

Truth and Reconciliation in South Africa

The Fundamental Documents

Selected, Introduced and Annotated by
Erik Doxtader and Philippe-Joseph Salazar



The Institute for Justice and Reconciliation is grateful to the
Austrian Consulate General, Cape Town for financial assistance.

First published 2007

© Institute for Justice and Reconciliation

New Africa Books (Pty) Ltd
99 Garfield Road
Claremont 7700
South Africa

David Philip is an imprint of New Africa Books (Pty) Ltd.

This book is copyright under the Berne Convention. In terms of the Copyright Act, No. 98 of 1978, no part of this book may be reproduced or transmitted in any form or by any means, electronic, or mechanical, including photocopying, recording or by any information storage and retrieval system, without permission in writing from the Publisher.

ISBN 13 Digit: 978-0-86486-707-0

Editor:
Layout and Design: Fresh Identity
Cover photograph:
Cover design: Fresh Identity
Proofreader: Ingrid Brink

Printed and bound in the Republic of South Africa by xxxxx

Foreword

The world remains fascinated by the South African political transition, of which the Truth and Reconciliation Commission (TRC) was an integral part. For nations wracked by internal division and conflict, the South African case is particularly intriguing given that the country averted a predicted bloodbath, despite being divided by 300 years of colonialism and nearly 50 years of statutory apartheid.

In South Africa, the TRC process continues to be evaluated – both critically and with a view to augmenting the process of national reconciliation and nation building. In turn, the documentation produced by the Commission is being closely scrutinised, both for how it might add to the truth discovered by the TRC and as a way of understanding how and how well the Commission's recommendations have been implemented in the 10 years since its first hearings in 1996.

This publication forms part of a multi-pronged initiative by the Institute for Justice and Reconciliation to make TRC materials available to various sectors of society. This volume, designed and edited by Erik Doxtader and Philippe-Joseph Salazar, is an important contribution to this endeavour. It is a companion to the volume entitled *South African Truth and Reconciliation in South Africa – Ten Years On*. The documents also augment an interactive DVD containing selected material from the TRC that is being produced for use in the nation's schools.

This volume provides easy access to documents that reveal some of the historical antecedents and roots of the Commission, along with texts that detail key elements and moments of TRC's work and which address responses by government and the public sector to the Commission's efforts. The Institute is extremely grateful to the editors for the thoughtful and meticulous manner in which they have collected and edited this work. The volume is a resource for those wishing to understand the TRC and enter into the debate over the Commission's continuing role in the ongoing South African transition.

We are grateful to the South African National Archive for their permission to republish the majority of documents in this volume. With thanks, we also acknowledge those who facilitated the inclusion of several other texts, including those in the public domain.

We further express our sincere appreciation to the Consulate General of Austria in Cape Town for their generous support in making this volume possible. Christine Kivinen has assisted us significantly.

All royalties and other income that may result from this publication are to be donated to the President's Fund.

CHARLES VILLA-VICENCIO
Executive Director
Institute for Justice and Reconciliation

Contents

Abbreviations vii

INTRODUCTION: The Road to Reconciliation
in South Africa viii

Part I

THE GROUNDS OF SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION

Section 1

Dealing with a Crime against Humanity

1. *The Policies of Apartheid of the Government of South Africa*, United Nations General Assembly Resolution, 1970.....
2. *Epilogue, Interim Constitution of South Africa*, 1993.....
3. *The Truth and Reconciliation Commission*, Pamphlet created on behalf of the South African Ministry of Justice, 1995.....
4. *The Promotion of National Unity and Reconciliation Act*, 1995.....
5. Judgment in the matter of *AZAPO, Biko, Mxenge, Riberio v. The President of South Africa, The Government of South Africa, The Minister of Justice, The Minister of Safety and Security, The Chairperson of the Truth and Reconciliation Commission*, Constitutional Court of South Africa, 1996.....

Source Information and Additional Readings

Section 2

The Theological and Political Roots of Reconciliation in South Africa

6. *Human Relations and the South African Scene in Light of the Scripture*, General Synod of the Dutch Reformed Church, 1974
7. *The Belbar Confession*, Dutch Reformed Mission Church in South Africa, 1982, 1986
8. Desmond Tutu, *Nobel Peace Prize Lecture*, 1984
9. *The Kairos Document*, 1985
10. Nelson Mandela, *Letter to State President P.W. Botha*, 1989
11. F.W. de Klerk, *Presidential Inaugural Address*, 1989.....
12. Kader Asmal, *Sins of Apartheid Cannot Be Ignored*, 1992
13. Nelson Mandela, *Presidential Inaugural Address*, 1994
14. *Indemnity Act* (1990) and *The Further Indemnity Act* (1992), Government of South Africa
15. *National Executive Committee's Response to the Motsuenyane Commission's Report*, African National Congress, 1993

16. *Statement on the Issue of Indemnity for Security Forces Involved in Defending Apartheid*, African National Congress, 1994.....
 17. Desmond Tutu, “Chairperson’s Forward,” *Truth and Reconciliation Commission of South Africa Report*, 1998
 18. “Concepts and Principles,” *Truth and Reconciliation Commission of South Africa Report*, 1998
 23. Busiswe Kewana and Thomzama Maliti, Testimony to the Human Rights Violations Committee, 1996.....
 24. Hilda Levy, Testimony to the Human Rights Violations Committee, 1996.....
 25. John Deegan, Testimony at the TRC Special Hearing on Conscription, 1997
 26. Nozibonelo Maria Mxathule, Testimony at TRC Women’s Hearing Convened by the Human Rights Violations Committee, 1997
- Source Information and Additional Readings.....

Part II

THE DIFFICULT WORK OF FINDING TRUTH AND PROMOTING RECONCILIATION

Section 3

The Recounting of Suffering and the Findings of the TRC’s Human Rights Violations Committee

19. “Victims Findings,” *Truth and Reconciliation Commission of South Africa Report*, 2003.....
 20. “Coding Frame for Gross Violations of Human Rights,” *Truth and Reconciliation Commission of South Africa Report*, 1998.....
 21. Joyce N. Mtimkhulu, Testimony to the Human Rights Violations Committee, 1996....
 22. Notutu Lizzie James, Testimony to the Human Rights Violations Committee, 1997.....
 27. Quentin Cornelius and Michael January, Testimony to the Amnesty Committee Regarding the Heidelberg Tavern Massacre, 1997.....
 28. Analysis of Gross Violations of Human Rights, *Truth and Reconciliation Commission of South Africa Report*, 1998.....
 29. Consequences of Gross Violations of Human, *Truth and Reconciliation Commission of South Africa Report*, 1998
 30. Findings from Special Hearings on Women, *Truth and Reconciliation Commission of South Africa Report*, 1998
 31. Findings from Special Hearing on Children and Youth, *Truth and Reconciliation Commission of South Africa Report*, 1998
- Source Information and Additional Readings

Section 4

32. Conrad Nkuna, Testimony before the TRC Amnesty Committee, 1997
33. Amnesty Hearing in Regards to the Nğema Tavern Killing, 1999
34. Harold Snyman, Testimony and Cross-Examination in Respect to the Death of Stephen Biko, TRC Amnesty Committee Hearing, 1997
35. Eugene de Kock, Testimony in Respect to the Piet Retief Incidents, TRC Amnesty Committee, 1999
36. Robert McBride, Testimony in Respect to the Bombing of the 'Why Not Restaurant' and 'Magoo's Bar', TRC Amnesty Committee, 1999
37. Bassie Mkhumbuzi, Testimony in Respect to the St. James Church Attack, TRC Amnesty Committee, 1997
38. TRC Amnesty Committee, Decision in Respect to the Amnesty Application of Philane Zondi, 1998
39. TRC Amnesty Committee, Decision in Respect to the Amnesty Applications Pertaining to the Murder of Stanza Bopape, 2000
40. TRC Amnesty Committee, Decision in Respect to the Amnesty Applications of Ian Ndzamela and Phumzile Mayapi, 1999.....
41. TRC Amnesty Committee, Decision in Respect to the Amnesty Applications Pertaining to the Assassination of Chris Hani, 1999.....
42. "The Legal Basis of the Amnesty Process," *Truth and Reconciliation Commission of South Africa Report*, 2003.....

43. "Causes, Motives and Perspectives of Perpetrators," *Truth and Reconciliation Commission of South Africa Report*, 1998.....

44. "Some Reflections on the Amnesty Process," *Truth and Reconciliation Commission of South Africa Report*, 2003.....

45. Statistical Analyses of the Amnesty Process

Source Information and Additional Readings

Section 5

What the Parties, Institutions and Business had to say about their Responsibility

46. African National Congress, Statement to the Truth and Reconciliation Commission, 1996
47. F.W. de Klerk on Behalf of the National Party, Submission to the Truth and Reconciliation Commission, 1996
48. Leon Wessels, Statement given at the TRC's State Security Council Hearings, 1997.....
49. TRC Findings on the Apartheid State: The Deadly Rhetoric
50. Inkatha Freedom Party, Response to the TRC's Findings, 2003.....
51. General Georg L. Meiring, Address to the Truth and Reconciliation Commission, 1996...
52. Major General B. Mortimer, Submission on Behalf of the South African Defense Force to the Truth and Reconciliation Commission, 1996
53. The Azanian People's Liberation Army, Submission to the TRC's Armed Forces Hearings, 1997

- 54. Findings on the South African Judiciary, *Truth and Reconciliation Commission of South Africa Report*, 1998
- 55. South African Broadcasting Corporation, Submission to the TRC's Media Hearings, 1997
- 56. SANLAM, Submission to the TRC's Business Sector Hearings, 1997
- 57. Dutch Reformed Church (NGK), Submission to the TRC Faith Communities Hearings, 1997

Source Information and Additional Readings

Part III

LIVING WITH THE ISSUE OF RECONCILIATION

Section 6

Reconciliation and Reparation: The Terms of an Ongoing Debate

- 58. "Reconciliation," *Truth and Reconciliation Commission of South Africa Report*, 1998
- 59. "The Case for Reparation and Rehabilitation: Domestic and International Law," *Truth and Reconciliation Commission of South Africa Report*, 2003

- 60. "Reparation and Rehabilitation Policy," *Truth and Reconciliation Commission of South Africa Report*, 1998
- 61. "Reparations and the Business Sector," *Truth and Reconciliation Commission of South Africa Report*, 2003
- 62. "Reparations and Civil Society," *Truth and Reconciliation Commission of South Africa Report*, 2003
- 63. "Recommendations," *Truth and Reconciliation Commission of South Africa Report*, 1998
- 64. Selected speeches from Parliament's Debate over the TRC Final Report, 1999
- 65. Thabo Mbeki, "Statement to the National Houses of Parliament and the Nation, at the Tabling of the Report of the Truth and Reconciliation Commission," 2003
- 66. *Prosecution Policy and Directives Relating to the Prosecution of Criminal Matters Arising from Conflicts of the Past*, National Prosecuting Authority, 2005

Source Information and Additional Readings

Chronology of Events

Abbreviations

| | | | |
|---------|--|----------|---|
| AC | – Amnesty Committee (TRC) | NGO | – Non-Governmental Organisation |
| ACDP | – African Christian Democratic Party | NGK | – Nederduitse Gereformeerde Kerk (Dutch Reformed Church) |
| ANC | – African National Congress | NGSK | – Nederduitse Gereformeerde Sendingkerk (Dutch Reformed Mission Church) |
| APLA | – Azanian People's Liberation Army | NHK | – Nederduitse Hervormde Kerk |
| ARMSCOR | – Armaments Corporation of South Africa | NP | – National Party |
| AVF | – Afrikaner Volksfront (Afrikaner Popular Front) | NPA | – National Prosecuting Authority |
| AVU | – Afrikaner Volksunie (Afrikaner People's Union) | NSMS | – National Security Management System |
| AWB | – Afrikaner Weerstandsbeweging (Afrikaner Resistance Movement) | PAC | – Pan Africanist Congress |
| AZAPO | – Azanian People's Organisation | PASO | – Pan Africanist Student Organisation |
| BC | – Black Consciousness | RRC | – Reparations and Rehabilitation Committee (TRC) |
| BCM | – Black Consciousness Movement | RSA | – Republic of South Africa |
| CCB | – Civil Cooperation Bureau | SABC | – South African Broadcasting Company |
| CODESA | – Convention for a Democratic South Africa | SACP | – South African Communist Party |
| COSATU | – Congress of South African Trade Unions | SADF | – South African Defence Force |
| CP | – Conservative Party | SANDF | – South African National Defence Force |
| DP | – Democratic Party | SAG | – South African Government |
| FA | – Freedom Alliance | SAP | – South African Police |
| FF | – Freedom Front | SDU | – Self-Defence Unit |
| HRVC | – Human Rights Violations Committee (TRC) | SSC | – State Security Council |
| IFP | – Inkatha Freedom Party | STRATCOM | – Strategic Communication Unit |
| JMCC | – Joint Military Coordinating Committee | UDF | – United Democratic Front |
| KZP | – KwaZulu Police | TRC | – Truth and Reconciliation Commission |
| MK | – Umkhonto we Sizwe (Spear of the Nation) | WARC | – World Alliance of Reformed Churches |
| NEC | – National Executive Committee (African National Congress) | | |

Introduction

The Road to Reconciliation in South Africa

This is a book for those who want to better understand and engage with South Africa's Truth and Reconciliation Commission (TRC). Its contents aim to provide a clear sense of the Commission's mandate and development. It also presents a detailed view of the varied work that was undertaken by the TRC, the ways in which victims and perpetrators of human rights violations chose to present accounts of their experiences and actions, and the basic conclusions and findings of the Commission.

The TRC convened its first public meeting on 15 April 1996 in an East London community hall. The room was packed. The audience, along with a good number of Commission members, was far from certain about what the next hours would hold. After leading a prayer and a hymn, Anglican Archbishop Desmond Tutu, the TRC's Chairperson, pleaded for a "dignified hearing," explained that the purpose of the gathering was to "hear harrowing stories from those who are going to be witnesses" and set the event within the TRC's larger charge to "promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past."

The first hearing was to become exemplary. A woman, Mrs Nohle Mohape, was the first individual to testify before the TRC's Human Rights Violations Committee. A long time activist in the Black Consciousness movement (once led by Steve Biko, slain by apartheid police), she took her seat under the glare of the media that would soon throw an even brighter and not infrequently cruder light on the Commission. Addressing events that had occurred precisely 20 years earlier, Mohape's testimony recalled the circumstances surrounding the death of her husband, Mapetla Mohape, during his detention by the South African police and then detailed the precise terms of her own banning, harassment, detention, and torture by security officials. Noting that her family had agreed to "go to the TRC and speak out about what happened", Mohape closed her testimony with a request that the TRC "try to find out what happened" to her children's father. Her plea would soon become a litany recited by many deponents: "I want my son's remains, his bones and ashes"; "I want my husband's right hand given back to me"; "My wish is for a tombstone for my son"; "We want to know whether to mourn."

Described by one South African media observer as a "theatre of pain and catharsis" (*Mail and Guardian*, 19 April 1996), the TRC took to the stage in 1996 to both understand and help resolve the uncertainty, anguish, and anger wrought by history. Five years later, the process closed as President Thabo Mbeki, Nelson Mandela's successor, issued a proclamation dissolving the TRC's Amnesty Committee. Charged with the controversial task of making amnesty recommendations on a case by case basis, the Amnesty Committee played a key in pursuing the TRC's larger mandate to establish "as complete a picture as possible of the nature, causes and extent" of apartheid-era (1960-1994)

gross violations of human rights and determine the “antecedents, circumstances, factors and context of such violations.” Much of this work occurred in public hearings. In the name of establishing truth, determining accountability, and building a culture of human rights, perpetrators seeking amnesty were required to offer not remorse but a full disclosure of their politically motivated acts, offences, and omissions. Many applicants were successful. Most were not.

For victims of apartheid-era violence, the dramatic relief of amnesty appeared to come at the cost of their newly entrenched constitutional right to seek justice in South African courts. In exchange for this sacrifice, which partly explains how the TRC is conjoined structurally to the democratic Constitution of 1996 and not its legal subaltern, the TRC’s Reparation and Rehabilitation Committee sought to develop a package of compensation that would “counterbalance amnesty,” promote reconciliation, and help to restore “the human and civil dignity of victims of violations of human rights.” Yet, as the Committee did not enjoy the power to implement its recommendations, it was not until 2003 that government announced a policy of reparation for the 21 290 individuals named by the TRC as victims of gross violations of human rights.

South Africa’s TRC has been praised. And, it has been blamed. In order to understand the perception that the TRC was unjust to victims, and justly deserving of criticism, it is important to consider the Commission’s exceptional position in the process of nation-building. Along with the Constitution of 1996, the Commission’s Final Report has been held up as a founding document, a symbol and idea that defined a new nation as it made its way from apartheid oligarchy to non-racial democracy. This is a claim with which we are sympathetic. At the same time, however, the TRC’s work – and the media attention that was devoted to it – has led some to conclude that it overshadowed the task of economic and social reconstruction and allowed the State to back away from its promises about redressing the material inequalities that are one cause of so much despair and violence in South African society.

The Commission’s hearings afforded important forums for recognising the dignity of victims, uncovering some of the causes and motives of human rights violations, and demonstrating that vengeance, in whatever legal disguise, is not always the best path to political normalisation and social or personal restoration. And yet, these same hearings did not reveal the whole story or the complete truth. Not all victims had the opportunity to testify. Some freedom fighters refused to depose as victims, as they would not equate their actions with those of “victims”. Many perpetrators declined the opportunity to apply for amnesty, either because they thought they could escape criminal investigation or charges at a later stage, or because they did not perceive their actions as being “criminal”. While they come with no precedent of success, promised prosecutions have been slow to materialise. As well, an obvious but important fact is that apartheid ideology was never summoned to the bar, as it were. The National Party stood by its historical evaluation, presented on several occasions and by President de Klerk in particular: apartheid had a purpose, was perhaps (in De Klerk’s words) “wrong”, even as its initial vision was practical if not generous. While this position generated significant and altogether understandable outcry, no hearing was devoted to the intellectual construction of apartheid (or, to be even-handed, to the intellectual construction of liberation ideologies). Finally, the reparation package, in the opinion of many, was too little too late. In 1998, the emotionally charged release of the Commission’s five volume Report provoked an important and in many ways ongoing public and political debate over how and how well the Commission managed to balance the imperatives of truth, reconciliation, and justice.

While there were times when the TRC was under virtual siege from nearly all sides of the political spectrum, the domestic debates over the Commission have not always appeared in western accounts of its work. Indeed, Desmond Tutu has argued tirelessly that the TRC captured the world's imagination and inspired the international community's thinking about the difficult demands of transitional justice. There is evidence to support this claim, although capturing of imagination is not the same thing as persuading by reason. While several international human rights organisations warned during the Commission's design that the provision of amnesty would yield a dangerous amnesia, the TRC's linking of victim-centred hearings and a public (and conditional) amnesty process has been held up as a viable way to balance the political requirements of nation-building and the obligations of justice. In recent years, greater and lesser portions of the Commission's architecture have been copied and used in a number of other post-conflict situations. The sum total of this derivative use remains to be evaluated dispassionately. History will tell how and why and if, the TRC's form and underlying logic can be reproduced with therapeutic effect. More important perhaps, for us today, the Commission's work is now taken as a warrant, an evident need and credible reason for deeply divided societies to create structures and forums that can facilitate truth-telling, investigate human rights abuses, and promote reconciliation between citizens.

Did the TRC ultimately succeed? There are moments when the question that asks for a definitive judgment is not the question that sheds the most important light. While it received several extensions from the South African Parliament, the TRC was charged with an enormous task and initially authorised to work for a mere 18 months. As well, it is worth remembering – although many do not – that the Commission was not asked to achieve reconciliation but to *promote* it. The TRC cannot be faulted for not having done what remains the duty of good government and it is government, including the work of citizens, which must bear the responsibility for shortfalls in the reconciliation process. At a larger level, there have been a number of instances when the rush to determine the TRC's ultimate success has come at the expense of a larger reflection on the Commission's historical roots, its relationship to the constitutional transition that took shape between 1990 and 1994, and the precise details of its work. As we have each suggested elsewhere, a concern for reconciliation in South Africa did not begin with the TRC. Key portions of its mandate must be understood in relation to both the terms of the struggle against apartheid and the “negotiated revolution” that culminated with the writing of the 1993 interim constitution's epilogue (Document 2).

At a still larger level, there are very few – inside or outside the Commission – who have anything near a complete understanding of the work that it did do. The Commission's Final Report represents the absorbing question of how to capture and make sense of over 19 050 victim statements, hundreds of human rights violations hearings, nearly 2 000 days of amnesty hearings, the myriad transcripts and evidence presented at special hearings and community forums, along with the internal analysis and findings of the Commission's staff. While there are a vast number of documents and transcripts housed on the Commission's website (http://www.doj.gov.za/trc/trc_frameset.htm), it is also the case that its work is surrounded by an enormous mass of archives. In this light, the matter of whether the TRC succeeded rests first on understanding the nature of its mandate and the varieties of work that it undertook. In its Final Report, the Commission went an important step further, arguing that its efforts were the beginning and not the end of the road to reconciliation. More precisely, the TRC invited all South Africans to undertake the creation of a “culture of debate” and urged political leaders at all levels to “place the goal of reconciliation and unity at the top of their respective agendas.” Along with this call, the Commission emphasised that the pursuit of reconciliation and a fuller understanding of South Africa's past hinged on

timely public access to its archive and the creation of resources that would allow interested citizens to reflect on and extend the TRC's work.

In a widely circulated 2006 report, *A Nation in the Making: A Discussion Document on Macro-Social Trends in South Africa*, the South African government published the results of a survey which found that over 50% of all respondents had either not heard of or could not identify the purpose of the Bill of Rights, the Constitutional Court and the South African Human Rights Commission. Such findings do not bode well for making good on the TRC's call for critical debate and the promotion of reconciliation. In the Commission's case, the matter is complicated by the fact that since the publication of its seven ponderous volumes, hardly a matter for public consumption and very expensive to purchase, the Report, let alone the archives of the Commission, that are to the Report what flesh and blood are to bones and sinews, are not in the public conscience. To their credit, shortly after the Report's release, the Independent group of newspapers published extensive extracts in five installments (2-6 November 1998, carried by *The Star*, *Cape Argus*, *Daily News*, *Cape Times*, *The Natal Mercury*, *Pretoria News*, and *Diamond Fields Advertiser*). These remain the only popular, shorter version of the Report – provided that one has kept these collector's issues. A condensed version of the Report was promised shortly after the Commission disbanded, but has not materialised.

South African citizens and students, along with many scholars, do not have access to the TRC's work or a clear sense of how to enter its labyrinthine archive. As a result, the most extraordinary gesture of public unveiling of human rights violations committed either at the service of a criminal regime or while fighting it, and of people's sufferings, remains shrouded in mystery. Or the privilege of researchers. The cost of this situation lies in a failure to meet a fundamental democratic exigency: that only an informed citizenry that can make the choices that engender politics, grapple with what is meant by "never again", and consider where we come from and how we will proceed without repeating mistakes, or letting fellow-citizens commit them. One example: the current debate on crime in South Africa is stuck on issues such as urban poverty levels, gun control (an acute issue in white farming communities), government's policing inefficiency, "Nigerian" drug-related crimes and, in private violence (rape and children killings in particular), the tension between "traditional values" and constitutional norms. Indeed, these are factors. But, if the general public could read, for themselves, the forms and inordinate levels of crude, cruel and cold violence committed against normal people under apartheid, and if they could read the nauseating accounts of humanity savaged, this same public would be able to realise that the main cause for violence in South Africa is probably the utter violence that reigned, in most parts of this society, before 1994. Violence is not new. It repeats itself under new forms. To open the TRC's Report and to engage with its archives is to discover that current crime is the continuation under a different name of a preceding crime – apartheid.

The documents selected here have been gathered primarily from TRC resources and its on-line archive, making this volume the first of its kind in English (German and French equivalents already exist). Its purpose is to provide readers inside and outside South Africa with a thoughtful summation of basic documents of the TRC together with additional texts that we believe are essential to understanding what the TRC was set to achieve. The volume, however, is not a documentary history of the TRC, or apartheid, or the liberation struggle.

The editors have extracted documents with care and a concern for what the TRC named "even-handedness." But, this too was a source of controversy over the Commission's life time.

Thus, quite clearly, critics will point out that “this or that” is “not there.” The fact is that every account by every victim, every confession by every perpetrator, every deposition by every actor, may it be a big business or a church, is irreplaceable and unique. However, the editors believe that some are exemplary either of the thinking of the Commission, or of the minds of criminals, or of the suffering of victims. The harrowing catalogue of victims, a holocaust in the starkest sense of this word, that closes volume 7 of the Report (quoted, in its blunt evidence, in Document 19 below), shows how, to recall Hannah Arendt’s phrase, evil had the face of banality. Equally important, the representative quality of our selections, like the larger question of how well the TRC discovered truth and cast South Africa’s history, is an occasion and basis for a welcome debate about how to best interpret the TRC’s work and how its efforts might be used to open new avenues of inquiry and forms of collective understanding. If so, this book is, first and foremost, a book for citizens. It is also a volume for would be students of the TRC and perhaps those who have only concentrated their attention on one aspect of the Commission’s work.

The volume is composed of seven sections. Section 1 – *Dealing with a Crime against Humanity* – opens with the United Nation’s indictment of apartheid. South Africans tend to forget that, had apartheid not been declared a crime against humanity, political events may have well taken another course but, in any event, the TRC would not have existed, and been imitated, with limited success, in other democratic transitions. The United Nations stated the criminal case, as it were. In no small measure, this determined how the newly installed democracy responded to succeeding a criminal regime, and avoided altogether understandable calls for vengeance and retaliation. Against this backdrop, the section sheds light on the constitutional inspiration for the TRC and then features a set of documents that explain the Commission’s precise form and complex legislative mandate. In both technical and public language, these defining texts constitute the referent for many of the documents included later in the volume. They also represent the basis of the section’s final text, the judgment of the Constitutional Court against a group of individuals who challenged the legality of granting amnesty to perpetrators of gross human rights violations.

Section 2 – *The Theological and Political Roots of Reconciliation in South Africa* – offers a glimpse into the discourses of reconciliation that preceded and shaped the TRC’s formation and mandate. From the heated religious debate over the relationship between reconciliation and separate development to the controversy over amnesty that ran throughout the constitutional negotiations, the section demonstrates why reconciliation was a significant concern well before the Commission’s creation. Against this backdrop, the section also features an account of how the TRC interpreted its charge and devised the “concepts and principles” that enabled and guided its work.

Section 3 – *The Recounting of Suffering and the Findings of the TRC’s Human Rights Violations Committee* – presents the case made by victims. In their own words, in different languages (although translated into English for reporting sake), following narrative modes sometimes naïve, or contrived, always harrowing, some fluent, some stultified, victims told their “story” and heard it accepted by the Commission as a valid form of personal or narrative truth (see Document 18). Special hearings were dedicated to groups: women, the youth, and white men who were conscripted. Some perpetrators presented themselves as victims, and the TRC was willing to hear them out, in the name of personal truth (Document 25).

Section 4 – *The Words of Perpetrators and the Process of Amnesty* – turns to the work of the TRC’s Amnesty Committee and the testimony of those who sought and sometimes declined the opportunity for amnesty. While frequently scripted to address and meet the declared requirements for amnesty, the violence depicted in the disclosures of perpetrators is uniformly horrifying, although not always for the same reasons. Along with a number of the Amnesty

Committee's decisions with respect to particular applications, the section also includes significant portions of the larger TRC's findings about the "causes, motives, and perspectives" of those who committed gross violations of human rights during the apartheid-era.

Section 5 – *What the Parties, Institutions and Business had to say about their Responsibility* – offers some of the explanations given by political parties, business, churches, security forces and the media concerning their role under apartheid. It was not amnesty these sectors sought (in any event, group amnesty was a scenario the TRC had ruled out) but to give an account of how they behaved and functioned during the apartheid era. In a mix of obfuscation and frankness (the army, Document 52), of humility and steadfast righteousness (the Reformed Church, Document 57), with vehemence (Document 53) or a tone of superior calling (Documents 46 and 47), these submissions present a sort of official history of how apartheid policies, and anti-apartheid ones, were conceived, implemented, applied and enlarged upon (by the media and business, Documents 55 and 56). These policies provided the framework, the reasons and motives and often the material instruments, or at least a justification, for many perpetrators to commit their crimes.

Section 6 – *Reconciliation and Reparation: The Terms of an Ongoing Debate* – leads us straight into the aftermath of the TRC. Plainly put, the TRC was tasked with "promoting" reconciliation, not with achieving it. To bring reconciliation into material reality is the task of government, and in one specific area: reparation. The TRC made recommendations, in 1998, and in 2003, government responded. Thus, a logic of human reparation came into collision with a logic of State. As the TRC reminded government, and the ANC in particular: the republican democracy shaped by the negotiated settlement and borne by both the Constitution and the Commission was supposed to create a new society. In the ensuing debate, government argued on resources available and means to effect strategic redress, while the TRC remonstrated that individuals and communities needed to be rehabilitated, restored, repaired, and not merely in intention, but in deeds. The debate between the two logics, between a humane logic of political goodness and a political logic of goods and people, is made all the more acrimonious by the confrontation of two institutions who can speak with the same authority, the Commission (which survives its own disbanding) and the State.

In creating a volume such as this one, we have confronted a number of practical questions about how to best edit and present selections from the TRC's public archive. With respect to the transcripts from various TRC hearings that are included here, we have gathered these materials largely from the Commission's website. While witnesses spoke in a number of South Africa's 11 official languages, the TRC choose English as the medium of transcription. This decision has inevitably contributed to the flattening and sometimes distortion of certain testimonies. Too, the work of recording, translating, and transcribing is not easy. As they appear, we have not omitted the breaks, pauses, and gaps in the record. In a very few cases it has been necessary to suggest an alternate sentence construction or insert missing words into testimony. In each case, these changes appear in brackets and are attributed to the editors (eds).

The TRC's Final Report is a complicated and potentially confusing text. To be clear, the Commission's Report is composed of seven volumes. The first five volumes were released in October 1998, not long after the TRC's Human Rights Violations Committee completed its

hearings. Volumes Six and Seven were released in 2003, following the completion of the amnesty process and the finalisation of the Victims Findings. While the 1998 volumes (1-5) are not organised in the same manner as those published in 2003 (6 and 7), the Commission did number the paragraphs of each particular chapter and section of its Report. We have reproduced this numbering as it appeared in all of the original volumes. We have not, however, included many of the footnotes that appear in the Report. Where we have reproduced these notes, they are numbered sequentially, i.e. they do not have the footnote number that appeared in the Final Report. For those wishing to consult the original text or read further, each section of this volume concludes with specific bibliographic information and a selection of additional readings.

Both the TRC transcripts and Report employ ellipses. To avoid confusion, we have used the notation '[...]' throughout this volume to signal our editorial intervention. During its operation, the TRC's expansive inquiry and limited resources frequently conspired to make it difficult for the Commission to check and double check the spelling of names, dates and the particular details of specific events. In advance, we apologise if we have reproduced any such errors. These errors are living proof of the very nature of the TRC: life, death, in plain and uncertain words.

The creation of this volume has afforded an opportunity for a most welcome collaboration. The chance to read deeply into the TRC archive and reflect on how to best compose a picture of the Commission's work has provided us with an opportunity to think together and enjoy the fruits of long conversation. At the same time, we owe much to those who generously lent their insight and assistance to the volume's content and production. First and foremost, Charles Villa-Vicencio, the Executive Director of the Institute for Justice and Reconciliation, both supported and made central contributions to the project from its earliest days. His deep concern and ongoing work to understand and extend the South African reconciliation process is unflagging. This volume owes some of its inspiration to *Amnistier l'Apartheid* (Paris, 2004), a selection, in French, of the TRC's documents (a book which, without the support of Dr Stuart Saunders, would not have come to fruition) – and made, in French, the keyword *ubuntu* a philosophical idiom. Fanie du Toit offered crucial assistance and vital commentary in the early phases of the project and Marchalene Benjamin provided much logistical support. When it came time to format text, Paul Stob and Whitney Sogol provided technical and human efforts for which we are very grateful.

About the Editors

ERIK DOXTADER is Professor of Rhetoric at the University of South Carolina (USA) and a Senior Research Fellow at the Institute for Justice and Reconciliation in Cape Town. He has authored, edited, and co-edited a number of books on the history and dynamics of reconciliation in South Africa, including *To Repair the Irreparable: Reparation and Reconstruction in South Africa* (2004) and a recently completed work, *Faith in the Works of Words: The Beginnings of Reconciliation in South Africa, 1985-1995*.

PHILIPPE-JOSEPH SALAZAR is a Distinguished Professor at the University of Cape Town. An international authority in the field of political rhetoric, he has authored several books on South Africa, in French and in English, among which the most recent are *Amnistier l'Apartheid* (Paris, Seuil, 2004) and *An African Athens* (Mahwah NJ/London, Erlbaum, 2002). He is a past director of research in Rhetoric and Democracy at *Collège international de philosophie* (Paris), founded by philosopher Jacques Derrida (philippe.salazar@uct.ac.za).

Part I

THE GROUNDS OF SOUTH AFRICA'S TRUTH AND
RECONCILIATION COMMISSION

Section I

Dealing with a Crime against Humanity

With a 'negotiated revolution' that ended a long recognised crime against humanity, South Africa emerged from the shadow of apartheid and confronted the question of how to deal with a bitter legacy of violence, social-political division, and material inequality. In 1993, the epilogue (or post-amble) of the country's interim constitution offered a difficult reply: the move from past to future rested on a process of reconciliation that included an amnesty for those who perpetrated apartheid's crimes and the excesses of the liberation struggle.

Written nearly a month after the larger interim constitution was approved by delegates at the Multi-Party Negotiating Process, the epilogue did not mandate the formation of the Truth and Reconciliation Commission (TRC). What this foundational text performed, however, was to focus and spark a protracted public debate over how South Africa could best expose and redress the wounds of apartheid in a 'morally acceptable way.' For over a year after Nelson Mandela's election as South African president, this debate shaped and reshaped the legislation – The Promotion of National Unity and Reconciliation Act – that authorised the TRC's creation and charged it to administer a public amnesty process, attend to the interests and needs of victims, and create as "complete a picture as possible of the causes, nature and extent of the gross violations of human rights" that occurred between 1960 and 1994.

Early efforts to publicise and explain the TRC's work brought praise and substantial opposition. Shortly before the Commission opened its first hearings in April 1996, a group of citizens approached South Africa's Constitutional Court and claimed that the TRC amnesty process violated the rights of victims to seek criminal and civil relief from the law. In a decision that underscored the significance of the interim constitution's epilogue and which took great pains to explain the 'delicate balance' between the need for justice and the dynamics of political transition, the Court rejected the application with an argument as to why the uncomfortable if not potentially unjust TRC process was necessary if South Africa was indeed to realise democracy's promise, rebuild the rule of law, and draw from a spirit of *ubuntu* to come to terms with history.

I

“THE POLICIES OF APARTHEID OF THE GOVERNMENT OF SOUTH AFRICA,”
UNITED NATIONS GENERAL ASSEMBLY RESOLUTION, 1970

The General Assembly,

Recalling its resolutions and those of the Security Council on the question of apartheid,

Having considered the report of the Special Committee on Apartheid,

Taking note of the resolutions adopted by the Assembly of the Heads of State and Government of the Organisation of African Unity at its seventh ordinary session and by the Third Conference of Heads of State or Government of Non-Aligned Countries on the question of apartheid,

Gravely concerned over the aggravation of the situation in South Africa and in southern Africa as a whole, because of the inhuman and aggressive policies of apartheid pursued by the Government of South Africa in defiance of United Nations resolutions, in violation of the Universal Declaration of Human Rights and in contravention of its obligations under the Charter of the United Nations,

Expressing deep concern over the increasing military build-up of South Africa, which constitutes a grave danger to the cause of peace and security on the African continent,

Noting with indignation the continued persecution and torture of African patriots and other opponents of apartheid by the Government of South Africa under the Terrorism Act of 1967 and other ruthless repressive legislation,

Convinced that the establishment of “bantustans” in South Africa is designed to deprive the majority of the people of their inalienable rights and to destroy the unity of the South African people, [...]

1. *Declares* that the policies of apartheid of the Government of South Africa are a negation of the Charter of the United Nations and constitute a crime against humanity;
2. *Reaffirms* its recognition of the legitimacy of the struggle of the people of South Africa to eliminate, by all means at their disposal, apartheid and racial discrimination and to attain majority rule in the country as a whole, based on universal suffrage;
3. *Condemns* the establishment by the racist minority Government of South Africa of “Bantustans” in so-called African reserves as fraudulent, a violation of the principle of self-determination and prejudicial to the territorial integrity of the State and the unity of its people;

PART I

THE GROUNDS OF SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION

4. *Again calls upon* the Government of South Africa to end all repressive measures against African patriots and other opponents of apartheid and to liberate all persons imprisoned, interned or subjected to other restrictions for their opposition to apartheid;
5. *Strongly deplores* the continued cooperation by certain States and foreign economic interests with South Africa in the military, economic, political and other fields, as such cooperation encourages the Government of South Africa in the pursuit of its inhuman policies;
6. *Again draws the attention* of the Security Council to the grave situation in South Africa and in southern Africa as a whole and recommends that the Council resume urgently the consideration of effective measures, in the light of relevant General Assembly resolutions, including those under Chapter VII of the Charter;
7. *Urges* all States:
 - (a) To terminate diplomatic, consular and other official relations with the Government of South Africa;
 - b) To terminate all military, economic, technical and other cooperation with South Africa;
 - (c) To end tariff and other preferences to South African exports and facilities for investment in South Africa;
 - (d) To ensure that companies registered in their countries and their nationals comply with the United Nations resolutions on this question;
8. *Requests* all States and organisations to suspend cultural, educational, sporting and other exchanges with the racist regime and with organisations or institutions in South Africa which practise apartheid [...]

2

EPILOGUE, *INTERIM CONSTITUTION OF SOUTH AFRICA*, 1993

NATIONAL UNITY AND RECONCILIATION

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

Nkosi sikelel' iAfrika. God seën Suid-Afrika
Morena boloka sechaba sa heso. May God bless our country
Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika

3

THE TRUTH AND RECONCILIATION COMMISSION, *PAMPHLET CREATED ON BEHALF OF THE SOUTH AFRICAN MINISTRY OF JUSTICE, 1995*

Introduction by the Minister of Justice, Mr Dullah Omar: After a long process of discussion and debate, inside and outside of Parliament, the scene is finally set for the appointment of the Truth and Reconciliation Commission. It is important to understand the context in which the Truth and Reconciliation Commission will take place. The Commission is based on the final clause [*Epilogue* – Document 2 – eds.] of the Interim Constitution [...]

I could have gone to Parliament and produced an amnesty law – but this would have been to ignore the victims of violence entirely. We recognised that we could not forgive perpetrators unless we attempt also to restore the honour and dignity of the victims and give effect to reparation.

The question of amnesty must be located in a broader context and the wounds of our people must be recognised. I do not distinguish between ANC wounds, PAC wounds and other wounds – many people are in need of healing, and we need to heal our country if we are to build a nation which will guarantee peace and stability.

A critical question which involves all of us is how do South Africans come to terms with the past. In trying to answer this important question honestly and openly, we are fortunate in having a President who is committed to genuine reconciliation in our country and to the transformation of South Africa into a non-racial, non-sexist democracy based on a recognition of universally accepted human rights.

The President believes – and many of us support him in this belief – that the truth concerning human rights violations in our country cannot be suppressed or simply forgotten. They ought to be investigated, recorded and made known. Therefore the President supports the setting up of a Commission of Truth and Reconciliation. The democratic government is committed to the building up of a human rights culture in our land.

There is a commitment to break from the past, to heal the wounds of the past, to forgive but not to forget and to build a future based on respect for human rights. This new reality in the human rights situation in South Africa places a great responsibility upon all of us. Human rights is not a gift handed down as a favour by government or state to loyal citizens. It is the right of each and every citizen. Part of our joint responsibility is to help to illuminate the way, chart the road forward and provide South Africa with beacons or guidelines based on international experiences as we traverse the transition. We must guard against dangers and pitfalls! We must involve our citizens in the debate so as to ensure that human rights is not the preserve of the few but the birthright of every citizen! We must embark upon the journey from the past, through our transition and into a new future.

I wish to stress that the objective of the exercise is not to conduct a witch hunt or to drag violators of human rights before court to face charges. However, it must be stressed that a commission is a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation. I invite you to join in the search for truth without which there can be no genuine reconciliation.

OBJECTIVES OF THE COMMISSION

The objectives of the Commission will be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by:

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

FUNCTIONS OF THE COMMISSION

The function of the Commission will be to achieve its objectives and to that end the Commission shall:

- facilitate, and where necessary initiate or coordinate, inquiries into:
 - gross violations of human rights, including violations which were part of a systematic pattern of abuse;
 - the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;
 - the identity of all persons, authorities, institutions and organisations involved in such violations;
 - the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual;
 - accountability, political or otherwise, for any such violation;
- facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;
- facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty in the Government Gazette;

- determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;
- prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;
- make recommendations to the President with regard to:
 - the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;
 - measures which should be taken to grant urgent interim reparation to victims;
- make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of the Act;
- make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of human rights violations.

