directorate and divisional meetings and most administrative records covering the period 1989 - 1994 were destroyed at this late stage. It is unclear whether a position, adopted by the Heads of Civilian Services (HOCS)20 in about September 1994, that all record destruction should cease, was fully complied with. What is clear, however, is that, throughout the phase of systematic destruction, NIS's own requirements for the preparation of destruction certificates were seldom complied with.

61 The result of the destruction was a massive purging of the NIS's corporate memory. This was supplemented by the unauthorised *ad hoc* removal of documents by individuals for their own purposes. Any attempt to quantify this phenomenon was beyond the resources of the joint investigative team. Very little pre-1990 material survives in the paper-based, microfilm and electronic systems. The one seemingly intact series of records are the minutes of senior management meetings for the period 1980 - 1994. Other documentation from the period 1990 - 1994 was substantially sanitised.

62 It is clear that the main purpose of purging the records of the NIS was to deny a new government access to records documenting state action against the opponents of apartheid. Subsidiary aims, outlined in NIS top management elaborative outlines issued in 1992, included the protection of sources and the sanitisation of the image of both government and the NIS in a new political environment (see appendices B and C).

63 Crucial to a complete picture of record destruction is the fact that, in addition to its own records, the NIS was the custodian of documentation generated by the NSMS, including the State Security Council and its numerous sub-structures. On 29 November 1991, when the system was being dismantled, a circular was sent to all government departments requiring them to transfer all State Security Council Secretariat records in their custody to the NIS. The stated purpose of the exercise was to enable the Security Secretariat to assemble a complete set of all such records. Interviewed in the course of the investigation into the civilian intelligence bodies, Mr Johan Mostert, who was head of the Security Secretariat in 1993, reiterated the position he took in the public debate at the time, insisting that a full set of such documentation had been kept by the NIS. Indeed, he subsequently provided the Commission with a sworn affidavit to this effect. When the extant records were transferred from the former NIS offices into the custody of SAS in March and April 1995, however, it became clear that this was not the case. The transferred records covered the period 1979 - 1989, but contained numerous and substantial gaps[21]. According to Mr AP Stemmet, who was a senior official in the State Security Council Secretariat and responsible for the management of these records between 1980 and 1990, the gaps were primarily the result of routine destruction exercises undertaken throughout the 1980s. The suspicion remains, however, that the 1991 exercise was designed to secure not the preservation but the destruction of certain records.[22] Supplementary documentation transferred to the National Archives by Mr Mostert in December 1997 (covering the period 1990-1994) contained similar gaps.

64 During 1995, the remaining former 'homelands' intelligence services were integrated into the new civilian intelligence services. It seems that, before then, very little records destruction had taken place. However, between April and October 1995, a NIA Chief Directorate Research and Analysis Co-ordinating Committee subjected some of the records inherited from these services to a thorough re-evaluation process. Working both on-site and with records that had been transferred to NIA headquarters, the Committee was mandated to identify for preservation records of value to the NIA, from both an operational and an historical perspective. Committee members estimated that about 5 per cent of the records evaluated were identified for preservation. On-site inspection by the joint investigative team suggests that a far smaller percentage was preserved, with almost nothing pre-dating 1990, and that in practice the sole criterion for preservation seems to have been security relevance. The remaining documents were subsequently destroyed: the last destruction exercise took place as late as November 1996. These destruction exercises defied the moratoria on the destruction of state records introduced in 1995 by both NICOC and Cabinet. However, after completion of the re-evaluation process, large

volumes of additional records from the offices of all three former services were secured at NIA headquarters. The periods covered by these records are as follows: Bophuthatswana Intelligence Service (1973 - 1995), Bophuthatswana National Security Council (1987 - 1994), Transkei Intelligence Service (1969 - 1994) and Venda Intelligence Service (1979 - 1994).

65 The KwaZulu Intelligence Service (KWAZINT) was unique in that it was a NIS special project (code named *Aalbessie*) fully funded by the NIS. KWAZINT existed between 1986 and 1991, when NIS terminated it. It included the NIS and KwaZulu government officials and all project records were either sent to or managed by the NIS. As far as the joint investigative team could determine, none of these records has survived. For this account of KWAZINT's existence, the joint team relied on the testimony (both written and verbal) of ex-KWAZINT operatives.

South African Defence Force

66 In June 1997, the Commission began trying to set up the joint investigative team. It was hoped, at that stage, to conduct a broad investigation of record destruction by SADF structures. However, the team was only finally constituted in December 1997, after several unsuccessful attempts by the Commission to initiate the enquiry. As indicated earlier, by the time the SANDF finally offered its co-operation, much time had been lost and it became necessary to adopt objectives that were more modest. These included:

a the securing of an overview of SADF records management practice; and

b focused probes into record keeping by Military Intelligence and other particularly sensitive structures and operations.