CONSTITUTION OF THE COMMISSION

- The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet.
- The President shall appoint the commissioners in consultation with the Cabinet.
- The commissioners shall be fit and proper persons who are impartial and who do not have a high political profile, provided that not more than two persons who are not South African citizens may be appointed as commissioners. [...]
- A commissioner appointed in terms of the Act shall hold office for the duration of the Commission. [...]
- The President may remove a commissioner from office on the grounds of misbehaviour, incapacity or incompetence, as determined by the joint committee and upon receipt of an address from the National Assembly and an address from the Senate. [...]

STRUCTURE OF THE COMMISSION

Committee on Human Rights Violations

Apart from the powers and duties referred to under Functions of the Commission, this Committee shall take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and 9 May 1995, or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period.

The Committee may record allegations and complaints of gross human rights violations. The Committee may also:

- collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;
- make recommendations to the Commission as outlined under Functions of the Commission;
- make information which is in its possession available to either of the other two committees, a subcommittee or the investigating unit;

- submit interim reports to the Commission indicating the progress made by the Committee with its activities or with regard to any other particular matter.

The Committee will exercise the powers of investigation granted to the Commission in Chapter Six and Chapter Seven of the Act. This entails the establishment of an Investigating Unit which will investigate any matter falling within the scope of the Commission's powers, functions and duties, subject to the directions of the Commission, and shall at the request of the Committee investigate any matter falling within the scope of the powers, functions and duties of that Committee, subject to the direction of the Committee.

Committee on Amnesty

This Committee will facilitate and promote the granting of amnesty in respect of acts associated with political objectives by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts applications for the granting of amnesty in respect of such acts and by publishing decisions granting amnesty in the *Government Gazette*.

Any person who wishes to apply for amnesty shall within 12 months from the date of the proclamation make such application to the Commission in the prescribed form. The hearings of the Amnesty Committee, which will have a Judge of the Supreme Court as its chairperson, will be held in public unless, in the judgment of the chairperson and the committee, this may jeopardise life or limb, or contradict a process of fundamental human rights. The procedure can take different forms. Once the application form has been received by the Committee the Committee can, if it is satisfied that the requirements have been complied with, that there is no need for a hearing and that the act or omission or offence to which the application relates does not constitute a gross violation of human rights, in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly.

If, however, in the view of the Committee, a hearing is necessary the Committee will inform the person of the place and time when the application will be heard and considered. The Committee then will deal with the application by granting or refusing amnesty. One of the provisions laid down is that the applicant must make a full disclosure of all relevant facts. The Committee shall be guided by the consideration of certain laid-down criteria:

- the motive of the person who committed the act, omission or offence;
- the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;
- the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;
- the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;
- whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and
- the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality), of the act, omission or offence to the objective pursued.

However, this does not include any act, omission or offence committed by any person referred to in subsection (2) of the Act who acted:

- for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or
- out of personal malice, ill-will or spite, directed against the victim of the acts committed.

Committee on Reparation and Rehabilitation of Victims

This Committee will:

- consider matters referred to it by the Commission, the Committee on Human Rights Violations and the Committee on Amnesty;
- gather evidence relating to the identity, fate and whereabouts of victims and the nature and extent of the harm suffered by them;

The Committee may:

- make recommendations which may include urgent interim measures as to appropriate measures of reparation to victims;
- make recommendations relating to the creation of institutions conducive to a stable and fair society and the measures which need to be taken to prevent the commission of human rights violations;
- prepare and submit to the Commission interim reports in connection with its activities;

The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

The Committee will establish and make known the fate or whereabouts of victims and restore the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims and by recommending reparation measures in respect of them.

APPLICATIONS FOR REPARATION

Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation. The Committee shall consider any such application and may exercise any of the powers conferred on it, as outlined above.

In any matter referred to the Committee and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations.

If, upon consideration of any matter or application submitted to it and any evidence received or obtained by it, the Committee is of the opinion that the applicant is a victim, it shall, having due regard to the prescribed criteria, make recommendations in an endeavour to restore the human and civil dignity of the victim.

Over and above making recommendations which may include urgent interim measures, the Committee will report to the Commission with its findings and make recommendations which will be considered by the President with a view to making recommendations to Parliament and making regulations.

PRESIDENT'S FUND

The President may, in such manner as he may deem fit, in consultation with the Minister of Justice and the Minister of Finance, establish a Fund into which shall be paid all money appropriated by Parliament for the purposes of the Fund and all money donated or contributed to the Fund or accruing to the Fund from any source.

There shall be paid from the Fund all amounts payable to victims by way of reparation in terms of regulations made by the President.

VICTIMS OF HUMAN RIGHTS VIOLATIONS

When dealing with victims, the actions of the Commission shall be guided by the following principles:

- Victims shall be treated with compassion and respect for their dignity;
- Victims shall be treated equally and without discrimination of any kind, including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
- Procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible;
- Victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information on the role of the Commission and the scope of its activities and the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry;
- Appropriate measures shall be taken in order to minimise inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf and to protect them from intimidation;
- Appropriate measures shall be taken to allow victims to communicate in the language of their choice;
- Informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims.

SUPPORT STRUCTURES

Although the Commission will be independent and will have a full-time staff drawn from many different categories, it will not be able to achieve its objectives without the fullest cooperation from voluntary organisations.

There are many non-governmental organisations (NGOs) which have an outstanding track record of service to the community. Some of these are human rights organisations, some are psychological and/or social support service organisations whilst others are religious bodies. All of these have the potential to complement the work of the Commission.

Many of these organisations have already been involved in the preparation leading up to the appointment of the Commission. If you are a member of one of these organisations or belong to a

church, mosque or synagogue, please encourage your organisation to play an active role in assisting the Commission.

If you have been a victim of political violence and are not sure how to contact the Commission or what your rights are, get in touch with an NGO or religious organisation closest to you and ask for their help. They will be able to put you in touch with the Commission.

Once the Commission is appointed it will advertise very widely on radio, TV and in newspapers and this also will assist you both in linking up with the work of the Commission and being in a better position to make direct contact with the Commission, should you wish to do so.

Whatever else is true, South Africa needs to be transformed and needs to move towards the consolidation of democracy and the development of a culture of human rights. The Truth and Reconciliation Commission can make a contribution in this direction but its work will be enhanced, broadened and strengthened with your assistance. [...]

4

THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995

To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission, a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith.

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

AND SINCE it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future; AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society; AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation; AND SINCE the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past; AND SINCE the Constitution provides that Parliament shall under the Constitution adopt a law which determines a firm cut-off date, which shall be a date after 8 October 1990 and before the cut-off date envisaged in the Constitution, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with; [...]

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:
[...]

CHAPTER 2: TRUTH AND RECONCILIATION COMMISSION ESTABLISHMENT AND SEAT OF TRUTH AND RECONCILIATION COMMISSION

2. (i) There is hereby established a juristic person to be known as the Truth and Reconciliation Commission. [...]

Objectives of Commission

3. (i) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by- (a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings; (b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act; (c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them; (d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.
- (2) The provisions of subsection (i) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act. [...]

Functions of Commission

4. The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall (a) facilitate, and where necessary initiate or coordinate, inquiries into- (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse; (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations; (iii) the identity of all persons, authorities, institutions and organisations involved in such violations; (iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and (v) accountability, political or otherwise, for any such violation; (b) facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims; (c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for

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

Powers of Commission

5. In order to achieve its objectives and to perform its functions the Commission shall have the power to- (a) determine the seat, if any, of every committee; (b) establish such offices as it may deem necessary for the performance of its functions; (c) establish subcommittees to exercise, carry out or perform any of the powers, duties and functions assigned to them by the Commission; (d) conduct any investigation or hold any hearing it may deem necessary and establish the investigating unit referred to in section 28; (e) refer specific or general matters to, give guidance and instructions to, or review the decisions of, any committee or subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions and the carrying out of its duties, the working procedures which should be followed and the divisions which should be set up by any committee in order to deal effectively with the work of the committee: Provided that no decision, or the process of arriving at such a decision, of the Committee on Amnesty regarding any application for amnesty shall be reviewed by the Commission; direct any committee or subcommittee to make information which it has in its possession available to any other committee or subcommittee; (g) direct the submission of and receive reports or interim reports from any committee or subcommittee; (h) have the administrative and incidental work connected with the exercise of its powers, the execution of its duties or the performance of its functions carried out by persons- (i) employed or appointed by it; (ii) seconded to its service by any department of State at the request of the Commission and after consultation with the Public Service Commission; (iii) appointed by it for the performance of specified tasks; (i) in consultation with the Minister and through diplomatic channels, obtain permission from the relevant authority of a foreign country to receive evidence or gather information in that country; (j) enter into an agreement with any person, including any department of State, in terms of which the Commission will be authorised to make use of any of the facilities, equipment or personnel belonging to or under the control or in the employment of such person or department; (k) recommend to the President that steps be taken to obtain an order declaring a person to be dead; (l) hold meetings at any place within or outside the Republic; (m) on its own initiative or at the request of any interested person inquire or investigate into any matter, including the disappearance of any person or group of persons. [...]

Constitution of Commission

7. (1) The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet. (2) (a) The President shall appoint the commissioners in consultation with the Cabinet. (b) The commissioners shall be fit and proper persons who are impartial and who do not have a high political profile: Provided that not more than two persons who are not South African citizens may be appointed as commissioners. [...]

Principles to govern actions of Commission when dealing with victims

11. When dealing with victims the actions of the Commission shall be guided by the following principles: (a) Victims shall be treated with compassion and respect for their dignity; (b) victims shall be treated equally and without discrimination of any kind, including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability; (c) procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible; (d) victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of- (i) the role of the Commission and the scope of its activities; (ii) the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry; (e) appropriate measures shall be taken in order to minimise inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation; (f) appropriate measures shall be taken to allow victims to communicate in the language of their choice; (g) informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims.

CHAPTER 3: INVESTIGATION OF HUMAN RIGHTS VIOLATIONS**Committee on Human Rights Violations**

12. There is hereby established a committee to be known as the Committee on Human Rights Violations, which shall in this Chapter be referred to as the Committee.
Constitution of Committee
13. (1) The Committee shall consist of- (a) (i) a Chairperson; and (ii) two Vice-Chairpersons, who shall be commissioners designated by the Commission; (b) such other commissioners as may be appointed by the Commission; and (c) not more than three other members. (2) The Commission shall appoint, as the members referred to in subsection (1)(c), South African citizens who are fit and proper persons and broadly representative of the South African community and shall, when making such appointments, give preference to persons possessing knowledge of the content and application of human rights or of investigative or fact-finding procedures.
Powers, duties and functions of Committee
14. (1) In addition to the powers, duties and functions conferred on, imposed upon and assigned to it in this Act, and for the purpose of achieving the objectives of the Commission, referred to in section 3(i)(a), (c) and (d)- (a) the Committee shall- (i) institute the inquiries referred to in

section 4(a); (ii) gather the information and receive the evidence referred to in section 4(b); (iii) determine the facts contemplated in section 4(d); (iv) take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and the date of commencement of this Act or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period; (v) record allegations and complaints of gross violations of human rights; (b) the Committee may- (i) collect or receive from any organisation, commission or person, articles relating to gross violations of human rights; (ii) make recommendations to the Commission with regard to the matters referred to in section 4(f), (g) or (h); (iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit; (iv) submit to the Commission interim reports indicating the progress made by the Committee with its activities or with regard to any other particular matter; (v) exercise the powers referred to in Chapters 6 and 7. (2) The Committee shall at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying out of its duties in terms of this Act.

Referrals to Committee on Reparation and Rehabilitation

15. (1) When the Committee finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26. (2) After a referral to the Committee on Reparation and Rehabilitation has been made by the Committee in terms of subsection (1), it shall, at the request of the Committee on Reparation and Rehabilitation, furnish that Committee with all the evidence and other information relating to the victim concerned or conduct such further investigation or hearing as the said Committee may require.

CHAPTER 4: AMNESTY MECHANISMS AND PROCEDURES

COMMITTEE ON AMNESTY

16. There is hereby established a committee to be known as the Committee on Amnesty, which shall in this Chapter be referred to as the Committee.
Constitution of Committee
17. (1) The Committee shall consist of a Chairperson, a Vice-Chairperson and three other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community. (2) The President shall appoint the Chairperson, the Vice-Chairperson, one other person and, after consultation with the Commission, two commissioners as members of the Committee. (3) The Chairperson of the Committee shall be- (a) a judge as defined in section 1(t) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); or (b) a judge who has been discharged from active service in terms of Section 3 of the said Act. (4) Any vacancies in the Committee shall be filled in accordance with this section.
Applications for granting of amnesty

18. (1) Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in section 7(3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form. (2) The Committee shall give priority to applications of persons in custody and shall prescribe measures in respect of such applications after consultation with the Minister and the Minister of Correctional Services.

Committee shall consider applications for amnesty

19. (1) Upon receipt of any application for amnesty, the Committee may return the application to the applicant and give such directions in respect of the completion and submission of the application as may be necessary or request the applicant to provide such further particulars as it may deem necessary. (2) The Committee shall investigate the application and make such enquiries as it may deem necessary: Provided that the provisions of section 30(2) shall, with the necessary changes, apply in respect of such investigation. (3) After such investigation, the Committee may- (a) (i) inform the applicant that the application, judged on the particulars or further particulars contained in the application or provided by the applicant or revealed as a result of enquiries made by the Committee, if any, does not relate to an act associated with a political objective; (ii) afford the applicant the opportunity to make a further submission; and (iii) decide whether the application, judged on the particulars referred to in subparagraph (i), and in such further submission, relates to such an act associated with a political objective, and if it is satisfied that the application does not relate to such an act, in the absence of the applicant and without holding a hearing refuse the application and inform the applicant accordingly; or (b) if it is satisfied that- (i) the requirements mentioned in section 20(i) have been complied with; (ii) there is no need for a hearing; and (iii) the act, omission or offence to which the application relates, does not constitute a gross violation of human rights, in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly. (4) If an application has not been dealt with in terms of subsection (3), the Committee shall conduct a hearing as contemplated in Chapter 6 and shall, subject to the provisions of section 33- (a) in the prescribed manner, notify the applicant and any victim or person implicated, or having an interest in the application, of the place where and the time when the application will be heard and considered; (b) inform the persons referred to in paragraph (a) of their right to be present at the hearing and to testify, adduce evidence and submit any article to be taken into consideration; (c) deal with the application in terms of section 20 or 21 by granting or refusing amnesty. (5) (a) The Committee shall, for the purpose of considering and deciding upon an application referred to in subsection (1), have the same powers as those conferred upon the Commission in section 5(l) and (m) and Chapters 6 and 7. (b) Notwithstanding the provisions of section 18(1), the Committee may consider jointly the individual applications in respect of any particular act, omission or offence to which such applications relate. (6) If the act or omission which is the subject of an application under section 18 constitutes the ground of any claim in civil proceedings instituted against the person who submitted that application, the court hearing that claim may at the request of such person, if it is satisfied that the other parties to such proceedings have been informed of the request and afforded the opportunity to address the court or to make further submissions in this regard, suspend those proceedings pending the consideration and disposal of the application. (7) If the person who submitted an application under section 18 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, the

Committee may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application for amnesty. (8) (a) Subject to the provisions of section 33, the applications, documentation in connection therewith, further information and evidence obtained before and during an investigation by the Commission, the deliberations conducted in order to come to a decision or to conduct a hearing contemplated in section 33, shall be confidential. (b) Subject to the provisions of section 33, the confidentiality referred to in paragraph (a) shall lapse when the Commission decides to release such information or when the hearing commences.

Granting of amnesty and effect thereof

20. (1) If the Committee, after considering an application for amnesty, is satisfied that- (a) the application complies with the requirements of this Act; (b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and (c) the applicant has made a full disclosure of all relevant facts, it shall grant amnesty in respect of that act, omission or offence.

(2) In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period I March 1960 to the cut-off date, by- (a) any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of such organisation or movement, bona fide in furtherance of a political struggle waged by such organisation or movement against the State or any former state or another publicly known political organisation or liberation movement; (b) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against any members or supporters of such organisation or movement, and which was committed bona fide with the object of countering or otherwise resisting the said struggle; (c) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed- (i) in the case of the State, against any former state; or (ii) in the case of a former state, against the State or any other former state, whilst engaged in a political struggle against each other or against any employee of the State or such former state, as the case may be, and which was committed bona fide with the object of countering or otherwise resisting the said struggle; (d) any employee or member of a publicly known political organisation or liberation movement in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against the State or any former state or any publicly known political organisation or liberation movement engaged in a political struggle against that political organisation or liberation movement or against members of the security forces of the State or any former state or members or supporters of such publicly known political organisation or liberation movement, and which was committed bona fide in furtherance of the said struggle; (e) any person in the performance of a coup d'etat to take over the

government of any former state, or in any attempt thereto; (f) any person referred to in paragraphs (a), (b), (c) and (d), who on reasonable grounds believed that he or she was acting in the course and scope of his or her duties and within the scope of his or her express or implied authority; (g) any person who associated himself or herself with any act or omission committed for the purposes referred to in paragraphs (a), (b), (c), (d), (e) and (f).

(3) Whether a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective, shall be decided with reference to the following criteria: (a) The motive of the person who committed the act, omission or offence; (b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto; (c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence; (d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals; (e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and (f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, but does not include any act, omission or offence committed by any person referred to in subsection (2) who acted- (i) for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or (ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed.

(4) In applying the criteria contemplated in subsection (3), the Committee shall take into account the criteria applied in the Acts repealed by section 48.

(5) The Commission shall inform the person concerned and, if possible, any victim, of the decision of the Committee to grant amnesty to such person in respect of a specified act, omission or offence and the Committee shall submit to the Commission a record of the proceedings, which may, subject to the provisions of this Act, be used by the Commission.

(6) The Committee shall forthwith by proclamation in the Gazette make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act, omission or offence in respect of which amnesty has been granted.

(7) (a) No person who has been granted amnesty in respect of an act, omission or offence shall be criminally or civilly liable in respect of such act, omission or offence and no body or organisation or the State shall be liable, and no person shall be vicariously liable, for any such act, omission or offence. (b) Where amnesty is granted to any person in respect of any act, omission or offence, such amnesty shall have no influence upon the criminal liability of any other person contingent upon the liability of the first-mentioned person. (c) No person, organisation or state

shall be civilly or vicariously liable for an act, omission or offence committed between 1 March 1960 and the cut-off date by a person who is deceased, unless amnesty could not have been granted in terms of this Act in respect of such an act, omission or offence.

(8) If any person- (a) has been charged with and is standing trial in respect of an offence constituted by the act or omission in respect of which amnesty is granted in terms of this section; or (b) has been convicted of, and is awaiting the passing of sentence in respect of, or is in custody for the purpose of serving a sentence imposed in respect of, an offence constituted by the act or omission in respect of which amnesty is so granted, the criminal proceedings shall forthwith upon publication of the proclamation referred to in subsection (6) become void or the sentence so imposed shall upon such publication lapse and the person so in custody shall forthwith be released.

(9) If any person has been granted amnesty in respect of any act or omission which formed the ground of a civil judgment which was delivered at any time before the granting of the amnesty, the publication of the proclamation in terms of subsection (6) shall not affect the operation of the judgment in so far as it applies to that person.

(10) Where any person has been convicted of any offence constituted by an act or omission associated with a political objective in respect of which amnesty has been granted in terms of this Act, any entry or record of the conviction shall be deemed to be expunged from all official documents or records and the conviction shall for all purposes, including the application of any Act of Parliament or any other law, be deemed not to have taken place: Provided that the Committee may recommend to the authority concerned the taking of such measures as it may deem necessary for the protection of the safety of the public.

Refusal of amnesty and effect thereof

21. (1) If the Committee has refused any application for amnesty, it shall as soon as practicable notify- (a) the person who applied for amnesty; (b) any person who is in relation to the act, omission or offence concerned, a victim; and (c) the Commission, in writing of its decision and the reasons for its refusal. (2) (a) If any criminal or civil proceedings were suspended pending a decision on an application for amnesty, and such application is refused, the court concerned shall be notified accordingly. (b) No adverse inference shall be drawn by the court concerned from the fact that the proceedings which were suspended pending a decision on an application for amnesty, are subsequently resumed.

Referrals to Committee on Reparation and Rehabilitation

22. (1) Where amnesty is granted to any person in respect of any act, omission or offence and the Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of Section 26.
26. (2) Where amnesty is refused by the Committee and if it is of the opinion that- (a) the act, omission or offence concerned constitutes a gross violation of human rights; and (b) a person is a victim in the matter, it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of Section 26.

CHAPTER 5: REPARATION AND REHABILITATION OF VICTIMS COMMITTEE ON REPARATION AND REHABILITATION

23. There is hereby established a committee to be known as the Committee on Reparation and Rehabilitation, which shall in this Chapter be referred to as the Committee. [...]

Powers, duties and functions of Committee

25. (1) In addition to the powers, duties and functions in this Act and for the purpose of achieving the Commission's objectives referred to in Section 3(i)(c) and (d)- (a) the Committee shall- (i) consider matters referred to it by- (aa) the Commission in terms of Section 5(e); (bb) the Committee on Human Rights Violations in terms of Section 15(i); and (cc) the Committee on Amnesty in terms of Section 22(i); (ii) gather the evidence referred to in Section 4(b); (b) the Committee may- (i) make recommendations which may include urgent interim measures as contemplated in Section 4(f)(ii), as to appropriate measures of reparation to victims; (ii) make recommendations referred to in Section 4(h); (iii) prepare and submit to the Commission interim reports in connection with its activities; (iv) may exercise the powers referred to in Section 5(l) and (m) and Chapters 6 and 7.

(2) The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

Applications for reparation

26. (1) Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form. (2)(a) The Committee shall consider an application contemplated in subsection (1) and may exercise any of the powers conferred upon it by Section 25. (b) In any matter referred to the Committee, and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations to deal with the matter in terms of Section 14. (3) If upon consideration of any matter or application submitted to it under subsection (1) and any evidence received or obtained by it concerning such matter or application, the Committee is of the opinion that the applicant is a victim, it shall, having regard to criteria as prescribed, make recommendations as contemplated in Section 25(i)(b)(i) in an endeavour to restore the human and civil dignity of such victim.

Parliament to consider recommendations with regard to reparation of victims

27. (1) The recommendations referred to in Section 4(f)(i) shall be considered by the President with a view to making recommendations to Parliament and making regulations. (2) The recommendations referred to in subsection (1) shall be considered by the joint committee and the decisions of the said joint committee shall, when approved by Parliament, be implemented by the President by making regulations. (3) The regulations referred to in subsection (2)- (a) shall- (i) determine the basis and conditions upon which reparation shall be granted; (ii) determine the authority responsible for the application of the regulations; and (b) may- (i) provide for the revision and, in appropriate cases, the discontinuance or reduction of any reparation; (ii) prohibit the cession, assignment or attachment of any reparation in terms of the

regulations, or the right to any such reparation; (iii) determine that any reparation received in terms of the regulations shall not form part of the estate of the recipient should such estate be sequestered; and (iv) provide for any other matter which the President may deem fit to prescribe in order to ensure an efficient application of the regulations. (4) The joint committee may also advise the President in respect of measures that should be taken to grant urgent interim reparation to victims.

CHAPTER 6: INVESTIGATIONS AND HEARINGS BY COMMISSION

Commission may establish investigating unit

28. (1) The Commission may establish an investigating unit which shall consist of such persons, including one or more commissioners, as may be determined by the Commission. (2) The period of appointment of such members shall be determined by the Commission at the time of appointment, but such period may be extended or curtailed by the Commission. (3) The Commission shall appoint a commissioner as the head of the investigating unit. (4) (a) The investigating unit shall investigate any matter failing within the scope of the Commission's powers, functions and duties, subject to the directions of the Commission, and shall at the request of a committee investigate any matter failing within the scope of the powers, functions and duties of that committee, subject to the directions of the committee. (b) The investigating unit shall in the performance of its functions follow such procedure as may be determined by the Commission or the committee concerned, as the case may be. (5) Subject to section 33, no article or information obtained by the investigating unit shall be made public, and no person except a member of the investigating unit, the Commission, the committee concerned or a member of the staff of the Commission shall have access to such article or information until such time as the Commission or the committee determines that it may be made public or until the commencement of any hearing in terms of this Act which is not held behind closed doors.

Powers of Commission with regard to investigations and hearings

29. (1) The Commission may for the purposes of or in connection with the conduct of an investigation or the holding of a hearing, as the case may be- (a) at any time before the commencement or in the course of such investigation or hearing conduct an inspection *in loco*; (b) by notice in writing call upon any person who is in possession of or has the custody of or control over any article or other thing which in the opinion of the Commission is relevant to the subject matter of the investigation or hearing to produce such article or thing to the Commission, and the Commission may inspect and, subject to subsection (3), retain any article or other thing so produced for a reasonable time; (c) by notice in writing call upon any person to appear before the Commission and to give evidence or to answer questions relevant to the subject matter of the hearing; (d) in accordance with section 32 seize any article or thing referred to in paragraph (b) which is relevant to the subject matter of the investigation or hearing. (2) A notice referred to in subsection (1) shall specify the time when and the place where the person to whom it is directed shall appear, shall be signed by a commissioner, shall be served by a member of the staff of the Commission or by a sheriff, by delivering a copy thereof to the person concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the article is to be produced or the evidence is to

be given. (3) If the Commission is of the opinion that the production of any article in the possession or custody or under the control of the State, any department of State, the Auditor-General or any Attorney-General may adversely affect any intended or pending judicial proceedings or the conduct of any investigation carried out with a view to the institution of judicial proceedings, the Commission shall take steps aimed at the prevention of any undue delay in or the disruption of such investigation or proceedings. (4) The Commission may require any person who in compliance with a requirement in terms of this section appears before it, to take the oath or to make an affirmation and may through the Chairperson or any member of the staff of the Commission administer the oath to or accept an affirmation from such person. (5) No person other than a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information submitted at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced at a hearing in terms of this Act, or at any proceedings in any court of law.

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

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

Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

31. (1) Any person who is questioned by the Commission in the exercise of its powers in terms of this Act, or who has been subpoenaed to give evidence or to produce any article at a hearing of the Commission shall, subject to the provisions of subsections (2), (3) and (5), be compelled to produce any article or to answer any question put to him or her with regard to the subject-matter of the hearing notwithstanding the fact that the article or his or her answer may incriminate him or her. (2) A person referred to in subsection (1) shall only be compelled to answer a question or to produce an article which may incriminate him or her if the Commission has issued an order to that effect, after the Commission-
- (a) has consulted with the attorney-general who has jurisdiction;
 - (b) has satisfied itself that to require such information from such a person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
 - (c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.
- (3) Any incriminating

answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 39(d)(ii) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955). (4) Subject to the provisions of this section, the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1). (5) Any person appearing before the Commission by virtue of the provisions of subsection (1) shall be entitled to peruse any article referred to in that subsection, which was produced by him or her, as may be reasonably necessary to refresh his or her memory.

Entry upon premises, search for and seizure and removal of certain articles or other things

32. (1) Any commissioner, member of the staff of the Commission or police officer authorized thereto by a commissioner may on the authority of an entry warrant, issued in terms of subsection (2), enter upon any premises in or upon which any article or thing- (a) which is concerned with or is upon reasonable grounds suspected to be concerned with any matter which is the subject of any investigation in terms of this Act; (b) which contains, or is upon reasonable grounds suspected to contain, information with regard to any such matter, is or is upon reasonable grounds suspected to be, and may on the authority of a search warrant, issued in terms of subsection (2)- [...]

(2) An entry or search warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article or thing mentioned in paragraph (a) or (b) of subsection (1) is upon or in such premises, and shall specify which of the acts mentioned in paragraph (b)(i) to (vi) of that subsection may be performed thereunder by the person to whom it is issued. (3) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and any entry upon or search of any premises order, including- (a) a person's right to, respect for and the protection of his or her dignity; (b) the right of a person to freedom and security; and (c) the right of a person to his or her personal privacy. [...]

Hearings of Commission to be open to public

33. (1) (a) Subject to the provisions of this section, the hearings of the Commission shall be open to the public. (b) If the Commission, in any proceedings before it, is satisfied that- (i) it would be in the interest of justice; or (ii) there is a likelihood that harm may ensue to any person as a result of the proceedings being open, it may direct that such proceedings be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or any part thereof: Provided that the Commission shall permit any victim who has an interest in the proceedings concerned, to be present. (c) An application for proceedings to be held behind closed doors may be brought by a person referred to in paragraph (b) and

such application shall be heard behind closed doors. (d) The Commission may at any time review its decision with regard to the question whether or not the proceedings shall be held behind closed doors. (2) Where the Commission under subsection (1)(b) on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the Commission may, subject to the provisions of section 20(6)- (a) direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner; (b) direct that no person may, in any manner, make public any information which may reveal the identity of any witness in the proceedings; (c) give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness: Provided that the Commission may authorize the publication of so much information as it considers would be just and equitable.

Legal representation

34. (1) Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative. (2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of witnesses or any address to the Commission. (3) The Commission may appoint a legal representative to appear on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative. (4) A person referred to in subsection (1) shall be informed timeously of his or her right to be represented by a legal representative. Limited witness protection programme
35. (1) The Minister shall, in consultation with the Commission, promote the establishment of a witness protection programme in order to provide for the protection and safety of witnesses in any manner when necessary. [...]

CHAPTER 7: GENERAL PROVISIONS

Independence of Commission

36. (1) The Commission, its commissioners and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any party, government, administration, or any other functionary or body directly or indirectly representing the interests of any such entity. (2) To the extent that any of the personnel of the entities referred to in subsection (1) may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission. (3) (a) If at any stage during the course of proceedings at any meeting of the Commission it appears that a commissioner has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his or her functions as such a commissioner, such a commissioner shall forthwith and fully disclose the nature of his or her interest and absent himself or herself from that meeting so as to enable the remaining commissioners to decide whether the commissioner should be precluded from participating in the meeting by reason of that interest. [...]

Regulations

40. (1) The President may make regulations- (a) prescribing anything required to be prescribed for the proper application of this Act; (b) prescribing the remuneration and allowances and other

benefits, if any, of commissioners: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa; (c) determining the persons who shall for the purposes of this Act be regarded as the dependants or relatives of victims; (d) providing, in the case of interim measures for urgent reparation payable over a period of time, for the revision, and, in appropriate cases, for the discontinuance or reduction of any reparation so paid; (e) prohibiting the cession, attachment or assignment of any such reparation so granted; determining that any such reparation received in terms of a recommendation shall not form part of the estate of the recipient, should such estate be sequestrated; (g) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation by persons attending any hearing of the Commission in compliance with a subpoena issued in terms of this Act. [...]

President's Fund

42. (1) The President may, in such manner as he or she may deem fit, in consultation with the Minister and the Minister of Finance, establish a Fund into which shall be paid- (a) all money appropriated by Parliament for the purposes of the Fund; and (b) all money donated or contributed to the Fund or accruing to the Fund from any source. (2) There shall be paid from the Fund all amounts payable to victims by way of reparation in terms of regulations made by the President. [...]

Completion of report by Commission and dissolution of Commission

43. (1) Subject to the provisions of subsection (2), the Commission shall within a period of 18 months from its constitution or the further period, not exceeding six months, as the President may determine, complete its work. (2) The Commission shall within three months, from the date contemplated in subsection (1), complete its final report. [...]

Publication of final report of Commission

44. The President shall, in such manner as he or she may deem fit, bring the final report of the Commission to the notice of the Nation, among others, by laying such report, within two months after having received it, upon the Table in Parliament. [...]

Acts repealed

48. (1) The Indemnity Act, 1990 (Act No. 35 of 1990), the Indemnity Amendment Act, 1992 (Act No. 124 of 1992), and the Further Indemnity Act, 1992 (Act No. 151 of 1992), are hereby repealed. (2) Any indemnity granted under the provisions of the Indemnity Act, 1990, the Indemnity Amendment Act, 1992, or the Further Indemnity Act, 1992, shall remain in force notwithstanding the repeal of those Acts. (3) Any temporary immunity or indemnity granted under an Act repealed in terms of subsection (1) shall remain in force for a period of 12 months after the date referred to in section 7(3) notwithstanding the repeal of that Act. [...]

5

JUDGMENT IN THE MATTER OF *AZAPO*, BIKO, MXENGE, RIBERIO v. THE PRESIDENT OF SOUTH AFRICA, THE GOVERNMENT OF SOUTH AFRICA, THE MINISTER OF JUSTICE, THE MINISTER OF SAFETY AND SECURITY, THE CHAIRPERSON OF THE TRUTH AND RECONCILIATION COMMISSION, *CONSTITUTIONAL COURT OF SOUTH AFRICA*, 1996

Judgment delivered by Constitutional Court Deputy President Ismael Mohamed:

1. For decades South African history has been dominated by a deep conflict between a minority which reserved for itself all control over the political instruments of the state and a majority who sought to resist that domination. Fundamental human rights became a major casualty of this conflict as the resistance of those punished by their denial was met by laws designed to counter the effectiveness of such resistance. The conflict deepened with the increased sophistication of the economy, the rapid acceleration of knowledge and education and the ever increasing hostility of an international community steadily outraged by the inconsistency which had become manifest between its own articulated ideals after the Second World War and the official practices which had become institutionalised in South Africa through laws enacted to give them sanction and teeth by a Parliament elected only by a privileged minority. The result was a debilitating war of internal political dissension and confrontation, massive expressions of labour militancy, perennial student unrest, punishing international economic isolation, widespread dislocation in crucial areas of national endeavour, accelerated levels of armed conflict and a dangerous combination of anxiety, frustration and anger among expanding proportions of the populace. The legitimacy of law itself was deeply wounded as the country haemorrhaged dangerously in the face of this tragic conflict which had begun to traumatise the entire nation.
2. During the eighties it became manifest to all that our country with all its natural wealth, physical beauty and human resources was on a disaster course unless that conflict was reversed. It was this realisation which mercifully rescued us in the early nineties as those who controlled the levers of state power began to negotiate a different future with those who had been imprisoned, silenced, or driven into exile in consequence of their resistance to that control and its consequences. Those negotiations resulted in an interim Constitution committed to a transition towards a more just, defensible and democratic political order based on the protection of fundamental human rights. It was wisely appreciated by those involved in the preceding negotiations that the task of building such a new democratic order was a very difficult task because of the previous history and the deep emotions and indefensible inequities it had generated; and that this could not be achieved without a firm and generous commitment to reconciliation and national unity. It was realised that much of the unjust consequences of the past could not ever be fully reversed. It might be necessary in crucial areas to close the book on that past.

3. This fundamental philosophy is eloquently expressed in the epilogue to the Constitution [...] Pursuant to the provisions of the epilogue, Parliament enacted during 1995 what is colloquially referred to as the Truth and Reconciliation Act. Its proper name is the Promotion of National Unity and Reconciliation Act 34 of 1995 (“the Act”). [...]

11. Mr Marcus, who together with Mr D Leibowitz appeared for the Respondents, contended that the epilogue, which I have previously quoted, is indeed a “provision of this Constitution” within the meaning of section 33(2). He argued that any law conferring amnesty on a wrongdoer in respect of acts, omissions and offences associated with political objectives and committed during the prescribed period, is therefore a law properly authorised by the Constitution.

12. It is therefore necessary to deal, in the first place, with the constitutional status of the epilogue. In the founding affidavit in support of the application for direct access to this court made by the deputy president of the first applicant, reliance was placed on the Constitutional Principles contained in schedule 4 to the Constitution and it was submitted that “[the] Constitutional Principles in Schedule 4 enjoy a higher status to that of other sections of the Constitution, in that, in terms of Section 74(i) of the Constitution, it is not permissible to amend the Constitutional Principles and they shall be included in the final Constitution.
To the extent that, therefore, the post-end clause is in conflict with Constitutional Principle VI, the latter should prevail.”
Constitutional Principle VI provides that “[t]here shall be a separation of powers between the legislature, executive and the judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.” [...]

14. The Constitutional Principles have no effect on the status of the epilogue. That status is determined by section 232(4) of the Constitution which provides as follows: “In interpreting this Constitution a provision in any Schedule, including the provision under the heading ‘National Unity and Reconciliation’, to this Constitution shall not by reason only of the fact that it is contained in a Schedule, have a lesser status than any other provision of this Constitution which is not contained in a Schedule, and such provision shall for all purposes be deemed to form part of the substance of this Constitution.” [...]

15. It was contended that even if this is the proper interpretation of the status of the epilogue and even if the principle of “amnesty” is authorised by the Constitution, it does not authorise, in particular, the far-reaching amnesty which section 20(7) allows. In his heads of argument on behalf of the applicants, Mr Soggot conceded that the wording of the epilogue provides “... a clear indication that the Constitution contemplates the grant of amnesty in respect of offences associated with political objectives and committed in the course of the conflicts of the past, including offences involving gross violations of human rights.” [...]

16. I understand perfectly why the applicants would want to insist that those wrongdoers who abused their authority and wrongfully murdered, maimed or tortured very much loved members of their families who had, in their view, been engaged in a noble struggle to confront the inhumanity of apartheid, should vigorously be prosecuted and effectively be punished for their callous and inhuman conduct in violation of the criminal law. I can therefore also understand why they are emotionally unable to identify themselves with the consequences of

the legal concession made by Mr Soggot and if that concession was wrong in law I would have no hesitation whatsoever in rejecting it.

17. Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty immune from constitutional attack, but the circumstances in support of this course require carefully to be appreciated. Most of the acts of brutality and torture which have taken place have occurred during an era in which neither the laws which permitted the incarceration of persons or the investigation of crimes, nor the methods and the culture which informed such investigations, were easily open to public investigation, verification and correction. Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof. Loved ones have disappeared, sometimes mysteriously and most of them no longer survive to tell their tales. Others have had their freedom invaded, their dignity assaulted or their reputations tarnished by grossly unfair imputations hurled in the fire and the cross-fire of a deep and wounding conflict. The wicked and the innocent have often both been victims. Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible, witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law. The Act seeks to address this massive problem by encouraging these survivors and the dependants of the tortured and the wounded, the maimed and the dead to unburden their grief publicly, to receive the collective recognition of a new nation that they were wronged, and crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible. That truth, which the victims of repression seek so desperately to know is, in the circumstances, much more likely to be forthcoming if those responsible for such monstrous misdeeds are encouraged to disclose the whole truth with the incentive that they will not receive the punishment which they undoubtedly deserve if they do. Without that incentive there is nothing to encourage such persons to make the disclosures and to reveal the truth which persons in the positions of the applicants so desperately desire. With that incentive, what might unfold are objectives fundamental to the ethos of a new constitutional order. The families of those unlawfully tortured, maimed or traumatised become more empowered to discover the truth, the perpetrators become exposed to opportunities to obtain relief from the burden of a guilt or an anxiety they might be living with for many long years, the country begins the long and necessary process of healing the wounds of the past, transforming anger and grief into a mature understanding and creating the emotional and structural climate essential for the "reconciliation and reconstruction" which informs the very difficult and sometimes painful objectives of the amnesty articulated in the epilogue.
18. The alternative to the grant of immunity from criminal prosecution of offenders is to keep intact the abstract right to such a prosecution for particular persons without the evidence to sustain the prosecution successfully, to continue to keep the dependants of such victims in many cases substantially ignorant about what precisely happened to their loved ones, to leave their yearning for the truth effectively unassuaged, to perpetuate their legitimate sense of

resentment and grief and correspondingly to allow the culprits of such deeds to remain perhaps physically free but inhibited in their capacity to become active, full and creative members of the new order by a menacing combination of confused fear, guilt, uncertainty and sometimes even trepidation. Both the victims and the culprits who walk on the “historic bridge” described by the epilogue will hobble more than walk to the future with heavy and dragged steps delaying and impeding a rapid and enthusiastic transition to the new society at the end of the bridge, which is the vision which informs the epilogue.

19. Even more crucially, but for a mechanism providing for amnesty, the “historic bridge” itself might never have been erected. For a successfully negotiated transition, the terms of the transition required not only the agreement of those victimised by abuse but also those threatened by the transition to a “democratic society based on freedom and equality” (Sections 33(1)(a)(ii) and 35(1) of the Constitution). If the Constitution kept alive the prospect of continuous retaliation and revenge, the agreement of those threatened by its implementation might never have been forthcoming, and if it had, the bridge itself would have remained wobbly and insecure, threatened by fear from some and anger from others. It was for this reason that those who negotiated the Constitution made a deliberate choice, preferring understanding over vengeance, reparation over retaliation, ubuntu (the meaning of that concept is discussed in *S v Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) at paras 224-7; 241-51; 263 and 307-13) over victimisation. (See the fourth paragraph of the epilogue to the Constitution).
20. Is Section 20(7), to the extent to which it immunises wrongdoers from criminal prosecution, nevertheless objectionable on the grounds that amnesty might be provided in circumstances where the victims, or the dependants of the victims, have not had the compensatory benefit of discovering the truth at last or in circumstances where those whose misdeeds are so obscenely excessive as to justify punishment, even if they were perpetrated with a political objective during the course of conflict in the past? Some answers to such difficulties are provided in the sub-sections of Section 20. The Amnesty Committee may grant amnesty in respect of the relevant offence only if the perpetrator of the misdeed makes a full disclosure of all relevant facts (Section 20(1)(c) of the Act). If the offender does not, and in consequence thereof the victim or his or her family is not able to discover the truth, the application for amnesty will fail. Moreover, it will not suffice for the offender merely to say that his or her act was associated with a political objective. That issue must independently be determined by the Amnesty Committee pursuant to the criteria set out in Section 20(3), including the relationship between the offence committed and the political objective pursued and the directness and proximity of the relationship and the proportionality of the offence to the objective pursued.
21. The result, at all levels, is a difficult, sensitive, perhaps even agonising, balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and the need for reparations for the victims of that truth; between a correction in the old and the creation of the new. It is an exercise of immense difficulty interacting in a vast network of political, emotional, ethical and logistical considerations. It is an act calling for a judgment falling substantially within the domain of those entrusted with lawmaking in the era

preceding and during the transition period. The results may well often be imperfect and the pursuit of the act might inherently support the message of Kant that “out of the crooked timber of humanity no straight thing was ever made” (Immanuel Kant paraphrased in Isaiah Berlin’s essay on “Two concepts of Liberty” in *Four Essays on Liberty*, Oxford University Press, Oxford 1969, 170) [...]. There can be legitimate debate about the methods and the mechanisms chosen by the lawmaker to give effect to the difficult duty entrusted upon it in terms of the epilogue. We are not concerned with that debate or the wisdom of its choice of mechanisms but only with its constitutionality. That, for us, is the only relevant standard. Applying that standard, I am not satisfied that in providing for amnesty for those guilty of serious offences associated with political objectives and in defining the mechanisms through which and the manner in which such amnesty may be secured by such offenders, the lawmaker, in Section 20(7), has offended any of the express or implied limitations on its powers in terms of the Constitution. [...]

39. Mr Soggot contended forcefully that whatever be the legitimate consequences of the kind of amnesty contemplated by the epilogue for the criminal and civil liability of the wrongdoer, the Constitution could not justifiably authorise any law which has the effect of indemnifying the state itself against civil claims made by those wronged by criminal and delictual acts perpetrated by such wrongdoers in the course and within the scope of their employment as servants of the state. Section 20(7) of the Act, he argued, had indeed that effect and was therefore unconstitutional to that extent.
40. This submission has one great force. It is this. If the wrongdoer in the employment of the state is not personally indemnified in the circumstances regulated by the Act, the truth might never unfold. It would remain shrouded in the impenetrable mysteries of the past, leaving the dependants of many victims with a grief unrelieved by any knowledge of the truth. But how, it was argued, would it deter such wrongdoers from revealing the truth if such a revelation held no criminal or civil consequences for them? How could such wrongdoers be discouraged from disclosing the truth if their own liberty and property was not to be threatened by such revelations, but the state itself nevertheless remained liable to compensate the families of victims for such wrongdoings perpetrated by the servants of the state?
41. This is a serious objection which requires to be considered carefully. I think it must be conceded that in many cases, the wrongdoer would not be discouraged from revealing the whole truth merely because the consequences of such disclosure might be to saddle the state with a potential civil liability for damages arising from the delictual acts or omissions of a wrongdoer (although there may also be many cases in which such a wrongdoer, still in the service of the state, might in some degree be inhibited or even coerced from making disclosures implicating his or her superiors).
42. The real answer, however, to the problems posed by the questions which I have identified, seems to lie in the more fundamental objectives of the transition sought to be attained by the Constitution and articulated in the epilogue itself. What the Constitution seeks to do is to facilitate the transition to a new democratic order, committed to “reconciliation between the people of South Africa and the reconstruction of society”. The question is how this can be done effectively with the limitations of our resources and the legacy of the past.

43. The families of those whose fundamental human rights were invaded by torture and abuse are not the only victims who have endured “untold suffering and injustice” in consequence of the crass inhumanity of apartheid which so many have had to endure for so long. Generations of children born and yet to be born will suffer the consequences of poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on life and living for so many. The country has neither the resources nor the skills to reverse fully these massive wrongs. It will take many years of strong commitment, sensitivity and labour to “reconstruct our society” so as to fulfill the legitimate dreams of new generations exposed to real opportunities for advancement denied to preceding generations initially by the execution of apartheid itself and for a long time after its formal demise, by its relentless consequences. The resources of the state have to be deployed imaginatively, wisely, efficiently and equitably, to facilitate the reconstruction process in a manner which best brings relief and hope to the widest sections of the community, developing for the benefit of the entire nation the latent human potential and resources of every person who has directly or indirectly been burdened with the heritage of the shame and the pain of our racist past.
44. Those negotiators of the Constitution and leaders of the nation who were required to address themselves to these agonising problems must have been compelled to make hard choices. They could have chosen to direct that the limited resources of the state be spent by giving preference to the formidable delictual claims of those who had suffered from acts of murder, torture or assault perpetrated by servants of the state, diverting to that extent, desperately needed funds in the crucial areas of education, housing and primary health care. They were entitled to permit a different choice to be made between competing demands inherent in the problem. They could have chosen to direct that the potential liability of the state be limited in respect of any civil claims by differentiating between those against whom prescription could have been pleaded as a defence and those whose claims were of such recent origin that a defence of prescription would have failed. They were entitled to reject such a choice on the grounds that it was irrational. They could have chosen to saddle the state with liability for claims made by insurance companies which had compensated institutions for delictual acts performed by the servants of the state and to that extent again divert funds otherwise desperately needed to provide food for the hungry, roofs for the homeless and black boards and desks for those struggling to obtain admission to desperately overcrowded schools. They were entitled to permit the claims of such school children and the poor and the homeless to be preferred.
45. The election made by the makers of the Constitution was to permit Parliament to favour “the reconstruction of society” involving in the process a wider concept of “reparation”, which would allow the state to take into account the competing claims on its resources but, at the same time, to have regard to the “untold suffering” of individuals and families whose fundamental human rights had been invaded during the conflict of the past. In some cases such a family may best be assisted by a reparation which allows the young in this family to maximise their potential through bursaries and scholarships; in other cases the most effective reparation might take the form of occupational training and rehabilitation; in still other cases complex surgical interventions and medical help may be facilitated; still others might need subsidies to prevent eviction from homes they can no longer maintain and in suitable cases the

deep grief of the traumatised may most effectively be assuaged by facilitating the erection of a tombstone on the grave of a departed one with a public acknowledgement of his or her valour and nobility. There might have to be differentiation between the form and quality of the reparations made to two persons who have suffered exactly the same damage in consequence of the same unlawful act but where one person now enjoys lucrative employment from the state and the other lives in penury.

46. All these examples illustrate, in my view, that it is much too simplistic to say that the objectives of the Constitution could only properly be achieved by saddling the state with the formal liability to pay, in full, the provable delictual claims of those who have suffered patrimonial loss in consequence of the delicts perpetrated with political objectives by servants of the state during the conflicts of the past. There was a permissible alternative, perhaps even a more imaginative and more fundamental route to the "reconstruction of society", which could legitimately have been followed. This is the route which appears to have been chosen by Parliament through the mechanism of amnesty and nuanced and individualised reparations in the Act. I am quite unpersuaded that this is not a route authorised by the epilogue to the Constitution.
47. The epilogue required that a law be adopted by Parliament which would provide for "amnesty" and it appreciated the "need for reparation", but it left it to Parliament to decide upon the ambit of the amnesty, the permissible form and extent of such reparations and the procedures to be followed in the determination thereof, by taking into account all the relevant circumstances to which I have made reference. Parliament was therefore entitled to decide that, having regard to the resources of the state, proper reparations for those victimised by the unjust laws and practices of the past justified formulae which did not compel any irrational differentiation between the claims of those who were able to pursue enforceable delictual claims against the state and the claims of those who were not in that position but nevertheless deserved reparations.
48. It was submitted by Mr Soggot that the reference to the "need for reparation" in the epilogue is contained only in the fourth paragraph of the epilogue and does not appear in the directive to Parliament to adopt a law "providing for the mechanisms, criteria and procedures, including tribunals, if any, through which ... amnesty shall be dealt with ...". He argued from this that what the makers of the Constitution must have contemplated was that the ordinary liability of the state, in respect of damages sustained by others in consequence of the acts of the servants of the state, remained intact, and was protected by Section 22 of the Constitution. In my view, this is a fragmentary and impermissible approach to the structure of the epilogue. It must be read holistically. It expresses an integrated philosophical and jurisprudential approach. The very first paragraph defines the commitment to the "historic bridge" and the second paragraph expands on the theme of this bridge by elevating "the pursuit of national unity, ... reconciliation between the people of South Africa and the reconstruction of society." It then goes on in the third paragraph, in very moving and generous language, to "secure" the "foundation" of the nation by transcending "the divisions and strife of the past, which generated gross violations of human rights" and elects, in eloquent terms in the next paragraph, to make the historic choice in favour of understanding above vengeance, ubuntu over victimisation and "a need for reparation but not for retaliation." This philosophy then

informs the fifth paragraph which directs Parliament to adopt a law providing for amnesty and is introduced by the words “[i]n order to advance such reconciliation and reconstruction, amnesty shall be granted ...”. The reference to “such reconciliation and reconstruction” embraces the continuing radiating influence of the preceding paragraphs including the reference to “the need for reparation”. Approached in this way, the reparations authorised in the Act are not alien to the legislation contemplated by the epilogue. Indeed, they are perfectly consistent with, and give expression to, the extraordinarily generous and imaginative commitment of the Constitution to a philosophy which has brought unprecedented international acclaim for the people of our country. It ends with the deep spirituality and dignity of the last line: “Nkosi sikelel’ iAfrika – God seën Suid-Afrika” [...]

50. In the result, I am satisfied that the epilogue to the Constitution authorised and contemplated an “amnesty” in its most comprehensive and generous meaning so as to enhance and optimise the prospects of facilitating the constitutional journey from the shame of the past to the promise of the future. Parliament was, therefore, entitled to enact the Act in the terms which it did. [...]

SOURCE INFORMATION AND ADDITIONAL READINGS

Document 1

A/RES/2671 F (XXV), 8 December 1970. The 1970 resolution was followed by the General Assembly's *International Convention on the Suppression and Punishment of the Crime of Apartheid*. Adopted in 1973, this convention entered into full force on 18 July 1976. In its Final Report, the TRC provides a detailed history of the international community's condemnation of apartheid (Volume 1, 94-102). As well, the ANC has compiled a useful set of the UN resolutions, condemnations, and actions directed against the apartheid state <www.anc.org.za/un/>.

Document 2

Chapter 15, following 251 of the Constitution of the Republic of South Africa, Act 200 of 1993 (Assented to 25 January 1994; Date of Commencement 27 April 1994). The full text of the Interim Constitution is available at <www.polity.org.za>.

Document 3

Published in a number of South Africa's eleven official languages and distributed across the country, this booklet was created in 1995 by the non-governmental organisation (NGO) *Justice in Transition* on behalf of the South African Ministry of Justice. The NGO sector played a central role in the debate over whether South Africa needed a truth commission in the aftermath of apartheid. For crucial examples of this contribution, see *Dealing with the Past: Truth and Reconciliation in South Africa* (Alex Boraine, Janet Levy and Ronel Scheffer) (eds). (Cape Town: Institute for Democracy in South Africa, 1994) and *The Healing of a Nation*, Alex Boraine and Janet Levy (eds) (Cape Town: Justice in Transition, 1995).

Document 4

Act no. 34 of 1995: Promotion of National Unity and Reconciliation Act, 19 July 1995. Reprinted at <<http://www.info.gov.za/acts/1995/a34-95.pdf>>. Subsequent amendments to the Act can be located at <http://www.doj.gov.za/trc/trc_frameset.htm>. For a detailed reflection on the development of the TRC and its authorising legislations, see Johnny de Lange, "The Historical Context, Legal Origins, and Philosophical Foundation of the South African Truth and Reconciliation Commission," in *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission in South Africa*. Charles Villa-Vicencio and Wilhelm Verwoerd (eds) (London: Zed, 2000), 14-31. For a list of those who served on the Commission, consult *Truth and Reconciliation Commission of South Africa Report*, Vol. 1, 1998, Chapter 3.

Document 5

Constitutional Court of South Africa, Case CCT 17/96 (Decided on 25 July 1996). In its Final Report (Volume 1), the TRC provides an extensive discussion of how its work provoked a number of different legal challenges and lawsuits. Also see Jeremy Sarkin, "The Trials and Tribulations of the South African Truth and Reconciliation Commission," *South African Journal of Human Rights* 12 (1996).

Section 2

The Theological and Political Roots of Reconciliation in South Africa

An understanding of the Truth and Reconciliation Commission requires a consideration of reconciliation's long and contentious history in South Africa. Following the Anglo-Boer war, the idea of conciliation was limited to what was then termed the "two races", the Boer and the Britton, and defended by Jan Smuts as a way to promote the unity needed for the Afrikaner and the Brit to ensure control over black South Africans. After the rise of apartheid in 1948, the connection between reconciliation and systematic racism became more explicit as the powerful Dutch Reformed Church devoted substantial attention to explaining and rationalising the National Party's policy of apartheid. Rooting the case more in the diversity of human languages than race, the church condoned the practice of separate development on the grounds that it both expressed God's will and laid the basis for reconciliation in the next life. Beginning in the 1960s, this position provoked substantial criticism from some English-speaking churches (Catholic and Protestant alike) in South Africa. While they too preached to segregated congregations, these opposing voices initiated an important debate, one that relied heavily on the African National Congress' expressed commitment to non-racialism and which moved from an initial discussion of how to interpret scripture to the problem of how to actively resist apartheid's "heresy".

In the decade after the Soweto uprising, the leadership of English-speaking churches played an increasingly important role in the liberation struggle and argued widely that apartheid was the very antithesis of an increasingly urgent reconciliation. Prefaced by declarations like the Belhar Confession, the 1985 *Kairos Document*, for instance, issued a widely publicised criticism of both "state theology" and the passive interpretation of reconciliation offered by "mainstream" religious institutions. Arguing that calls for reconciliation could not overlook the offenses of a criminal regime, the central terms of the *Kairos Document* soon found their way into high level political discussions about the increasing risk of endless civil war and the apparent need for South Africans to undertake negotiations that would replace apartheid with a system of non-racial democracy.

In the late 1980s and early 1990s, both Nelson Mandela and F.W. de Klerk made concerted appeals for all South Africans to embrace a spirit of reconciliation. An important step in beginning the so-called "talks about talk," each claimed that the process of reconciliation offered a way to shape the transition to democracy and avoid civil war. Driven by controversy over how indemnity was used to ensure that members of the liberation struggle could take their place at the negotiating table and disputes over whether the transition required that such protection be extended to all parties in the conflict, these arguments raised difficult questions about the relationship between reconciliation's promotion of "unity in diversity" and the demands of justice. Thus, as the constitutional negotiations gained momentum, several influential calls for a truth commission underscored the risks of "blanket amnesty" and drew partly from transitional arrangements in Latin and South America to make the case for a public and "victim-centred" process that could provide an opportunity for both healing and accountability.

6

HUMAN RELATIONS AND THE SOUTH AFRICAN SCENE IN LIGHT OF THE SCRIPTURE, *GENERAL SYNOD OF THE DUTCH REFORMED CHURCH, 1974*

[...] UNITY OF MANKIND

The Scriptures teach and uphold the essential unity of mankind and the primordial relatedness and fundamental equality of all peoples. The “genealogical table of peoples” of Gen. 10 uniquely emphasises the unity of mankind. It was not the intention to present the genealogical register of a certain nation; the intention was to indicate how all the nations are descended from Noah. Hugo du Plessis (*Banier van die Volke*, p. 38) states the case in the following words: “What is given here is the genealogy of the human race in its differentiation into nations... in spite of the God-willed diversity, there is not only the unity of common descent from Noah, but here we also find, at least in principle, complete equality of the generations. All the peoples bear the same relationship to God and are answerable to God in the same way. Here all ethnocentrism is transcended.” He then goes on to state: “This majestic vision of the primordial relatedness of all peoples and their fundamental equality is only found in the Scriptures” (*op. cit.* p. 38 *et seq.*).

The “genealogical table of peoples” is therefore of importance, not only from the point of view of ethnic diversity, but also to the basic unity of all generations and humanity as a whole.

Differentiation comes about because of distinctions in races and peoples, but differentiation does not revoke the essential unity. Nor can races and peoples be compared with one another and classified in order of superiority, inferiority or difference in kind. Such distinctions smack of heathenism because they do not respect the Biblical foundation of man’s descent from one human couple.

ETHNIC DIVERSITY

The Scriptures also teach and uphold the ethnic diversity of the human race.

Ethnic diversity does not have a polyphylogenetic origin. Whether or not the differentiation process first started with Babel, or whether it was already implicit in the fact of Creation and the cultural injunction (Genesis 1:28), makes no essential difference to the conclusion that ethnic diversity is in its very origin in accordance with the will of God for this dispensation. The choice between these alternative explanations of origins depends on an examination of the important chapters 10 and 11 of the book of Genesis. The universal message of the “genealogical table of people” (Gen. 10) is that God created all peoples from one progenitor, and that this view of the human race not only avoids the danger of ethnocentrism, but also that of cosmopolitanism. Gen. 10 and 11, which should be read in conjunction, each individually recounts the fact and process of the division and distribution of peoples. According to Gen. 10, the diversity of peoples is the result of a progressive split in the genealogical line, while Gen. 11:1-9 presents it as being the result of dispersal. The two processes are not unrelated. In Gen. 11 the spontaneous development of

generations is given its momentum and specific character. In the process of progressive differentiation of the human race into peoples and races there is not only a curse, but also a blessing, not only a judgment on the sinful arrogance of the builders of Babel, but also an active mercy preserving mankind from destruction so “That they should seek the Lord” (Acts. 17:27) and so that God’s purpose for the fulfilment of the earth should be achieved.

The question we are faced with here is whether the Scriptures also give us a normative indication of other ways in which the human race differentiated into a variety of races, peoples and nations. It is therefore a question of whether the diversity of peoples accords with the will of God and whether it was God’s intention, from the outset, to differentiate the human race in this way. If this question is answered in the affirmative, we already have an indication that we should judge and evaluate the existence of various races and peoples as a positive premise. A further question will involve, of course, the relationship between diversity and unity among peoples, and, in particular, how both should be judged in the context of the kingdom of God. This is of particular importance because of the difference in emphasis between ourselves and Christians of other countries. This difference relates to the manner in which we value the diversity of peoples positively and incorporate it in our ideas on relations between races and peoples. It is therefore important to distinguish carefully. [...]

For the purpose of our report the question arises as to whether Gen. 11:1-9 can serve as a Scriptural basis for a policy of autogenous development? Our answer is a qualified “yes”. The diversity of races and peoples to which the confusion of tongues contributed, is an aspect of reality which God obviously intended for this dispensation. To deny this fact is to side with the tower builders. Therefore a policy which in broad terms (as distinct from its concrete implementation) bears this reality in mind, is Biblically realistic in the good sense of the word. We must not forget that Gen. 11 also tells us of man’s attempt to establish a (forced) unity of the human race. Herewith we are not saying that no positive value attaches to attempts at achieving unity as such. The history of peoples in Biblical times, and particularly that of peoples in modern times, relates the process wherein smaller groups have become linked into larger units, and no one wishes to claim that these efforts have only furnished negative results. The endeavour towards unity by the tower builders of Babel, however, was rooted, not only in a God-given command, but in sinful human arrogance. This form of unity carries within it the germ of its own destruction and can never be a substitute for the unity that God alone can give. Therefore, also from this point of view, there is reason to bear in mind the diversity of races and peoples.

We repeat however, that ours is a qualified “yes”. Gen. 11:1-9 answers the question as to how, in terms of Gen. 10, the diversity of languages and nations originated. We have pointed out (2.3), however, that Gen. 10 also emphasises the primordial relatedness of all nations: everyone’s genealogical history is traced back to one progenitor, Noah (10:1). In no instance does the diversity revoke the essential unity of the human race. In all races and peoples we are dealing with individuals “related” to one another on the horizontal plane, and on the vertical plane to God to whom they are accountable. [...]

In specific circumstances and under specific conditions the New Testament makes provision for the regulation on the basis of separate development of the co-existence of various peoples in one country.

From the fact that the existence of a diversity of peoples is accepted as a relative, but nevertheless real, premise, one may infer that the New Testament allows for the possibility that a given country may decide to regulate its inter-people relationships on the basis of separate development – considering its own peculiar circumstances, with due respect for the basic norms which the Bible

prescribes for the regulation of social relations (cf. proposition 3.2.8) and after careful consideration of all possible solutions offered. When such a country honestly comes to the conclusion that the ethical norms for ordering social relationship, i.e. love of one's neighbour and social justice, can best be realised on the basis of parallel development, and if such a conviction is based on factual reasoning, the choice of parallel development can be justified in the light of what the Bible teaches.

THE TASK OF THE CHURCH

It is the primary task of the church to preach the Word of God and to equip its adherents for service in all spheres of life, which includes their own society. Thus, the Christian must be the salt of the earth and the light of the world in all spheres of life. This means that in its preaching the church must also call upon its adherents to apply the principles of the kingdom of God in the social and political sphere. (*Acts of the Synod of the Ned. Geref. Kerk in S.A.*, Report 5a, especially page 18; *Die N.G. Kerk in S.A. en Rasseverhoudinge*, p. 18 h (iii) 20, 33 and RES, Acts 1963 and Acts 1968, Majority Report D6).

THE CHURCH'S MESSAGE OF RECONCILIATION

The church must preach the kingdom's prophetic message of reconciliation and healing. At the same time it must denounce sin and seek to correct sinful structures in society. In executing this function the church should not merely be concerned with the promotion of popular opinions, nor should it seek to hide behind opinions which cannot be justified according to Scripture. In fact, wherever the Word of God should demand it, the church should fulfil its prophetic function in spite of popular opinion. [...]

THE CHURCH AND THE PARTICULAR POPULATION RELATIONSHIPS IN SOUTHERN AFRICA

In Southern Africa the church is called upon to be the light and salt in a complicated set of population relationships; several highly disparate peoples which differ substantially from one another, i.e. in level of civilisation, have to live together in one country.

The inequality among these peoples, particularly as a result of such factors as history and development, places a heavy burden of responsibility on the privileged peoples and societies to let justice be done to all, particularly because certain measures, essential to maintain order in certain situations, may cause suffering and hardship for some. The church is specially called to be the "conscience" of the community and at all times to place such measures in proper perspective in the light of Scripture.

In this imperfect world of ours there is, on the one hand, the temptation of egoism, exploitation and discrimination by the privileged against the less privileged group and, on the other hand, the temptation for the latter group not only to accept responsibility for their own development. Both these temptations are manifest in human relationship. [...]

HUMAN RIGHTS

We cannot accept, purely according to the teaching of the Bible, that man has rights in the sense of claims on the basis of his own merits, as the term is generally understood today. Human rights are those rights which God has bestowed upon man as the bearer of his image so that he may be able to fulfil his duties and calling as a human being. In order to be able to fulfil his calling as a human being, man has a right to life and the propagation thereof through marriage and the creation of communities and associations to property and to freedom of religious practice and of conscience. It is self-evident that the exercise of these rights can never be divorced from the community in which the individual lives his life. For, as an association of people, the community has collective rights on the basis of which it must fulfil its divine calling.

When it comes to the acknowledgement of rights, privileges must at all times be accompanied by responsibility. Rights and privileges may not be withheld when the claim is just.

AUTOGENOUS SEPARATE DEVELOPMENT

A political system based on the autogenous or separate development of various population groups can be justified from the Bible, but the commandment to love one's neighbour must at all times be the ethical norm towards establishing sound inter-people relations.

7

THE BELHAR CONFSSION, *DUTCH REFORMED MISSION CHURCH*
 IN SOUTH AFRICA, 1982, 1986

We believe

1. in the triune God, Father, Son and Holy Spirit, who gathers, protects and cares for his church by his Word and his Spirit, as he has done since the beginning of the world and will do to the end.
2. in one holy, universal Christian church, the communion of saints called from the entire human family.

We believe

- that Christ's work of reconciliation is made manifest in the church as the community of believers who have been reconciled with God and with one another;
- that unity is, therefore, both a gift and an obligation for the church of Jesus Christ; that through the working of God's Spirit it is a binding force, yet simultaneously a reality which must be earnestly pursued and sought: one which the people of God must continually be built up to attain;
- that this unity must become visible so that the world may believe that separation, enmity and hatred between people and groups is sin which Christ has already conquered, and accordingly that anything which threatens this unity may have no place in the church and must be resisted;
- that this unity of the people of God must be manifested and be active in a variety of ways: in that we love one another; that we experience, practice and pursue community with one another; that we are obligated to give ourselves willingly and joyfully to be of benefit and blessing to one another; that we share one faith, have one calling, are of one soul and one mind; have one God and Father, are filled with one Spirit, are baptised with one baptism, eat of one bread and drink of one cup, confess one name, are obedient to one Lord, work for one cause, and share one hope; together come to know the height and the breadth and the depth of the love of Christ; together are built up to the stature of Christ, to the new humanity; together know and bear one another's burdens, thereby fulfilling the law of Christ that we need one another and upbuild one another, admonishing and comforting one another; that we suffer with one another for the sake of righteousness; pray together; together serve God in this world; and together fight against all which may threaten or hinder this unity;
- that this unity can be established only in freedom and not under constraint; that the variety of spiritual gifts, opportunities, backgrounds, convictions, as well as the various languages and cultures, are by virtue of the reconciliation in Christ, opportunities for mutual service and enrichment within the one visible people of God;
- that true faith in Jesus Christ is the only condition for membership of this church;

Therefore, we reject any doctrine

- which absolutises either natural diversity or the sinful separation of people in such a way that this absolutisation hinders or breaks the visible and active unity of the church, or even leads to the establishment of a separate church formation;
- which professes that this spiritual unity is truly being maintained in the bond of peace whilst believers of the same confession are in effect alienated from one another for the sake of diversity and in despair of reconciliation;
- which denies that a refusal earnestly to pursue this visible unity as a priceless gift is sin;
- which explicitly or implicitly maintains that descent or any other human or social factor should be a consideration in determining membership of the church.

3. We believe

- that God has entrusted to his church the message of reconciliation in and through Jesus Christ; that the church is called to be the salt of the earth and the light of the world, that the church is called blessed because it is a peacemaker, that the church is witness both by word and by deed to the new heaven and the new earth in which righteousness dwells;
- that God by his lifegiving Word and Spirit has conquered the powers of sin and death, and therefore also of irreconciliation and hatred, bitterness and enmity, that God, by his lifegiving Word and Spirit will enable his people to live in a new obedience which can open new possibilities of life for society and the world;
- that the credibility of this message is seriously affected and its beneficial work obstructed when it is proclaimed in a land which professes to be Christian, but in which the enforced separation of people on a racial basis promotes and perpetuates alienation, hatred and enmity;
- that any teaching which attempts to legitimate such forced separation by appeal to the gospel, and is not prepared to venture on the road of obedience and reconciliation, but rather, out of prejudice, fear, selfishness and unbelief, denies in advance the reconciling power of the gospel, must be considered ideology and false doctrine.

Therefore, we reject any doctrine which, in such a situation sanctions in the name of the gospel or of the will of God the forced separation of people on the grounds of race and colour and thereby in advance obstructs and weakens the ministry and experience of reconciliation in Christ.

4. We believe

- that God has revealed himself as the one who wishes to bring about justice and true peace among men; that in a world full of injustice and enmity he is in a special way the God of the destitute, the poor and the wronged and that he calls his church to follow him in this; that he brings justice to the oppressed and gives bread to the hungry; that he frees the prisoner and restores sight to the blind; that he supports the downtrodden, protects the stranger, helps orphans and widows and blocks the path of the ungodly; that for him pure and undefiled religion is to visit the orphans and the widows in their suffering; that he wishes to teach his people to do what is good and to seek the right;
- that the church must therefore stand by people in any form of suffering and need, which implies, among other things, that the church must witness against and strive against any form of injustice, so that justice may roll down like waters, and righteousness like an ever-flowing stream;

- that the church as the possession of God must stand where he stands, namely against injustice and with the wronged; that in following Christ the church must witness against all the powerful and privileged who selfishly seek their own interests and thus control and harm others.

Therefore, we reject any ideology which would legitimate forms of injustice and any doctrine which is unwilling to resist such an ideology in the name of the gospel.

5. **We believe** that, in obedience to Jesus Christ, its only head, the church is called to confess and to do all these things, even though the authorities and human laws might forbid them and punishment and suffering be the consequence.

Jesus is Lord.

To the one and only God, Father, Son and Holy Spirit, be the honour and the glory for ever and ever.

8

DESMOND TUTU, *NOBEL PEACE PRIZE LECTURE*, 1984

Ladies and Gentlemen,

Before I left South Africa, a land I love passionately, we had an emergency meeting of the Executive Committee of the South African Council of Churches with the leaders of our member churches. We called the meeting because of the deepening crisis in our land, which has claimed nearly 200 lives this year alone. We visited some of the trouble-spots on the Witwatersrand. I went with others to the East Rand. We visited the home of an old lady. She told us that she looked after her grandson and the children of neighbours while their parents were at work. One day the police chased some pupils who had been boycotting classes, but they disappeared between the township houses. The police drove down the old lady's street. She was sitting at the back of the house in her kitchen, whilst her charges were playing in the front of the house in the yard. Her daughter rushed into the house, calling out to her to come quickly. The old lady dashed out of the kitchen into the living room. Her grandson had fallen just inside the door, dead. He had been shot in the back by the police. He was 6 years old. A few weeks later, a white mother, trying to register her black servant for work, drove through a black township. Black rioters stoned her car and killed her baby of a few months old, the first white casualty of the current unrest in South Africa. Such deaths are two too many. These are part of the high cost of apartheid.

Everyday in a squatter camp near Cape Town, called K.T.C., the authorities have been demolishing flimsy plastic shelters which black mothers have erected because they were taking their marriage vows seriously. They have been reduced to sitting on soaking mattresses, with their household effects strewn round their feet, and whimpering babies on their laps, in the cold Cape winter rain. Everyday the authorities have carried out these callous demolitions. What heinous crime have these women committed, to be hounded like criminals in this manner? All they have wanted is to be with their husbands, the fathers of their children. Everywhere else in the world they would be highly commended, but in South Africa, a land which claims to be Christian, and which boasts a public holiday called Family Day, these gallant women are treated so inhumanely, and yet all they want is to have a decent and stable family life. Unfortunately, in the land of their birth, it is a criminal offence for them to live happily with their husbands and the fathers of their children. Black family life is thus being undermined, not accidentally, but by deliberate Government policy. It is part of the price human beings, God's children, are called to pay for apartheid. An unacceptable price.

I come from a beautiful land, richly endowed by God with wonderful natural resources, wide expanses, rolling mountains, singing birds, bright shining stars out of blue skies, with radiant sunshine, golden sunshine. There is enough of the good things that come from God's bounty, there is enough for everyone, but apartheid has confirmed some in their selfishness, causing them to grasp greedily a disproportionate share, the lion's share, because of their power. They have taken 87% of the land, though being only about 20% of our population. The rest have had to make do with the remaining 13%. Apartheid has decreed the politics of exclusion. 73% of the population is excluded from any meaningful participation in the political decision-making processes of the land

of their birth. The new Constitution, making provision of three chambers, for whites, coloureds, and Indians, mentions blacks only once, and thereafter ignores them completely. Thus this new Constitution, lauded in parts of the West as a step in the right direction, entrenches racism and ethnicity. The constitutional committees are composed in the ratio of 4 whites to 2 coloureds and 1 Indian. 0 black. 2 + 1 can never equal, let alone be more than, 4. Hence this Constitution perpetuates by law and entrenches white minority rule. Blacks are expected to exercise their political ambitions in unviable, poverty-stricken, arid, bantustan homelands, ghettos of misery, inexhaustible reservoirs of cheap black labour, bantustans into which South Africa is being balkanised. Blacks are systematically being stripped of their South African citizenship and being turned into aliens in the land of their birth. This is apartheid's final solution, just as Nazism had its final solution for the Jews in Hitler's Aryan madness. The South African Government is smart. Aliens can claim but very few rights, least of all political rights.

In pursuance of apartheid's ideological racist dream, over 3 000 000 of God's children have been uprooted from their homes, which have been demolished, whilst they have then been dumped in the bantustan homeland resettlement camps. I say dumped advisedly: only things or rubbish is dumped, not human beings. Apartheid has, however, ensured that God's children, just because they are black, should be treated as if they were things, and not as of infinite value as being created in the image of God. These dumping grounds are far from where work and food can be procured easily. Children starve, suffer from the often irreversible consequences of malnutrition – this happens to them not accidentally, but by deliberate Government policy. They starve in a land that could be the bread basket of Africa, a land that normally is a net exporter of food.

The father leaves his family in the bantustan homeland, there eking out a miserable existence, whilst he, if he is lucky, goes to the so-called white man's town as a migrant, to live an unnatural life in a single sex hostel for 11 months of the year, being prey there to prostitution, drunkenness, and worse. This migratory labour policy is declared Government policy, and has been condemned, even by the white Dutch Reformed Church, not noted for being quick to criticise the Government, as a cancer in our society. This cancer, eating away at the vitals of black family life, is deliberate Government policy. It is part of the cost of apartheid, exorbitant in terms of human suffering.

Apartheid has spawned discriminatory education, such as Bantu Education, education for serfdom, ensuring that the Government spends only about one tenth on one black child per annum for education what it spends on a white child. It is education that is decidedly separate and unequal. It is to be wantonly wasteful of human resources, because so many of God's children are prevented, by deliberate Government policy, from attaining to their fullest potential. South Africa is paying a heavy price already for this iniquitous policy because there is a desperate shortage of skilled manpower, a direct result of the short-sighted schemes of the racist regime. It is a moral universe that we inhabit, and good and right equity matter in the universe of the God we worship. And so, in this matter, the South African Government and its supporters are being properly hoisted with their own petard.

Apartheid is upheld by a phalanx of iniquitous laws, such as the Population Registration Act, which decrees that all South Africans must be classified ethnically, and duly registered according to these race categories. Many times, in the same family one child has been classified white whilst another, with a slightly darker hue, has been classified coloured, with all the horrible consequences for the latter of being shut out from membership of a greatly privileged caste. There have, as a result, been several child suicides. This is too high a price to pay for racial purity, for it is doubtful whether any end, however desirable, can justify such a means. There are laws, such as the Prohibition of Mixed Marriages Act, which regard marriages between a white and a person of

another race as illegal. Race becomes an impediment to a valid marriage. Two persons who have fallen in love are prevented by race from consummating their love in the marriage bond. Something beautiful is made to be sordid and ugly. The Immorality Act decrees that fornication and adultery are illegal if they happen between a white and one of another race. The police are reduced to the level of peeping Toms to catch couples red-handed. Many whites have committed suicide rather than face the disastrous consequences that follow in the train of even just being charged under this law. The cost is too great and intolerable.

Such an evil system, totally indefensible by normally acceptable methods, relies on a whole phalanx of draconian laws such as the security legislation which is almost peculiar to South Africa. There are the laws which permit the indefinite detention of persons whom the Minister of Law and Order has decided are a threat to the security of the State. They are detained at his pleasure, in solitary confinement, without access to their family, their own doctor, or a lawyer. That is severe punishment when the evidence apparently available to the Minister has not been tested in an open court – perhaps it could stand up to such rigorous scrutiny, perhaps not; we are never to know. It is a far too convenient device for a repressive regime, and the minister would have to be extra special not to succumb to the temptation to circumvent the awkward process of testing his evidence in an open court, and thus he lets his power under the law to be open to the abuse where he is both judge and prosecutor. Many, too many, have died mysteriously in detention. All this is too costly in terms of human lives. The minister is able, too, to place people under banning orders without being subjected to the annoyance of the checks and balances of due process. A banned person for 3 or 5 years becomes a non-person, who cannot be quoted during the period of her banning order. She cannot attend a gathering, which means more than one other person. Two persons together talking to a banned person are a gathering! She cannot attend the wedding or funeral of even her own child without special permission. She must be at home from 6:00 PM of one day to 6:00 AM of the next and on all public holidays, and from 6:00 PM on Fridays until 6:00 AM on Mondays for 3 years. She cannot go on holiday outside the magisterial area to which she has been confined. She cannot go to the cinema, nor to a picnic. That is severe punishment, inflicted without the evidence allegedly justifying it being made available to the banned person, nor having it scrutinised in a court of law. It is a serious erosion and violation of basic human rights, of which blacks have precious few in the land of their birth. They do not enjoy the rights of freedom of movement and association. They do not enjoy freedom of security of tenure, the right to participate in the making of decisions that affect their lives. In short, this land, richly endowed in so many ways, is sadly lacking in justice.

Once a Zambian and a South African, it is said, were talking. The Zambian then boasted about their Minister of Naval Affairs. The South African asked, “But you have no navy, no access to the sea. How then can you have a Minister of Naval Affairs?” The Zambian retorted, “Well, in South Africa you have a Minister of Justice, don’t you?”

It is against this system that our people have sought to protest peacefully since 1912 at least, with the founding of the African National Congress. They have used the conventional methods of peaceful protest – petitions, demonstrations, deputations, and even a passive resistance campaign. A tribute to our people’s commitment to peaceful change is the fact that the only South Africans to win the Nobel Peace Prize are both black. Our people are peace-loving to a fault. The response of the authorities has been an escalating intransigence and violence, the violence of police dogs, tear gas, detention without trial, exile, and even death. Our people protested peacefully against the Pass Laws in 1960, and 69 of them were killed on 21 March 1960, at Sharpeville, many shot in the back running away. Our children protested against inferior education, singing songs and

displaying placards and marching peacefully. Many in 1976, on 16 June and subsequent times, were killed or imprisoned. Over 500 people died in that uprising. Many children went into exile. The whereabouts of many are unknown to their parents. At present, to protest that self-same discriminatory education, and the exclusion of blacks from the new constitutional dispensation, the sham local black government, rising unemployment, increased rents and General Sales Tax, our people have boycotted and demonstrated. They have staged a successful two-day stay away. Over 150 people have been killed. It is far too high a price to pay. There has been little revulsion or outrage at this wanton destruction of human life in the West. In parenthesis, can somebody please explain to me something that has puzzled me. When a priest goes missing and is subsequently found dead, the media in the West carry his story in very extensive coverage. I am glad that the death of one person can cause so much concern. But in the self-same week when this priest is found dead, the South African Police kill 24 blacks who had been participating in the protest, and 6 000 blacks are sacked for being similarly involved, and you are lucky to get that much coverage. Are we being told something I do not want to believe, that we blacks are expendable and that blood is thicker than water, that when it comes to the crunch, you cannot trust whites, that they will club together against us? I don't want to believe that is the message being conveyed to us.

Be that as it may, we see before us a land bereft of much justice, and therefore without peace and security. Unrest is endemic, and will remain an unchanging feature of the South African scene until apartheid, the root cause of it all, is finally dismantled. At this time, the Army is being quartered on the civilian population. There is a civil war being waged. South Africans are on either side. When the African National Congress and the Pan-Africanist Congress were banned in 1960, they declared that they had no option but to carry out the armed struggle. We in the South African Council of Churches have said we are opposed to all forms of violence – that of a repressive and unjust system, and that of those who seek to overthrow that system. However, we have added that we understand those who say they have had to adopt what is a last resort for them. Violence is not being introduced into the South African situation *de novo* from outside by those who are called terrorists or freedom fighters, depending on whether you are oppressed or an oppressor. The South African situation is violent already, and the primary violence is that of apartheid, the violence of forced population removals, of inferior education, of detention without trial, of the migratory labour system, etc.

There is war on the border of our country. South African faces fellow South African. South African soldiers are fighting against Namibians who oppose the illegal occupation of their country by South Africa, which has sought to extend its repressive system of apartheid, unjust and exploitative.

There is no peace in Southern Africa. There is no peace because there is no justice. There can be no real peace and security until there be first justice enjoyed by all the inhabitants of that beautiful land. The Bible knows nothing about peace without justice, for that would be crying "peace, peace, where there is no peace". God's Shalom, peace, involves inevitably righteousness, justice, wholeness, fullness of life, participation in decision-making, goodness, laughter, joy, compassion, sharing and reconciliation.

I have spoken extensively about South Africa, first because it is the land I know best, but because it is also a microcosm of the world and an example of what is to be found in other lands in differing degree – when there is injustice, invariably peace becomes a casualty. In El Salvador, in Nicaragua, and elsewhere in Latin America, there have been repressive regimes which have aroused opposition in those countries. Fellow citizens are pitted against one another, sometimes attracting the unhelpful attention and interest of outside powers, who want to extend their

spheres of influence. We see this in the Middle East, in Korea, in the Philippines, in Kampuchea, in Vietnam, in Ulster, in Afghanistan, in Mozambique, in Angola, in Zimbabwe, behind the Iron Curtain.

Because there is global insecurity, nations are engaged in a mad arms race, spending billions of dollars wastefully on instruments of destruction, when millions are starving. And yet, just a fraction of what is expended so obscenely on defence budgets would make the difference in enabling God's children to fill their stomachs, be educated, and given the chance to lead fulfilled and happy lives. We have the capacity to feed ourselves several times over, but we are daily haunted by the spectacle of the gaunt dregs of humanity shuffling along in endless queues, with bowls to collect what the charity of the world has provided, too little too late. When will we learn, when will the people of the world get up and say, Enough is enough. God created us for fellowship. God created us so that we should form the human family, existing together because we were made for one another. We are not made for an exclusive self-sufficiency but for interdependence, and we break the law of our being at our peril. When will we learn that an escalated arms race merely escalates global insecurity? We are now much closer to a nuclear holocaust than when our technology and our spending were less.