67 The investigation was completed in March 1998 and received good support from the SANDF personnel involved.

68 Throughout the period under review (1960 - 1994), the SADF was fully subject to both the Archives Act and the professional supervision of SAS. However, the SADF enjoyed a special status within this framework. It managed its own archival repository (the SADF Archives) and, from the late 1960s, provided its own records management service (through the SADF Archives) to SADF structures. Both functions were supervised by SAS. Standing orders required that records be destroyed only in terms of authorisations signed by the Director of Archives, and that destruction certificates be submitted to the SADF Archives.

69 However, from at least 1971, conflicting standing orders authorised the routine destruction of classified records without reference to the SADF Archives, the Director of Archives or the Archives Act. The evidence provided by extant internal destruction certificates suggests that substantial volumes of records were destroyed in this way without any archival intervention. Neither the SADF Archives nor the Director of Archives appears to have been aware of the existence of these orders.

70 In November 1991, the SADF received the instruction from the NIS, referred to earlier, requiring it to collect and transfer to that body all records in its custody related to the State Security Council Secretariat. The instruction was interpreted to embrace all NSMS records, which were systematically secured and prepared for transfer to NIS. While the joint investigative team could find no documentary evidence of the transfer, an executive plan was identified which, according to strong verbal evidence, had been put into effect by 1993.

71 In 1992 Lieutenant-General Steyn, the then SADF Chief of Staff, was appointed to investigate SADF intelligence activities. On 23 November 1992, all SADF structures were informed that from then on records were only to be destroyed with the express approval of Steyn.

72 However, in mid-1993, the Cabinet-approved guidelines for the disposal of 'state sensitive documentation' were received. The Chief of the SADF ordered their immediate implementation, thus effectively repealing General Steyn's instruction. Two joint teams, consisting of inspector general and counter intelligence personnel, were appointed to visit all units and to identify records for destruction. A countrywide destruction exercise followed. This exercise failed, by and large, to produce the required destruction certificates, making analysis of its impact extremely difficult.

73 Several processes sustained the disposal of SADF records outside the ambit of archival legislation. Not mentioned above, and impossible to quantify, were the unauthorised *ad hoc* removals and destruction undertaken by individuals. Assessing the overall impact of these processes was beyond the joint investigative team's capacity. However, several probes sought to arrive at a general sense of their impact.

a Although subjected to close scrutiny during the 1993 destruction exercise, a large volume of Military Intelligence files survived. The joint investigative team identified three discrete file groups at the SANDF Archives: group number 14, comprising 299 boxes of files covering the period 1977 - 1987; group number 21, comprising 254 files covering the period 1975 - 1987; and group number 30, comprising 529 boxes of files covering the period 1976 - 1996. However, significant gaps were identified. For instance, no record accumulations of the Directorate Special Tasks or the Directorate Covert Collection could be found, and only a small accumulation of Contra-mobilisation Projects (COMOPS).

b No record accumulation relating to the CCB could be found.

c Spot checks revealed that not all personnel files could be made available, raising the question as to whether or not such files had been destroyed.

d Spot checks suggested that substantial documentation of cross border operations in neighbouring countries had survived.

e Very little NSMS documentation managed by the SADF had survived. The only significant accumulation comprised fifty-four boxes of files (now in the SANDF Archives), generated in the Eastern Cape and preserved for use in the Goniwe Inquest. However, some other NSMS documentation was identified in each of the three military intelligence file groups described above.

74 The joint team also conducted two supplementary probes:

a A task group authorised by the Chief of the SANDF in June 1994 managed the acquisition by the SANDF Archives of all extant records of the former defence forces of Transkei, Bophuthatswana, Venda and Ciskei. These forces had been amalgamated with the SADF and non-statutory forces to form the SANDF in April 1994. Apart from the 1 544 boxes of files secured from the former Bophuthatswana Defence Force, relatively insignificant documentary traces were secured: eighty boxes of files from the Transkei, 115 from the Ciskei and 331 from Venda. Personnel files have been excluded from these figures, as they were integrated with the SANDF's personnel file series.

b The records of the South West Africa Territory Force were subjected to systematic appraisal in an exercise initiated in December 1988. Decisions about which records were to be destroyed were authorised by the commanding officer. There was no consultation with the civilian archives repository in

Windhoek, the SADF Archives, or the State Archives Service. Records that survived this exercise were placed in the custody of the SADF Archives.

Department of Prison Services

75 The joint investigative team responsible for this investigation conducted its work between November and December 1997. It received excellent support from the Department of Correctional Services.

76 In terms of records management policy and practice, the Department of Prison Services was in most respects a model governmental body. From the early 1960s, it secured SAS approval for its records classification systems, regularly reported revisions to them, and was diligent in securing disposal authorisation from the Director of Archives for all records categories. Records were destroyed in terms of these authorities, and the requisite destruction certificates were forwarded to the Director of Archives. SAS documentation demonstrates that the Department was also diligent in reporting cases of records lost or destroyed other than in terms of the authorities. These cases were all investigated by the SAS, and no evidence of sinister motives was uncovered.