Unless we work assiduously so that all of God's children, our brothers and sisters, members of our one human family, all will enjoy basic human rights, the right to a fulfilled life, the right of movement, of work, the freedom to be fully human, with a humanity measured by nothing less than the humanity of Jesus Christ Himself, then we are on the road inexorably to self-destruction, we are not far from global suicide; and yet it could be so different.

When will we learn that human beings are of infinite value because they have been created in the image of God, and that it is a blasphemy to treat them as if they were less than this and to do so ultimately recoils on those who do this? In dehumanising others, they are themselves dehumanised. Perhaps oppression dehumanises the oppressor as much as, if not more than, the oppressed. They need each other to become truly free, to become human. We can be human only in fellowship, in community, in koinonia, in peace.

Let us work to be peacemakers, those given a wonderful share in Our Lord's ministry of reconciliation. If we want peace, so we have been told, let us work for justice. Let us beat our swords into ploughshares.

God calls us to be fellow workers with Him, so that we can extend His Kingdom of Shalom, of justice, of goodness, of compassion, of caring, of sharing, of laughter, joy and reconciliation, so that the kingdoms of this world will become the Kingdom of our God and of His Christ, and He shall reign forever and ever. Amen. Then there will be a fulfillment of the wonderful vision in the Revelation of St. John the Divine (Rev. 6:9ff):

9. After this I beheld, and lo, a great multitude, which no man could number, of all nations and kindreds and people and tongues, stood before the throne and before the Lamb, clothed with white robes, and palms in their hands,
10. And cried with a loud voice saying, "Salvation to our God, who sitteth upon the throne, and unto the Lamb".
11. And all the angels stood round about the throne, and about the elders and the four beasts, and fell before the throne on their faces, and worshipped God
12. saying, "Amen; Blessing and glory and wisdom and thanksgiving and honour and power and might, be unto our God forever and ever. Amen".

9

THE KAIROS DOCUMENT, 1985

THE MOMENT OF TRUTH

The time has come. The moment of truth has arrived. South Africa has been plunged into a crisis that is shaking the foundations and there is every indication that the crisis has only just begun and that it will deepen and become even more threatening in the months to come. It is the KAIROS¹ or moment of truth not only for apartheid but also for the Church and all other faiths and religions.²

We as a group of theologians have been trying to understand the theological significance of this moment in our history. It is serious, very serious. For very many Christians in South Africa this is the KAIROS the moment of grace and opportunity, the favourable time in which God issues a challenge to decisive action. It is a dangerous time because, if this opportunity is missed, and allowed to pass by, the loss for the Church, for the Gospel and for all the people of South Africa will be immeasurable. Jesus wept over Jerusalem. He wept over the tragedy of the destruction of the city and the massacre of the people that was imminent, "and all because you did not recognise your opportunity (KAIROS) when God offered it" (Lk 19:44).

A crisis is a judgment that brings out the best in some people and the worst in others. A crisis is a moment of truth that shows us up for what we really are. There will be no place to hide and no way of pretending to be what we are not in fact. At this moment in South Africa the church is about to be shown up for what it really is and no cover up will be possible.

What the present crisis shows up, although many of us have known it all along, is that *the Church is divided*. More and more people are now saying that there are in fact two Churches in South Africa – a White Church and a Black Church. Even within the same denomination there are in fact two Churches. In the life and death conflict between different social forces that has come to a head in South Africa today, there are Christians (or at least people who profess to be Christians) on both sides of the conflict – and some who are trying to sit on the fence!

Does this prove that Christian faith has no real meaning or relevance for our times? Does it show that the Bible can be used for any purpose at all? Such problems would be critical enough for the Church in any circumstances but when we also come to see that the conflict in South Africa is between the oppressor and the oppressed, the crisis for the Church as an institution becomes much more acute.³ Both oppressor and oppressed claim loyalty to the same Church. They are both baptised in the same baptism and participate together in the breaking of the same bread, the same body and blood of Christ. There we sit in the same Church while outside Christian policemen and

1 *Kairos* is the Greek word that is used in the Bible to designate a special moment of time when God visits his people to offer them a unique opportunity for repentance and conversion, for change and decisive action. It is a time of judgment. It is a moment of truth, a crisis. (See for example: Mk 1: 15; 13: 33; Lk 8: 13; 19: 44; Rom 13: 11-13; I Cor 7: 29; II Cor 6: 2; Tit 1: 3; Rev 1: 3; 22: 10).

2 What is said here of Christianity and the Church could be applied, *mutatis mutandi*, to other faiths and religions in South Africa; but this particular document is addressed to "all who bear the name of Christian" (See Conclusion).

3 If the apostle Paul judged that the truth of the gospel was at stake when Greek and Jewish Christians no longer ate together (Gal 2: 11-14), how much more acute is the crisis for the gospel of Jesus Christ when some Christians take part in the systematic *oppression* of other Christians!

soldiers are beating up and killing Christian children or torturing Christian prisoners to death while yet other Christians stand by and weakly plead for peace.

The Church is divided against itself⁴ and its day of judgment has come.

The moment of truth has compelled us to analyse more carefully the different theologies in our Churches and to speak out more clearly and boldly about the real significance of these theologies. We have been able to isolate three theologies and we have chosen to call them 'State Theology', 'Church Theology' and 'Prophetic Theology'.⁵ In our thoroughgoing criticism of the first and second theologies we do not wish to mince our words. The situation is too critical for that.

CRITIQUE OF 'STATE THEOLOGY'

The South African apartheid State has a theology of its own and we have chosen to call it 'State Theology'. 'State Theology' is simply the theological justification of the status quo with its racism, capitalism and totalitarianism. It blesses injustice, canonises the will of the powerful and reduces the poor to passivity, obedience and apathy.⁶

How does 'State Theology' do this? It does it by misusing theological concepts and biblical texts for its own political purposes. In this document we would like to draw your attention to four key examples of how this is done in South Africa. The first would be the use of Romans 13:1-7 to give an absolute and 'divine' authority to the State. The second would be the use of the idea of 'Law and Order' to determine and control what the people may be permitted to regard as just and unjust. The third would be the use of the word 'communist' to brand anyone who rejects 'State Theology'. And finally there is the use that is made of the name of God. [...]

The State makes use of the concept of law and order to maintain the status quo which it depicts as 'normal'. But this *law* is the unjust and discriminatory laws of apartheid and this *order* is the organised and institutionalised disorder of oppression. Anyone who wishes to change this law and this order is made to feel that they are lawless and disorderly. In other words they are made to feel guilty of sin.

It is indeed the duty of the State to maintain law and order, but it has no divine mandate to maintain any kind of law and order. Something does not become moral and just simply because the State has declared it to be a law and the organisation of a society is not a just and right order simply because it has been instituted by the State. We cannot accept any kind of law and any kind of order. The concern of Christians is that we should have in our country a just law and a right order.

In the present crisis and especially during the State of Emergency, 'State Theology' has tried to re-establish the status quo or orderly discrimination, exploitation and oppression by appealing to the consciences of its citizens in the name of law and order. It tries to make those who reject this law and this order feel that they are ungodly. The State here is not only usurping the right of the Church to make judgments about what would be right and just in our circumstances, it is going even further than that and demanding of us, in the name of law and order, an obedience that must

4 Mt 12:25; 1 Cor 1:13.

5 These are obviously not the only theologies that are current in South Africa but they represent the three Christian theological stances in relation to the present situation in South Africa.

6 What we are referring to here is something more than the 'Apartheid Theology' of the White Dutch Reformed Churches that once tried to justify apartheid by appealing to certain texts in the Bible. Our analysis of present-day theological stances has led us to the conclusion that there is a 'State Theology' that does not only justify racism but justifies all the activities of the State in its attempts to hold on to power and that is subscribed to as a theology well beyond the White Dutch Reformed Churches.

be reserved for God alone. The South African State recognises no authority beyond itself and therefore it will not allow anyone to question what it has chosen to define as 'law and order'. However, there are millions of Christians in South Africa today who are saying with Peter: "We must obey God rather than man (human beings)" (Acts 5:29).

'State theology' further believes that the government has the God-given right to use *violence* to enforce its system of 'law and order'. It bases this on Romans 13:4: "The authorities are there to serve God: they carry out God's revenge by punishing wrongdoers". In this way *state security* becomes a more important concern than *justice*, and those who in the name of God work to change the unjust structures of society are branded as ungodly agitators and rebels. The State often admonishes church leaders to "preach the pure gospel" and not to "meddle in politics", while at the same time it indulges in its own political theology which claims God's approval for its use of violence in maintaining an unjust system of "law and order". [...]

The oppressive South Africa regime will always be particularly abhorrent to Christians precisely because it makes use of Christianity to justify its evil ways. As Christians we simply cannot tolerate this blasphemous use of God's name and God's word. 'State theology' is not only heretical, it is blasphemous. Christians who are trying to remain faithful to the God of the Bible are even more horrified when they see that there are Churches, like the White Dutch Reformed Churches and other groups of Christians, who actually subscribe to this heretical theology. 'State theology' needs its own prophets and it manages to find them from the ranks of those who profess to be ministers of God's Word in some of our Churches. What is particularly tragic for a Christian is to see the number of people who are fooled and confused by these false prophets and their heretical theology.

CRITIQUE OF 'CHURCH THEOLOGY'

We have analysed the statements that are made from time-to-time by the so-called 'English-speaking' Churches. We have looked at what Church leaders tend to say in their speeches and press statements about the apartheid regime and the present crisis. What we found running through all these pronouncements is a series of inter-related theological assumptions. These we have chosen to call 'Church theology'. We are well aware of the fact that this theology does *not* express the faith of the majority of Christians in South Africa today who form the greater part of most of our Churches. Nevertheless the opinions expressed by Church leaders are regarded in the media and generally in our society as the official opinions of the Churches.⁷ We have therefore chosen to call these opinions 'Church theology'. The crisis in which we found ourselves today compels us to question this theology, to question its assumptions, its implications and its practicality.

In a limited, guarded and cautious way this theology is critical of apartheid. Its criticism, however, is superficial and counter-productive because instead of engaging in an in-depth analysis of the signs of our times, it relies upon a few stock ideas derived from Christian tradition and then uncritically and repeatedly applies them to our situation. The stock ideas used by almost all these Church leaders that we would like to examine here are: reconciliation or peace, justice, and non-violence.

⁷ We realise only too well that we are making broad and sweeping generalisations here. There are some Church statements that would be exceptions to this general tendency. However what concerns us here is that there are a set of opinions that in the mind of the people are associated with the liberal 'English-speaking' Churches.

Reconciliation

There can be no doubt that our Christian faith commits us to work for *true* reconciliation and *genuine* peace. But as so many people, including Christians, have pointed out there can be no true reconciliation and no genuine peace *without justice*. Any form of peace or reconciliation that allows the sin of injustice and oppression to continue is a *false* peace and *counterfeit* reconciliation. This kind of “reconciliation” has nothing whatsoever to do with the Christian faith.

‘Church theology’ is not always clear on this matter and many Christians have been led to believe that what we need in South Africa is not justice but reconciliation and peace. The argument goes something like this: “We must be fair. We must listen to both sides of the story. If the two sides can only meet to talk and negotiate they will sort out their differences and misunderstandings, and the conflict will be resolved”. On the face of it this may sound very Christian. But is it?

The fallacy here is that “reconciliation” has been made into an absolute principle that must be applied in all cases of conflict or dissension. But not all cases of conflict are the same. We can imagine a private quarrel between two people or two groups whose differences are based upon misunderstandings. In such cases it would be appropriate to talk and negotiate to sort out the misunderstandings and to reconcile the two sides. But there are other conflicts in which one side is right and the other is wrong. There are conflicts where one side is a fully armed and violent oppressor while the other side is defenceless and oppressed. There are conflicts that can only be described as the struggle between justice and injustice, good and evil, God and the devil. To speak of reconciling these two is not only a mistaken application of the Christian idea of reconciliation, it is a total betrayal of all that Christian faith has ever meant. Nowhere in the Bible or in Christian tradition has it ever been suggested that we ought to try to reconcile good and evil, God and the devil. We are supposed to do away with evil, injustice oppression and sin – not come to terms with it. We are supposed to oppose, confront and reject the devil and not try to sup with the devil.

In our situation in South Africa today it would be totally unChristian to plead for reconciliation and peace before the present injustices have been removed. Any such plea plays into the hands of the oppressor by trying to persuade those of us who are oppressed to accept our oppression and to become reconciled to the intolerable crimes that are committed against us. That is not Christian reconciliation, it is sin. It is asking us to become accomplices in our own oppression, to become servants of the devil. No reconciliation is possible in South Africa *without justice*, without the total dismantling of apartheid.

What this means in practice is that no reconciliation, no forgiveness and no negotiations are possible *without repentance*. The Biblical teaching on reconciliation and forgiveness makes it quite clear that nobody can be forgiven and reconciled with God unless she or he repents of their sins. Nor are we expected to forgive the unrepentant sinner. When he or she repents we must be willing to forgive seventy times seven times but before that we are expected to preach repentance to those who sin against us or against anyone. Reconciliation, forgiveness and negotiations will become our Christian duty in South Africa only when the apartheid regime shows signs of genuine repentance.⁸ The recent State of Emergency, the continued military repression of the people in

⁸ It should be noted here that there is a difference between the *willingness to forgive*, on the one hand, and the reality of forgiveness or the experience of being forgiven with all its healing consequences, on the other hand. God's forgiveness is unconditional and permanent in the sense that he is always willing to forgive. Jesus expresses this on the cross by saying, “Father forgive them for they know not what they do” (Lk 23:24). However, we as sinners will not experience God's forgiveness in our lives, we will not actually be freed or liberated from our sins until we confess and renounce our sins (1 Jn 1: 8-9) and until we demonstrate the fruits of repentance (Lk 3: 7-14).

Human beings must also be *willing to forgive* one another at all times even seventy times seven times. But forgiveness will not become a reality with all its healing effects until the offender repents. Thus in South Africa forgiveness will not become an experienced reality until the apartheid regime shows signs of genuine repentance. Our willingness to forgive must not be taken to mean a willingness to allow sin to continue, a willingness to allow our oppressors to continue oppressing us. To ask us to forgive our unrepentant oppressors in the sense that we simply ignore or overlook the fact that they are continuing to humiliate, crush, repress, imprison, maim and kill us is to add insult to injury.

What is required at this stage above all else is repentance and conversion.

the townships and the jailing of all its opponents is clear proof of the total lack of repentance on the part of the present regime.

There is nothing that we want more than true reconciliation and genuine peace—the peace that God wants and not the peace the world wants (Jn 14:27). The peace that God wants is based upon truth, repentance, justice and love. The peace that the world offers us is a unity that compromises the truth, covers over injustice and oppression and is totally motivated by selfishness. At this stage, like Jesus, we must expose this false peace, confront our oppressors and be prepared for the dissension that will follow. As Christians we must say with Jesus: “Do you suppose that I am here to bring peace on earth. No, I tell you, but rather dissension” (Lk 12:51). There can be no real peace without justice and repentance. [...]

Prophetic theology

To be truly prophetic, our response would have to be, in the first place, solidly grounded in the Bible. Our KAIROS impels us *to return to the Bible* and to search the Word of God for a message that is relevant to what we are experiencing in South Africa today. This will be no mere academic exercise. Prophetic theology differs from academic theology because, whereas academic theology deals with all biblical themes in a systematic manner and formulates general Christian principles and doctrines, prophetic theology concentrates on those aspects of the Word of God that have an immediate bearing upon the critical situation in which we find ourselves. The theology of the prophets does not pretend to be comprehensive and complete, it speaks to the particular circumstances of a particular time and place – the KAIROS.

Consequently a prophetic response and a prophetic theology would include a *reading of the signs of the times*. This is what the great Biblical prophets did in their times and this is what Jesus tells us to do. When the Pharisees and Sadducees ask for a sign from heaven, he tells them to “read the signs of the times” (Mt 16:3) or to “interpret this KAIROS” (Lk 12:56). A prophetic theology must try to do this. It must know what is happening, analyse what is happening (social analysis) and then interpret what is happening in the light of the gospel. This means that the starting point for prophetic theology will be our experience of the present KAIROS, our experience of oppression and tyranny, our experience of conflict, our crisis and struggle, our experience of trying to be Christians in this situation. It is with this in mind that we must begin to search the scriptures. [...]

Prophetic theology therefore faces us with this fundamental choice that admits of no compromises. Jesus did the same. He faced the people with the fundamental choice between God and money. “You cannot serve two masters” (Mt 6:24). Once we have made our choice, once we have taken sides then we can begin to discuss the morality and effectiveness of means and strategies. It is therefore not primarily a matter of trying to reconcile individual people, but a matter of trying to change unjust structures so that people will not be pitted against one another as oppressor and oppressed.

This is our KAIROS. The structural inequality (political, social, and economic) expressed in discriminatory laws, institutions, and practices has led the people of South Africa into a virtual civil war and rebellion against tyranny. [...]

This also means that the apartheid minority regime is irreformable. We cannot expect the apartheid regime to experience a conversion or change of heart and totally abandon the policy of apartheid. It has no mandate from its electorate to do so. Any reforms or adjustments it might make would have to be done in the interests of those who elected it. Individual members of the government could experience a real conversion and repent but, if they did, they would simply have

to follow this through by leaving a regime that was elected and put into power precisely because of its policy of apartheid.

And that is why we have reached the present impasse. As the oppressed majority become more insistent and puts more and more pressure on the tyrant by means of boycotts, strikes, uprisings, burnings and even armed struggle, the more tyrannical will this regime become. On the one hand it will use repressive measures: detentions, trials, killings, torture, bannings, propaganda, states of emergency and other desperate and tyrannical methods. And on the other hand it will introduce reforms that will always be unacceptable to the majority because all its reforms must ensure that the white minority remains on top.

A regime that is in principle the enemy of the people cannot suddenly begin to rule in the interests of all the people. It can only be replaced by another government—one that has been elected by the majority of the people with an explicit mandate to govern in the interests of all the people.

A regime that has made itself the enemy of the people has thereby also made itself the enemy of God. People are made in the image and likeness of God and whatever we do to the least of them we do to God (Mt 25: 49, 45). [...]

CHALLENGE TO ACTION

God sides with the oppressed

To say that the Church must now take sides unequivocally and consistently with the poor and the oppressed is to overlook the fact that the majority of Christians in South Africa have already done so. By far the greater part of the Church in South Africa is poor and oppressed. Of course it cannot be taken for granted that everyone who is oppressed has taken up their own cause and is struggling for their own liberation. Nor can it be assumed that all oppressed Christians are fully aware of the fact that their cause is God's cause. Nevertheless it remains true that the Church is already on the side of the oppressed because that is where the majority of its members are to be found. This fact needs to be appropriated and confirmed by the Church as a whole.

At the beginning of this document it was pointed out that the present crisis has highlighted the divisions in the Church. We are a divided Church precisely because not all the members of our Churches have taken sides against oppression. In other words not all Christians have united themselves with God "who is always on the side of the oppressed" (Ps 103: 6). As far as the present crisis is concerned, there is only one way forward to Church unity and that is for those Christians who find themselves on the side of the oppressor or sitting on the fence, to cross over to the other side to be united in faith and action with those who are oppressed. Unity and reconciliation within the Church itself is only possible around God and Jesus Christ who are to be found on the side of the poor and the oppressed.

If this is what the Church must become, if this is what the Church as a whole must have as its project, how then are we to translate it into concrete and effective action?

Participation in the struggle

Christians, if they are not doing so already, must quite simply participate in the struggle for liberation and for a just society. The campaigns of the people, from consumer boycotts to stayaways, need to be supported and encouraged by the Church. Criticism will sometimes be necessary but encouragement and support will be also necessary. In other words the present crisis

challenges the whole Church to move beyond a mere "ambulance ministry" to a ministry of involvement and participation.⁹

Transforming Church activities

The Church has its own specific activities: Sunday services, communion services, baptisms, Sunday school, funerals, and so forth. It also has its specific way of expressing its faith and its commitment, that is, in the form of confessions of faith. All of these activities must be re-shaped to be more fully consistent with a prophetic faith related to the KAIROS that God is offering us today. The evil forces we speak of in baptism must be named. We know what these evil forces are in South Africa today. The unity and sharing we profess in our communion services or Masses must be named. It is the solidarity of the people inviting all to join in the struggle for God's peace in South Africa. The repentance we preach must be named. It is repentance for our share of the guilt for the suffering and oppression in our country.

9 However, the Church must participate in the struggle as a *Church* and not as a political organisation. Individual Christians as citizens of this country can and must join the political organisations that are struggling for justice and liberation, but the Church as Church must not become a political organisation or subject itself to the dictates of any political party. The Church has its own motivation, its own inspiration for participating in the struggle for justice and peace. The Church has its own beliefs and its own values that impel it to become involved, alongside of other organisations, in God's cause of liberation for the oppressed. The Church will have its own way of operating and it may sometimes have its own special programmes and campaigns but it does not have, and cannot have, its own political blueprint for the future, its own political policy, because the Church is not a political party. It has another role to play in the world.

The individual Christian, therefore, is both a member of the Church and a member of society, and, on both accounts, Christians should be involved in doing what is right and just. The same is no doubt true of people who adhere to other religious faiths.

IO

NELSON MANDELA, *LETTER TO STATE PRESIDENT P W BOTHA*, 1989

The deepening political crisis in our country has been a matter of grave concern to me for quite some time and I now consider it necessary in the national interest for the African National Congress and the government to meet urgently to negotiate an effective political settlement. At the outset I must point out that I make this move without consultation with the ANC. I am a loyal and disciplined member of the ANC, my political loyalty is owed, primarily, if not exclusively, to this organisation and particularly to our Lusaka headquarters where the official leadership is stationed and from where our affairs are directed.

THE ORGANISATION FIRST

In the normal course of events, I would put my views to the organisation first, and if these views were accepted, the organisation would then decide on who were the best qualified members to handle the matter on its behalf and on exactly when to make the move. But in the current circumstances I cannot follow this course, and this is the only reason why I am acting on my own initiative, in the hope that the organisation will, in due course, endorse my action.

I must stress that no prisoner irrespective of his status or influence can conduct negotiations of this nature from prison. In our special situation negotiation on political matters is literally a matter of life and death which requires to be handled by the organisation itself through its appointed representatives.

The step I am taking should, therefore, not be seen as the beginning of actual negotiations between the government and the ANC. My task is a very limited one, and that is to bring the country's two major political bodies to the negotiating table.

MY RELEASE NOT THE ISSUE

I must further point out that the question of my release from prison is not an issue, at least at this stage of the discussions, and I am certainly not asking to be freed. But I do hope that the government will, as soon as possible, give me the opportunity from my present quarters to sound the views of my colleagues inside and outside the country on this move. Only if this initiative is formally endorsed by the ANC will it have any significance.

I will touch presently on some of the problems which seem to constitute an obstacle to a meeting between the ANC and the government. But I must emphasise right at this stage that this step is not a response to the call by the government on ANC leaders to declare whether or not they are nationalists and to renounce the South African Communist Party before there can be negotiations. No self-respecting freedom fighter will take orders from the government on how to wage the freedom struggle against that same government and on who his allies in the freedom struggle should be.

To obey such instructions would be a violation of the long-standing and fruitful solidarity which distinguishes our liberation movement, and a betrayal of those who have worked so closely and

suffered so much with us for almost 70 years. Far from responding to that call my intervention is influenced by purely domestic issues, by the civil strife and ruin into which the country is now sliding. I am disturbed, as many other South Africans no doubt are, by the spectre of a South Africa split into two hostile camps; blacks (the term 'blacks' is used in a broad sense to include all those who are not whites) on one side and whites on the other, slaughtering one another; by acute tensions which are building up dangerously in practically every sphere of our lives, a situation which, in turn, preshadows more violent clashes in the days ahead. This is the crisis that has freed me to act.

CURRENT VIEWS AMONG BLACKS

I must add that the purpose of this discussion is not only to urge the government to talk to the ANC, but it is also to acquaint you with the views current among blacks, especially those in the Mass Democratic Movement.

If I am unable to express these views frankly and freely, you will never know how the majority of South Africans think on the policy and actions of the government; you will never know how to deal with their grievances and demands. It is perhaps proper to remind you that the media here and abroad has given certain public figures in this country a rather negative image not only in regard to human rights questions, but also in respect to their prescriptive stance when dealing with black leaders generally.

The impression is shared not only by the vast majority of blacks but also by a substantial section of the whites. If I had allowed myself to be influenced by this impression, I would not even have thought of making this move. Nevertheless, I have come here with an open mind and the impression I will carry away from this meeting will be determined almost exclusively by the manner in which you respond to my proposal.

It is in this spirit that I have undertaken this mission, and I sincerely hope that nothing will be done or said here that will force me to revise my views on this aspect.

OBSTACLES TO NEGOTIATION

I have already indicated that I propose to deal with some of the obstacles to a meeting between the government and the ANC. The government gives several reasons why it will not negotiate with us. However, for purposes of this discussion, I will confine myself to only three main demands set by the government as a precondition for negotiations, namely that the ANC must first renounce violence, break with the SACP and abandon its demand for majority rule.

RENUNCIATION OF VIOLENCE

The position of the ANC on the question of violence is very simple. The organisation has no vested interest in violence. It abhors any action which may cause loss of life, destruction of property and misery to the people. It has worked long and patiently for a South Africa of common values and for an undivided and peaceful non-racial state. But we consider the armed struggle a legitimate form of self-defence against a morally repugnant system of government which will not allow even peaceful forms of protest.

It is more than ironical that it should be the government which demands that we should renounce violence. The government knows only too well that there is not a single political organisation in this country, inside and outside parliament, which can ever compare with the ANC in its total commitment to peaceful change.

Right from the early days of its history, the organisation diligently sought peaceful solutions and, to that extent, it talked patiently to successive South African governments, a policy we tried to follow in dealing with the present government.

APARTHEID VIOLENCE

Not only did the government ignore our demands for a meeting, instead it took advantage of our commitment to a non-violent struggle and unleashed the most violent form of racial oppression this country has ever seen. It stripped us of all basic human rights, outlawed our organisations and barred all channels of peaceful resistance. It met our demands with force and, despite the grave problems facing the country, it continues to refuse to talk to us. There can only be one answer to this challenge: violent forms of struggle.

Down the years oppressed people have fought for their birthright by peaceful means, where that was possible, and through force where peaceful channels were closed. The history of this country also confirms this vital lesson. Africans as well as Afrikaners were, at one time or other, compelled to take up arms in defence of their freedom against British imperialism. The fact that both were finally defeated by superior arms, and by the vast resources of that empire, does not negate this lesson.

But from what has happened in South Africa during the last 40 years, we must conclude that now that the roles are reversed, and the Afrikaner is no longer a freedom fighter, but is in power, the entire lesson of history must be brushed aside. Not even a disciplined non-violent protest will now be tolerated. To the government a black man has neither a just cause to espouse nor freedom rights to defend. The whites must have the monopoly of political power, and of committing violence against innocent and defenceless people. That situation was totally unacceptable to us and the formation of Umkhonto we Sizwe was intended to end that monopoly, and to forcibly bring home to the government that the oppressed people of this country were prepared to stand up and defend themselves.

It is significant to note that throughout the past four decades, and more especially over the last 26 years, the government has met our demands with force only and has done hardly anything to create a suitable climate for dialogue. On the contrary, the government continues to govern with a heavy hand, and to incite whites against negotiation with the ANC. The publication of the booklet *Talking with the ANC* ... which completely distorts the history and policy of the ANC, the extremely offensive language used by government spokesmen against freedom fighters, and the intimidation of whites who want to hear the views of the ANC at first hand, are all part of the government's strategy to wreck meaningful dialogue.

PRETORIA NOT READY FOR TALKS

It is perfectly clear on the facts that the refusal of the ANC to renounce violence is not the real problem facing the government. The truth is that the government is not yet ready for negotiation

and for the sharing of political power with blacks. It is still committed to white domination and, for that reason, it will only tolerate those blacks who are willing to serve on its apartheid structures. Its policy is to remove from the political scene blacks who refuse to conform, who reject white supremacy and its apartheid structures, and who insist on equal rights with whites.

This is the real reason for the government's refusal to talk to us, and for its demand that we should disarm ourselves, while it continues to use violence against our people. This is the reason for its massive propaganda campaign to discredit the ANC, and present it to the public as a communist-dominated organisation bent on murder and destruction. In this situation the reaction of the oppressed people is clearly predictable.

ARMED STRUGGLE

White South Africa must accept the plain fact that the ANC will not suspend, to say nothing of abandoning, the armed struggle until the government shows its willingness to surrender the monopoly of political power, and to negotiate directly and in good faith with the acknowledged black leaders. The renunciation of violence by either the government or the ANC should not be a precondition to, but the result of, negotiation.

Moreover, by ignoring credible black leaders, and imposing a succession of still-born negotiation structures, the government is not only squandering the country's precious resources but it is in fact discrediting the negotiation process itself, and prolonging civil strife. The position of the ANC on the question of violence is, therefore, very clear. A government which used violence against blacks many years before we took up arms has no right whatsoever to call on us to lay down arms.

THE SOUTH AFRICAN COMMUNIST PARTY

I have already pointed out that no self-respecting freedom fighter will allow the government to prescribe who his allies in the freedom struggle should be, and that to obey such instructions would be a betrayal of those who have suffered repression with us for so long.

We equally reject the charge that the ANC is dominated by the SACP and we regard the accusation as part of the smear campaign the government is waging against us. The accusation has, in effect, also been refuted by two totally independent sources. In January, 1987 the American State Department published a report on the activities of the SACP in this country which contrasts very sharply with the subjective picture the government has tried to paint against us over the years.

The essence of that report is that, although the influence of the SACP on the ANC is strong, it is unlikely that the Party will ever dominate the ANC.

The same point is made somewhat differently by Mr Ismail Omar, member of the President's Council, in his book *Reform in Crisis* published in 1988, in which he gives concrete examples of important issues of the day over which the ANC and the SACP have differed.

He also points out that the ANC enjoys greater popular support than the SACP. He adds that, despite the many years of combined struggle, the two remain distinct organisations with ideological and policy differences which preclude a merger of identity.

These observations go some way towards disproving the accusation. But since the allegation has become the focal point of government propaganda against the ANC, I propose to use this

opportunity to give you the correct information, in the hope that this will help you to see the matter in its proper perspective, and to evaluate your strategy afresh.

Co-operation between the ANC and the South African Communist Party goes back to the early 'twenties and has always been, and still is, strictly limited to the struggle against racial oppression and for a just society. At no time has the organisation ever adopted or co-operated with communism itself. Apart from the question of co-operation between the two organisations, members of the SACP have always been free to join the ANC. But once they do so, they become fully bound by the policy of the organisation set out in the Freedom Charter.

As members of the ANC engaged in the anti-apartheid struggle, their Marxist ideology is not directly relevant. The SACP has throughout the years accepted the leading role of the ANC, a position which is respected by the SACP members who join the ANC.

FIRMLY ESTABLISHED TRADITION

There is, of course, a firmly established tradition in the ANC in terms of which any attempt is resisted, from whatever quarter, which is intended to undermine co-operation between the two organisations.

Even within the ranks of the ANC there have been, at one time or another, people – and some of them were highly respected and influential individuals – who were against this co-operation and who wanted SACP members expelled from the organisation. Those who persisted in these activities were themselves ultimately expelled or they broke away in despair.

In either case their departure ended their political careers, or they formed other political organisations which, in due course, crumbled into splinter groups. No dedicated ANC member will ever heed a call to break with the SACP. We regard such a demand as a purely divisive government strategy.

It is in fact a call on us to commit suicide. Which man of honour will ever desert a lifelong friend at the instance of a common opponent and still retain a measure of credibility among his people?

Which opponent will ever trust such a treacherous freedom fighter? Yet this is what the government is, in effect, asking us to do – to desert our faithful allies. We will not fall into that trap.

ANC IS NON-ALIGNED

The government also accuses us of being agents of the Soviet Union. The truth is that the ANC is non-aligned, and we welcome support from the East and the West, from the socialist and capitalist countries. The only difference, as we have explained on countless occasions before, is that the socialist countries supply us with weapons, which the West refuses to give us. We have no intention whatsoever of changing our stand on this question.

The government's exaggerated hostility to the SACP and its refusal to have any dealings with that party have a hollow ring. Such an attitude is not only out of step with the growing co-operation between the capitalist and socialist countries in different parts of the world, but it is also inconsistent with the policy of the government itself, when dealing with our neighbouring states.

Not only has South Africa concluded treaties with the Marxist states of Angola and Mozambique – quite rightly in our opinion – but she also wants to strengthen ties with Marxist Zimbabwe. The government will certainly find it difficult, if not altogether impossible, to

reconcile its readiness to work with foreign Marxists for the peaceful resolution of mutual problems, with its uncompromising refusal to talk to South African Marxists.

The reason for this inconsistency is obvious. As I have already said, the government is still too deeply committed to the principle of white domination and, despite lip service to reform, it is deadly opposed to the sharing of political power with blacks, and the SACP is merely being used as a smokescreen to retain the monopoly of political power.

The smear campaign against the ANC also helps the government to evade the real issue at stake, namely, the exclusion from political power of the black majority by a white minority, which is the source of all our troubles.

PERSONAL POSITION

Concerning my own personal position, I have already informed you that I will not respond to the government's demand that ANC members should state whether they are members of the SACP or not.

But because much has been said by the media, as well as by government leaders regarding my political beliefs, I propose to use this opportunity to put the record straight.

My political beliefs have been explained in the course of several political trials in which I was charged, in the policy documents of the ANC and in my autobiography, *The Struggle is my Life*, which I wrote in prison in 1975.

I stated in these trials and publications that I did not belong to any organisation apart from the ANC. In my address to the court which sentenced me to life in prison in June 1964, I said: "Today I am attracted by the idea of a classless society, an attraction which springs in part from Marxist reading, and in part from my admiration of the structure and organisation of early African societies in this country."

"It is true, as I have already stated, that I have been influenced by Marxist thought. But this is also true of many leaders of the new independent states. Such widely different persons as Gandhi, Nehru, Nkrumah and Nasser all acknowledge this fact. We all accept the need for some form of socialism to enable our people to catch up with the advanced countries of the world, and to overcome their legacy of poverty."

MY VIEWS STILL THE SAME

My views are still the same. Equally important is the fact that many ANC leaders who are labelled communists by the government embrace nothing different from these beliefs. The term 'communist' when used by the government has a totally different meaning from the conventional one. Practically every freedom fighter who receives his military training or education in the socialist countries is, to the government, a communist.

It would appear to be established government policy that, as long as the National Party is in power in this country, there can be no black freedom struggle, and no black freedom fighter. Any black political organisation which, like us, fights for the liberation of its people through armed struggle, must invariably be dominated by the SACP.

This attitude is not only the result of government propaganda. It is a logical consequence of white supremacy. After more than 300 years of racial indoctrination, the country's whites have developed such deep-seated contempt for blacks as to believe that we cannot think for ourselves,

that we are incapable of fighting for political rights without incitement by some white agitator. In accusing the ANC of domination by the SACP, and in calling on ANC members to renounce the Party, the government is deliberately exploiting that contempt.

MAJORITY RULE

The government is equally vehement in condemning the principle of majority rule. The principle is rejected despite the fact that it is a pillar of democratic rule in many countries of the world. It is a principle which is fully accepted in the white politics of this country.

Only now that the stark reality has dawned that apartheid has failed, and that blacks will one day have an effective voice in government, are we told by whites here, and by their Western friends, that majority rule is a disaster to be avoided at all costs. Majority rule is acceptable to whites as long as it is considered within the context of white politics.

If black political aspirations are to be accommodated, then some other formula must be found provided that formula does not raise blacks to a position of equality with whites.

Yet majority rule and internal peace are like the two sides of a single coin, and white South Africa simply has to accept that there will never be peace and stability in this country until the principle is fully applied.

It is precisely because of its denial that the government has become the enemy of practically every black man. It is that denial that has sparked off the current civil strife.

NEGOTIATED POLITICAL SETTLEMENT

By insisting on compliance with the above-mentioned conditions before there can be talks, the government clearly confirms that it wants no peace in this country but turmoil; no strong and independent ANC, but a weak and servile organisation playing a supportive role to white minority rule, not a non-aligned ANC but one which is a satellite of the West, and which is ready to serve the interests of capitalism.

No worthy leaders of a freedom movement will ever submit to conditions which are essentially terms of surrender dictated by a victorious commander to a beaten enemy, and which are really intended to weaken the organisation and to humiliate its leadership.

The key to the whole situation is a negotiated settlement, and a meeting between the government and the ANC will be the first major step towards lasting peace in the country, better relations with our neighbour states, admission to the Organisation of African Unity, readmission to the United Nations and other world bodies, to international markets and improved international relations generally.

An accord with the ANC, and the introduction of a non-racial society, is the only way in which our rich and beautiful country will be saved from the stigma which repels the world.

Two central issues will have to be addressed at such a meeting; firstly, the demand for majority rule in a unitary state; secondly, the concern of white South Africa over this demand, as well as the insistence of whites on structural guarantees that majority rule will not mean domination of the white minority by blacks.

The most crucial task which will face the government and the ANC will be to reconcile these two positions. Such reconciliation will be achieved only if both parties are willing to compromise.

The organisation will determine precisely how negotiations should be conducted. It may well be that this should be done at least in two stages. The first, where the organisation and the government will work out together the preconditions for a proper climate for negotiations. Up to now both parties have been broadcasting their conditions for negotiations without putting them directly to each other.

The second stage would be the actual negotiations themselves when the climate is ripe for doing so. Any other approach would entail the danger of an irresolvable stalemate.

OVERCOME THE CURRENT DEADLOCK

Lastly, I must point out that the move I have taken provides you with the opportunity to overcome the current deadlock, and to normalise the country's political situation. I hope you will seize it without delay. I believe that the overwhelming majority of South Africans, black and white, hope to see the ANC and the government working closely together to lay the foundations for a new era in our country, in which racial discrimination and prejudice, coercion and confrontation, death and destruction will be forgotten.

II

F W DE KLERK, *PRESIDENTIAL INAUGURAL ADDRESS*, 1989

In my first public address after my election as leader of the National Party I made the following statement: "Our goal is a new South Africa, a totally changed South Africa; a South Africa which has rid itself of the antagonisms of the past; a South Africa free of domination or oppression in whatever form; a South Africa within which the democratic forces – all reasonable people – align themselves behind mutually acceptable goals and against radicalism, irrespective of where it comes from".

In this, my first public address after my inauguration as State President, I repeat that statement. This time I do so, not on behalf of a party, but on behalf of the new, lawfully constituted government of the Republic of South Africa, with a clear mandate for reform and renewal.

Executing this mandate is our highest priority. The new government will be installed tomorrow. It will start working immediately on the details of practical steps aimed at reaching our objective. I therefore do not deem it advisable to elaborate today on miscellaneous details.

What is important today is that I commit myself and the Government to the practical and expeditious execution of our mandate. I do so with conviction.

We are determined to turn our words into action. Considerable preparatory work has been done and we fully appreciate the urgency of prompt progress in all fields. We shall pursue that without being guilty of rash or thoughtless action.

We accept that time is of the essence and we are committed to visible evolutionary progress in various fields. This we will endeavour to attain within the framework of the principles of our mandate.

I am aware that we have raised certain expectations during the past months. We intend to live up to them, because we believe in what we advocate.

I am, however, also aware of other unreasonable expectations which have been aroused. In many cases this was done benevolently; in others, less so.

While we are quite prepared to be tested against our undertakings, we cannot accept responsibility for over-enthusiastic or even twisted versions of our policy.

Before turning to the future, I wish to pay homage to my predecessor. He dedicated a lifetime of loyal service to South Africa.

It was his unyielding courage that placed our country on the road of reform and renewal. On behalf of South Africa I would like to thank Mr and Mrs P W Botha for their great contribution over the years in the interest of South Africa.

The mandate of 6 September placed us irrevocably on the road to a new South Africa.

Executing this mandate will place high demands on the government. It is an extensive and complex task which rests on our shoulders. At the same time it also confronts the entire South African population with great challenges.

Progress on the road of constitutional reform, to which all sensible South Africans look forward, does not depend only on the government and myself. Likewise, the government is not the only determining factor in our quest for an increased rate of economic growth and improved international relations.

However, it can be rightly expected of us to take the lead and to provide guidance and initiative. We do not flinch from this. After all, we accepted the challenge of leading the way on the road of renewal.

The other side of the coin, however, is the attitude of reactions of other players regarding the different focal points where progress is so sorely needed.

That is why I want to plead today for a new spirit and approach in our fatherland.

For years progress was hampered by, among others, lack of co-operation, suspicion and mistrust. And, as critics of the government would surely want to allege, also by actions and/or failures on the side of the government.

I do not want to argue about cause and effect on this occasion. We shall not succeed in getting a new South Africa off the ground with accusations and reproaches. An argument about who erred where and when is a dead end. It achieves nothing.

Protest regarding past injustice or alleged injustice does not bring us closer to solutions either. Nor do unrest and violence.