77 However, from at least 1985 the Department routinely destroyed classified records in terms of the NIS Guidelines for the Protection of Classified Information. This was done without any consultation with the SAS. Moreover, the 1993 Cabinet-approved guidelines for the disposal of 'state sensitive' records and the circular received by all government offices from the Security Secretariat in July 1993 recommending the destruction of certain categories of classified records were both acted upon. The circular was understood to constitute an instruction from a higher authority than the SAS, and was implemented to the letter. A substantial volume of classified records was destroyed. Appropriate destruction certificates were prepared.

78 In probing the Department's records management practice, the joint investigative team focused on records documenting security and political prisoners or detainees, and prisoners sentenced to death. The findings were as follows:

a The files of each security and political prisoner were transferred to Pretoria on the prisoner's release. These files were investigated by the team and found to be intact, in excellent condition and under the careful management of the Department's Directorate of Security. The historical value of this documentation is extremely significant.

b A separate visit to the strongroom containing the files of the ANC Rivonia trialists and several other ANC leaders showed these files to be in a similar state of excellent preservation. The files are those of President Mandela and Messrs Harry Gwala, Ahmed Kathrada, Govan Mbeki, Raymond Mhlaba, Wilton Mkwayi, Andrew Mlangeni, Elias Motsoaledi and Walter Sisulu. There was a total of 208 personal files as well as a number of registers, *dagboeke* and additional documents. Again, the historical value of these records demands the utmost care and protection.

c The Department kept no record of security and political detainees. The latter were under the direct control of the Security Branch of the SAP, which managed the relevant documentation.

d Documentation of prisoners sentenced to death had been preserved, and was under the control of Correctional Services' Regional Commissioner for Gauteng.

The Department of Justice's Security Legislation Directorate

79 This investigation was conducted by representatives of the Commission and the National Archives with the excellent co-operation of the Ministry of Justice. Because of the small size of the Department of Justice's Security Legislation Directorate, and the concentration of all its records into a single Ministry of Justice strong room, it was possible to complete the investigation without any logistic problems within one week during December 1997.

80 The Directorate was established in 1982 and endured until 1991. Its predecessor was the Internal Security Division and, before that, the function was performed (beginning in 1949) by various individuals in the Department. Its function was to make recommendations to the Ministers of Justice and Law and Order concerning the administration of security legislation. For example, whether an individual or organisation should be banned; whether an individual should be restricted; whether a gathering should be allowed, and so on. Legislation falling within its ambit included the Suppression of Communism Act, the Internal Security Act, the Affected Organisations Act, the Terrorism Act, the Unlawful Organisations Act and the Public Safety Act. It is worth noting that its involvement with Section 29 detainees was terminated in 1987, and that it played no role concerning state of emergency regulations. Its recommendations were made on the basis of investigations initiated by the Security Branch of the SAP. These recommendations were supported by information gathered on its behalf by the Security Branch, the NIS and Military Intelligence. It had no information-gathering capacity of its own.

81 The evidence suggests that the Directorate's records management practice was impeccable. Records were kept in accordance with SAS and departmental directives, and disposal was performed in terms of disposal authorities issued by the Archives Commission and the Director of Archives. While the Directorate did routinely destroy classified documents received from other government offices in terms of NIS guidelines, it ignored the 1993 Cabinet-approved disposal guidelines and the 1993 Security Secretariat circular advising the destruction of certain classified records.

82 The Directorate's extant records constitute a comprehensive and extremely valuable collection. Kept in excellent condition by the Ministry of Justice, it comprises the following:

- a a series of case files for individuals, spanning the period 1949-1991;
- b series of case files for organisations and for publications. It should be noted that the series for organisations includes files inherited by the Directorate dating back to the 1920s;
- c policy, administrative and other subject-based correspondence files.

83 The Ministry of Justice readily made this documentation available to the Commission.

þ CONCLUSIONS

Destruction in terms of the Archives Act

84 No state has the resources to preserve permanently all the records generated by it. The information 'explosion' of the second half of the twentieth century has made it essential that rigorous selection policies be applied to records which have served their shorter term functional and accountability purposes. In the United States, for example, between 1950 and 1985, the authorised destruction of 120 million cubic metres of federal records took place.23 The selection policies of some countries' national archives secure for archival preservation as little as 1 per cent of all state records24; the SAS estimates that the policies implemented in South Africa between 1960 and 1994 secured the preservation of approximately 15 per cent of state records.