There is but one way to peace, to justice for all: That is the way of reconciliation; of together seeking mutually acceptable solutions; of together discussing what the new South Africa should look like; of constitutional negotiation with a view to a permanent understanding; of participating in a balanced economic plan that will ensure growth and break the back of inflation; of accepting, with understanding, the sacrifices and adjustments that will be required of everybody.

More than anything, the watershed at which South Africa finds itself, demands of all our people a commitment and the will and determination to reach a peaceful accord; it demands of all South Africans to rise above their fears and suspicions and to start building a new South Africa.

The time has come for South Africa to restore its pride and to lift itself out of the doldrums of growing international isolation, economic decline and increasing polarisation.

On this day on which I assume the highest office in our country, I want to pledge myself to a quest for peace through fairness and justice. And I invite my fellow countrymen and women to join me in this quest.

In particular, I address myself to all the leaders of South Africa, irrespective of their sphere of leadership, be it political, economic, religious, educational, journalistic or whichever other sphere.

All reasonable people in this country – by far the majority – anxiously await a message of hope. It is our responsibility as leaders in all spheres to provide that message realistically, with courage and conviction. If we fail in that, the ensuing chaos, the demise of stability and progress, will forever be held against us.

History has thrust upon the leadership of this country the tremendous responsibility to turn our country away from its present direction of conflict and confrontation. Only we, the leaders of our peoples, can do it.

The eyes of responsible governments across the world are focused on us. The hopes of millions of South Africans are centred around us. The future of Southern Africa depends on us. We dare not falter or fail.

It will not be easy. Fine words, eloquent speeches, and stirring appeals will not cause peace to descend upon us. No, much more will be needed from all sides.

I wish today to commit myself and the new government to an active effort on our part to remove the actual and imagined obstacles on the road to peace and understanding.

Firstly, I should like to convert election promises into definite government commitments.

During the term of the new government we shall concentrate especially on five crucial areas:

1. We shall set everything in motion to bridge the deep gulf of mistrust, suspicion and fear between South Africans.

The time has come for unity within our diversity to take form. A broad national consensus must be built up around the core values which the large majority of South Africans already share with one another. Unification and co-operation, with the maintenance of security, is the recipe for the future. We are going to work out that recipe with all leaders from all communities.

2. The negotiation process will, from the start, receive incisive attention.
3. We are going to open the door to prosperity and economic growth. We shall do this by breaking out of the international stranglehold which, for political reasons, has been applied to our growth potential. This will be accompanied by the determined and consistent implementation of a comprehensive economic plan, which will include strong expenditure discipline by the state, lower taxation, privatisation, deregulation, increased exports and import substitution.

A progressive economy is a prerequisite for success. In co-operation with the private sector, we are going to place our country on the road to sustained economic growth and prosperity.

4. We are going to develop a new constitutional dispensation in which everyone will be able to participate without domination.

Experts will investigate all possible constitutional models which can achieve just this.

There are good examples elsewhere from which we can learn. Our constitutional discussion will take a clear direction, domination must be excluded and participation for everyone be assured.

5. We shall continue to deal with unrest, violence and terrorism with a firm hand.

Agreement and co-operation can succeed only between people who desire peace and who are prepared to make sacrifices for it. Radical organisations, who are only interested in the seizure of power, rule themselves out. Their violence, breaking of the law and intimidation are obstacles on the road to peace.

We shall not permit the peace process to be disrupted by violence and anarchy.

I believe that in this manner we will break out of the vicious circle of stagnation, distrust, division, tension and conflict and make a breakthrough to a totally new South Africa.

Furthermore, we shall also take certain initiatives with regard to exactly those matters which so frequently are raised as obstacles by opponent of the government. We shall do this because we believe civilised norms to demand this, because it is in South Africa's best interest, and not because we buckle to pressure.

We shall work urgently on proposals with regard to the handling of discriminatory legislation. The continued removal of discrimination remains an important objective.

We shall work just as urgently on the formulation of alternative methods of protecting group and minority rights in a non-discriminatory manner. This includes urgent attention to the place and role of a Human Rights Bill and constitutional methods to eliminate domination.

The process of the release of security prisoners, which was started by my predecessor, will be continued. In each case the test will still be whether it would be appropriate on the basis of all the relevant circumstances; that proper order should not be threatened and that the process of peaceful solutions be promoted.

By the strict, but fair, maintenance of law and order, together with the implementation of our action plan, we shall try to help create a climate which will make it possible to lift the state of emergency or, at least, to gradually move away from it.

In Southern Africa the Republic of South Africa is willing to expand the constructive role that is already playing in this region. On the basis of good neighbourliness, non-intervention and healthy co-operation, Southern Africa can enter into a new era of stability and prosperity.

To that end my Government and I will exert ourselves.

In South West Africa we will continue to fulfil, consistently, our part of the agreed process. We expect all other parties to do the same.

We are serious about all this and to this we are committed. Having said all this, and from the position of leadership in which I have now been placed, I make an urgent appeal.

My call to the international community is: Take note of what is happening in South Africa. There is a determination amongst millions of South Africans to negotiate fair and peaceful solutions. Use your influence constructively to help us attain that goal.

Now is the time to adopt a positive attitude towards the positive developments in South and Southern Africa.

And to the leaders and the people of South Africa my appeal is: Help me and the government to make a breakthrough to peace.

Stretch out your hands. Do your bit. Together, let us build a new, just South Africa.

Let us all bow before God Almighty and pray that He gives us the wisdom and the strength to face this great challenge. With all my limitations, I am at the service of the Republic of South Africa and all her people.

I 2

KADER ASMAL, *SINS OF APARTHEID CANNOT BE IGNORED*, 1992

COMING TO TERMS WITH THE PAST IS DIFFICULT, AND, FOR SOME, PAINFUL

We will have to close the book on the past, but before we do that, we must not suppress the past.

There has to be a recognition of the illegitimacy of the system which has operated.

There will be formal democratic change, the structures of Government and social institutions may accommodate themselves to such changes but the life force, assumptions and the “old ways” will not change overnight.

The newly acquired veneer of democracy by the previous upholders of apartheid – with their fancy formulae for minority rights – enables political conservatives and neo-racists to anchor their undemocratic ideologies in white-washed national precedent.

We need a revival of moral conscience if we are to build from our diversity a common citizenship and national consciousness.

Our country can only be healed if we reject the euphemisms for separation such as “maintaining norms and standards” and protecting “community values” and attempt to reach out to enable common values and standards to develop.

Reaching out means seeking black athletes in the townships, understanding the legitimate expectations of a Cape Flats unemployed youngster and the painful demand of a Namaqua farmer for the return of his land.

What we need is a time of debate and opening up.

Through this we may enter what the Chileans call *reconvivencia*, a period of getting used to living with each other again.

It is essential that we confront the roots of violence in our country if we are ever to eradicate its effects.

One type of violence is the direct violence that kills immediately.

The second is the structural violence that kills slowly, through exploitation and repression.

A human rights statement is concerned with both types of violence and not only with the situation at present, but also with the future and the past.

There is the argument that comes from Gramsci.

If the old order is dying and the new is not yet born, can there be reconciliation simply through an assertion that new structures and new arrangements will be set in place?

Is reconciliation between victim-survivor and the overlord possible on the basis of a Caliban and Prospero relationship, between master and servant?

Theologians focus on the need for confession and atonement in order to obtain forgiveness.

This is a requirement which in South Africa should result in legal redress and compensation for prior wrongs.

The Confession of 1982, better known as the Belhar Confession, adopted by the Synod of the Dutch Reformed Mission in October of that year, denied that there could be any moral or theological grounds on which to defend apartheid.

For lawyers, liberation and justice should be pre-requisites for an effective agenda for human rights.

The past should also be accounted for to avoid the revenge factor.

We should not fall into the trap of making a whole community into a scapegoat for the policies of the past.

Conversely, imposing collective guilt on what the Czechs call the *nomenklatura*, the officials of the old regime, effectively translates into society's collective innocence.

This may be convenient for some but harmful to the ends to be achieved.

We want the revival of a moral consciousness that will accept the need for a New Deal in our country, encompassing much more.

THERE IS NO PLACE FOR REVENGE OR PURGES IN THIS

There is also the catharsis argument, which calls for an outlet of emotion, and through an act of purgation allows for change without violent disruption.

Catharsis cannot occur if there is an evasive or indifferent approach reflected in the sentiment that we all have much to forgive and be forgiven for.

Then there is the truth and justice argument.

It has been argued that the pursuit of those guilty of systematic abuses of human rights results in destabilising democracy.

In Chile, for example, one reason for setting up the Commission for Truth and Reconciliation in 1990, soon after the dictator Pinochet stepped aside, but not down, was to get to the truth behind the thousands of "disappearances".

The Chilean president warned that it was necessary to balance the virtue of justice with the virtue of prudence.

The rationale for sacrificing justice for truth is the need to consolidate democracy, close the chapter on the past and avoid confrontation.

Even the Chilean courts got their courage back and allowed challenges to the amnesty law and the prosecution of senior military staff.

In South Africa, we have neither democracy to consolidate nor yet the truth.

In any event, the idea that one can in some way buy justice by paying money to those who were tortured – as is now happening in Argentina – is inadequate but may be necessary.

Neither stability, democracy nor justice is served by this kind of pay-off.

The stability of a democracy is not built by granting concession to the military.

In any event, the exoneration of those guilty of crime perpetuates the culture of fear and intimidation that has prevailed in our country since 1948.

Time and again the apartheid state has bestowed immunities both prospective and retrospective, on police and military action, and in so doing has debased criminal law and encouraged state lawlessness.

I3

NELSON MANDELA, *PRESIDENTIAL INAUGURAL ADDRESS*, 1994

Your Majesties, Your Highnesses, Distinguished Guests, Comrades and Friends.

Today, all of us do, by our presence here, and by our celebrations in other parts of our country and the world, confer glory and hope to newborn liberty.

Out of the experience of an extraordinary human disaster that lasted too long, must be born a society of which all humanity will be proud.

Our daily deeds as ordinary South Africans must produce an actual South African reality that will reinforce humanity's belief in justice, strengthen its confidence in the nobility of the human soul and sustain all our hopes for a glorious life for all.

All this we owe both to ourselves and to the peoples of the world who are so well represented here today.

To my compatriots, I have no hesitation in saying that each one of us is as intimately attached to the soil of this beautiful country as are the famous jacaranda trees of Pretoria and the mimosa trees of the bushveld.

Each time one of us touches the soil of this land, we feel a sense of personal renewal. The national mood changes as the seasons change.

We are moved by a sense of joy and exhilaration when the grass turns green and the flowers bloom.

That spiritual and physical oneness we all share with this common homeland explains the depth of the pain we all carried in our hearts as we saw our country tear itself apart in a terrible conflict, and as we saw it spurned, outlawed and isolated by the peoples of the world, precisely because it had become the universal base of the pernicious ideology and practice of racism and racial oppression.

We, the people of South Africa, feel fulfilled that humanity has taken us back into its bosom, that we, who were outlaws not so long ago, have today been given the rare privilege to be host to the nations of the world on our own soil.

We thank all our distinguished international guests for having come to take possession with the people of our country of what is, after all, a common victory for justice, for peace, for human dignity.

We trust that you will continue to stand by us as we tackle the challenges of building peace, prosperity, non-sexism, non-racialism and democracy.

We deeply appreciate the role that the masses of our people and their political mass democratic, religious, women, youth, business, traditional and other leaders have played to bring about this conclusion. Not least among them is my Second Deputy President, the Honourable FW de Klerk.

We would also like to pay tribute to our security forces, in all their ranks, for the distinguished role they have played in securing our first democratic elections and the transition to democracy, from blood-thirsty forces which still refuse to see the light.

The time for the healing of the wounds has come.

The moment to bridge the chasms that divide us has come.

The time to build is upon us.

We have, at last, achieved our political emancipation. We pledge ourselves to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender and other discrimination.

We succeeded to take our last steps to freedom in conditions of relative peace. We commit ourselves to the construction of a complete, just and lasting peace.

We have triumphed in the effort to implant hope in the breasts of the millions of our people. We enter into a covenant that we shall build the society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity – a rainbow nation at peace with itself and the world.

As a token of its commitment to the renewal of our country, the new Interim Government of National Unity will, as a matter of urgency, address the issue of amnesty for various categories of our people who are currently serving terms of imprisonment.

We dedicate this day to all the heroes and heroines in this country and the rest of the world who sacrificed in many ways and surrendered their lives so that we could be free.

Their dreams have become reality. Freedom is their reward.

We are both humbled and elevated by the honour and privilege that you, the people of South Africa, have bestowed on us, as the first President of a united, democratic, non-racial and non-sexist government.

We understand it still that there is no easy road to freedom.

We know it well that none of us acting alone can achieve success.

We must therefore act together as a united people, for national reconciliation, for nation building, for the birth of a new world.

Let there be justice for all.

Let there be peace for all.

Let there be work, bread, water and salt for all.

Let each know that for each the body, the mind and the soul have been freed to fulfill themselves.

Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world.

Let freedom reign.

The sun shall never set on so glorious a human achievement!

God bless Africa!

Thank you.

I4

THE INDEMNITY ACT (1990) AND THE FURTHER INDEMNITY ACT (1992), GOVERNMENT OF SOUTH AFRICA

THE INDEMNITY ACT

(Afrikaans text signed by the Acting State President. Assented to 15 May 1990.)

Preamble

Whereas recent world events and domestic realities have created opportunities for reconciliation and a joint search for common goals and peaceful solutions in South Africa;

And whereas the course of events has resulted in criminal charges against and the arrest of a number of persons being possible or pending;

And whereas for the sake of reconciliation and for the finding of peaceful solutions it has now become necessary from time to time to grant temporary immunity or permanent indemnity against arrest, prosecution, detention and legal process to such persons;

Be it therefore enacted by the State President and the Parliament of the Republic of South Africa, as follows:

State President may grant temporary immunity

1. (1) The State President may, if he is of the opinion that it is necessary for the promotion of peaceful constitution solutions in South Africa or the unimpeded and efficient administration of justice, by notice in the *Gazette* grant to any person the immunity referred to in subsection (2), either unconditionally or on the conditions he may deem it fit.
(2) No proceedings, either civil or criminal, shall be instituted or continued in any court of law against any person to who has been granted such immunity, during the period stipulated in such notice in respect of him, in respect of anything done or omitted by him on any date prior to the commencement of that period, and such person shall not be detained during such period in terms of any law in respect of an act or omission at any time prior to the commencement of that period.

State President may grant indemnity

2. (1) The State President may by notice in the *Gazette* grant indemnity to any person or category of persons, either unconditionally or on the conditions he may deem fit, in respect of any event or category of events specified in the notice.
(2) No proceedings, either civil or criminal, shall be instituted or continued in any court of law against any person who has been granted indemnity in terms of subsection (1), in respect of the events specified in the said notice, and such person shall not be detained in terms of any law in respect of those events.

Regulations

3. (1) The State President may make regulations regarding any matter to which this Act relates if he considers it necessary or expedient so as to achieve the objects of this Act.
(2) Any regulation which results in expenditure from the State Revenue Fund shall be made after consultation by the Minister of Justice with the Minister of Finance.

Saving

4. (1) Any section of this Act shall, subject to the provisions of subsection (2), cease to have effect after the expiry of one year from the commencement of that section, but it shall not affect the previous operation of that section or any immunity or indemnity granted in terms thereof.
(2) The period referred to in subsection (1) may be extended by the State President by proclamation in the *Gazette* for one year at a time: Provided that a second or subsequent extension shall only take place with the concurrence of all three Houses of Parliament.

Short title and commencement

5. (1) This Act shall be called the Indemnity Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
(2) Different dates may be so fixed in respect of different provisions of this Act.

THE FURTHER INDEMNITY ACT

(Afrikaans text signed by the State President. Assented to 4 November 1992.)

Preamble

Whereas the Indemnity Act, 1990 (Act No. 35 of 1990), commenced on 18 May 1990 with the purpose of granting temporary immunity or permanent indemnity;

And whereas several persons were thereafter granted such immunity or indemnity under the said Act and in accordance with certain guidelines published in the *Gazette* or were otherwise released;

And whereas certain persons also advised, directed, commanded, ordered or performed acts with a political object which acts may result in criminal charges against the arrest of such persons being pending or possible or which acts resulted in the criminal prosecution, conviction and sentence of a number of persons;

And whereas the last-mentioned persons did not qualify to be granted immunity or indemnity or to be released under the said Act and in accordance with the said guidelines;

And whereas it has now become necessary, in order to promote reconciliation and peaceful solutions, from time to time to grant such persons further indemnity against arrest, prosecution, detention and legal process or to release such persons who have already been sentenced;

Be it therefore enacted by the State President and the Parliament of the Republic of South Africa, as follows:

Definitions

1. In this Act, unless the context otherwise indicates –
 - (i) “act with a political object” means any act or omission which has been advised, directed, commanded, ordered or performed –
 - (a) with a view to the achievement of a political object; or

- (b) for the promotion or combating of an object or interest of any organisation, institution or body of a political nature; or
- (c) with the *bona fide* belief that such object or interest will be served; or
- (d) with the approval or on instruction or in accordance with the policy of such organisation, institution or body, or in reaction thereto; [...]

CHAPTER I – Release by State President of certain prisoners

2. (i) Notwithstanding the provisions of Section 64 of the Correctional Services Act, 1959 (Act No. 8 of 1959), or any other law, but subject to the provisions of subsection (2), the State President may, after consultation with the Council—
 - (a) release any prisoner sentenced to life imprisonment; or
 - (b) of his own accord, release any prisoner sentenced to imprisonment, unconditionally or on such conditions as he may determine if he is of the opinion that—
 - (i) the offence in respect of which that prisoner was convicted and sentenced to imprisonment was advised, directed, commanded, or ordered or performed with a political object; and
 - (ii) such release may promote reconciliation and peaceful solutions.
- (2) The State President may only release a prisoner under subsection (i) if the offence in respect of which that prisoner was convicted and sentenced was committed during the period preceding 12:00 on 8 October 1990: Provided that the State President may extend the said period by proclamation in the *Gazette* with the concurrence of all three Houses of Parliament.
- (3) Any prisoner referred to in subsection (i)(a) or (b) who has been or is purported to have been released under any law during the period 8 October 1990 up to and including the date of commencement of this Chapter in accordance with the guidelines referred to in subsection (i)(i) and (ii), shall be deemed to have been properly released under the provisions of this Chapter.

CHAPTER II – Granting of indemnity by State President after consultation with National Council on Indemnity

3. (i) The State President may, after consultation with the Council, grant indemnity to any person, either unconditionally or on such conditions as he may think fit, in respect of any act with a political object advised, directed, commanded, ordered or performed by such person before 12:00 on 8 October 1990.
- (2) No proceedings, either civil or criminal, shall be instituted or continued in any court of law against any person in respect of any act for which he has been granted indemnity under subsection (i), and such person shall not be detained in terms of any law in respect of that act.

Application for indemnity

4. (i) Any person wishing to claim indemnity by virtue of the provisions of Section 3(i) may lodge an application with the Minister in the prescribed manner to be indemnified by the State President.
- (2) The Minister shall submit such application together with any other relevant document to the Council for consideration as soon as practicable.

Establishment of Council

5. There is hereby established a council to be known as the National Council of Indemnity.

Constitution of Council

6. (i) The Council shall consist of the number of members which the State President may deem necessary and who are appointed by him.
- (2) The State President shall designate one of the members of the Council as the chairman thereof.
- (3) Any member of the Council shall remain in office at the State President's pleasure, but may resign by notice in writing to the State President.
- (4) Any member of the Council who is not in the full-time service of the State may be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.
- (5) The State President may appoint a person to act in the place of a member of the Council.

Functions of Council

7. (i) The Council shall consider the case of any prisoner referred to in Section 2 together with any relevant document submitted to it, and shall—
- (a) make a finding regarding the question whether the prisoner qualifies to be released under the provisions of that section; and
- (b) notify the State President in writing of its finding, and recommendation, if any
- (2) The Council shall consider every application submitted to it in accordance with the provisions of Section 4(2), whereafter the Council shall—
- (a) make a finding regarding the question whether the applicant qualifies to be indemnified by the State President under the provisions of Section 3(i); and
- (b) notify the State President in writing of its finding, and recommendation, if any.
- (3) The Council shall consider the case of every person referred to in Section 11(i) which is referred to it and shall—
- (a) make a finding regarding the question whether that person qualifies to be indemnified by the State President under the provisions of Section 3(i); and
- (b) notify the registrar or clerk of the court concerned and the State President in writing of its finding.
- (4) The Council shall consider every question referred to it in accordance with the provisions of Section 12 and notify the State President in writing of its finding and recommendation in connection therewith. [...]

Privileged information

10. (i) No person, except the chairman or a member of the Council in the full-time service of the State, shall take his seat as such a member unless he has taken the oath or made a declaration of secrecy referred to in subsection (7).
- (2) No person shall attend the proceedings of the Council, except with the permission of the chairman or in terms of a prescribed direction.
- (3) The chairman may order that any permission granted by him to any person under subsection (2) shall not be valid unless such person has taken the oath or made a declaration of secrecy referred to in subsection (7).

- (4) No person shall, without the prior consent of the State President, disclose any particulars of—
 - (a) the proceedings of or before the Council, including the contents of any evidence or statement given or deposited before the Council or submitted to the Council; or
 - (b) a finding or recommendation of the Council referred to in Section 7, except in so far as it may be necessary for the proper carrying out of the provisions of this Act.
- (5) No person shall, without the prior consent of the chairman, inspect—
 - (a) any record of the Council, including any recording of any proceedings of or before the Council; or
 - (b) any document or anything else in the custody or under the control of the Council on or in which information is in any manner whatsoever contained or embodied, while such document or something else is in the custody or under the control of the Council, except in so far as it may be necessary for the proper carrying out of the provisions of this Act.
- (6) The disposal and handling of—
 - (a) any record of the Council, including any record of any proceedings of or before the Council; or
 - (b) any document or anything else in the custody or under the control of the Council or in which information is in any manner whatsoever contained or embodied, shall be in accordance with the directions which the Chief Justice or a judge designated by him may issue in general or in a specific case. [...]

CHAPTER III – Referral of case by court to National Council on Indemnity for finding regarding indemnity

- 11. (1) If at any stage of civil or criminal proceedings in any court of law a party or the accused alleges that he is entitled to indemnity in relation to the cause of action or charge by virtue of the provisions of Section 3(1) but has not yet applied therefore, the court may, after hearing evidence in camera, suspend such proceedings and refer the case to the Council for its consideration and finding.
- (2) If the finding of the Council is that in relation to the cause of action or charge the person concerned—
 - (a) qualifies to be indemnified by the State President under the provisions of Section 3(1) and the State President so indemnifies him, the proceedings referred to in subsection (1) shall lapse and be deemed to be null and void; or
 - (b) does not so qualify, those proceedings shall continue from the stage at which they were suspended.

CHAPTER IV – Referral by State President of certain matters to National Council on Indemnity

- 12. The State President may, subject to the provisions of Section 4 of the Indemnity Act, 1990 (Act. No. 35 of 1990), in the exercising of the power conferred upon him by Section 2 of that Act, refer any question in connection with any matter mentioned in the last-mentioned section connected with the guidelines referred to in Section 3(1) of this Act to the Council for its consideration, finding and recommendation. [...]

15

NATIONAL EXECUTIVE COMMITTEE'S RESPONSE TO THE MOTSUENYANE COMMISSION'S REPORT, *AFRICAN NATIONAL CONGRESS*, 1993

I. INTRODUCTION

The National Executive Committee of the African National Congress welcomes the release on Monday, 23rd August 1993 of the Motsuenyane Commission Report on the treatment of detainees in some of the ANC camps.

We congratulate the members of the Commission – Dr S M Motsuenyane, the Hon. Margaret Burnham and Advocate D M Zamchiya – for the thorough way in which the evidence was gathered and the proceedings conducted, and for highlighting principles they endorsed in their findings.

It is a significant moment in opening a national discourse on the human rights violations of the past. The ANC therefore has taken a courageous first step in this direction. Recognising that abuses did occur, representing a breakdown in the difficult chains of command and communication that can occur under siege conditions, we express our profound sense of regret, collective moral responsibility and apology to all who suffered as a consequence.

Violations of human rights must always be condemned, no matter by whom, against whom. It is especially painful for us that the heroism of our combatants in exile should be tarnished by such unacceptable and tragic episodes as are revealed in the report. Our movement has always held that the standard by which we judge ourselves has never been the same as the apartheid regime's. We therefore appreciate the fact that the Commission has judged us by the highest standards, according to internationally accepted norms.

We accordingly endorse the four central implications of the investigation as outlined in the Report:

- We accept its affirmations of standards of accountability for human rights promotion in the future;
- We support the underlying principles of investigation, acknowledgement and reparations for abuses of the past;
- We accept its findings that periodically abuses did occur within the ANC camps, but acknowledge that it was not established that there was any systematic policy of abuse. Quite to the contrary, as the Commission illustrates, the ANC made a consistent effort to establish mechanisms of accountability and oversight, as evidenced by the very appointment of the investigative Commission itself;
- We accept the commitment to fostering a human rights culture and a spirit of reconciliation for the future that a public inquiry seeks to achieve.

One of the key ingredients to forging a human rights culture that entrenches norms of universally accepted standards of human rights is accountability. The accountability of leaders to these standards is the bridge between the legitimacy of a new rule of law and producing a climate of accountability.

The ANC made the critical first and historic step to establishing this culture of accountability when we subjected ourselves to external and objective scrutiny of our practices of the past. As the Commission has stated:

“It would be wrong to ignore the historic significance of the investigation the ANC, through this Commission, has undertaken, a first in the annals of human rights enforcement. By its commitment to this inquiry, the ANC seeks to breathe life into the lofty principles proclaimed in the Freedom Charter – to render fundamental human rights the Golden Rule, to be applied in good times and bad, peace and war.”

II. THE ROLE OF SECURITY

Reading the Motsuenyane Report has been painful for all of us, and for none more than members of the ANC security. We wish to put on record the outstanding work our security personnel did in protecting our leadership and organisation under extremely difficult conditions. They were defending, not an evil system, but a movement dedicated to democracy. Pretoria made no bones about their all-out war against us. They tried to destroy us with bombs, bullets and poison. They infiltrated large numbers of persons into our ranks with a mission to sow confusion and attack our leaders.

The fact that despite losing many outstanding comrades to assassination, we managed to preserve our core leadership, is in no small measure due to the vigilance and effectiveness of our security. It is to their credit that, far from covering up or attempting to frustrate the work of the Motsuenyane Commission, the Security Department co-operated fully with it. The sad story unveiled in the pages of the Commission’s Report represents just a fraction of their role in difficult years.

We are confident that the Department will in future adhere strictly to the principles of justice, humanity and accountability set out in our policy document *Ready to Govern* of May 1992, principles which must regulate the philosophy of a future security system in a democratic South Africa.

III. STEPS TAKEN BY THE ANC

In addition to establishing that abuses occurred, the Report shows that the ANC took a series of concrete steps to prevent repetition. These were as follows:

1. The appointment of the Stuart Commission in 1984 when the first allegations of abuses were raised regarding the mutiny in the camps.
2. The Code of Conduct agreed upon at the Kabwe Conference within a year after the Stuart Commission’s recommendations “showed that the leadership of the ANC was gravely concerned with the need to correct the identified wrongs once these had been properly investigated and thrown up”.
3. The system of justice represented by the structures in the Code of Conduct “was unique among liberation movements in Southern Africa”.
4. Some aspects of the system took long to produce benefits “because of the war context and the limited human and material resources available”.
5. “The system represented a large step forward in respect of human rights protection within the ANC” because the insistence on proper legal procedures including the appropriate burden of proof meant that arbitrary arrests should have been reduced in the knowledge that improperly

prepared cases would be thrown out of the trial. Further, many people were actually acquitted and released. The Vosloorus Six case, 1987, in connection with which seven detainees were released by the Tribunal in Quadro in 1988, is an example. All this had the effect of increasing the credibility of the system.

6. The Commission was told of only one case in which the Tribunal recommended capital punishment. The Tribunal, in principle, did not favour the death penalty which it did not consider effective as a deterrent; and even in this case, the penalty was not confirmed because the NEC, and O R Tambo himself, were against this form of punishment.
7. When in 1987 new allegations of abuses occurred, the then President of the ANC, O R Tambo visited Quadro camp for an investigation and the leadership of the Security Department was replaced. At that time, the ANC re-addressed itself on the issue of breaches in conduct and made a commitment to eradicating any incidences of abuse. A new office, the Provisional Directorate of Intelligence and Security was created to shift responsibility away from the Security Department in the tense years of 1986 – 1987.
8. A specific Commission was set up in 1989 to investigate allegations regarding the particular case of Thami Zulu.
9. The new office in turn made recommendations concerning the changes to improve oversight and accountability structures, which led eventually to the establishment of the Skweyiya Commission, the precursor to the current Motsuenyane Commission.

The Motsuenyane Commission has not found that there has ever been a pattern of systematic abuses of rights or a policy of violations. On the contrary, the Report documents that the ANC has made serious efforts to establish a rigorous chain of command and authority to preclude abuses; mechanisms have been established for oversight and enforcement. Finally, the ANC has made real efforts to facilitate investigations into our practices from the Motsuenyane Commission to those of the International Commission of Justice, Amnesty International and others.

IV. THE NEED FOR A TRUTH COMMISSION

The violations referred to in the Report can in no way be equated to the activities of the apartheid state, which were gross, systematic and a product of a policy which transgressed not only South African law but virtually the whole range of fundamental rights protected in international law. It must always be remembered that the international community has condemned the practices of apartheid as a crime against humanity, akin to slavery, extending far beyond any notion of single acts taken against individuals. Apartheid's violations were based on a denial of national rights where torture, ill-treatment and violence were instruments of state policy.

In recent years, when there have been investigations into the abuse of rights that have happened in other national liberation struggles, like Chile or El Salvador, violations committed by the liberation forces have comprised only a minute proportion of the number of total transgressions by illegitimate and authoritarian regimes. There is no reason to believe that the situation in South Africa is any different.

Only a broad national Truth Commission will establish whether this is in fact true. We further maintain that in no way can the lapses in authority and control that did occur in the ANC camps be compared to the systematic pattern of human degradation and suffering that apartheid consciously created. There was never a deliberate and preconceived policy of abuse in the ANC.

In fact, conscious efforts were made to ensure protection even under the difficult circumstances of responding to South African government infiltration into our ranks, assassination of our leaders, and the daily torture, harassment and dislocation of our supporters.

The ANC has consistently called for a full investigation of the abuses that have occurred under the apartheid system. The Government has never accepted collective or individual responsibility for the abuses of its regime. When called upon to agree to acknowledge the crimes of the past, its response was to pass the *Further Indemnity Act* which exonerated itself and the various components of the state for any responsibility for the egregious violations of the range of human rights that was apartheid. In this way, it sought to expunge from the record systematic murder, torture, dirty tricks of every vile sort and the most gross violations of the sovereignty of the neighbouring states.

Our position, then and now, is that the regime does not have the moral authority nor the right to condone unilateral wrong-doing by its agents, officers or superiors. Any policy on reparations and amnesty must be made as part of negotiations and democratic consultation. Otherwise, any possibility of establishing the essential goal of accountability will be destroyed.

While the ANC is taking the first historic step towards opening up to public scrutiny the abuses of the past with the goal of creating a culture of human rights for a post-apartheid South Africa, the Government has failed to fulfil even the most rudimentary premises upon which its own fundamentally flawed *Indemnity Act* is based:

- It has failed to investigate thoroughly allegations of abuses, it has chosen to isolate only a select few;
- It has not made available information on security force activity or collusion into activities that have resulted in torture, disappearances, detentions without trial, etc.;
- In fact, there is substantial evidence to suggest that the government has consciously destroyed materials necessary for a full disclosure of the past;
- No effort at reparations has been made by the government to date.

Abuses continue to date. Since February 1990, over 200 deaths have occurred in detention. Hit squads, assassinations and security force collusion into covert operations and para-military activity continue to wreck havoc in our communities.

While the ANC seeks to establish a framework of accountability, the Government, through its *Indemnity Act* has established a norm of immunity for all actions of violations by members of the police and security forces. The Government, simultaneously, has refused to come to a negotiated agreement on a policy of acknowledgement and reparations.

We therefore call on the Government to agree, following discussions with the ANC and other political and non-governmental organisations, to set up, without delay, a Commission of Enquiry or Truth Commission into all violations of human rights since 1948.

V. ENSURING THAT JUSTICE IS DONE

The NEC has devoted particular attention to what steps should be taken at this stage to ensure that justice and human rights will best be served in the light of the Commission's recommendations. Our decision is motivated by the following considerations:

1. We have a duty as a movement at all times to defend and advance the spirit of freedom, justice and respect for human rights contained in the *Freedom Charter*.

2. The most important factor in looking at past abuses is that the truth comes out and violations of human rights are acknowledged. This has been accomplished by the Skweyiya and the Motsuenyane Commissions. In the case of the latter, proceedings were in public; the press reported widely, and the hearings were attended by representatives of Amnesty International, Lawyers for Human Rights and other organisations.
3. When one considers the thousands of torturers, assassins and brutal guards of the apartheid regime who are going scot-free and even receiving generous pensions, one's sense of justice is not served by punishing a few persons from one side only. Respect for human rights requires equal treatment for all in similar circumstances.
4. Any response on our part must be based on principles of equity and fairness to all.
5. The question of reparations must also be viewed in an across-the-board manner. Thousands and thousands of persons were killed and maimed in the course of the struggle against apartheid. A huge number of victims are today destitute, without anyone accepting responsibility for them. To single out one group of victims for compensation would not strengthen the feeling in the community that justice was being done. We do not feel that the families of those thousands who were massacred would regard it as just that compensation should go to some and not to others.

VI. NEC RESPONSE TO THE COMMISSION'S RECOMMENDATIONS

The Commission has emphasised that it worked on the basis that its mandate was not to carry out "... a general audit report of the overall performance of the ANC while it was in exile" but to advise simply in relation to its terms of reference.

A general audit, in our view, would have established the tradition of accountability in the movement, the great care that the ANC took at considerable expense in time, energy and resources, while it was leading the struggle against apartheid and under harsh and burdensome conditions, to look after the welfare of its members and those for whom it was responsible.

The ANC accepts the basic principle of accountability as identified in the Report and responds in the following way to the recommendations of the Commission:

1. The African National Congress, through its National Executive Committee, accepts collective responsibility for the proven violations of human rights in a community of its camps and centres. It expresses its profound regret and apology for each and every such transgression.

At various times, the ANC ran 11 camps in Angola, as well as several camps in other Front Line States. The Commission refers to abuses in the main at one detention centre, namely Quadro in Angola.

2. The Code of Conduct for ANC members was adopted in 1985 and is now superseded by the 1992 Constitution of the ANC with its disciplinary rules and procedures and supplemented by on-going evaluation procedures. The National Executive Committee will soon be adopting a totally new Code of Conduct for its members and officials which will, for the first time in South Africa, provide guarantees of openness and machinery for enforcement. We will expect each member and every official to know and abide by these documents.
3. It is the view of the ANC that the acceptance by the ANC of collective responsibility for acts performed by its agents and personnel is a historic departure from the usual refusal of governmental and political organisations to make any such admission.

Press reporting on the Commission's findings has focused extensively on the names of two members of our (sic) Committee, Jacob Zuma and Joe Modise. We must point out that neither person was implicated by the Report in any way concerning the gross violations that the Report has referred to, nor was there anything in the Report to indicate in any way that they were linked directly or indirectly with any form of torture or ill-treatment.

4. We regard the Skweyiya and Motsuenyane Commission Reports as a first step in a process of national disclosure of all violations of human rights from all sides. We accordingly call for an establishment of a Commission of Truth, similar to bodies established in a number of countries in recent years to deal with the past. The purpose of such a Commission will be to investigate all the violations of human rights – killings, disappearances, torture as ill-treatment – from all quarters. This will not be a Nuremberg Tribunal. Its role will be to identify all abuses of human rights and their perpetrators, to propose a future code of conduct for all public servants, to ensure appropriate compensation to the victims and to work out the best basis for reconciliation. In addition, it will provide the moral basis for justice and for preventing any repetition of abuses in the future.
5. We feel that the same approach should be adopted for compensating victims of abuse. In line with the ANC's demand for a Truth Commission to be established, the issue of compensation must also be settled across the board, as part of a policy dealing with all breaches of human rights. Such a co-ordinated and national approach can only be carried out by a legitimate government with its resources, following the identification of the truth. Partial punishment or partial reparations is unfair to perpetrators and victims alike.
6. There is a category of ANC persons who are unaccounted for, who have either died or disappeared on missions inside the country. However only the Government has the information to explain their whereabouts. In relation to other missing persons, the ANC, two years ago, established a Missing Persons Committee which is continuing its work. It has reported to families of the missing and is continuing its counselling and welfare activities with the families. There are a few instances which we are still investigating.
7. Our doors will be open to any former members who wish to re-integrate themselves in the movement, in accordance with our normal membership provisions.
8. The Commission, in the interest of the "... principles of accountability and transparency" to which it says the ANC is committed, recommends that the ANC should make this report public. This we have done.

We are grateful to the Commission for assisting us in the process of disclosure, a sure basis for an open post-apartheid society. We therefore reiterate our full and unconditional commitment to the norms of a democratic society, based on respect for human rights.

16

STATEMENT ON THE ISSUE OF INDEMNITY FOR SECURITY FORCES INVOLVED
IN DEFENDING APARTHEID, *AFRICAN NATIONAL CONGRESS*, 1994

The President of the African National Congress (ANC), Comrade Nelson Mandela, has on a number of occasions pronounced on the issue of indemnity for members of the security forces who have been involved in criminal activities in defence of apartheid. The most recent pronouncement was made in Durban on Sunday 24th April.

The National Executive Committee (NEC) of the ANC on 29th August 1993 called for a full investigation of all the abuses that occurred under the apartheid system, pointing out that the National Party (NP) government has never accepted collective or individual responsibility for the abuses of the regime. The ANC has always been of the opinion that the NP government has neither the moral right nor the authority to unilaterally indemnify itself or its agents for wrongs committed in the past. That right can only be exercised by a government representative of all the people of South Africa. Such indemnity shall occur subject to full disclosure of the violations committed.

Disclosure should not be viewed as punitive, but is a necessary pre-condition for national reconciliation.

The ANC re-affirms that position.

The principle of indemnity has never been under dispute between ourselves and the NP government. Following the adoption of the Groote Schuur Minute in May 1990, the NP government and the ANC jointly arrived at a formula, which was translated into legislation, whose terms defined 8th October 1990 as the cut off date for all acts for which indemnity could be sought. That legislation remains operative. The ANC which was integrally involved in the conception and elaboration of the terms of that law, remains fully committed to its letter and spirit. Comrade Nelson Mandela's reiteration of the ANC's position regarding indemnity in Durban on Sunday, implies that, subject to full disclosure, the ANC is fully committed to granting indemnity to all members of the security forces for acts of commission or omission, that violated the rights of others committed before the agreed cut off date, 8th October 1990.

Sadly, numerous violations continued after that date. Hit squads, assassinations, covert operations, and para-military activities that wreaked havoc on our communities escalated. Thousands of people lost their lives, including entire African families. Respected judicial commissions and other official investigative bodies have repeatedly implicated members of the security forces in such crimes. The affected communities have also alleged that members of the security forces colluded and involved themselves in destabilisation activities.

It would be presumptuous of the ANC or any other party to seek to exonerate the perpetrators of these crimes unilaterally. In two days time the South African people will be going to the polls to elect a democratic parliament. That parliament, will, among other tasks, be charged with a thorough re-examination of the past, by setting in motion a process of national disclosure of all violations of human rights from all sides. A democratic parliament could then exercise its discretion as to how the matter is to be handled.

The ANC reiterates its commitment to the norms of democracy based on respect for human dignity and the rights of all persons irrespective of race, class, gender or creed.

I7

DESMOND TUTU, “CHAIRPERSON’S FORWARD,” *TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT*, 1998

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

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

ON PREPARING THE REPORT OF THE TRUTH AND RECONCILIATION COMMISSION

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

The work of the South African Commission has also been far more extensive than that of other commissions. The volume of material that passed through our hands will fill many shelves in the National Archives. This material will be of great value to scholars, journalists and others researching our history for generations to come. From a research point of view, this may be the Commission’s greatest legacy.

The report that follows tries to provide a window on this incredible resource, offering a road map to those who wish to travel into our past. It is not and cannot be the whole story; but it provides a perspective on the truth about a past that is more extensive and more complex than any one commission could, in two and a half years, have hoped to capture.

Others will inevitably critique this perspective – as indeed they must. We hope that many South Africans and friends of South Africa will become engaged in the process of helping our nation to come to terms with its past and, in so doing, reach out to a new future.

This report has been constrained by a number of factors – not least by the extent of the Commission's mandate and a number of legal provisions contained in the Act. It was, at the same time, driven by a dual responsibility. It had to provide the space within which victims could share the story of their trauma with the nation; and it had to recognise the importance of the due process of law that ensures the rights of alleged perpetrators. Several court rulings emphasised the importance of the latter. Obviously, the Commission respected these judgements. They did, however, sometimes make our efforts to obtain information about the past more difficult. This, in its turn, caused us to err on the side of caution in making our findings. Despite these difficulties, however, we can still claim, without fear of being contradicted, that we have contributed more to uncovering the truth about the past than all the court cases in the history of apartheid. [...]