85 In this period, huge volumes of state records were destroyed with the authorisation of either the Archives Commission (until 1979) or SAS (under the signature of the Director of Archives). While there is evidence that SAS attempted to secure a degree of professional autonomy, it is highly improbable that apartheid imperatives did not mould selection decisions. Indeed, numerous instances of this can be cited: for instance, in 1968 Military Intelligence was given authorisation (SV-35) to destroy classified records on a 'read and destroy' basis; it took the post-February 1990 winds of change to stimulate a review of an earlier decision not to preserve even a sample of Group Areas Act case files; and, as is recounted earlier in this chapter, the Director of Archives colluded with NIS in 1992 in securing authorisation for the quick destruction of financial and related records.

86 Clearly, a comprehensive account of state record destruction requires a thorough analysis of archival selection policies and practices. However, the over 4 000 record disposal authorities issued to state offices in the period under review placed such an analysis beyond the capacity of the Commission. This is another important story that remains to be told elsewhere.

Destruction outside the operation of the Archives Act

87 In the period 1960 - 1989, the SAS investigated numerous cases of alleged or actual destruction of state records, which had occurred without archival authorisation. Most cases of such destruction involved disasters such as fires and flooding, or resulted from negligence in the management of records. In not a single instance was the SAS able to identify sinister motivation – for example, the deliberate destruction of documentary evidence. This does not mean, of course, that such destruction never took place.

88 The evidence recounted earlier in this chapter demonstrates that the security establishment did, in fact, routinely destroy documentation without archival authorisation in the pre-1990 era. With the exception of the Department of Prison Services and the SADF, the SAS chose to avoid exercising its managerial responsibility in relation to these bodies' records systems. There is, indeed, no evidence of pre-1990 professional liaison between the SAS and other components of the security establishment. The reasons for this abrogation of responsibility are not clear. What is clear is that the State Archives Service was not in a position to detect the unauthorised destruction that was taking place.

89 It is also of significant interest that, when the Department of Justice transferred the Rivonia Treason Trial records into the custody of the SAS in 1995, it was discovered that most of the records were *missing* – although, again there is no evidence which suggests these records were in fact *destroyed*. An intensive investigation by the SAS failed to reveal what had happened to them.25

90 After February 1990, security establishment structures became increasingly apprehensive about certain state records passing out of their control at some future date. This resulted in a marked shift towards a more systematic and vigorous attempt to destroy state records. The NIS began a systematic destruction programme in 1991, the Security Branch of the SAP in 1992 and the SADF in 1993. At the same time operatives apparently began removing state records as 'insurance policies' for the future. This was done, for instance, by several CCB operatives. The Harms Commission of Enquiry revealed that the remaining CCB records had been systematically destroyed.26

91 In the course of its routine work in 1997, the NIA discovered several trunks of classified documents on South Africa's Chemical and Biological Warfare (CBW) programme and apparent hit-squad activities. These had been placed in the premises of a former colleague by Brigadier Wouter Basson, previously head of the SADF's CBW programme. This documentation, which had been removed from the custody

of the state, highlights the extent to which ‘state sensitive’ employees of the state appropriated documentation for their own purposes. In this instance, the documentation was returned to and scrutinised by the NIA as well as Commission personnel as a basis for their enquiry into the nature and extent of the CBW programme.

92 In November 1991, the NIS instructed all government departments to collect documentation of the State Security Council Secretariat in their custody and to transfer it to the NIS. As argued earlier, the purpose of the exercise appears to have been the systematic selective destruction of such documentation. In 1993, it was revealed that all Koevoet records had disappeared while in transit between Windhoek and Pretoria.27

93 By May 1994, a massive deletion of state documentary memory within the security establishment had been achieved. To what extent the systematic destruction was co-ordinated, and the question of whether or not it was sanctioned by Cabinet in its preliminary phase, is unclear. However, as recounted earlier, by 1993 Cabinet was both aware of the phenomenon and had authorised its expansion to involve all state offices. The motivation for this purging of official memory was clearly to prevent certain categories of record falling into the hands of the incoming government. The apartheid state was determined in this way to sanitise its image and protect its intelligence sources. It was also apparently intent on eliminating evidence of gross human rights violations. In this regard, the security establishment had most cause to destroy records.

þ THE PURGING OF OFFICIAL MEMORY : A CHRONOLOGY

From at least the 1970s:
Government offices, particularly within the security establishment, routinely destroy ‘sensitive’ records.

1978:
The Prime Minister authorises government-wide guidelines for the routine destruction of classified records. These are updated, with the StatePresident's approval, in 1984.

1988:
Records of the South West Africa Territory Force are appraised and large volumes destroyed.

1991:
NIS begins a systematic destruction programme which continues until late in 1994. The guidelines are channelled to the State Security Council as a basis for government-wide guidelines.

November 1991:
NIS attempts to collect all NSMS records, apparently to implement selective destruction.

1992:
The Security Branch of the SAP begins a systematic destruction programme, which continues into 1993.

3 July 1992:

Minister of Justice and National Intelligence authorises the destruction of NIS financial and related records outside parameters laid down by Treasury requirements.

2 June 1993:
Cabinet approves government-wide guidelines for the destruction of 'state sensitive' records. The guidelines are submitted to Cabinet by the State Security Council and incorporated the principles of the 3 July 1992 authorisation referred to above. Immediately, the SADF and other government structures begin systematic destruction programmes.

July 1993:
The Security Secretariat advises government offices to destroy certain categories of classified record. Widespread implementation follows.

From 1991:
All the above processes provide a cover for widespread *ad hoc* removalsand destruction of records by individuals.

1995:
In June, NICOC introduces a moratorium on the destruction of 'intelligence documents'. In November, Cabinet imposes a moratorium on the destruction of all categories of state record.

April 1995 – November 1996:
NIA systematically appraises and destroys certain records inherited from the intelligence services of the former homelands.

The issue of legality

94 The selective destruction of state records beyond the parameters of the Archives Act was concentrated largely within the security establishment in the period 1960 to 1990. This reflected the former state's tendency to operate in a highly secretive manner and the fact that 'sensitive' records were not subject to the operation of the Archives Act. This assumption was sanctioned by the 1978 and 1984 NIS Guidelines for the Protection of Classified Information, which had been authorised by the head of state. Between 1990 and 1994 selective destruction became a systematic endeavour authorised by Cabinet and reaching into all sectors of the state. It is clear that the former state wished to prevent the new government from access to many documents. At the time and subsequently, those responsible maintained that their motive was simply to protect intelligence sources and the legitimate security interests of the state. The evidence demonstrates that the destruction went far beyond this. Those responsible also maintain that the endeavour was entirely legal. They point to the state legal opinions secured by the State President's Office, the NIS and the Director-General of National Education in 1991 and 1993 which argued that 'state sensitive' records fell outside the definition of records which were subject to the Archives Act. However, the following factors need to be taken into account :

a The SAS disagreed with these legal opinions.

b The basis of Mr Brian Currin's legal intervention in 1993 was a rejection of the two 1991

opinions.

c In the wake of the Currin settlement, the Minister of Justice issued a media statement to the effect that that “Cabinet is of the view that state documentation should be dealt with in terms of the Archives Act.”28 However, the destruction of ‘state sensitive’ records beyond the operation of the Act continued. And, as recounted earlier, within months of the media statement Cabinet attempted to secure legal sanction for the removal from state custody of Cabinet minutes and other ‘sensitive’ records outside the operation of the Act.

d The state used the legal opinions selectively. For instance, the 1993 opinion’s recommendation that an advisory mechanism on records destruction be created was simply ignored.

e Cabinet’s approval of the destruction of financial records outside the parameters laid down by the Treasury requirements was of dubious legal validity.

f The legal opinions begged the question, ‘in terms of what law are 'state sensitive’ records to be destroyed?’ Several officials involved in such destruction pointed to the Protection of Information Act, but this Act makes no reference to the destruction of documents.

95 Ultimately the question of legality is perhaps largely a non-issue. On the one hand, the former government created rules and performed actions, which were perfectly legal but lacked legitimacy and often bore little or no relation to the rule of law. On the other, it is clear that the sanitisation of official memory would probably have taken place irrespective of legal constraints. As Mr Brian Currin said of the 1993 settlement, the only way to enforce it would have been to “tie up their [government’s] hands and confiscate all the relevant machinery they can use to destroy documents.”

The role of the State Archives Service

96 Given its legislative mandate, the SAS was the principal state agent responsible for acting against destruction without the required archival authorisation. While it investigated numerous cases of alleged or actual illegal destruction, lack of resources and an abrogation of responsibility led to its failure even to detect the routine destruction of classified records by the security establishment in the pre-1990 period. In the 1990-1994 period of mass destruction, SAS intervention achieved little. It followed up every case of alleged illegal destruction, engaged the security establishment in debate around the issue, registered its disagreement with the two 1991 legal opinions, and forced revision of the NIS’s 1994 Guidelines for the Protection of Classified Information. However, it was hamstrung by the government’s disregard for accountability, by its junior status within government, and by a leadership that was apparently intimidated by the security establishment. The evidence suggests that, while junior staff was pushing for decisive action, the leadership chose not to act. For instance:

a In June 1992, the Department of Foreign Affairs requested authority to destroy certain special projects files. When the Director of Archives indicated that they should be transferred into the custody of the SAS, Foreign Affairs withdrew its application and claimed that the files were in fact merely empty file covers. The Director refused calls by SAS junior staff for an investigation.

b When SAS staff became aware of the Security Secretariat’s 1993 circular concerning the destruction of classified records, and secured evidence of its implementation in government offices, they pushed for

an urgent intervention. When the Director of Archives failed to do so, one of these staff members is reported to have leaked the circular first to the press and then to Mr Brian Currin of Lawyers for Human Rights.29

c On no occasion in the period 1990 - 1994 did the Director of Archives authorise an investigative inspection of an office suspected of destroying records. Not once was the Archives Act used to institute an investigation of possible criminal charges in terms of the Act.