TRANSITIONAL OPTIONS

We could not make the journey from a past marked by conflict, injustice, oppression, and exploitation to a new and democratic dispensation characterised by a culture of respect for human rights without coming face to face with our recent history. No one has disputed that. The differences of opinion have been about how we should deal with that past; how we should go about coming to terms with it.

There were those who believed that we should follow the post World War II example of putting those guilty of gross violations of human rights on trial as the allies did at Nuremberg. In South Africa, where we had a military stalemate, that was clearly an impossible option. Neither side in the struggle (the state nor the liberation movements) had defeated the other and hence nobody was in a position to enforce so-called victor's justice.

However, there were even more compelling reasons for avoiding the Nuremberg option. There is no doubt that members of the security establishment would have scuppered the negotiated settlement had they thought they were going to run the gauntlet of trials for their involvement in past violations. It is certain that we would not, in such circumstances, have experienced a reasonably peaceful transition from repression to democracy. We need to bear this in mind when we criticise the amnesty provisions in the Commission's founding Act. We have the luxury of being able to complain because we are now reaping the benefits of a stable and democratic dispensation. Had the miracle of the negotiated settlement not occurred, we would have been overwhelmed by the bloodbath that virtually everyone predicted as the inevitable ending for South Africa.

Another reason why Nuremberg was not a viable option was because our country simply could not afford the resources in time, money and personnel that we would have had to invest in such an operation. Judging from what happened in the De Kock and so-called Malan trials, the route of trials would have stretched an already hard-pressed judicial system beyond reasonable limits. It would also have been counterproductive to devote years to hearing about events that, by their nature, arouse very strong feelings. It would have rocked the boat massively and for too long.

The Malan trials and the Goniwe inquest have also shown us that, because such legal proceedings rely on proof beyond reasonable doubt, the criminal justice system is not the best way to arrive at the truth. There is no incentive for perpetrators to tell the truth and often the court must decide between the word of one victim against the evidence of many perpetrators. Such legal proceedings are also harrowing experiences for victims, who are invariably put through extensive cross-examination.

In his judgement in the case brought by AZAPO and others against the Truth and Reconciliation Commission, Judge Mahomed, then Deputy President of the Constitutional Court and now our Chief Justice, quoted Judge Marvin Frankel. In his book, *Out of the Shadows of the Night: The Struggle for International Human Rights*, Judge Frankel wrote:

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

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

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

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

There were others who urged that the past should be forgotten – glibly declaring that we should 'let bygones be bygones'. This option was rightly rejected because such amnesia would have resulted in further victimisation of victims by denying their awful experiences. In Ariel Dorfmann's play, *Death and the Maiden*, a woman ties up the man who has injured her. She is ready to kill him when he repeats his lie that he did not rape or torture her. It is only when he admits his violations that she lets him go. His admission restores her dignity and her identity. Her experience is confirmed as real and not illusory and her sense of self is affirmed.

The other reason amnesia simply will not do is that the past refuses to lie down quietly. It has an uncanny habit of returning to haunt one. "Those who forget the past are doomed to repeat it" are the words emblazoned at the entrance to the museum in the former concentration camp of Dachau. They are words we would do well to keep ever in mind. However painful the experience, the wounds of the past must not be allowed to fester. They must be opened. They must be cleansed. And balm must be poured on them so they can heal. This is not to be obsessed with the past. It is to take care that the past is properly dealt with for the sake of the future.

In our case, dealing with the past means knowing what happened. Who ordered that this person should be killed? Why did this gross violation of human rights take place? We also need to know about the past so that we can renew our resolve and commitment that never again will such violations take place. We need to know about the past in order to establish a culture of respect for human rights. It is only by accounting for the past that we can become accountable for the future.

For all these reasons, our nation, through those who negotiated the transition from apartheid to democracy, chose the option of individual and not blanket amnesty. And we believe that this individual amnesty has demonstrated its value. One of the criteria to be satisfied before amnesty could be granted was full disclosure of the truth. Freedom was granted in exchange for truth. We have, through these means, been able to uncover much of what happened in the past. We know

now what happened to Steve Biko, to the PEBCO Three, to the Cradock Four. We now know who ordered the Church Street bomb attack and who was responsible for the St James' Church massacre. We have been able to exhume the remains of about 50 activists who were abducted, killed and buried secretly.

I recall so vividly how at one of our hearings a mother cried out plaintively: "Please can't you bring back even just a bone of my child so that I can bury him." This is something we have been able to do for some families and thereby enabled them to experience closure.

The lies and deception that were at the heart of apartheid – which were indeed its very essence – were frequently laid bare. We know now who bombed Khotso House. We can recall how Mr Adriaan Vlok, a former Minister of Law and Order, lied publicly and brazenly about this; how he unashamedly caused Shirley Gunn to be detained with her infant son as the one responsible for this act. It must be said to his credit that Mr Vlok apologised handsomely to Ms Gunn during his amnesty application.

Thus, we have trodden the path urged on our people by the preamble to our founding Act, which called on "the need for understanding but not for vengeance, a need for reparation but not retaliation, a need for ubuntu but not for victimisation." [...]

RECONCILIATION

Some have been upset by the suggestion that the work of the Truth and Reconciliation Commission could have resulted in making people angrier and race relations more difficult, as indicated by a recent survey. It would be naïve in the extreme to imagine that people would not be appalled by the ghastly revelations that the Commission has brought about. It would have been bizarre had this not happened. What is amazing is that the vast majority of the people of this land, those who form the bulk of the victims of the policies of the past, have said they believe reconciliation is possible.

The trouble is that there are erroneous notions of what reconciliation is all about. Reconciliation is not about being cosy; it is not about pretending that things were other than they were. Reconciliation based on falsehood, on not facing up to reality, is not true reconciliation and will not last.

We believe we have provided enough of the truth about our past for there to be a consensus about it. There is consensus that atrocious things were done on all sides. We know that the State used its considerable resources to wage a war against some of its citizens. We know that torture and deception and murder and death squads came to be the order of the day. We know that the liberation movements were not paragons of virtue and were often responsible for egging people on to behave in ways that were uncontrollable. We know that we may, in the present crime rate, be reaping the harvest of the campaigns to make the country ungovernable. We know that the immorality of apartheid has helped to create the climate where moral standards have fallen disastrously.

We should accept that truth has emerged even though it has initially alienated people from one another. The truth can be, and often is, divisive. However, it is only on the basis of truth that true reconciliation can take place. True reconciliation is not easy; it is not cheap. We have been amazed at some almost breathtaking examples of reconciliation that have happened through the Commission. Examples abound in the chapter on reconciliation. I want to make a heartfelt plea to my white fellow South Africans. On the whole we have been exhilarated by the magnanimity of

those who should by rights be consumed by bitterness and a lust for revenge; who instead have time after time shown an astonishing magnanimity and willingness to forgive. It is not easy to forgive, but we have seen it happen. And some of those who have done so are white victims. Nevertheless, the bulk of victims have been black and I have been saddened by what has appeared to be a mean-spiritedness in some of the leadership in the white community. They should be saying: “How fortunate we are that these people do not want to treat us as we treated them. How fortunate that things have remained much the same for us except for the loss of some political power.”

Can we imagine the anger that has been caused by the disclosures that the previous government had a Chemical and Biological Warfare Programme with projects that allegedly targeted only black people, and allegedly sought to poison President Nelson Mandela and reduce the fertility of black women? Should our land not be overwhelmed by black fury leading to orgies of revenge, turning us into a Bosnia, a Northern Ireland or a Sri Lanka?

Dear fellow South Africans, please try to bring yourselves to respond with a like generosity and magnanimity. When one confesses, one confesses only one's own sins, not those of another. When a husband wants to make up with his wife, he does not say: “I'm sorry, please forgive me, but darling of course you too have done so and so!” That is not the way to reach reconciliation. That is why I still hope that there will be a white leader who will say: “We had an evil system with awful consequences. Please forgive us.” Without qualification. If that were to happen, we would all be amazed at the response. [...]

CONCLUSION

Ours is a remarkable country. Let us celebrate our diversity, our differences. God wants us as we are. South Africa wants and needs the Afrikaner, the English, the coloured, the Indian, the black. We are sisters and brothers in one family – God's family, the human family. Having looked the beast of the past in the eye, having asked and received forgiveness and having made amends, let us shut the door on the past – not in order to forget it but in order not to allow it to imprison us. Let us move into the glorious future of a new kind of society where people count, not because of biological irrelevancies or other extraneous attributes, but because they are persons of infinite worth created in the image of God. Let that society be a new society – more compassionate, more caring, more gentle, more given to sharing – because we have left “the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice” and are moving to a future “founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.” Like our Constitution, the Commission has helped in laying –

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

My appeal is ultimately directed to us all, black and white together, to close the chapter on our past and to strive together for this beautiful and blessed land as the rainbow people of God. The Commission has done its share to promote national unity and reconciliation. Their achievement is up to each one of us.

I am honoured to commend this report to you.

18

“CONCEPTS AND PRINCIPLES,” *TRUTH AND RECONCILIATION*
COMMISSION OF SOUTH AFRICA REPORT, 1998

NATIONAL UNITY AND RECONCILIATION [...]

2. The Commission was founded in the belief that, in order to build the “historic bridge” of which the interim Constitution speaks, one must establish as “complete a picture as possible” of the injustices committed in the past. This must be coupled with a public, official acknowledgement of the “untold suffering” which resulted from those injustices. It is to these goals that the Commission must contribute. [...]

PROMOTING NATIONAL UNITY AND RECONCILIATION [...]

13. The work of the Commission highlighted the many different levels at which reconciliation needs to take place. [...] They include:

Coming to terms with painful truth

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

Reconciliation at a community level

17. The effects of human rights violations were multiple, inflicting lasting damage on social relations. At a national level, the main dimension of the conflict was between the oppressed black population and the former state. However, within and between communities, conflict played itself out in various, often insidious, ways. Internal divisions occurred between the young and the old, men and women, neighbours, as well as between different ethnic and racial groups. All these aspects required attention. [...]

Promoting national unity and reconciliation [...]

22. The following aspects of the Commission's contribution to the promotion of national unity and reconciliation need to be noted: (a) The democratic, transparent, inclusive process of the

Commission and the extensive public debates surrounding its work attempted to nurture and promote the central values of open debate and a democratic culture; (b) The Commission made significant progress in establishing “as complete and reliable a picture as possible of past violations”; (c) The Commission facilitated the official, public acknowledgement of these violations. In so doing, it sought to restore the dignity of those who had suffered; (d) By holding accountable not only individuals, but also the state and other institutions, and by making recommendations aimed at preventing future violations, the Commission sought to help restore trust in these institutions. Such trust is necessary for the functioning of a healthy democratic system. [...]

TRUTH

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

Factual or forensic truth [...]

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

All that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse. In Argentina, its work has made it impossible to claim, for example, that the military did not throw half-dead victims in the sea from helicopters. In Chile, it is no longer permissible to assert in public that the Pinochet regime did not dispatch thousands of entirely innocent people...¹

¹ From “Articles of Faith,” Index on Censorship (5) 1996, 113.

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

Personal and narrative truth [...]

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

Social truth

39. While narrative truth was central to the work of the Commission, especially to the hearings of the Human Rights Violations Committee, it was in its search for social truth that the closest connection between the Commission's process and its goal was to be found.
40. Judge Albie Sachs, a prominent participant in the debates preceding the establishment of the Commission and now a Constitutional Court judge, made a useful distinction between what he called 'microscope truth' and 'dialogue truth'. "The first", he said, "is factual, verifiable and can be documented and proved. 'Dialogue truth', on the other hand, is *social truth, the truth of experience that is established through interaction, discussion and debate*" (emphasis added). [...]
41. In recognising the importance of social or 'dialogue' truth, the Commission acknowledged the importance of participation and transparency. Its goal was to try to transcend the divisions of the past by listening carefully to the complex motives and perspectives of all those involved. It made a conscious effort to provide an environment in which all possible views could be considered and weighed, one against the other. People from all walks of life were invited to participate in the process, including faith communities, the South African National Defence Force (SANDF), non-governmental organisations (NGOs) and political parties. The public was engaged through open hearings and the media. The Commission itself was also subjected to constant public scrutiny and critique.

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

Healing and restorative truth

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

THE RELATIONSHIP BETWEEN TRUTH AND RECONCILIATION

46. It was frequently suggested that the Commission’s quest for more truth and less falsehood would result in deepened divisions rather than in the promotion of national unity and reconciliation. This concern must be taken seriously, although some of the mistaken assumptions underlying (much of) this criticism must be noted.
47. There can be little doubt that gross violations of human rights and other similar abuses during the past few decades left indelible scars on the collective South African consciousness. These scars often concealed festering wounds that needed to be opened up to allow for the cleansing and eventual healing of the body politic. This does not mean, however, that it was sufficient simply to open old wounds and then sit back and wait for the light of exposure to do the cleansing. Nor could the Commission be expected to accomplish all the healing that was required. [...]
50. Many victims justifiably insisted that they were not prepared to forgive if this meant that they must ‘close the book on the past’, ‘let bygones be bygones’ or ‘forget about the past and focus on the future’. Forgiveness is not about forgetting. It is about seeking to forego bitterness, renouncing resentment, moving past old hurt, and becoming a survivor rather than a passive victim.

51. The Commission sought to uncover the truth about past abuses. This was part of “the struggle of memory against forgetting” referred to by Milan Kundera. [...] But it was, at the same time, part of the struggle to overcome the temptation to remember in a partisan, selective way; to recognise that narrow memories of past conflicts can too easily provide the basis for mobilisation towards further conflicts, as has been the case in the former Yugoslavia and elsewhere. An inclusive remembering of painful truths about the past is crucial to the creation of national unity and transcending the divisions of the past.
52. This means that one must guard against such simplistic platitudes as ‘to forgive is to forget’. It is also crucial not to fall into the error of equating forgiveness with reconciliation. The road to reconciliation requires more than forgiveness and respectful remembrance. It is, in this respect, worth remembering the difficult history of reconciliation between Afrikaners and white English-speaking South Africans after the devastating Anglo-Boer/South African War (1899-1902). Despite coexistence and participation with English-speaking South Africans in the political system that followed the war, it took many decades to rebuild relationships and redistribute resources – a process that was additionally complicated by a range of urban/rural, class, and linguistic and other barriers. Reconciliation requires not only individual justice, but also social justice.

AMNESTY, TRUTH AND JUSTICE

53. The postamble of the interim Constitution states: “in order to advance such reconciliation and reconstruction (of society), amnesty shall be granted in respect of acts, omissions, and offences with political objective and committed in the course of the conflicts of the past.”
54. The implementation of this amnesty agreement proved to be very difficult indeed. [...]
55. Two particular tensions need to be noted:
 - (a) First, if justice is seen merely as retribution, it becomes difficult to make the appropriate connections between amnesty and justice. While both the interim Constitution and the Commission expressed strong opposition to acts of revenge, it is necessary, nevertheless, to acknowledge that the desire for revenge is an understandable human response. Suppressed anger undermines reconciliation. Nonetheless, the tendency to equate justice with retribution must be challenged and the concept of restorative justice considered as an alternative. This means that amnesty in return for public and full disclosure (as understood within the broader context of the Commission) suggests a restorative understanding of justice, focusing on the healing of victims and perpetrators and on communal restoration.
 - (b) Second, amnesty as an official act of pardon can all too easily be misinterpreted as ignoring responsibility and accountability. As such, amnesty can be seen to be encouraging a culture of impunity. Some victims felt that amnesty results in insufficient social repudiation and that, by refusing to punish those responsible and allowing perpetrators to walk free, it constitutes a failure to respect their suffering.
56. It is important, therefore, clearly to understand the various justifications for the concept of amnesty implemented by the Commission, with its unique focus on individual accountability. [...]

The quest for truth

64. The amnesty process was also a key to the achievement of another objective, namely eliciting as much truth as possible about past atrocities. The primary sources of information were the perpetrators themselves who, without the option of applying for amnesty, would probably not have told their side of the story.
65. For many victims, the granting of amnesty was a high price to pay for the public exposure of perpetrators. It was made even more difficult by the fact that those who applied for amnesty did not always make full disclosure; perpetrators recounted versions of events that were sometimes different. The inability to reach a clear version of truth in respect of particular incidents led to confusion and anger on the part of victims' families and members of the public. [...]

Amnesty and social justice

74. One of the consequences of granting amnesty is that the civil liability of both the perpetrator and the employer (often the state) is extinguished. While the wish to encourage individual perpetrators to tell the truth does not, in itself, justify indemnifying the state against civil liability, state indemnification may assist in meeting the fundamental objectives of reconciliation between the people of South Africa and the reconstruction of society. Two arguments support this.
75. First, by indemnifying the state in this way, prolonged litigation is avoided. Such litigation is likely to lead to a preoccupation with anguish and rancour about the iniquities of the past and may thus divert the energies of the nation from the long-term objectives of national reconciliation and the reconstruction of society. [...] Second, the achievement of reconciliation and the reconstruction of society demands that the limited resources of the state be deployed in a way that brings relief and hope to as many South Africans as possible. Faced with competing demands between the formidable claims of victims of gross human rights violations and their families, and the desperate need to correct massive wrongs in the crucial areas of housing, education and health care, the framers of the interim Constitution favoured the reconstruction of society.
76. The immunity awarded to the state does not remove the burden of responsibility for state reparations. It does, however, give the new, democratic government discretion when making difficult choices about the distribution of scarce resources between the victims of gross human rights violations (who fall within the mandate of the Commission) and those many victims who fall outside of the Commission's mandate. [...]
77. The basis for this transition towards social justice lies in the replacement of unjust, minority rule with a democratic state. The amnesty agreement and the way it was implemented were key factors in making the transition possible. It therefore makes at least an indirect contribution to social justice. By extension, it also contributes to the less visible, non-material dimensions of social justice. [...]

UBUNTU: PROMOTING RESTORATIVE JUSTICE

80. A principal task of the Commission was “restoring the human and civil dignity of victims”. The work of the Commission as a whole, together with the specific contributions of its three committees, underlined the need to restore the dignity of all South Africans. In the process, the sons and daughters of South Africa would begin to feel truly ‘at home’.
81. Thus, the tensions and links between amnesty, truth and justice, and the relationship between the Commission and the criminal justice system in South Africa were meant to help prepare the way for the Commission’s contribution to the restoration of civil and human dignity. [...]
82. This was the background to the constitutional commitment to “a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation”. It was a commitment that called for a respect for human life and dignity and for a revival of *ubuntu*; a commitment that included the strengthening of the restorative dimensions of justice. Restorative justice can be broadly defined as a process which: (a) seeks to redefine crime: it shifts the primary focus of crime from the breaking of laws or offences against a faceless state to a perception of crime as violations against human beings, as injury or wrong done to another person; (b) is based on reparation: it aims at the healing and the restoration of all concerned – of victims in the first place, but also of offenders, their families and the larger community; (c) encourages victims, offenders and the community to be directly involved in resolving conflict, with the state and legal professionals acting as facilitators; (d) supports a criminal justice system that aims at offender accountability, full participation of both the victims and offenders and making good or putting right what is wrong. [...]
83. Restorative justice challenges South Africans to build on the humanitarian and caring ethos² of the South African Constitution and to emphasise the need for reparation rather than retaliation – despite growing anger and insecurity in the midst of high levels of crime in South Africa.
84. We are also required to look again at the restorative dimensions of various traditions in South Africa, such as the Judaeo-Christian tradition and African traditional values. Neither is monolithic in its approach; both contain strong sources of communal healing and restoration. As such, they are sources of inspiration to most South Africans.
85. As far as traditional African values are concerned, the fundamental importance of *ubuntu* must be highlighted. *Ubuntu*, generally translated as ‘humaneness’, expresses itself metaphorically in *umuntu ngumuntu ngabantu* – ‘people are people through other people’. [...]

RESPONSIBILITY AND RECONCILIATION

101. The emergence of a responsible society, committed to the affirmation of human rights (and, therefore, to addressing the consequences of past violations), presupposes the acceptance of individual responsibility by all those who supported the system of apartheid (or simply allowed it to continue to function) and those who did not oppose violations during the political conflicts of the past.

² Mahomed J in *S Makwanyane and another* 1995 (3) SA 391 at para. 293.

102. It is, therefore, not only the task of the members of the Security Forces to examine themselves and their deeds. It is for every member of the society they served to do so. South Africa's weapons, ammunition, uniforms, vehicles, radios and other equipment were all developed and provided by industry. South Africa's finances and banking were controlled by institutions that went so far as to provide covert credit cards for covert operations. South African chaplains prayed for 'victory' and South African schools and universities educated for war. The media carried propaganda and the enfranchised white community voted the former government back into power, time after time, with ever-increasing majorities. [...]
103. This moral responsibility goes deeper than legal and political accountability. Such individual and shared moral responsibility cannot be adequately addressed by legislation or this Commission. What is required is that individuals and the community as a whole must recognise that the abdication of responsibility, the unquestioning obeying of commands (simply doing one's job), submitting to the fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all essential parts of the many-layered spiral of responsibility which makes large-scale, systematic human rights violations possible in modern states. Only this realisation can create the possibility for the emergence of something new in South African society. In short, what is required is a moral and spiritual renaissance capable of transforming moral indifference, denial, paralysing guilt and unacknowledged shame into personal and social responsibility.
104. At the practical level, the vexed issue of apartheid as a crime against humanity impinges perhaps more directly on moral than on legal culpability. A simple focus on the criminal culpability of isolated individuals responsible for apartheid can ignore the broader responsibilities presently under discussion. It is not enough merely to identify a few high-profile 'criminals' as those responsible for the atrocities of the past – and thus give insufficient attention to a deeper analysis of the underlying nature, cause and extent of apartheid. [...]
105. A pertinent question is the extent to which individual South Africans can be regarded as responsible for the premises and presuppositions which gave rise to apartheid. The kindest answer consists of a reminder that history suggests that most citizens are inclined to lemming-like behaviour – thoughtless submission rather than thoughtful accountability. This is a tendency that needs to be addressed in ensuring that the future is different from the past and serves as a reminder that the most penetrating enquiry into the past involves more than a witch-hunt. It involves, rather, laying a foundation against which the present and all future governments will be judged. [...]
107. One of the reasons for this failure of emphasis is the fact that the greater part of the Commission's focus has been on what could be regarded as the exceptional – on gross violations of human rights rather than the more mundane but nonetheless traumatising dimensions of apartheid life that affected every single black South African. The killers of Vlakplaas have horrified the nation. The stories of a chain of shallow graves across the country, containing the remains of abducted activists who were brutalised, tortured and ultimately killed, have left many South Africans deeply shocked. The media has understandably focused on these events – labelling Eugene de Kock, the Vlakplaas commander, 'Prime Evil'. The vast majority of victims who either made statements to the Commission or who appeared at public hearings of the Human Rights Violations Committee to tell their stories of suffering simply did not receive the same level of public attention. Indeed, victims of those violations of human rights that were not included in the Commission's mandate received no individual public attention at all.

108. This focus on the outrageous has drawn the nation's attention away from the more commonplace violations. The result is that ordinary South Africans do not see themselves as represented by those the Commission defines as perpetrators, failing to recognise the 'little perpetrator' in each one of us. To understand the source of evil is not to condone it. It is only by recognising the potential for evil in each one of us that we can take full responsibility for ensuring that such evil will never be repeated.
109. A second reason for the insufficient focus on moral responsibility beyond the narrow, direct responsibility of specific perpetrators of gross human rights violations was the widespread failure fully to grasp the significance of individual victims' testimony before the Commission. Each story of suffering provided a penetrating window into the past, thereby contributing to a more complete picture of gross violations of human rights in South Africa. The nation must use these stories to sharpen its moral conscience and to ensure that, never again, will it gradually atrophy to the point where personal responsibility is abdicated. The challenge is to develop public awareness, to keep the memories alive, not only of gross violations of human rights, but of everyday life under apartheid. [...]
110. Thus, a key pillar of the bridge between a deeply divided past of "untold suffering and injustice" and a future "founded upon the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all" is a wide acceptance of direct and indirect, individual and shared responsibility for past human rights violations.
111. In this process of bridge building, those who have benefited and are still benefiting from a range of unearned privileges under apartheid have a crucial role to play. Although this was not part of the Commission's mandate, it was recognised as a vital dimension of national reconciliation. This means that a great deal of attention must be given to an altered sense of responsibility; namely the duty or obligation of those who have benefited so much (through racially privileged education, unfair access to land, business opportunities and so on) to contribute to the present and future reconstruction of our society.

SOURCE INFORMATION AND ADDITIONAL READINGS

Background readings

There are a number of works that investigate the roots and development of the South African transition and which shed light on the historical place and significance of reconciliation within South African culture, religion, and politics. For instance, see John W de Gruchy, *Reconciliation: Restoring Justice* (Cape Town: David Philip, 2002); Allister Sparks, *Tomorrow Is Another Country: The Inside Story of South Africa's Road to Change* (Chicago: University of Chicago Press, 1996).

Document 6

General Synod of the Dutch Reformed Church, *Human Relations and the South African Scene in Light of the Scripture*, 1974 (bold emphases in original). One of the Dutch Reformed Church's most systematic reflections on the policy of separate development, this position was adopted by the General Synod in October 1974. For a useful overview of the DRC's policies and positions on apartheid, see J Loubser, *The Apartheid Bible, A critical review of racial theology in South Africa* (Cape Town: MaskewMiller Longman, 1987).

Document 7

First written in Afrikaans, the *Belhar Confession* was authored in 1982 and approved by the Dutch Reformed Mission Church in South Africa in 1986. The confession was presented and received significant attention at the 1982 meeting of the World Alliance of Reformed Churches (WARC) in Ottawa, Canada and marked growing international attention to the situation in South Africa. For a historical account of opposition to apartheid that reprints a number of documents issued by South African churches, see John W de Gruchy and Charles Villa-Vicencio, *Apartheid Is a Heresy* (Grand Rapids: Eerdmans, 1983).

Document 8

Archbishop Desmond Tutu's Nobel Prize address was delivered on 11 December 1994. For a collection of the Archbishop's writings and speeches against apartheid, see Desmond Tutu, *Hope and Suffering: Sermons and Speeches* (Johannesburg: Skotaville Publishing, 1983). For an extended analysis of Tutu's role and importance in the South African liberation struggle, consult Philippe-Joseph Salazar, *An African Athens: Rhetoric and the Shaping of Democracy in South Africa* (London: Lawrence Erlbaum, 2002).

Document 9

The Kairos Theologians, *The Kairos Document*, 2nd Ed. (Braamfontein: Skotaville Publishers, 1986). The word *kairos* has in fact two political meanings in Greek. One meaning refers to an opportunity for decisive action arising in the course of a political debate, and to the ability of one of the contestants to see that there is an opportunity not to be missed in order to resolve an issue. The other is found in the New Testament, to designate that special moment of time when God visits his people to offer them a unique opportunity for repentance and conversion, for change and decisive action. A time of *kairos* indicates a moment when belief is confronted with action, a critical moment (*krisis*, in turn, denotes "choice"). De Klerk's decision to unban the ANC and free Nelson Mandela was thus both a political *kairos* and a moment of true *krisis*. Similarly, although he

expressed disagreement with its characterisation of “Church theology” and chose not to sign the *Kairos Document*, Desmond Tutu’s insistence on reconciliation was the recognition of a Christian *kairos*, in politics, and the acknowledgment that a *krisis*, a radical choice (reconciliation, not vengeance), was at hand.

Document 10

Nelson Mandela wrote to the then President P W Botha while he was still in prison. For Mandela’s own account of the circumstances and motivations for the letter, see Nelson Mandela, *Long Walk To Freedom* (London: Abacus, 1994). The letter was not uncontroversial as there were some in the ANC who felt that Mandela had approached the government without the larger organisation’s consent.

Document 11

F W de Klerk’s inaugural address was delivered on 20 September 1989. Frequently overlooked in favour of de Klerk’s speech of 2 February 1990, an address to Parliament in which he promised *inter alia* to unban the ANC and release Mandela, the inaugural address was an important signal of De Klerk’s attitudes toward the form and content of political change. For De Klerk’s own reflections on the matter, see F W de Klerk, *The Last Trek – A New Beginning* (New York: Macmillan, 1995).

Document 12

This essay appeared in *The Evening Post*, 8 June 1992. The essay is a severely condensed version of Asmal’s influential writings in the early 1990s on the question of how South Africa might best acknowledge and redress the crimes of apartheid. For the fuller case and an argument to which the TRC expressed a significant debt, see Kader Asmal, “Victims, Survivors and Citizens – Human Rights, Reparations, and Reconciliation,” *Inaugural Lecture*, University of the Western Cape, May 1992. Also see, Kader Asmal, et al, *Reconciliation Through Truth: A Reckoning of Apartheid’s Criminal Governance* (Cape Town: David Philip, 1997).

Document 13

In the wake of his election, Nelson Mandela delivered several inaugural-type speeches. From the steps of the Union Building in Pretoria, this address was delivered on 10 May 1994. For an overall analysis of his three speeches (Cape Town Grand Parade, Opening of Parliament and the Pretoria Inauguration, Philippe-Joseph Salazar, *An African Athens: Rhetoric and the Shaping of Democracy in South Africa* (London: Lawrence Erlbaum, 2002).

Document 14

Indemnity Act, 1990 (Act No. 35, 1990); *Indemnity Act*, 1992 (Act No. 151, 1992). The passage of the Indemnity Act of 1990 was controversial. Wanted by the apartheid state, exiled, or imprisoned, the legislation allowed many of the ANC’s top leadership to sit down at the negotiating table and begin preliminary talks about ending apartheid. As important, the Indemnity Act was read by some as a sign of government’s good faith with respect to the negotiations process. In the months and years after the 1990 Act was implemented, the distinction between indemnity and amnesty became increasingly blurry, particularly as the passage of the 1992 Indemnity Act occurred within a larger debate over whether the ending of apartheid required a “blanket amnesty” for those that had served the state. Even more contentious than its counterpart, the 1992 legislation was never

formally approved by Parliament but was implemented through a procedural manoeuvre undertaken by the then President F W de Klerk. Deemed necessary to allow for the release of prisoners not eligible for indemnity under the 1990 legislation, the Act fed debates over the merits and dangers of a larger amnesty. For a close examination of the development and controversy surrounding indemnity and amnesty, see Erik Doxtader. “Easy to Forget or Never (Again) Hard to Remember: History, Memory and the ‘Publicity’ of Amnesty,” in *The Provocations of Amnesty: Memory, Justice and Impunity*, Charles Villa-Vicencio and Erik Doxtader (eds.) (Cape Town: David Philip, 2003), 121-155.

Document 15

National Executive Committee's Response to the Motsuenyane Commission's Report, 29 August 1993. Reprinted at <www.anc.org.za/ancdocs/pr/1993/pro829.html>. The Motsuenyane Commission Report was released at a delicate time, a moment in which the main parties were fully immersed in the negotiations process that culminated in the Interim Constitution. While the ANC has previously rejected calls for blanket amnesty, a call that they had once made, the report fed arguments about the importance of amnesty and demonstrated to some that all parties needed to reflect on the costs of the struggle to preserve and overthrow apartheid. Preceded by the Stuart, Skweyiya, and Douglas Commission Reports, the latter of which the ANC largely rejected, the Motsuenyane Commission's report was not the first inquiry into events in ANC training camps.

Document 16

Statement on the Issue of Indemnity for Security Forces Involved in Defending Apartheid, African National Congress, 25 April 1994. Reprinted at <<http://www.anc.org.za/ancdocs/pr/1994/pro425.html>>. Given the ambiguity of its mandate, the Epilogue of the interim Constitution did not end controversy over the relative need for amnesty. This statement was released days before the election of Nelson Mandela and reflected an ongoing concern by some that security force members from the soon to be previous dispensation were reluctant to embrace if not actively resisting the end of apartheid.

Document 17

Truth and Reconciliation Commission of South Africa Report, Volume 1, 1998, Chapter 1. For Desmond Tutu's larger reflection on the TRC's work and importance, see Desmond Tutu, *No Future Without Forgiveness* (London: Rider, 1999).

Document 18

Truth and Reconciliation Commission of South Africa Report, Volume 1, 1998, Chapter 5. While debate continues over how the TRC conceptualised the work that it was mandated to undertake, it is also important to note that the Commission's limited tenure forced it to “hit the ground running.” This chapter from the Final Report is thus a crucial distillation of the Commission's thinking about its charge and how it was best approached. For a careful analysis of the Commission's political and ethical-moral logic, see Andre du Toit, “The Moral Foundations of the South African TRC: Truth as Acknowledgement and Justice as Recognition,” in *Truth v. Justice: The Morality of Truth Commissions*, Robert Rotberg and Dennis Thompson (eds.) (Princeton: Princeton University Press, 2000), 122-40.

Part II

THE DIFFICULT WORK OF FINDING TRUTH AND
PROMOTING RECONCILIATION

Section 3

The Recounting of Suffering and the Findings of the TRC's Human Rights Violations Committee

The Commission began its work by giving a voice to the victims of South Africa's violent past. From written submissions (statements), the Commission selected those to be heard in public. The first hearing was held over four days in East London, from 15-18 April 1996. In the Commission's words, this inaugural hearing set a standard, a "ceremonial" style even. Victims' hearings lasted until the end of June 1997. The Human Rights Violations Committee expressed its findings in Volume 5 of the Report. The final Volume (7) offers, over 919 pages, the holocaust of victims acknowledged by the Commission. The status of a victim is determined by a chillingly precise and systematic "coding" of gross violations.

As the Commission travelled across the country it held regional victims hearings (summarised in Volume 4 of the TRC's Final Report) and also "special hearings" focused on three themes: women, the youth (the lost generation), and the compulsory conscription of white young men (including the death squads of Koevoet – "crowbar") (see Final Report, Volume 5, Chapters 8, 9, 10, respectively). Some particular events, such as the Heidelberg Tavern bombing on 30 December 1993 by the Azanian People's Liberation Army tested the limits of amnesty, forgiveness and remorse.

19

*“VICTIM FINDINGS,” TRUTH AND RECONCILIATION COMMISSION
OF SOUTH AFRICA REPORT, 2003*

LISWOGA, Eleanore Matodzi (15), was beaten with sjamboks by members of the Venda Police in detention at Magau, near Louis Trichardt, Tvl, in 1990. Eleanore was returning from church when she was arrested with protesters participating in a march in the village.

LITLAME, Nthabiseng Germaine (13), was shot during a random shooting by members of the SAP on 11 April 1986 in Dukathole, Aliwal North, Cape. As a result of the shooting, she is unable to walk or stand properly.

LITLHAKANYANE, Lietsiso Eckoo (49), a Basotoland Congress Party supporter, was intimidated by members of the SAP at his workplace and jailed at Moroka police station, Soweto, Johannesburg, in 1978. He was tortured and interrogated about the whereabouts of LRA members who had undergone military training in South Africa.

LITTLE, Kathleen, was shot and injured when APLA operatives threw hand grenades at and opened fire on the congregation of St James' Church, Kenilworth, Cape Town, on 25 July 1993. Eleven people were killed and 58 wounded in the attack. See APLA Attacks. Three of four APLA members were granted amnesty for the attack. The fourth had his application struck off the roll for failing to attend the amnesty hearing (AC/1998/0018).

LITTLE, William (42), was bruised, suffered trauma and bouts of depression after a bomb attack on the Department of Coloured Affairs in Durban, on 21 May 1982. He had been in the toilet when the bomb, placed by MK operatives, exploded and blew up his office, destroying furniture.

LIUTLILENG, Esau, a policeman, suffered an attempt on his life when Sharpeville police

station, Johannesburg, was attacked by MK operatives, on 1 October 1989. The objective of the attack was to disarm the police and to obtain weapons for their organisation. Three policemen were apprehended and one was shot in the leg. One perpetrator was granted amnesty (AC/2000/007).

LIVINGSTONE, L, was injured in what became known as the Magoo's Bar Bombing in Durban on 14 June 1986. The explosion killed three women and injured at least 74 other people. Seven MK operatives were granted amnesty (AC/2001/128).

LIWANE, Georgina Ma-Umfundisi (43), an ANC supporter and women's activist, was arrested and detained in Robertson, Cape, on 11 June 1986. She was held for three months under emergency regulations at Pollsmoor Prison, Cape Town.

LIWANE, Mzwandile 'Mechanic' (49), a member of the Lagunya Taxi Association, was shot dead in Khayelitsha, Cape Town, on 11 July 1993, by a hit squad wearing balaclavas. Mr Liwane was a witness and plaintiff in cases laid against WEBTA, an opposing taxi organisation. The attack took place during heightened taxi conflict that acquired a political dimension due to perceptions of political allegiances. See Taxi Violence.

LIZANI, Nomathemba Sheila (40), an ANCWL member, was injured in the head when police threw a teargas canister at her during a funeral in KwaZakele, Port Elizabeth, in 1986.

LIZO, Anderson Mpenelo 'Blackie' (20), an ANC supporter, was shot and injured by members of the SAP in Paballelo, Upington, Cape, in August 1992, during an ANCYL demonstration against the municipality.

LLALE, Matlhodi Diane, was shot dead by members of the SAP in Soweto, Johannesburg, on 24 August 1976 during the Soweto uprising.

LOAPE, Papiki (16), was shot dead when members of the SAP opened fire on protesters in Thabong, Welkom, OFS, on 17 August 1984. Mr Loape, an invalid with only one leg, was on his way home from a local hospital at the time of the shooting.

LOBELO, Derrick Boithomo (aka 'Vusi Mayekiso') (34), a member of MK from Bophuthatswana, was detained by the ANC security department in Angola in 1982. He was subsequently executed by order of a military tribunal. A number of ANC members were detained, tortured and killed during a period of anxiety about infiltration by South African agents following the SADF bombing of Nova Catengue camp in 1979.

LOBELO, Francis Ohaletse (19), a UDF supporter, was severely burnt in a petrol bomb attack by vigilantes in Vryburg, Cape, on 26 November 1985. He was allegedly targeted because he had been part of a group that attended a civic meeting to organise the funeral of a 'comrade' allegedly killed by the vigilantes.

LOBESE, Thobigunya (36), a SAYCO member, was severely beaten by members of the Ciskei Police on 16 June 1986 in Mdantsane, Ciskei. He was forced to divulge information about the people who had killed two police officers. He was then charged with public violence, convicted and sentenced to two years' imprisonment.

LOCHENBERG, Nomawisile Ivy (36), had her home burnt down during political conflict between the 'Red' and 'Green' Factions in Bhambayi, near KwaMashu, Durban, in 1993.

LOCHENBURG, Ernest, an ANC supporter, was severely assaulted by members of the SAP while he was in custody at Bizana, Transkei, in June 1960. Mr Lochenburg had been involved in the Pondoland Revolt.

LODEWICK, Sydney Edward (24), was shot and injured in the foot by traffic officers and

members of the SAP in Toekomsrus, Randfontein, Transvaal, on 18 October 1990 during a rent boycott called by the ANC and SANCO in the area.

LOEWE, Michael Ian (26), was detained in Port Elizabeth in June 1986 and held without trial for 83 days. He was interrogated, went on a hunger strike and was later admitted to hospital where he was treated for bronchial pneumonia.

LOKOLOLO, Makonza, an ANC supporter, had her house destroyed in an arson attack in Richmond, Natal, during 1991, in political conflict between IFP and ANC supporters in the area.

LOKWALOENG, Sehularo Eva (56), was detained under emergency regulations in Huhudi, Cape, on 12 June 1986, because the police alleged that she was conducting UDF meetings. Her nephew, also a detainee, was shot dead after escaping from detention. See police brutality.

LOLIWE, Shwalakhe (15), an ANC supporter, was shot dead on 12 August 1985 in Molteno, Cape, when members of the SAP opened fire at demonstrators during a march.

LOLLAN, Arthur Carroll, a member of the Congress Alliance, was shot and injured by members of the SAP in Johannesburg, in January 1960.

LOLLAN, Stanley Basil, a member of the Congress Alliance, was arrested, detained and assaulted in Johannesburg, on several occasions during 1960. Mr Lollan was one of the 1956 treason trialists. Before his exile in Swaziland in 1960, he was constantly harassed by the SAP, and was assaulted while in exile.

LOLO, Lucky Hendrick, a UDF supporter, was burnt to death when his home was set alight by members of the SAP in Khutsong, Carletonville, Transvaal, in June 1987 during conflict between police and 'comrades' in the township. The police allegedly locked Mr Lolo and another youth in their shack and set fire to it.

LOLWANA, Zenzile, a UDF supporter, was detained in 1985 in George, Cape. He was assaulted by police and dumped blindfolded

from the boot of a vehicle outside the town. He was again detained in June 1986 in Richmond and held for two months under emergency regulations at Middelburg prison, Cape. See police brutality.

LOLWANE, Nomhle Beauty (54), an ANC supporter, was severely beaten in Khutsong, Carletonville, Transvaal, in May 1990 by members of a street committee who accused her of hiring someone to kill two named members of the street committee. They then sold her shack for R400.

LOMBAARD, Casper, sustained minor injuries when MK operatives detonated a car bomb using a remote control device outside the Ellis Park rugby stadium, Johannesburg, on 2 July 1988. Two spectators leaving the rugby match were killed and 37 others sustained minor and major injuries. Four operatives from MK's Special Operations Unit, including its commander, were granted amnesty (AC/2001/161).