The role of the liberation movements

97 As is recounted elsewhere in this chapter, from 1992 ANC structures began calling for a moratorium on the destruction of state records. Already there was a strong suspicion that the state was planning, or had already embarked upon, a process of systematic destruction. In September 1993, the ANC's Department of Information and Publicity issued a media release in support of Currin's attempt to stop the destruction of classified records. However, the ANC leadership failed to put the issue on the table during the multi-party negotiation process, and the liberation movements further failed to ensure that it was addressed in the Transitional Executive Council Act (No. 151 of 1993). Moreover, the Transitional Executive Council failed to act in the wake of the Currin settlement - the Council was, in the words of Currin, "just paralysed and didn't respond". When the moratoria were introduced in 1995, they came too late. It is also not clear how effectively the moratoria were communicated to and enforced within security establishment structures. Certainly, the NIA continued systematically destroying records of the ex-homelands intelligence services after the introduction of the moratoria, until as late as November 1996. Of course, it could be argued that more decisive intervention by the ANC and the other liberation movements would not have prevented the mass destruction. Nevertheless, this was a lever that, sadly, was never utilised.

þ FINDINGS

98 A clear distinction has been made in this chapter between the routine destruction of state records outside the parameters of the Archives Act which took place before 1990, and the systematic destruction that took place between 1990 - 1994. The same distinction is made in the following analysis.

The Commission finds that:

99 Before 1990, 'sensitive' records were routinely destroyed by state bodies, particularly those within the security establishment. This was based on an assumption that such records fell outside the ambit of the Archives Act, an assumption that was not tested by a state legal opinion until 1991. The assumption was sanctioned by NIS guidelines authorised by the head of state. The protection of state security was the stated objective of these destruction processes, but they went further in ensuring that certain aspects of the inner workings of the apartheid state remained hidden forever.

100 Accountability rests ultimately with the heads of state at the time, although the NIS carries a heavy burden of responsibility for the key role it played in formulating and disseminating the guidelines mentioned above. The SAS is accountable for having failed to uncover the destruction processes.

101 The massive destruction that took place in the period 1990 - 1994 is a different matter. Here the intention, irrespective of legal considerations, was to deny a new government access to apartheid secrets

through a systematic purging of official memory. Evidence assembled in this chapter demonstrates that, from at least 1993, this endeavour bore the explicit sanction of Cabinet. To this extent, Cabinet is culpable. However, a number of other parties must share culpability:

a Both the NIS and the SAP Security Branch began purging exercises long before formal Cabinet sanction was secured in 1993.

b The Cabinet-approved destruction guidelines of 1993 were first passed by the State Security Council and originated with the NIS's internal destruction guidelines.

c In failing to revise its Guidelines for the Protection of Classified Information in the wake of the Currin settlement, the NIS clearly defied the terms of the settlement.

d As custodian of the NSMS records, the NIS failed to take appropriate steps to ensure that a complete set of such records was preserved. In fact, evidence suggests that the NIS played a key role in ensuring that the records were also purged.

e Numerous individual state officials used the cloak provided by the destruction endeavour to destroy or remove documents without authorisation.

102 **Other parties must, in turn, be held accountable for their role**:

a In 1993, and again in his appearance before the joint investigative team enquiry into the record management of the civilian intelligence service, Mr Johan Mostert maintained that a full set of original NSMS documentation had been preserved. This documentation had, however, been purged in over ten years of routine destruction. Mr Mostert, who appeared in his capacity as former head of the Security Secretariat, said that he recommended the destruction of certain categories of state records. In his sworn affidavit to the Commission, to which reference has already been made, he acknowledged "sole responsibility for the content of the letter" which was sent to all director-generals in the public service.

b SAS must be held accountable for the indecisive and ineffective steps it took to halt the destruction endeavour.

c The liberation movements failed to exercise all the leverage at their disposal in acting against the endeavour.

103 Although these activities fall outside the Commission's mandate period, the NIA was still destroying records systematically as late as November 1996, in defiance of two government moratoria on the destruction of state records. Culpability rests with the officials directly responsible, but the Agency's top management must be held accountable.

104 The mass destruction of records outlined above has had a severe impact on South Africa's social memory. Swathes of official documentary memory, particularly around the inner workings of the apartheid state's security apparatus, have been obliterated.

105 Moreover, the apparent complete destruction of all records confiscated from individuals and organisations by the Security Branch of the SAP has removed from our heritage what may arguably have been the country's richest accumulation of records documenting the struggle against apartheid.

106 Clearly, the work of the Commission suffered as a result. Numerous investigations of gross human rights violations were hampered by the absence of documentation. Ultimately, of course, *all* South Africans have suffered the consequences - all are victims of the apartheid state's attempted imposition of a selective amnesia.

þ APPENDIX 1

DISPOSAL OF STATE SENSITIVE DOCUMENTATION

1 Introduction

1.1 The vast volume of classified material in the state set-up and the relevance thereof in changing circumstances in the country have raised practical questions about disposing of such documentation.

1.2 The intelligence security subcommittee of CIC has approached the subject in the light of the following principles in consultation with a working group appointed by cabinet:

- There is a need for a simplified, orderly system which will entail fewer prescriptions but will nevertheless provide greater protection in cases where it will really be necessary;

- it is about state sensitive documentation or information that is worthy of protection from a state point of view, and not about shielding against mere political embarrassment;

- no disposal will be aimed at the obstruction of justice.

2. Legal requirements

2.1 he Archives Act, 1962 applies in brief to all documents that are created or received in state offices and that cannot be dealt with in another way as a result of the nature thereof or the relevance of other legal requirements.

2.2 Section 9 of the Act gives the public the right to have access to all "archives" or documentation older than thirty years, except in those cases where the Minister of National Education refuses or regulates access on the basis of "public policy". By the same token, the Minister may also allow access to archives younger than 30 years.

2.3 In the case of state sensitive documentation, the Archives Act does not apply as a result of the confidential nature of the material and/or the provisions of the Protection of Information Act, 1982. In these circumstances, the relevant head of department has complete power of disposal, including destruction. (See Guidelines for protection of classified information SP 2/8/1 Chapter 4, paragraph 12).

2.4 In another context, an opinion was sought from state legal advisers with regard to the claim of outgoing political office bearers over state documentation. According to the legal advisers the state documentation

remains the property of the state and these office bearers have no claim to it. The State Archive has a filing system that is meant to maintain the difficult distinction between a political office bearer's political and state activities. This is made available to the personal staff of office bearers when they assume office.

3 Administrative Requirements

3.1 Each head of department has the power to dispose of documents of a classified nature in his department within the provisions of the Guidelines for Protection of Classified Information - SP 2/8/1, Chapter 4, Paragraph 12 (taking into account existing legislation) by way of his own departmental procedural prescription. This includes destruction.

3.2 Where the destruction of authorisations, evidentiary material and other financial records of state sensitive projects is concerned, the normal disposal periods can be deviated from after sufficient motivation and subject to the following conditions:

3.2.1 Destruction may only take place after the Auditor-General (AG)'s auditing cycle had expired. This implies that destruction may only take place once the discussion of the AG's report on Secret Funds by the Joint Committee over Public Accounts has taken place and after all outstanding auditing queries with regard to a specific financial year have been dealt with. A certificate similar to that prescribed in Treasury Instruction M 1.3.2 Annexure 1, must still be provided.

3.2.2 However, where circumstances dictate that some documents have to be destroyed immediately after the audit, the relevant minister must decide on this in the light of a full oral or written motivation.

3.2.3 Documentation dealing with expenditure that does not yet form a final debit against a special account and/or budget post, for instance in the case of outstanding advances, may not be destroyed. It is also necessary to preserve documents/evidentiary material relating to the following aspects:

- Assets that have not been finally disposed of
- Shareholdings in institutions outside the State set-up like companies and close corporations
- Outstanding loans or debits
- Incomplete projects that cover more than one financial year and for which permission for final closure has not yet been obtained.

3.2.4 There are also some documents that may only be destroyed in certain limited circumstances. The following are examples:

- In all cases (except the SADF) the relevant minister can personally authorise directives for destruction. Such authorisation can however not be obtained once off for all sensitive projects and each project has to be approached separately. The recommendation is however that approval, in principle, should also be obtainable in advance from the Department of State Expenditure.

- The Defence Force's Special Defence Account falls under the Treasury Act and provisions for destruction are clearly contained in the Financial Guide to the Treasury, Chapter M. Authorisations in these cases must be given by both the Ministers of Defence and of State Expenditure.

3.2.5 In summary: The matter of the destruction of authorisations and documentation with regard to sensitive projects must be cleared by each department with the responsible minister(s).

4 Problem

4.1 Inadequate procedural provisions have the result that a significant number of documents may be destroyed because they have become irrelevant and redundant. Destruction of documents in order to get rid of the information contained therein, also arises. If a responsible person is currently in possession of documents, the publication of which could endanger human lives, sour international relationships and derail the negotiation and transition process, he cannot be expected to speculate about the identity and responsibility of future co-rulers. The interests that are endangered, are far too weighty.

4.2 The injudicious destruction of documentation can harm relations in a transitional government. Gaps in records will raise questions that will be based on negative deductions. These suspicions etc. can be more prejudicial than the documentation destroyed in the destruction process.