LOMBARD, E, was injured when MK operatives detonated an explosive in a car outside the South African Air Force (SAAF) headquarters in Church Street, Pretoria, on 20 May 1983. Twenty-one people were killed and 217 injured. The overall commander of MK's Special Operations Unit and two MK operatives were granted amnesty (AC/2001/003 and AC/2001/023). See Church Street Bombing, Pretoria.

LOMBARD, Helena, was injured when MK operatives detonated an explosive in a car outside the South African Air Force (SAAF) headquarters in Church Street, Pretoria, on 20 May 1983. Twenty-one people were killed and 217 injured. The overall commander of MK's Special Operations Unit and two MK operatives were granted amnesty (AC/2001/003 and AC/2001/023). See Church Street Bombing, Pretoria.

LOMBARD, Iris, was injured on 17 August 1984 when MK operatives from the 'Dolphin Unit' detonated a limpet mine at the Security Branch offices in Roodepoort, Transvaal. Five members of the Security Branch and several

civilians were injured in the blast. Two MK operatives were granted amnesty (AC/2001/0003).

LOMBARD, Philipus L, a member of the SAP, was injured when a car bomb, planted by MK operatives, exploded outside the NBS building in Witbank, Transvaal, on 24 October 1988. The building was used for commercial purposes, but also housed the Witbank Security Branch offices. Three people were killed and over 20 were injured, mainly civilians. Two MK operatives were granted amnesty for the bombing (AC/2000/055).

LOMBARD, Tsabane, was shot and injured by IFP supporters in Katilehong, Germiston, Transvaal, on 5 July 1993 when they fired at a funeral procession.

LOMBO, Arnold Lolo (40), an IFP member, was shot dead by MK operatives and UDF supporters at his place of work in central Pietermaritzburg on 31 October 1990, on the orders of two senior MK operatives. Four perpetrators were granted amnesty (AC/1997/040).

LOMBO, Ntombizonke Virginia (36), an Inkatha supporter, had her house burnt down by UDF supporters in Inati, kwazulu, near Pietermaritzburg, in 1987.

LONDON, Wessel 'Vira' (11), was shot and severely injured by a named member of the Municipal Police in Ashton, Cape, on 23 May 1986, when police opened fire on mourners attending the restricted funeral of an activist.

LONGO, Elliot Gwele, was shot dead by men shooting from a vehicle outside the town council offices in Crossroads, Cape Town, on 22 March 1990. Another man also died and one was injured. The incident took place during conflict between two local Crossroads leaders.

LONGWE, Patrick Skobho (23), was severely beaten by members of the SAP in KaNyamazane, KaNgwane, during a consumer boycott in 1986.

LONGWE, Siphon Leonard, was stabbed to death by IFP supporters in Johannesburg, on 4 June 1992 during train violence in the Transvaal.

20

“CODING FRAME FOR GROSS VIOLATIONS OF HUMAN RIGHTS,” *TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT*, 1998

INTRODUCTION

The task of the Commission is to identify those people who suffered gross violations of human rights, defined as KILLING, TORTURE SEVERE ILL TREATMENT and ABDUCTION. In addition to these four, there is a fifth category, the ASSOCIATED VIOLATION. This has not been defined as a gross violation, yet it is important for the understanding it provides of the context in which violations could and did take place. Each of the five categories has several sub-headings, which explain how the violation took place.

THE CATEGORIES OF HUMAN RIGHTS VIOLATIONS

[...]

Killing

A killing is when a person dies, in one of three ways: a) Assassination is killing of a *targeted person* by a person or group who *developed a secret plan or plot* to achieve this. A person is targeted because of political position; b) Execution is capital punishment (death sentence) imposed and carried out by a legal or authorised body such as court of law or tribunal. Victim is aware of death sentence. Perpetrators are the state, homeland governments, or security structures of political movements; c) Killing is all other deaths, including a killing by a crowd of people.

Torture

Torture happens in *captivity* or in *custody* of any kind, formal or informal (for example, prisons, police cells, detention camps, private houses, containers, or anywhere while the individual is tied up or bound to something). Torture is usually used to get information, or to force the person to do something (for example, admit to a crime, or sign a statement), but it is also used for punishment, degradation, and systematic breakdown of an individual. It includes mental or psychological torture (for example, witnessing torture, or telling the person that their family is dead).

Severe ill treatment

Severe ill treatment covers attempted killing and all ill-treatment forms of inflicted suffering causing *extreme* bodily and/or mental harm. It tends to take place outside of custody (for example, injury by a car bomb, or assault at a rally), but a person can be subjected to severe ill treatment in custody too (for example, a single severe beating, or tear gas in the cell).

Abduction

Abduction is when a person is forcibly and illegally taken away (for example, kidnapping). It does not mean detention or arrest. Arrest is not a gross violation of human rights (see *Associated violation*). If the person is never found again, it is a disappearance.

Associated violation

These are not gross violations of human rights, but are important for understanding the context of the violation (for example, detention, harassment, framing, violating a corpse after death).

THE VIOLATION TYPES

The tables [text – eds.] below show the HRV categories and the types of violations within each.

Killing

- **Beaten to death.** Beaten to death by being hit, kicked, punched, to death specifying description of part of body assaulted, if known (e.g. feet, face, head, genitals, breasts), or object used (e.g. sjambok, baton, gun, rifle, stick, rope, whip, plank, beat against wall).
- **Burnt to death.** Killed in a fire or burnt to death using petrol, chemicals, fire, scalding, arson. This does *not* include 'necklacing' or petrol bombing.
- **Killed by poison, drugs or chemicals.** Killed by poison, drugs, or household substances, such as bleach or drain cleaner.
- **Killed by drowning.** Drowned in a river, swimming pool, or even in a bucket of water.
- **Killed by electrocution.** Killed by an electric shock.
- **Killing by death sentence.** Hanged or shot as decided by a formal body (court or death sentence tribunal) such as the state, homeland state, or political party. It is the consequence of a death sentence.
- **Killed in an explosion.** Killed by any manufactured explosive or bomb, but *not* a petrol bomb (see below). Explosives include dynamite, landmine, limpet mine, car bomb, hand grenade, plastic explosives, detonator, booby-trap, letter bomb, parcel bomb, special device (e.g. walkman).
- **Killed by exposure.** Person dies after being subjected to extremes such as heat, cold, weather, exercise, forced labour.
- **Necklacing.** Burnt with petrol and a tyre. Necklacing is coded separately from burning, because it featured heavily in the past. It is differentiated from, for example, setting alight with petrol or burning in a house.
- **Other types of killing.** All other methods of killing, including being buried alive, strangling, tear gas, decapitation, disembowelling.
- **Petrol bomb.** Killed by a burning bottle of petrol. Petrol bombing falls in a category between burning and bombing, so, like necklacing, it is useful to code it separately. Also called Molotov Cocktail.
- **Shot dead.** Shot and killed by a live bullet, gunshot, birdshot, buckshot, pellet, rubber bullet.
- **Stabbed to death.** Killed with a sharp object, such as a knife, panga, death axe, scissors, spear (including assegai).
- **Suspicious suicide or accident.** Died in a *suspicious* suicide or fatal accident. Examples are: slipped on soap, jumped out of window, fell down stairs, hanged oneself, car accident, booby-trapped hand grenades or explosives, shot oneself.

- **Stoned to death.** Killed with bricks, stones or other thrown missiles.
- **Tortured to death.** Tortured to death.
- **Unknown cause of death.** Person dies, but there is no further information.
- **Killing involving vehicle.** Dragged behind, thrown out of, driven over, put in a car boot, specifying type of vehicle involved (for example, car, train, truck, van, bakkie, Hippo, Casspir). *Not* a car bomb (see bombing).

Torture

- **Torture by beating.** Tortured by being beaten severely or for a long time (for example, hit, kicked, punched), specifying part of body assaulted (for example, feet, face, head, genitals, breasts) and object used in the beating (for example, sjambok, baton, gun, rifle, stick, rope, whip, plank, beat against wall, or if the victim is pregnant or miscarries).
- **Torture by burning.** Burnt with cigarettes, or fire, for example.
- **Torture with poison, drugs, or chemicals.** Tortured with poison, drugs, or household substances, such as bleach or drain cleaner.
- **Torture by deprivation.** Tortured by withholding essentials, such as food, or medical attention where there is serious injury or need. (See *Associated violations* for general lack of medical care while in custody.)
- **Electric shock torture.** Electric shocks administered to the body, specifying which body part was shocked (for example, genitals, breasts, fingers, toes, ears, etc.).
- **Torture by exposure to extremes.** Tortured by subjecting victim to extremes such as heat, cold, weather, exercise, labour, noise, darkness, extreme light (including flashing lights, blinding by light), blind-folding, confinement to small space, smells, immobilisation.
- **Psychological or mental torture.** Tortured psychologically, mentally or emotionally, for example, by simulated execution (includes Russian roulette), solitary confinement, degradation (includes use of excrement, urine, spit), insults, disinformation (for example, telling the person that a loved one is dead), threats, witnessing torture, forced participation in torture, exposure when washing or on the toilet, threat of torture.
- **Torture by bodily mutilation.** Torture involving injuries to the body where parts of the body are partly or wholly cut, severed or broken, specifying body part, for example, genitals, finger nails, ears, hair, etc. It includes amputation of body parts, breaking of bones, pulling out nails, hair or teeth, scalping.
- **Other types of torture.** All other methods of torture, including use of animals for torture (for example, snake, tortoise, baboon), use of vehicle.
- **Torture by forced posture.** Tortured by forcing the body into painful positions, for example, suspension, 'helicopter', tied up, hand-cuffed, stretching of body parts, prolonged standing, standing on bricks, uncomfortable position (includes squatting, 'imaginary chair', standing on one leg, pebbles in shoes), forced exercise, forced labour, blindfolding and gagging.
- **Torture by sexual assault/abuse.** Torture using the victim's gender or genitals as a weak point. (See elsewhere for electric shock, abuse mutilation or beating.) It includes: slamming genitals or breasts in drawer or other device, suspension of weights on genitals, squeezing genitals or breasts, rape by opposite sex, rape by same sex, gang rape, forced sexual acts (for example oral sex, simulating intercourse), introduction of objects into vagina or rectum, sexual abuse using animals, threats of rape, touching, nakedness, sexual comments or insults, sexual enticement, deprivation of sanitary facilities for menstruation).

- **Torture by suffocation.** Torture by stopping a victim from breathing, for example, by bag, towel, tube (wet or dry) over head, drowning (head, whole body submerged), choking, strangling, stifling, throttling, teargassing, burying alive.
- **Unknown type of torture.** Tortured by an unknown method.

Severe ill treatment

- **Severely beaten.** Badly or severely beaten, or beaten for a long period. Victim may be hit, kicked, punched, twisted, specifying part of the body (for example, feet, face, head, genitals, breasts), or object used (for example, sjambok, baton, gun, rifle, stick, rope, whip, plank, wall), specifying if the victim is pregnant.
- **Injured by burning.** Injured by burning with fire, petrol, chemical, scalding, but not necklacing or petrol bomb (see below), specifying body part if burning is localised.
- **Injured by poison, drugs, or chemicals.** Poisoned or injured by poison, drugs, household substances (for example, bleach or drain cleaner).
- **Injured in an explosion.** Injured by a bomb or explosives, but not a petrol bomb. Explosives include dynamite, landmine, limpet mine, car bomb, hand grenade, plastic explosives, detonator, booby-trap, letter bomb, parcel bomb, special device (e.g. booby-trapped walkman).
- **Psychological or mental ill treatment.** Severe psychological, mental or emotional ill treatment, for example, by simulated execution ill treatment (includes Russian roulette), degradation (includes use of excrement, urine, spit), death threats, threat of torture.
- **Bodily mutilation.** Injured by having parts of body mutilated or damaged, specifying body part, (for example, genitals, fingernails, ears, hair, etc.). Includes amputation of body parts, breaking of bones, pulling out nails, hair or teeth, scalping.
- **Necklacing.** Injured in an attempted necklacing.
- **Other type of severe ill treatment.** All other types of severe ill treatment, describing severe method, and including strangling, drowning, spreading of disease.
- **Sexually assaulted or abused.** All forms of attack on a person using their gender or genitals as a weak point, for example, rape or abused by opposite sex, rape by same sex, gang rape, forced sexual acts (for example, oral sex, simulating intercourse), introduction of objects or substances into vagina or rectum, sexual abuse using animals.

[...]

Abduction

- **Illegal and forcible abduction.** Forcibly and illegally taken away (for example, forcible kidnapping), but found again, returned or released. It does *not* refer to detention or arrest (see *Associated violations*).
- **Disappearance.** Forcibly and illegally taken away and is never seen again. It does not include cases where a person goes into exile and never returns. It *does* include people who have disappeared for unknown reasons (instead of abduction, they might have run away or been shot and buried). In this case, a finding will be made and the code will be left as it is, or changed to killing if the person was killed, or found to be out of the mandate of the Commission.

Associated violation

- **Beating.** Person is beaten, but it is not a severe or prolonged beating. It includes once-off mild beating, specifying if in custody or if victim is pregnant or miscarried.
- **Violation after death.** Body of victim violated after death, for example, by improper burial, body mutilated or burnt or blown up, funeral restrictions, funeral disruption, anonymous burial, mass grave.
- **Deprivation.** Deprivation of facilities or essentials, for example, medical attention, food, water, sanitary facilities, privacy, family visits.
- **Destruction of property.** Includes violations such as arson, destruction, vandalism, theft, forced removal, eviction.
- **Financial impropriety.** Subjection to bribery, extortion, pay-off, ransom, blackmail, ruin of business.
- **Framing.** Labelling as an informer, collaborator (*impimpi*) or criminal, false information is spread about the person, or a smear campaign against the person is started.

[...]

GLOSSARY OF TERMS

- *Necklacing* refers to the practice of placing a car tyre around the neck of a victim and setting it alight.
- A *panga* is a large knife with a flat blade (used for cane cutting).
- An *assegai* is a spear, either short for stabbing or long for throwing.
- A *bakkie* is a light truck or van with a cabin and open back.
- Hippos and Casspirs are armoured personnel carriers.
- A *sjambok* is a whip.
- An *impimpi* is an informer or spy.
- The 'helicopter' technique refers to a method of torture where a victim is suspended from the ceiling, with hands and feet shackled to a stick, and spun around.
- The 'invisible chair' technique refers to a method of torture where a victim is forced to pretend to sit on a chair while being interrogated.

21

JOYCE N. MTIMKHULU, *TESTIMONY TO THE HUMAN RIGHTS
VIOLATION COMMITTEE*, 1996

[...]

MRS MTIMKHULU: In 1981, it was on the 31st of May, I was in (indistinct). I received a telephone call from Mrs Mtongana, Princess, she informed me that Sipiwo has come back and he has returned to my place and that I should come back home.

I packed my belongings and I came back to Port Elizabeth. When I got here, I found him in one of our houses which we used as a dining room. He had covered his feet with the eiderdown, probably it is something that we would call a duvet nowadays. You could feel that he had cold feet.

And you could see that he was not the usual spirit that we know. You could see that something was not right. I greeted him and I was very happy to meet him, I used all the nicknames that I used to call him.

I was glad that he came back from jail. He spent five months.

MR NTSEBEZA: When you say he had returned, when was he arrested?

MRS MTIMKHULU: I would like to mention that Sipiwo was shot previously and then he was detained. As he was detained, you could see that he was injured on the arm. He was taken to hospital. The police who shot and arrested him were the same people who took him to the hospital, at Livingstone Hospital.

He was not admitted for quite a long time, because when we tried to visit him, we were informed that he had already been discharged. We were just informed that he was here and there. We went to each ward, but we couldn't find him and then we gave up and went back home. It was a long time that he was admitted, I think it was five months. In the middle of the 6th month, he was then discharged, it was on the 20th of October 1981, when he was discharged from hospital. [...] As I said before, he covered his feet. We exchanged greetings. I asked him you look ill, what is the problem, he admitted that he was ill.

I wanted to know what was wrong with him. He stated that he had an excruciating pain in the stomach. He stated that his feet are always cold and they are swollen. He says the lower limbs are always swollen. He showed me and I also could see that he was swollen. And you could feel that it seems as if there was no circulation. I asked him what was wrong with you, what happened to you. He stated that it was a very long story.

I was hurt to see my son in this condition and he also mentioned that he was ill-treated severely. He even said the Boers have finished me, I am totally finished, there is nothing that you can do about me.

I asked him why don't you stop this involvement with the struggle? He stated that he cannot do that. Although he is in that condition, he was still prepared to go on. He said he cannot stop. The time for him to stop has passed.

He stated that he would rather die than stop what he was doing. I asked him what happened, we cannot understand why your feet are always swollen. He mentioned that he was beaten severely.

He stated that there were people who has to assault him severely, Nieuwoudt was the forerunner. Roelofse was also the attacker, they had a team.

MR NTSEBEZA: I am sorry Mama, we'd like to understand clearly, get clarification. This Nieuwoudt that you're talking about, is he the same Nieuwoudt who said we must not talk about him because those were lies that we are going to say?

MRS MTIMKHULU: Yes, it is the same one. **MR NTSEBEZA:** Are you not mistaken?

MRS MTIMKHULU: No, I am not mistaken. He is one of the people who tried to prohibit him and sent an interdict that we shouldn't mention his name.

I don't know any other Nieuwoudt except that one, he is the same person who used to pretend to be a Minister of religion. He would put on the collar and he would come and collect Siphwiwo.

He would say he is a member of the Methodist church in town. He is the same Nieuwoudt that I am talking about. He is Gideon Nieuwoudt, he is Gideon Nieuwoudt in Xhosa.

MR NTSEBEZA: When he got into your house, what language did he use? Did he use Xhosa?

MRS MTIMKHULU: No, he would try to speak English, but he had a problem to speak English.

MR NTSEBEZA: I do not know whether we are talking about the same person. There was a Gideon Nieuwoudt who was in court recently. Is it the same person? **MRS MTIMKHULU:** Yes, it is the one who's hair is always fluffy and who is always – he hair is always flapping in the wind and you could see him on TV that. **MR NTSEBEZA:** Thank you Archbishop. Is it the same one who was in court recently who has been sentenced for murder? **MRS MTIMKHULU:** Yes, he is a killer. **MR NTSEBEZA:** Okay, let's continue.

MRS MTIMKHULU: Nieuwoudt and Roelofse, according to Siphwiwo's details and information, would take Siphwiwo and allow him to take his clothes off. They would chain him and said he must lay on the floor.

Siphwiwo gives an account of what (tape starts) ... he would hand over to Roelofse to do the same. Roelofse would also take apparatus or tools to torture him. He would take pipes and the electric wire and he would hit him, flog him on the back severely.

And they would always utter some words to him and would say he must speak the truth. They would always say they want documents and I didn't know what they wanted and Siphwiwo would always say he didn't know what they were talking about.

He would say I will try to breathe because I would be suffocated in the process. At times I would pretend as if I've lost consciousness and then they would leave me until I regain consciousness.

Then this was a trick that he used to use so that he could get some rest. When they realised that I've regained consciousness, they would resume their dirty work. They would take a towel, this would be a wet towel and they would suffocate you with this towel.

They would take you and put you into very cold water in a bath tub, you'll be taken out and then they would say you are going to speak the truth. That is the only thing that we want from you.

He used to say he would be taken and were taken to the sea. He will be taken there naked and they will go there beyond and would make a braai or enjoy themselves. As they were enjoying themselves,

they would take some drinks and Roelofse would go and collect a tin and bring it over here.

I would receive torturing in the cells, there was another type of torture that I would receive outside the cells.

He said they would put me on the rocks naked and Roelofse and Nieuwoudt would always say together with Mashekazi Tungata, they would always say to me this is the place where we always get the truth out of you comrades.

We always take them and we do everything that we have done to you or that we are still going to do to you, until some of them die. We always torture them until they die.

He said he would be put on this rock, he would see that there is no where else that you could go, you would sit, you will be tortured to the extent that you would not know what is happening to you. I was helpless.

They would also take me and throw bones to me as if I was a dog. They would starve me for days. At times they would put me into the van or into the boot, at times they would take the meat that they had been eating and they would give the leftovers to the other prisoners, but they would tie me and starve me.

The food that would come, they would put cigarette ashes in my food and at times I just did not eat because I couldn't eat what they were presenting to me.

MR NTSEBEZA: During the time when he covered his feet, was he able to walk at that time? When you came back from Hilltown did you find him still able to walk?

MRS MTIMKHULU: Commissioner, I think I can mention that he couldn't walk properly, but he was able to walk independently. But he didn't walk the way in which he used to, he was limping and at times I would see that he was afraid to tread heavily.

A few days later, as I have said, he came back on the 20th, on the 21st we could see that he was deteriorating. On the 22nd he was unable to walk, he crawled. He had to crawl around the room. He would grundle during the night.

We tried to give him medication. At times we would try to relieve him of the pain by rubbing him. We tried to give him some medication.

Each time he took something, he would vomit it, he never relieved himself. If he had to go to urinate, he was unable to do so.

At times it would be just painful drops. At times when he had to go to relieve himself, you could see that it was only blood that used to come out. It was a dark, thick blood.

He would state that it is very painful when he tries to relieve himself. We took him to the hospital, a day hospital. Mr Lamani, the late Mr Lamani took him. He was given treatment after the examination, but this was not effective.

We took him to the private Doctor again, Dr Moodley was the Doctor which we usually took all the comrades to. Because of his condition you could see that it was difficult for him to do anything. His body was becoming swollen, gradually the upper limbs were also beginning to swell, he had to be admitted.

His condition deteriorated completely at Livingstone Hospital. When we visited him, you could see that even the face was swollen, the whole body was affected. You couldn't recognise him.

He didn't even want anybody to come closer to him, the way in which he was feeling the pain.

He said he had electric shocks. Due to his condition we had to request that he should be transferred to another hospital. We were thinking about Groote Schuur and then this happened.

He was then admitted at Groote Schuur Hospital. When he got there, we could see that he was ageing. You can remember that I said in the Livingstone Hospital he was swollen, but when he got there at Groote Schuur, his condition changed. He looked like an old man, I didn't believe when I visited him, that he was the same person that I saw the last time in Port Elizabeth. He smiled because he could see that I didn't recognise him. When he smiled, I was able to see that it was him. I will never forget the Boers.

MR NTSEBEZA: Mama, you can say anything that you want to say. Please express yourself as much as you can. This is the most important day for you.

MRS MTIMKHULU: I don't want to cry, I understand that this is my day, I don't want to cry, I want to speak.

Probably if I cry, it won't be due to the pain, it would be due to the hatred, it would be due to the fact that there is no honesty amongst our people. This is the 14th year, for 14 years we were going along with this pain.

Boers are liars. Boers are prohibiting us to say anything about Siphwiwo because they have a lot of money. They have got a lot of money and they are able to bribe people so that they can be defended.

Let me go back to my story. Siphwiwo was unrecognisable. During that period there were people who were visiting him. It is true that if you do something to a person here in Port Elizabeth, everybody would show support because you could see so many people, some of them who don't even know him, they were supporting him. Giving him support and they tried to comfort him as much as possible.

Brian Bishop were the people who were giving the support that I am talking about. What happened to Siphwiwo at the time whilst he was in Cape Town was one of the big surprises for me, because Nieuwoudt, Van Rensburg, Du Preez and his team Dunsta who always played karate on my child, were the people who are responsible for Siphwiwo's condition.

This shows how cruel those people were. I am still referring and explaining much about what happened to Siphwiwo in Cape Town. You know they have big rats at their places and that is the poison, the poison they could have used for those rats, they used on my son.

To the effect that he lost his hair, he was critical at the time. You would witness that he was in pain, but you could see that he was also losing his stature, he was losing his hair, but he was a bit much better, because in the previous hospital he was disorientated and would just stare at you without any communication.

He continued to lose his hair, I would like to show you his hair. Really we have to bring evidence and exhibitions so that if you make your investigations, you should have a clear picture of what happened. This is Siphwiwo's hair, this is the scalp, attached to the hair.

That person is not at home, we all know that if you cut a person's hair, you don't cut the scalp, but I want you today to see Commission, that we have his hair together with his scalp attached to the hair. I want the Commission to witness what I've brought here today so that they should know the effect of the poison which was used on my son.

I want to show that if you, I want to inform you that he would bleed whereas he loses the hair, he would also bleed, the scalp would bleed. I don't know why did I keep this hair, I do not why I could keep it for quite a long time, but I said to myself, let me keep this so that one day something might happen so that I can be able to show this to the people.

That is why I am grateful today. [...]

Siphiwo was admitted for about a month in Cape Town, but you could see that he was promising, the prognosis was at least good, you could see that there was new hair which was growing.

He was discharged. It was on the 17th of January 1982 when he was discharged. We fetched him from the airport.

When he came back he was already confined to a wheelchair, he couldn't walk independently. His father asked him Siphiwo, as you are in this condition, how do you feel now because I told you to do away with your struggle. One day you are going to die. I've already told you that we are not yet politicised, so we didn't understand what was going on with our children.

Siphiwo insisted that he will never go back, he will never turn his back from the struggle. He said he is finished now. One of the journalists who was a lady who came to the airport said to Siphiwo, please stop this.

Discontinue your involvement. He said, I cannot do that. He stated that he has been with the people and leading people, working together with them and then he will not betray his people. He regarded that if he should stop his involvement, it would be just like betraying the people.

At times we would see that he would try to walk, but it was very difficult for him. He tried to make exercises, he tried to recover also because he was also determined to recover.

MR NTSEBEZA: Was he still confined to a wheelchair? **MRS MTIMKHULU:** Yes. Yes.

Commissioner, he was still in a wheelchair. We could see that his condition was improving. The fallen hair was growing out, but he was still having a lot of loss of appetite. He was very selective to what he was eating. [...]

I think it was on the 31st of March when he had to go for a check up in Cape Town. He missed the date and said he would go the other day. He did go, it was the 14th of April in 1982, he went to Livingstone Hospital. It was very early in the morning.

And he was accompanied by Topsy Madaka. He was the person who used to visit him frequently. He used to take him with his car and transport him to and from the hospital.

On this day he did the same so that he can be accommodated and admitted there before he can be transferred to Cape Town. I would like to mention that Commissioner, they went to Livingstone as arranged.

It is said he did reach his destination. He met Dr Brown and nobody knows what happened thereafter. But somebody said there was a folder that he was supposed to have gone to fetch in the hospital. But I couldn't understand this because he was unable to walk.

Because he had left the wheelchair at home because he was using a walking stick with the support of his colleague.

It is said he went to fetch the folder, I do not know whether he got the folder or not. The only thing that I know is that in the afternoon Moli Bloban phoned. He even came personally to find out if Siphiwo had arrived, because he said Siphiwo had tried to contact him telephonically but he didn't find him.

MR NTSEBEZA: Why did Siphiwo phone him?

MRS MTIMKHULU: He said – Moli reports that Siphiwo was requesting Moli to transport him home because Topsy had disappeared. He phoned again to find out if Topsy was there, but he found that there was nobody.

The story goes that Siphiwo at last, because we didn't receive any telephone call from him, it is reported that he was taken by somebody from Livingstone Hospital because I do not know this person, because he didn't bring the child to me.

This person took Sphiwo to wherever he knows, but that was the last time that I saw Sphiwo when he was going to the hospital. On the same day, Commissioner, Topsy came back in the evening.

It was about eight in the evening. We were in the kitchen having supper. He greeted us and I looked behind him thinking that Sphiwo would be coming along, but Topsy said to me, he was asking if Sphiwo has come back home. I was surprised.

I informed him that it is very strange because you are the person who took Sphiwo to the hospital, why do you come and ask him from me.

As I say this, I didn't bother much. I was not panicking because I thought he might have gone to some of his friends. But I was surprised why did he leave him and then he would come in the evening and ask me.

I informed him, I gave him Sphiwo's tracksuit because it was a bit cold in the evening. Topsy took this tracksuit top and left. We slept, Topsy and Sphiwo never came back.

The following day Moli contacted us telephonically. We informed her [him – eds.] that Sphiwo is not yet back. Moli promised to assist us so that we can find out if we cannot find him. He was asking did I hear anybody who has collected him, I said no.

Nobody fetched him from hospital as far as I know. I think it was the third day when we searched again. Moli promised to make the search again and he promised to go personally to the places or the comrades with whom he used to communicate.

I believed (tape ends) ... by days passed, weeks passed and we felt that this is now a problem. We tried to find out, we communicated with all our relatives in the Transkei, in East London, all over the places where we had relatives but nobody ever said they had seen Sphiwo.

Briefly we took further steps and we went to Lesotho. We didn't suspect that Sphiwo could go to Lesotho especially in his condition. But we had a clue that he might have gone to Lesotho, we got this through the newspapers because the newspapers publicised that they have seen Topsy's car and that is why we tried to trace this clue.

I went together with my husband. We made enquiries to the boarders, people helped us to search. We went to the churches, we went everywhere. We wanted to find out probably some people might have taken him to nurse him. We searched for three days, but to no avail.

When we came back, one of the special branch officers came to my place. We didn't report to the police that Sphiwo has disappeared, the reason being that we didn't trust them. Although the lawyer, Fisher tried to locate him from the cells, that is why we didn't go to the police, because we suspected that they might be also responsible for his disappearance.

And we feared that we might be exposing that we are looking for him.

MR NTSEBEZA: In other words the police could not be trusted at the time as they were supposed to be protecting the community?

MRS MTIMKHULU: No Commissioner, you would never trust a policeman at the time. During that period I was taken by Diani, he took my by car, he said I was wanted at Sanlam.

I tried to find out why did they want me at Sanlam, he said he doesn't know. When I got there, there were other gentlemen, I cannot tell you who those people were, but they were White Boers.

They showed me photographs and I could see that it was Sphiwo on those photographs. I thought that as they called me, I thought they were going to tell me something which was tangible.

They asked me where do I think Sphiwo could have gone to. I said that I did not know, I mentioned that the last time I saw him was when he was going to the hospital. They constantly asked me if I didn't think that he had gone in exile.

This surprised me. I explained that I didn't think that Siphwi could cross the borders and follow the other comrades. I don't think in his condition he can survive there and I don't think he can be able to work for the organisation.

They asked me if I didn't think that maybe he can go to another place so that he can get some medical assistance. I said that I didn't think that Siphwi can do that. They asked me what have I done, I stated that I was still looking for him.

I also tried to contact the SABC so that it can be publicised, they turned my appeal down and stated that I was supposed to have gone to the police first. So I used to go up and down trying to search for my son.

Ultimately they stated that they were going to help me to search for my son. They also said that I should contact them as soon as I can find him, they will do the same if they can find Siphwi.

MR NTSEBEZA: Is that Nieuwoudt who said so? **MRS MTIMKHULU:** I am not quite sure, I am really not quite sure. I can say I do not know. (pause). **MR NTSEBEZA:** Let us go back and you continue where you had stopped. As the police had promised to assist you in the search of you son, did they do that or what did they do to show that they were with you?

MRS MTIMKHULU: I thank you sir. After their promise, the police were unable to fulfil their promise. The only thing that they did, they became hostile towards us. They used to come at my place and would always roam around on my premises and around my house, always questioning me about whether I was communicating with Siphwi or what was the position, how much did I know about his whereabouts. [...]

Even today we had never heard anything from the police. The only thing that they did then was this continuous harassment. They would stop their cars across one of the streets and they would lay ambush. At times they would visit us, especially Nieuwoudt, he would always come and search for my son and make enquiries about my son's whereabouts.

MR NTSEBEZA: What did you hear about the car in which they were travelling?

MRS MTIMKHULU: Commissioner, we learnt a story about the car in which they were travelling. It was said they disappeared whilst they were travelling in this car. We heard that Topsy's identity book was found in the car, but I was not informed about what happened to him although it was said it was the identity book which was found in his car. That is the only information that we had about Topsy and my son. When we learnt about this, we just went there and followed the clue.

MR NTSEBEZA: Is there any information that you received from the Commissioner of the Police, about the disappearance of your son? **MRS MTIMKHULU:** I'd like you to repeat the question again. **MR NTSEBEZA:** At times the authorities and the high ranking officials are referred to as Commissioners, is there anyone of them who ever came to inform you about what happened to your son?

MRS MTIMKHULU: Nobody came to me and even the Station Commander or the Commissioner of the Police, they never came to me. I don't think they could have come and informed me because I suspect he was also involved in the whole thing.

You could remember that he was the one against whom Sphiwo has laid a charge. We know that Sphiwo had already laid charges against him, so he couldn't come and report what happened to my son.

Sphiwo did his own thing without informing most of the people, he could write and would give extensive information and give details about everything that happened to him. He would also state who did what to him. That is why I didn't think much about what happened at the cells, because I knew that he had all the details. He scribbled everything about what happened to him.

MR NTSEBEZA: I'd like to find out, did you say anything about the charges which he laid against the Commissioner? Was it when he was released? Was it before he disappeared, I do not know whether you can understand my question, but seemingly to me you seemed to say although he was an invalid and before he disappeared, he had already laid a charge against the Station Commander or the Commissioner of the Police about what happened to him, especially the poisoning when he was in jail, is that so?

MRS MTIMKHULU: Yes, it is so. **MR NTSEBEZA:** In other words he disappeared during the period when he was waiting for the court appearance? **MRS MTIMKHULU:** Yes, it is so. **MR NTSEBEZA:** How did you know about this? Especially about Sphiwo's disappearance, how could you get a clue about his whereabouts, can we get some information on that? **MRS MTIMKHULU:** Commissioner, I could state that the little clue that we could get which led us to continue with our search, I can state that if I am not mistaken it was on the 10th or 11th, it was covered in the newspapers.

MR NTSEBEZA: I am not concerned about the dates, I know it is a long time ago. We don't want to pressurise you, you are not under pressure to remember the dates, we are just interested in the details. The day is not very important to us, the most important thing is we want to know how did you get the clue about the disappearance of your child which led you to resume the search? I think we have documents that can help us if we want dates.

MRS MTIMKHULU: Thank you sir. We got the clue from the newspapers, I think it was in February in 1990. There was an extensive coverage in the newspapers and Dirk Coetzee is the person who is alleged to have given information to the journalists. He mentioned my son's disappearance and Siswe Xondile, he mentioned them as one of the highlights of their extensive disruptions, mentioning that they had killed Xondile and my son.

That is the only clue that led us to try and search again for our son. Most of the things that took place thereafter, were related to the information that we received and read from the papers.

MR NTSEBEZA: Is the report in the papers, the report that was also contained in the Harms Commission? **MRS MTIMKHULU:** Yes. **MR NTSEBEZA:** Is the information received from Dirk Coetzee, who – do you think should appear?

MRS MTIMKHULU: Commissioner, I would like to mention that I was very glad when I heard that he was going to appear in this hearings. I was glad because I was not going to say things that I am not sure about.

I wouldn't be talking about something which I said it is the allegation on the papers, I was glad that he was going to say it personally and inform us that he is the person who gave that information.

I was very hurt that I learnt that he is not here, I still want him to appear. To me it won't be proper to say the Commission has done its work unless Dirk Coetzee can come forward. I am worried because even in East London I was prohibited from giving evidence because of Van Rensburg and Du Preez, because they are the people who gave the information that the poison was sent by him to them.

Dirk knows a lot about the poisoning. I would really like him to be subpoenaed so that he can come and give evidence.

MR NTSEBEZA: In other words if I can get clarification, do you want the Commission to try their best, even if there are any interdicts, the Commission should fight that they should bring him along?

MRS MTIMKHULU: Yes. I would like to say I was worried when Mr Bangani yesterday told me that Dirk won't be here. I thought that yesterday when I met Bangani, would inform me that Dirk would be here. I am certain that most of the people who are here today, was certain that they were going to see this hefty person who was going to appear today.

MR NTSEBEZA: I would like to promise you that the day will come one day, the promise might be fulfilled. Would you like the Doctor who gave you the findings about the poisoning, would you like him to appear before the Commission?

MRS MTIMKHULU: Yes, Professor Ames is the person who is important to this evidence.

MR NTSEBEZA: What would you like the Commission to assist you with? [...]

MRS MTIMKHULU: Commission I'd like to say, honourable Commission, if you have a partner and then you had a relationship and then that lady gets married, it would be said the gentleman's hand is very comfortable and proper because it was regarded as luck to get married.

I am worried because those children are now struggling. The son is staying with the grandparents in Cape Town, he is working as a domestic worker, he is still staying with the mother. He is still working as a domestic parent, the grandmother is the sole breadwinner and is looking after this child.

I am also unemployed, we would just like to thank God for our survival. The second one is doing standard 10, Alotha. She is staying with her mother and the mother is now married, but she is still looking after her child.

Skomboza is maintained by the grandmother and also his mother. We do not know what is going to happen to them because they might be exposed to insults because they have attended their father's hearing. I am very glad to see these people. We don't have much to do now, we will die tomorrow, that is why we request that some assistance should be given to those children.

I am sure if Siphwiwo was alive, he could have done his bit. (tape starts) ... I am certain that he used to like education. I know he was involved in the struggle, he even died for it, he never turned his back. Although there are some people who are liars, he was never a liar.

I am apologising to my church. The people of today would take oaths and promise to do things, but they never fulfil the promises. I might be regarded as one of those people, but I still say I would like the children to be assisted.

I am unable to state any amount of money that I can say I would like to have about Siphiso's disappearance or death, no price can pay for his death.

But I would request that because the Commission, it is said to be the Truth Commission, I'd like it to assist us. Dumisa, we know that you have experience with the struggle. I've heard a lot about you. As it has been said that this is the Truth Commission, I wouldn't say anything to the Commission to say that I would like them to do this for me, probably they may not meet my demands.

Because there were people who were able to send interdicts to prevent us from giving evidence. As we are here today I would like to say to you, you are the people who would use your discretion to look after all those who have been orphaned, those who have been widowed and those who have lost their children.

I would like to say to you there is no price that we can say that it would pay for the loss of our loved ones. The last thing I would like to say is Dirk Coetzee and Mamasela who are both perpetrators and evils, if they can just show us the bones of my child I would be grateful.

Where did they leave the bones of my child? Where did they take him from Port Elizabeth, who handed him over to them? Where did they take him to? What did they do to him? How? I hope you are writing what I am saying, because I want it to be scribbled as I am saying it. Is it being written?

MR NTSEBEZA: Yes, it is. **MRS MTIMKHULU:** Is it what you are writing now? **MR NTSEBEZA:** Yes, it is what I am writing now.

MRS MTIMKHULU: All right. I'd like to speak directly to you then. I'd like what I have said to be stated as I have mentioned. Who handed him over to them, what did they do to him, and where did they leave him?

Because I could realise that they were so cruel and mean and scrupulous that they shot him, they were not satisfied they poisoned him, they were not satisfied again, they didn't get satisfied Archbishop, about the poisoning.

Although they have already killed him, physically and mentally, they have done a lot to my child. They were so mean, but I would like them Mamasela or Dirk or whoever, Nieuwoudt and all his team, I don't know because now he is a prisoner, I'd like them to bring Siphiso's remains, or they can just go and direct me to where they have buried his bones.

I nearly buried his hair, I thought I would make a burial of my son through the hair. I tried to do something as a ceremony, but this didn't succeed very well because I didn't know what I was doing.

I just wanted to make a memorial to show that I was mourning for my child. There are reverends like Daduxia and the others who graced the occasion. I was just about to bury my son's hair, but by God's will I didn't, as if I knew that I would be here today.

I think I have said enough.

22

NOTUTU LIZZIE JAMES, *TESTIMONY TO THE HUMAN RIGHTS VIOLATIONS COMMITTEE, 1997*

REVD FINCA: We would request that those people who have a problem following the language, do get the earphones handed over to them so that we are ready to start. Let us just check how many people are needing earphones. Only one person there? Okay, let's say that those who are needing earphones, should talk to, where is the Logistics Officer, to that lady at the door there – those who are needing earphones.

The procedure that we are going to follow, will be in Xhosa. I was just telling those people who do not understand Xhosa, what to do. We welcome you in this hearing of the Truth Commission, here in Cradock. We thank you for your presence in this hearing and we thank you for accompanying the people who will be testifying in front of the Commission.

We are now going to start – the time is quarter past nine. Usually, before the proceedings, we usually stand up to give respect to the people who will be testifying, therefore I request you to stand up.

We are going to ask Reverend Vena to lead us in prayer.

THE COMMISSION COMMENCES WITH PRAYERS.

REVD FINCA: We thank Reverend Vena. We greet the people of Cradock. We thank the Lord that He kept us until we got to Cradock, the place that we know.

I think all the South Africans know this place, of its contribution. The great contribution that it made in the struggle of liberation in our country.

If we mention the places that brought the leaders of the struggle of liberation, we usually mention Cradock as one of those places because it had a remarkable contribution.

It had that spirit that was so amazing in fighting for our freedom in our country. When we arrived here in Cradock, some of us were involved in the struggle, they get the spirit because they came to the root of the struggle. As the Commission was planning its work at the beginning of last year, when it concluded where to start, there was an idea that the first hearing should sit in Cradock, but because of other regions, because we wanted the first hearing to show our region Eastern Cape, as a whole, we had to take different cases from different people of different nations and different organisations.

We concluded that the first hearing should be in East London, but I would like to tell you that Cradock was among the places that we thought about first. [...]