4.3 It must be accepted that copies of some of the documentation, the destruction of which is now being contemplated, already exist and are kept in private ownership with ulterior motives. The destruction of this documentation can, in the case of malicious publication of copies, lend a sinister hue to something that can be explained reasonably. An original document would also be necessary to expose a falsification thereof.

4.4 Special care must be taken not to destroy documentation that can be used to allay untrue allegations/charges.

4.5 Apart from the above, it is possible that original documentation may be necessary to enforce contractual obligations in some instances.

4.6 The rationalising of tasks and departments in the broader state set-up has resulted in the dividing up of relevant documentation as well. It is difficult, if not impossible, to provide a full record of such documentation. Regard is had specifically to the disbanding of the Department of Development Assistance.

4.7 The Department of Administration (House of Assembly) has already handed a portion of its documentation over to the central archive and the SADF has transferred a large portion of its documentation to its own archives.

4.8 With the disbanding of the Special Services Divisions in state departments, many of the officials are no longer in service of the relevant departments either. This results in certain people who may not have the necessary background and knowledge, handling the expertise about the handling and disposal of certain documents and information.

5. Recommendations

5.1 Subject to any central directives there may be, each head of department is in the best position to dispose of documentation (specifically state sensitive documentation) in his department. The head of department may obviously ask his political head for a political decision.

5.2 The Sub-committee for Information Security of the Co-ordinating Intelligence Committee can advise heads of department on matters such as the applicability of the Archives Act and the considerations mentioned in par 5.7.

5.3 The following state sensitive documents may not be destroyed under any circumstances, but must be held in safekeeping by the Cabinet Secretariat:

- The signed minutes of cabinet meetings and meetings of cabinet and ministers' committees (except SSC and CCSS);

- one set of agendas and memoranda that were tabled at the aforementioned meetings.

5.4 State President's minutes and actions and accompanying memoranda must obviously not be destroyed and are currently dealt with in accordance with the Archives Act anyway.

5.5 The Secretariat of the SSC and the WVVS (Security Secretariat) must keep one copy of agendas and minutes of the SSC, CCVS and the WVVS and obtain proof of destruction from all other institutions that were in possession of copies of those documents.

5.6 Where documentation was obtained from another department or state institution, it should, after oral consultation, be returned or satisfactory proof of destruction should be provided to that department. Such consultation must be formulated briefly for later reference.

5.7 In considering the question whether state sensitive documentation should be destroyed for the sake of protection of information, the head of department must consider weighty factors such as the following:

- the protection of human lives;
- the protection of legitimate individual, corporate and state interests (including inter-state interests);
- the proper course of the normal legal process; and
- the need for continuing good government.

þ APPENDIX 2

TOP MANAGEMENT GUIDELINES WITH REFERENCE TO CATEGORY A INFORMATION

1 Category A, or sensitive information, must include the following and must be either destroyed or kept under circumstances where it can be destroyed quickly.

1.1 That which can compromise sources and co-workers;

1.2 Cooperation with liaison service with regard to operations or projects, especially those against any party currently taking part in negotiations. Intelligence Conferences and the exchange of information are naturally not included in this category;

1.3 Projects where funds are/were involved. Documentary evidence exceeding 18 months must be destroyed. (Especially note private corporations).

1.4 Information that can cause embarrassment to the Service, the Government or a public figure or cause harm to the political negotiation process.

1.5 All copies of source reports (covert reports) after having been processed as NIS products because these could be compromising. As microfilms could also potentially compromise, this medium must only be used in extreme circumstances.

þ APPENDIX 3

NORMS FOR DETERMINING SENSITIVITY

1. With regard to the norms for determining sensitivity, the principal point of departure is not what security relevant information is or is not, or the security classification of a document, but rather what the norms are that determine what is sensitive and specifically politically sensitive. To determine general valid norms, the following can be considered:

1.1 All information, when compromised, that can lead to the endangering of human lives. This includes Service members/Agents/Sources and Co-workers.

1.2 All information, when compromised, that can seriously damage RSA foreign relations on all terrains or embarrass the RSA.

1.3 All information, when compromised, that could harm the current Government's bona fides as an honest and open negotiating party/participating party to the political processes of the land.

1.4 All information, when compromised, that would/could damage the image of the Service and the bona fides that its employees are politically impartial, objective, professional and committed to the law and values of the total strategy. Any information that could show that the Service breached the values and norms that exist in a free and democratic community or violated the rights and freedom of individuals, could be considered sensitive. This implies that specific information (especially covert) on the internal political terrain carries a high level of sensitivity.

1.5 Information, when compromised, disclosed or accidentally made known can put unnecessary suspicion on individual Service members' loyalty, honesty and trustworthiness in a new political dispensation as well as continued employment within the intelligence service/community.