Because of the limited time that we have, we can take only a few statements. The statements that are not brought forward to the Commission, the Commission is dealing with them the same as the other statements, in other words, our investigative unit is going to investigate those cases. The Committee of the Human Rights Violations is also going to deal with those statements and make a finding. [...]

We appeal to the people that they give the hearing the respect that it deserves, and the dignity that it deserves. I am talking to the people of Cradock who know our battle, and the people who know what respect means, what kind of respect we gave to the victims of that battle. Thank you. For now I am going to hand over to Miss Tiny Maya, who will be telling us about the order of the day. Thank you.

MS MAYA: Thank you Chairperson. Honourable Presiding Commissioner, I present to you this morning a list of all the people who have applied to appear before the Human Rights Violations Committee of the Truth and Reconciliation Commission in the order in which they will appear. I wish to point out first that today our testimonies will cover four areas, or Magisterial Districts which are Cradock, Venterstad, Jansenville and Aberdeen. We originally had 17 witnesses who would be testifying on our line-out, but two of them, we are told, are absent unfortunately.

I will first read out the names of the witnesses who will be testifying, then those of the victims who were affected, the nature of the violation and the year during which such a violation occurred. [...] Notutu Lizzie James, in the matter of Rocky James, murdered in Cradock in 1977. [...]

REVD FINCA: We thank you Miss Maya. Before we start with our hearing, it is our tradition that we have a moment of silence to remember the people that we will be talking about, the people who died. I would request the people to stand up to give that respect.

We remember Zongezile Patrick Mfazwe, Rocky James, John Vuyisile Mboya, Simphiwe Khethwa, Nobeki Mbalula, Ayanda Mzati, Peter Rapudi, Vuyani Douze, Thembile Mejane, Themba Richard Grootboom.

May their souls rest in peace, may the Lord give them His light.

As usual we will now hand over. Just before I do that, I will introduce our panel today. We have Commissioners and Committee members of the Eastern Cape. From my far left, we have Mrs June Crichton, who is coming from Port Elizabeth, who used to work for the Black Sash. She was in the forefront in the Anglican Church Congregation. She is now a member of the Committee called the Human Rights Violations.

On my left I have Reverend Xundu. I think the people of Cradock know him. Most of the funerals here, he used to be there, he used to attend those funerals. You will remember in the funeral of the Cradock Four, he was participating as an Officiating Minister. He is an Anglican Church Reverend, and one of the prominent activists that were coming from the church here in the Eastern Cape.

On my right I have Miss Tiny Maya, she is an attorney, She is from Umtata where she was working as an attorney. She was practising as an attorney, she was also a prominent member in the organisations of attorneys dealing with Human Rights. She is also a member of the Human Rights Violations Committee.

On my far right, I have Mr Ntsiki Sandi. He is also an attorney. He is from Grahamstown. He was working on the border, he was working with the organisations of the attorneys that were actually dealing with Human Rights. I am Bongani Finca from Alice. We are the members of this panel today. Dr Alex Boraine, who is the Secretary of the Commission, he actually phoned me this morning greeting us because he is an acting Chairperson of this Commission as the Bishop is still sick at the moment.

He is also wishing us success, he is not here but he is with us in prayer. We are going to start.

MR SANDI: Excuse me Chairman, just before you start, I would like to introduce Reverend Finca who was in the Council of Churches. He was also involved in Ciskei during the overthrowing of the Government of Qgozo, he is also the Convenor of this Region, so I would like to introduce him to you, because he had a great contribution in looking at the Human Rights Violations. He is also a Convenor, he also deserves the position that he is holding. With those words, I wanted to introduce him to you, thank you.

REVD FINCA: We are going to call upon Notutu Lizzie James. We welcome you Mrs Lizzie. We are going to hand over to Reverend Xundu who will be administering the oath. **NOTUTU LIZZIE JAMES:** (sworn states) **REVD XUNDU:** Thank you. **REVD FINCA:** Tiny Maya will be leading you in questions Mrs James.

MS MAYA: Thank you Chairperson. I greet you Mrs James. Firstly I want to verify your names, you are Notutu Lizzie James, is that so? You reside at number 22 Loqolene Street, is that so?

MRS JAMES: Yes. **MS MAYA:** You are going to tell us today about your son, Rocky James, who was killed in 1977. What can you tell us about James, how old was he at the time?

MRS JAMES: He was 17 years old at the time. It was early in the morning, the White policeman came with the Councillor. I didn't know the White policeman, I only know the Councillor who was Xolile Dosini.

They didn't knock at the door, instead they kicked the door. When I asked, they said open up. Because I was just discharged from the hospital, though I was still sick, I tried to stand up to open up the door – when I opened the door, they asked me where is Rocky, I said Rocky is asleep, what's wrong?

They said they were looking for him. I said he was in the bedroom that was next to mine. They went there to that bedroom and I followed them. When he stood up, Dosini lit him with a torch, he said don't do that because I must first get my clothes. He said, you are not going to tell me what to do.

I said, you can't talk like that. Just give my child a chance to dress up, he is not going to get out of the house, naked as if he has killed a person. They waited for him until he finished dressing up. When he was about to go out, he said I greet you, Mom and Dad.

When he went out Dosini said, we are not going to waste time about you, we are going to deal with you quickly. They took him out, his father was preparing himself to go to work. I went back to bed.

After some time another van came. They didn't kick the door this time, they knocked. I kept quiet, I was sitting on my bed. I opened the curtains and I could see that there were policemen. I kept quiet. They said open up, I didn't respond.

They ordered me to open the door again, I didn't respond. They went to the door, the door was not locked because it was in the morning. When they opened, I remembered that there was a child who was sleeping in the lounge and I went there.

They asked me if I knew Rocky, I said yes, he is my son. They asked where is Rocky? I told them that the police took him. They asked me the name of the police, I said I don't know the names of the White policeman, I only know the Councillor which is Xolile Dosini.

They said we are coming to tell you that the police who took your son, have killed him. They went out of the door. After they have said that, I couldn't cry. The only thing that I did, I went out, but I am still wondering – even today – whether I was dressed up when I went to his father in town.

The neighbours woke up because the children were crying and I was not there. One of the neighbours who followed me and I was telling her to go back, because I didn't want to be there with anybody, I wanted to be with my God. And I knew that she was going to disturb me and I told her that if you are accompanying me, you must keep quiet because I am still talking to my Lord.

When I went to the garage where my husband was working, I saw him. He was alighting from the police van, he approached me and he told me that the police brought – he asked me if the police came to my house and he also told me that they took him to where my son was, but they didn't let him to come closer to him. They said he must just stand at a distance and confirm that it was his son.

They took him back to work. When we were still talking, there was another van who came to fetch him, my husband. He gave me the money, the bus fare to go back home and I said, I don't want to take any transport, I don't want to talk to anybody, I don't want to be disturbed, because I am still communicating with my Lord and I am asking the Lord what to do.

I decided to walk home. When I arrived home I noticed that there were lots of people, and the teachers were there. I told them that when the police were taking him, my son, I told them that they must first tell the teachers because he was writing exams.

What they did, they confused his father, so that he mustn't think about what to do about his son, because each time one other van is bringing him. Each time the van brought him home, the other van would come and take him back to the police station and they forced his father to sign that he was operated, he must sign the form and then he refused to sign, because he said he was not told about the operation. The person who made the operation, must sign.

They told us that we are not going to get the body of my son, they are going to bury him on a Thursday. He was going to be buried by the Government and we are not allowed to attend the funeral. He was going to be buried by the police.

I asked them how can that happen because we are the parents of his boy? They said, it is the law because whatever he was doing, he was doing it, we are not supposed to be at his funeral, we are not going to attend.

I tried, I made some attempts because I noticed that the father was still confused. I went to seek for legal advice from Fishart, who was a legal adviser from Port Elizabeth and I wanted him to come just before the funeral.

He came, Fishart came on a Wednesday at six o'clock, he went there, when he arrived, the District Commandant of the time asked the attorney where do you get this information, because I just arrived, I was on leave? I didn't hear anything about that, and you are coming from Port Elizabeth, you have this kind of information?

The attorney told him that the parents of this boy told him. They wanted to know who informed Fishart. Fishart said these parents have another child who is also in Port Elizabeth, who is the one who gave me, Fishart, the message.

MS MAYA: Let me just interrupt you Mrs James. Did Fishart help you to get the body of your son to bury it in the normal way? **MRS JAMES:** Yes, he helped us but they were also forcing us to bury him before time. I said, he was not going to be buried, the Government have killed my child and he is finished his role and the role is mine.

He was killed on a Wednesday, we buried him the following week.

MS MAYA: Were there any disturbances during the funeral? **MRS JAMES:** During his funeral there were some disturbances because they were shooting teargas, there was a helicopter that was moving around. I only noticed all these after we came from the graveyard and I only noticed – I also noticed that the schools were burning.

After the funeral I took a taxi. I went to a place called Nolali where Xolile was working. The Councillor refused me permission to talk to Xolile. I think they phoned the police station because after that I saw the police vans and the police alighted from the vans, pointing guns and they surrounded me and Xolile came out of the office and I said, don't be afraid, Xolile, I am not going to do anything. I just want to tell you something.

As a Xhosa person, if you know that if somebody else have done something wrong to you, you usually go to the inyanga's. If you don't have money to consult inyanga, tell me, I will give you

money to pay your inyanga, because my only inyanga is my God and all that has happened, God will see to it and I left him.

I went back to the house and even in the house I didn't tell anybody.

MS MAYA: As far as you know Mrs James, where is Xolile Dosini now? **MRS JAMES:** I don't know what is he doing there. **MS MAYA:** Can you please tell us now about Rocky again. You said Rocky at the time was only 16 years old, he was at school? **MRS JAMES:** Yes. **MS MAYA:** Do you know what role did he play in the political organisation or maybe the community organisations? **MRS JAMES:** Rocky, at that time, was in the Youth League of the ANC. **MS MAYA:** At the time of his arrest, do you know any reason for his arrest? **MRS JAMES:** No. **MS MAYA:** The details of his death, did you get them and what was happening, what did they say about his death?

MRS JAMES: I didn't get those details because though they were saying that his case was going to sit in Port Elizabeth, we were given the dates, but they said me and my husband were going to be given train tickets. The people who would be transported in vans, would be the people who would be testifying, the people who would be witnesses.

What I said, the very same people who took my child, they must also bring him again and I am not going to take a train, I am also going to take a van, because my son was taken in a van, so I am also going to take the same van.

We got into the van and we went to Port Elizabeth. I don't know what is it that they said, because they didn't ask anything, they didn't mention any attorney. This is where I learnt that the courts are full of corruption, because there are children who weren't there who were witnesses.

Those who would be testifying against us, they had a right to be protected. We were told that the case was closed. We didn't hear anything, they didn't ask us anything as the parents, they didn't even attempt to get the teachers who were teaching my child at school and get evidence that my child was attending school. They just discussed alone with Fishart. Even Fishart was not given any information.

MS MAYA: Was Fishart there? **MRS JAMES:** Yes, he arrived during the court's proceedings.

MS MAYA: Lastly you have told us that your child was operated without your permission. Who was that Doctor, do you know him? **MRS JAMES:** Even the Doctor, we didn't know anything about him, because even the Death Certificate was not available, so he was just buried like a dog, because I was deprived of my rights. **MS MAYA:** Did you get the Death Certificate later on?

MRS JAMES: No. I once tried to get a Death Certificate, but the Secretary, the clerk told me that I was supposed to get a document that should be sent to Pretoria and I must pay R10-00 for it. Because in that document it is written that Rocky James was dead and he was buried, there was nothing else.

MS MAYA: The last question, your request, or the wish that you have that you would like to tell the Commission, what is it? **MRS JAMES:** What I would like to request is that the Commission, as I am now the only person who is alive, I don't have a husband, the Commission should see how it could help me. **MS MAYA:** You have told us about your illness, can you tell us more about it?

MRS JAMES: I am undergoing treatment because I am sick. There is no other way that I can help myself. It is just that sometimes the groceries of my children is missing and I bought the groceries, and I put it in the transport, but when I went home, there was nothing. I don't even know what happened.

I didn't have the groceries with me, I don't even know what kind of transport I used from town to home, but one child that I am staying with, he said that I came and I asked for water to drink some tablets, and I said to him if somebody is looking for me, he must just say I am not around.

And I went into my bedroom and I locked my bedroom and I slept there. I remembered when the school children came home in the afternoon and they asked me did you go to buy any groceries, I said yes. They asked where was the groceries, I said just look in the house, it is there.

And the other child told them that I didn't come with any groceries. And what is actually wrong with me, is that I have a heart problem and high blood and nerves. If I happen to get those attacks at the same time, my mind is not working, so I just decide to go and sleep.

MS MAYA: So you are trying to tell us that you need some help so that you can get medical treatment?

MRS JAMES: Yes, if it is possible to get one, I would appreciate it. **MS MAYA:** Is there anything that you would like to add? **MRS JAMES:** There is nothing more. This is the end of my story. There is nothing that I would like to take into my hands, as this happened, I knew that my God is alive. All my problems, I should just give them to Him, there is nothing else that I am prepared to do because in some of the problems, I would like God to see to it, how He can help me.

MS MAYA: I am going to hand over to Mr Chairperson, maybe he might have some other questions.

REVD FINCA: Reverend Xundu? **REVD XUNDU:** Mrs James, I want to know about your son, if he had a child or not? **MRS JAMES:** He didn't have a child at the time. **REVD XUNDU:** Who was the District Surgeon at the time? There is usually a Government Doctor, called a District Surgeon, do you know that District Surgeon? **MRS JAMES:** No, I don't know him.

REVD XUNDU: Do you know the Doctors here in Cradock who were there at the time?

MRS JAMES: I know some of them, I've forgotten some of them. **REVD XUNDU:** Did you see Xolile after this incident, except the day that you went to tell him about the inyanga?

MRS JAMES: Yes, I saw Xolile after that. He was mentally disturbed. After that, I didn't see him again. I once saw him while his Sergeant called me, I was on my way from the hospital, his Sergeant called me.

He said I must tell him so that he can apologise because when Xolile was retrenched, even his clothes were taken, even his uniform was taken and he was not given a chance to go and wash them, so I heard that he was once there. His mother approached me because he wanted to apologise.

What I said to his mother, I said I can't say anything about Rocky, because it is not mine any more, because it was the devil, it was the police, it was Rocky and God was waiting to welcome Xolile's soul. So I won't be there, I can't say anything about Xolile.

REVD XUNDU: Thank you Chairperson. **REVD FINCA:** Mr Sandi?

MR SANDI: Thank you Chairperson. Mrs James, here I have your statement, your written statement.

I notice that there are things that you didn't mention during your testimony, therefore I would like to ask you a few questions with the aim of getting clarity.

Let us start about Mr Xolile Dosini, was this Xolile Dosini a Municipal Police?

MRS JAMES: Yes. **MR SANDI:** Did the Municipal Police have a good relationship with the community? **MRS JAMES:** Yes, they had a good relationship.

MR SANDI: I noticed in your statement that you said that you heard that your son and the others who were arrested with him, were taken to the office of Black Local Authority, do you mean the Municipal offices? **MRS JAMES:** Yes. **MR SANDI:** Where did you get that information?

MRS JAMES: The other children that he was with, were in that office, all of them. When I moved from my house, I didn't go straight to town, I went to the Municipal offices. When I arrived there, Xolile was scrubbing the floors where my son's blood was.

MR SANDI: What is it that they are saying, what happened in there, what did they tell you happened before Rocky was killed?

MRS JAMES: It is only Xolile who was there. The Sergeant who was with him, was not around at that time. While they were assaulting, they said he left, he was not there while they were assaulting them.

MR SANDI: Didn't you say that one policeman came to the cells and said Rocky must go out and run away and when he was trying to run away, they shot him.

MRS JAMES: No, I didn't say that. He was not in the cells, Rocky was not in the cells, he was in the Municipal offices, he was killed in those offices.

MR SANDI: At school, are there any complaints or troubles that were there that were caused by Rocky as students?

MRS JAMES: No, there were no problems. His teacher, when I told his teacher that the case was closed, he asked me as a teacher, why he was not called to the court to give a statement from a teacher's perspective.

Because he even took his exam papers to show them, he was prepared to show them to the court, trying to tell the people that he didn't go to school on that particular day.

MR SANDI: Thank you Mr Chairman. **REVD FINCA:** Mrs Lizzie James, we thank you for coming before this Commission and tell us this story about your son who was killed in this manner.

We thank you that this story reminds us, and it also reminds the people of this country, that they mustn't forget that this country was liberated through the blood of people like your son, Rocky.

I just wish that the Minister of Justice, Mr Dullah Omar, I wish he was here to listen to your story and the way that you were respecting the Courts of Law and the way that you lost that confidence in the Courts of Law because of the case of your son and the way it was handled.

Because that is showing us that the people who are our leaders today, they have to take further steps to try and bring back the dignity that the courts used to have.

The courts that lost their dignities because of the people who were leaders of the time. We also notice that your son died like a dog. There was no compensation, there was nothing. When the Commission will be making a report back to the President, we will also mention that as it shall be coming from most of the people who are coming in front of us, the people who sought help at the Courts of Law, instead the Courts of Law acted with apartheid rules instead of sympathising with the people who were in pain.

We thank you Mrs James, we also promise that all that you have told us today, we will try as much as we can to deal with that in the correct manner. We include them in the report back that we will be giving to the President of our country. Thank you, you can take your seat.

23

BUSISWE KEWANA AND THOMZAMA MALITI, TESTIMONY TO THE
HUMAN RIGHTS VIOLATIONS COMMITTEE, 1996

Readers will note that in this transcript the use of he/she, his/her, and references to gendered nouns, such as “uncle, is inconsistent. Beyond the possibility of transcription error, this may be due to the fact that pronouns in Xhosa do not necessarily carry grammatical gender. While we have not altered the transcript’s usage, we have indicated, between brackets, the correct gender in English. Throughout we have given Ms. Maliti her correct form of address, erroneously transcribed as ‘Mr.’ in many cases.

DR BORAINÉ: Ms Kewana thank you very much for coming, I see you are – you really know what to do, so let’s – let’s do it and start straight away before I forget to ask you to take the oath.

BUSISWE KEWANA (Duly sworn in, states).

DR BORAINÉ: Ms Kewana you are – come to tell a very grim – grim story and we’ve heard some grim stories but this is perhaps one of the worst that we have heard. The death of Nombulelo Delato, we want to thank you for coming, we wait to hear your story and my colleague on the Commission, advocate Denzil Potgieter is going to lead you and to assist you in telling your own story. We welcome you.

MS KEWANA: Thank you. **ADV POTGIETER:** Thank you Alex, good afternoon Busiswe.

MS KEWANA: Good afternoon Mr Denzil. **ADV POTGIETER:** Thank you for coming and thank you for being patient. Your – your evidence – your evidence – can you hear me? **MS**

KEWANA: No. **ADV POTGIETER:** Okay, can you hear me now? **MS KEWANA:** No. **ADV**

POTGIETER: Or perhaps the translation. **MS KEWANA:** Ja I hear you now. **ADV POTGIETER:** All right, you’ll hear if they translate. **MS KEWANA:** Yes.

ADV POTGIETER: We’ll try again, as the vice chairperson has indicated it – the matter concerns your late mother which is Nombulelo Delato who died in 1985 in – well the incident happened in Colesberg is that correct? **MS KEWANA:** Yes. **ADV POTGIETER:** Perhaps you could just give us some of your own – your personal background, what do you do at the moment.

MS KEWANA: Okay, my name is Busiswe Kewana, I was born at Hanover here in the Cape. I left it in 1984 and I went to study at Queenstown. That’s where I studied and from there I came to Cape Town to study here.

ADV POTGIETER: Thank you very much, when this incident happened that is here concerned you were actually in Queenstown you were studying, you were at school is that correct?

MS KEWANA: Yes that’s correct. **ADV POTGIETER:** Now what actually happened?

MS KEWANA: What happened while I was still in Queenstown, I received a telegram it was from my grandmother in Cape Town. It was telling me that my mother had passed away. He [she – eds.] has been burnt. **ADV POTGIETER:** It’s okay, we know it’s very difficult.

Ms KEWANA: After that, my grandmother and others tried by all means to find out what happened. They went to Bloemfontein, to find out from that hospital where she was, to find out what happened. Now there, they were told that she has died. And she was burned while she was pregnant.

Now after that, we tried to make arrangements for the funeral. Now we were prevented from burying her at Colesberg, I don't know why – we were never told. My mother and my maternal aunt – my mother – they were buried by the Government in Bloemfontein, that's all I heard.

ADV POTGIETER: Now was there any indication given as to why this happened?

Ms KEWANA: I tried to find out what happened, two weeks prior that I've – I met another sister from Colesberg. After a long time when I have been trying out what happened to my mother, she when she saw me, she recognised me. She asked me aren't you so and so's daughter. I said yes I am.

I got curious and then I asked her, how do you know my mother, she explained to me how she know – she knew her. So I told – I asked her what happened to my mother for her to be burned like that in Colesberg, so she told me what happened. I wasn't satisfied, the reason why I am here, I want the Commission to help me – to help me try and find out why they killed my mother. Because to me this is a wound that will never heal. That's where I will end.

ADV POTGIETER: Can I just ask you, you said that you were prevented from burying your mother in Colesberg, why – why was that and who – who prevented you?

Ms KEWANA: Like I said that we were not personally there we heard rumours that my mother could not be buried there, we don't know the reason, we were never told, until today.

ADV POTGIETER: Do you know whether your mother has been involved in politics in any way?

Ms KEWANA: As far as I am concerned, my mother was – my mother was politically active he [she – eds.] use to attend meetings no but now still, I don't understand why that happened to her. The woman who told me this, she says they were looking for somebody related to my mother. Now but because they couldn't find the person they were looking for then they took my mother and burnt her. **ADV POTGIETER:** The people who were involved were they arrested, were they taken to Court?

Ms KEWANA: Yes according to what I heard they were arrested. But I don't know what that – the case – how the case ended.

ADV POTGIETER: Okay is there – is there anything further that you want to add to what you've said already? **Ms KEWANA:** No. **ADV POTGIETER:** Perhaps I should just mention that with you on the witness stand is your grandmother. **Ms KEWANA:** Yes. **ADV POTGIETER:** That's – is that Margaret. **Ms KEWANA:** Kewana.

ADV POTGIETER: Kewana and with you as well is a witness, somebody who at least knows what – what actually happened who was in Colesberg that's Thomzama Maliti is that correct?

Ms KEWANA: Yes. **ADV POTGIETER:** Thank you, and you would like her to present her evidence as well. **Ms KEWANA:** Yes sir.

ADV POTGIETER: Thank you, I'll just hear if my colleagues have any questions for you first of all.

CHAIRPERSON: Any questions, Dr Boraine.

DR BORAINÉ: Mr Chairperson I – I do have some questions, but I am wondering if it wouldn't be wiser to wait for the eyewitness or a witness because he [she – eds.] may answer the questions, and it will save some time if I – if I don't ask them now. But I'll reserve that for later, but could I swear the witness in. **ADV POTGIETER:** Please.

DR BORAINÉ: Ms Maliti can you hear me all right? **MS MALITI:** Yes. **DR BORAINÉ:** You all right. **MS MALITI:** Yes.

DR BORAINÉ: I have to ask you to take the oath like everybody else, so would you please stand. I am going to ask you and then you can make your response. **THOMZAMA MALITI:** Duly sworn states. **DR BORAINÉ:** Thank you very much please be seated, Mr Potgieter.

ADV POTGIETER: Thank you Dr Boraine, perhaps I must just hear whether the translation is coming through to you, you can perhaps just indicate, are they translating for you, is it coming through there. **MS MALITI:** Yes. **ADV POTGIETER:** Is it fine? **MS MALITI:** Yes.

ADV POTGIETER: Okay, thank you very much. Thank you for coming, and of being of assistance to the Commission. Is it correct that you were – you presently living in Khayelitsha. **MS MALITI:** Ja.

ADV POTGIETER: But in 1985 you were living in Colesberg. **MS MALITI:** Yes that is true.

ADV POTGIETER: Thank you, and that you know the deceased that we talking about her.

MS MALITI: Yes I know him [her – eds]. **ADV POTGIETER:** And you know about the incident

that this case is about?. **MS MALITI:** Yes I know. **ADV POTGIETER:** Can you still remember when it happened. **MS MALITI:** Yes. **ADV POTGIETER:** Can you give that date to us.

MS MALITI: It was the end of October – 10th of October 1985. **ADV POTGIETER:** Can you tell us what you saw what happened.

MS MALITI: He [she – eds.] was on his way to work, two young men – young men approached at him. Now they were five, when they saw him, they chased him. He went to hide in another house, and now they took him [her – eds.] out of that house.

They took him [her – eds.] – they took his [her – eds.] overall; and they poured him [her – eds.] with petrol bomb. One of them held his [her – eds.] feet and then they started igniting her – his – her feet. They were beating him up – her up.

INTERPRETER: I am sorry I can't hear the microphone is off. They beat her up and they put a tyre on him – on her. There was nobody who could stop this, the police were looking for – for her but they were lost and they couldn't find her. She tried to go to them, when she got there, the people who tried to hurt her and [indistinct] they couldn't because she didn't have a voice, the police took her to Bloemfontein.

In Bloemfontein she stayed for three days, she started to mention everybody who did this to her. Then after that, she died. They didn't allow her to be buried in Colesberg, because they said she was an informer. After – they said if she was buried there, they were going to burn the church. Then she ended up being buried in Pilonome Hospital, that's where I will stop for a moment.

ADV POTGIETER: I assume that this incident had taken place in the township in Colesberg.

MS MALITI: Sorry? **ADV POTGIETER:** I assume that the incident happened in the township in Colesberg. **MR MALITI:** In the location. **ADV POTGIETER:** In the location? **MS MALITI:** Yes it was [indistinct].

ADV POTGIETER: Now was the deceased involved in any politics, supporting any movement?

MS MALITI: Yes he [she – eds.] was in every meeting that was held, she never missed any.

ADV POTGIETER: In those days there was the UDF, the United Democratic Front. **MS MALITI:** Yes it was the UDF. **ADV POTGIETER:** She supported that movement? **MS MALITI:** Sorry. **ADV POTGIETER:** She was supporting that movement. **MS MALITI:** Yes she used to attend UDF meetings every day.

ADV POTGIETER: You – I assume you knew the deceased well. **MS MALITI:** No I can't hear well no. **ADV POTGIETER:** I will just repeat that – I'll repeat the question just see if it's coming through to you. I accept that you knew Ms Delato well. **MS MALITI:** Yes I knew her well. **ADV POTGIETER:** Ja, was there – was there any truth in this allegation that she was an impiempi, an informer?

MS MALITI: She is my cousin, my uncle who was a policeman was looking for her, they said if they can't get part of her family, they are going to get her then. That's they got her, now but the reason why they burn her is because my uncle is a policeman.

ADV POTGIETER: And the people responsible, who are they – I mean – what – where do they belong in the – in the situation in the location at that stage, were they comrades – what were they – were they [intervention]

MS MALITI: When they – what they called themselves was that they were comrades.

ADV POTGIETER: You say that their names were given to the police, do you know what happened further?

MS MALITI: Yes they were arrested in 1985 and they were sent to Middelburg Cape. Then after that they were arrested. I am sure they got out of the prison after Mandela was released from prison, then they were also released. One of them was going to be hanged, I don't know what saved him, his name is Tifo Sihlaba.

ADV POTGIETER: Thank you very much, I've got no further questions. **CHAIRPERSON:** Thank you – are there any further questions, Dumisa Ntsebeza. **ADV NTSEBEZA:** Is your name Thomzama? **MS MALITI:** Yes my name is Thomzama.

ADV NTSEBEZA: There are just a few things that I would like us to explain, you said while this happened there was a boycott of the shops that time. One of the names stood up we were told now that we should boycott all the shops, a consumer boycott. Your mother's main offence was that she went to buy meat from the butchery, is there anything else? **MS MALITI:** No there is nothing else is just [end of Tape 15, side B] ...

ADV NTSEBEZA: You will correct me if I am wrong, she tried to clear her name. **MS MALITI:** Yes sir. **ADV NTSEBEZA:** According to the report that you gave us earlier, the people who were taking the statements earlier of the Commission. She paid in R100-00. **MS MALITI:** Yes. **ADV NTSEBEZA:** Where did she send this R100-00?

MS MALITI: She send it to the comrades and the comrades announced it that she did pay this R100-00 trying to ask for forgiveness for buying meat during a consumer boycott, they said they forgive her. At that time she was staying in town, not in the township. Now she took this letter to the township.

ADV NTSEBEZA: In other words she wrote a letter, saying that is asking for forgiveness for what she has done, and she would like to come back to live in the township, but – and she was told that – yes she has been forgiven by the comrades and again this was announced in the meeting. It was announced that yes she was forgiven? **MS MALITI:** Yes this was so.

ADV NTSEBEZA: When she came back to the township she was under the impression that she was forgiven. **MS MALITI:** Yes. **ADV NTSEBEZA:** In other words her killing – she was killed while she was still under the impression that she was safe, knowing that she was forgiven. **MS MALITI:** Yes that's so. **ADV NTSEBEZA:** When did the police come in? **MS MALITI:** The police arrived when she was burnt already.

ADV NTSEBEZA: What do you mean now by that? **MS MALITI:** When the police came in, they could – they were trying to find out where she was, but they could hear her crying. They saw her in the Main Road, she was already alight.

ADV NTSEBEZA: Did she run after she was burnt? **MS MALITI:** No she couldn't run, she was just walking slowly, her clothes were burning. She went to the direction where the police were.

ADV NTSEBEZA: Was she walking around while she was naked? **MS MALITI:** Yes.

ADV NTSEBEZA: Were the people afraid to help her? **MS MALITI:** No-one was allowed by the comrades to help her, so she went alone to the van.

ADV NTSEBEZA: Where these comrades who were chasing people away, where were these people at this time?

MS MALITI: There were five of them, at the beginning there were too many but at the end they were just five, one of them was Tifo Sihlaba, it was Tabo Gusha, Pinkdyaan Kelem, Toto Mayaba, Tembile Falati.

ADV NTSEBEZA: What about Zolile Silwayane? **MS MALITI:** Zolile Silwayane is the one who actually accepted the money, he is the leader of this whole situation.

ADV NTSEBEZA: I just wanted to clarify that. So Zolile is the one who accepted the money?

MR MALITI: Yes he is the one who – he is the one who announced that she has – he [she – eds.] had received the money and that he was the one who actually went back again and said she must be ignited.

ADV NTSEBEZA: Now this policeman Fezile Malitiba – Maliti is he your uncle? **MS MALITI:** Yes she [he – eds.] is my uncle and the deceased [deceased's – eds.] uncle. We are [indistinct] to him.

ADV NTSEBEZA: So you are related to Fezile? **MS MALITI:** Yes, my mother is Fezile's brother [sister – eds.]. **ADV NTSEBEZA:** Who is Fezile now?

MS MALITI: Fezile is the policeman – Fezile Maliti is his name. He was wanted because he was a policeman, but because he was staying in town the comrades couldn't get him. The actual person who they wanted was Fezile, now the comrades.

ADV NTSEBEZA: So the comrades decided to take – to take Fezile's relative. **MS MALITI:** First they came to me, then they went to my – to the deceased. **ADV NTSEBEZA:** What was your offence? **MS MALITI:** Our offence was because we were related to this policeman – Fezile our uncle. I ran to Cape Town.

ADV NTSEBEZA: We understand Thomzama that this is very painful, could you please and endure until I finished asking questions. These questions will enable us to finish this report.

This – this is a very unique case from all the cases we have heard, we've been listening to cases where our people were being killed by police and the Government but now this is unique because our people now are being killed by our own people at the same time. But now we are forced now to try and get all the details about this, so that in the report that we make, the Chairman of this Commission can be able to bring out the foolishness of these murders just by suspicion – just a few questions then I will let you go. Do you know the husband to the deceased?

MS MALITI: Yes I know his name is Doti. That day – he doesn't know anything because he ran. He ran to Crossroads, and even today he is not well since then. **ADV NTSEBEZA:** Just to clear something up, are you trying to say he was never well again mentally? **MS MALITI:** Yes that's what I am saying.

ADV NTSEBEZA: Do you know what happened to him? **MS MALITI:** He is now at Vredestad and he wants to come back to his house. But he is still struggling to get it back, he is the Mayor.

ADV NTSEBEZA: Is there anyone among you who can still go back to Colesberg? **MS MALITI:** No I don't want anything to do with Colesberg.

ADV NTSEBEZA: I heard that one of your wishes was that you would like to have her bones back.

MS MALITI: Yes we would like them to come back to Colesberg. **ADV NTSEBEZA:** Among these people who are now out of jail, are they here? **MS MALITI:** Yes they are all out of jail.

ADV NTSEBEZA: Do they still feel that Busisiwe's mother was an informer just because he [she – eds.] went to buy meat? **MS MALITI:** No I can't hear – I can't – I didn't hear anything about that, I don't know if that's how they still feel. Nobody even bothered to ask for forgiveness. When we saw each other, they just looked down.

ADV NTSEBEZA: I am very sorry that we have to ask you these painful questions, but I am sure that you also understand that we have a duty here to perform, thank you very much.

CHAIRPERSON: Thank you, anyone with a question, Mary Burton. **Ms BURTON:** Just one question, [indistinct] whether Fezile Maliti has – is still in Colesberg? **Ms KEWANA:** [No audible answer]
Ms BURTON: Can I ask the question again, I just wanted to ask whether your uncle Fezile Maliti is in Colesberg, whether he returned to Colesberg or where he is now.

Ms KEWANA: He was still – he was in Colesberg, he just came last year and he says he is not going anywhere.

Ms BURTON: Thank you and may I ask another question. You – as I understand your statement there were a number of possible reasons why there was this attack on your mother, because she had bought things from the shop although she had tried to make up for that, all because these were suspicions that she was an informer and also because she was related to a policeman.

Ms KEWANA: Yes that is so.

Ms BURTON: And at the same time you – there seems to be a suggestion that there were somebody pushing them to do this, that it wasn't just any of those reasons only, but that there was also some pressure on those people to take this action. **Ms KEWANA:** Yes that's so.

Ms BURTON: And you [indistinct] in your statement that those people were on the one hand working for the organisation but on the other hand also working for the police. **Ms KEWANA:** Yes that's correct. **Ms BURTON:** That's also something you would want us to try and find out more about. **Ms KEWANA:** [No audible answer]

Ms BURTON: Shall I say it again, so you would like us also to try and find out more about that so we can understand better. **Ms KEWANA:** Yes I would be very happy if you can do that. I would be happy if she would be buried again in Colesberg and then she would again get her own house.

Ms BURTON: Thank you.

CHAIRPERSON: Thank you very much – it's obvious to us that the things that we have to investigate – it's just ugly things and it's not just from one side only it's from both sides, this is why this Commission is an independent Commission. It is not only pulled by one side – it is meant to investigate all these atrocities that had happened in this country.

We are promising you that we will investigate up to the roots of this whole matter. Then we will be able to tell you why this happened maybe then we can be able to help you and try and bring your mother's bones back to Colesberg, thank you.

Ms KEWANA: Thank you. **CHAIRPERSON:** You may now leave.

Ms KEWANA: No I haven't finished. As she has said before, my – the question that I expected from you is that we are going to ask me what do I expect from the TRC.

My wish from the Commission is that my mother would be buried where she was born, and I would like us to get the house back, our own house back. I couldn't finish my studies because nobody could give me money, now I had to work so that I can educate myself. If I could just get something to help my family I will be happy with that.

CHAIRPERSON: Thank you, we don't really promise that we are going to do all these things, but we will try, thank you.

24

HILDA LEVY, *TESTIMONY TO THE HUMAN RIGHTS VIOLATIONS COMMITTEE*, 1996

CHAIRPERSON: Thank you, we would like to listen to the last case of this session and I call Ms Hilda Levy to come to the stage please.

HILDA LEVY: (Duly sworn in, states).

MS BURTON: ... that he wouldn't be with you, but it's good that she is there to be your briefer. You've come to tell us about the death of your son Ricardo whom you use to call Bollie, and just to remind ourselves that he died on the 6th of September 1989 which was a time when there was widespread protest and resistance against the elections for the tricameral parliament and during those days there were about 25 people who were shot dead and many hundreds who were injured. Among the dead were several children and one of them was your son. So we want you now please to tell us in your own words about what happened on that day.

[HILDA LEVY: – eds.]: I am Hilda Levy, I live in Kalksteentfontein. On that day the 6th of September 1989, my sister and I were standing in front of our house, my son who we – I use to call him Bollie, well they were playing in front of our gate. It was himself and his brother and sister. There was a fire was burning in the road, people were burning tyres in the road and of course they were curious to see what was happening but the road was – how could I put it, it is actually quite a distance away from the house, quite a distance away from the house and I wasn't that concerned. I thought well they were just playing in front of the house, it would be all right. And I was standing there, my sister and I, we were standing there and the children was playing quite safely at the gate. And I – remember I asked my sister why are my eyes burning and Bollie came back from the gate and he came and he stood right in front of me and he said to me, mom they firing tear gas, there is tear gas somewhere you better go inside before our little baby is harmed, because at that stage I was eight months pregnant. He was worried about me, and little did I know that he would be the victim. I then stood there and watched what was going on, but I became very thirsty and I then went to the back of the house because our tap and the toilet was – they were behind the house and I got a little bit of water to drink. And as I was drinking the water I heard shots being fired. And I ran, and I ran into the back door and my daughter who was 13 years old, came running and she collided with me and she told me mom, Bollie has just fallen. I said to her why doesn't he get up, what's wrong with him, why doesn't he get up, she said to me mommy I don't know but there is blood oozing from his mouth. I ran to the gate and I saw my child lying there, I just turned around and ran back into the house and I was screaming. My sister came running out, she grabbed a blanket and the neighbour picked up my son and put him in his car and they went off to the police station. My sister can't really be here today because her boss won't give her time off, when they got to the police station, the policeman – the neighbour didn't have enough petrol in his car to take him to the hospital and that's why they first had to go to the police station, so that the police could actually take him to hospital. Their answer at the police station was you can get him to hospital yourself and they fortunately made it to the hospital with the amount of petrol that they had. When they arrived at the hospital, they picked Ricardo up and they put him on a bed, on the hospital bed, the doctor

examined him and said that he was sorry but there was nothing more they could do. He was wounded in his mouth and the bullet actually lodged in the back of his neck. I was waiting at home, I was waiting for my sister to return from the hospital, but I was anxious and I started experiencing pains, and I sat waiting for my sister, I didn't even know that what happened. When my sister came home she said sister there was nothing more they could do for Bollie he's gone. And then I became ill and they rushed me to hospital, they admitted me to hospital and I stayed there overnight and the next morning I came home again. I wanted to come home because I wanted to go and identify my child's body. That morning when I came from hospital I first went to the school he was in std 4 at school, he was 11 years old at Montana Primary School. I went to the principal and I told him that Ricardo had died, then my sister and I went to Salt River mortuary, and I identified my child there. I asked them where he's clothes weren't there the police still had his clothes. And I said but why did the police have his clothes it should be here at the mortuary and they said no that they didn't know why the police took his clothes. We then went home my sister and I and then we wanted to go to the police station to make a statement. The people arrived at home then just as we left the door people arrived and they asked me whether I was Ricardo's mother and I said yes. I then asked them who they were and they told me they were members of the ANC. I am not politically involved, I am not really I don't know much about politics and they told me that I shouldn't go to the police station, we then went to Athlone to Essa Moosa's offices and there I told them what had happened. They wrote everything down – everything that I have just told you and thereafter I just stayed at home because I really didn't know what was going on, I couldn't go to the police station, I was confused, I didn't know what I was suppose to do. One day a big white man came knocking on our door and he told me that he was Captain Segal, but the man was so rude, he asked me what happened to my son. I said I got nothing to say to you, because this person was really very rude and I was actually a little bit afraid and this person then left, he went out of the house. But anyway the Monday we buried Ricardo, people really helped me a lot, the ANC has supported me a lot they really assisted me and I thank them for that. One day a black man came to my house, he introduced himself to my mother and myself, but I can't remember his surname but he said to us – said to me Ms Levy you have to appear in the Parow Court. And the person who murdered – who killed your child is Samuel John Swartz he is from the Springbok Police Patrol. We then went to court and I went into the court room it was my mother, my sister and myself. They then called Samuel John Swartz and afterwards they asked is Ms Levy in court would you please stand and I stood. The policeman then told me that I had to ... [SOME EVIDENCE IS LOST BETWEEN THE END OF SIDE A GOING ON TO SIDE B]

... to me that my child had not even been involved in any rioting or anything he was just playing at the gate. I just turned my back for a moment and the next moment my child was lying on the ground. I got a card from the postman, it said that I had to go and fetch something from the Guguletu police station, I asked my neighbour to take me there to the police station. And I think that was about a year or so after Ricardo's death and then we went to fetch this little box at Guguletu police station and it contained his clothes. When I took out his clothes from the box his clothes were scorched, his trousers, jersey all scorched. And I asked my mother by why – why would his clothes be scorched, burnt, when they removed him here from home there was nothing wrong with his clothes, why would it be in this condition now. What does an 11 year old child know about rioting and stuff like that? That really hurt, it still hurts. And the worst of all is that I will never ever forget Ricardo, the 16th of December and on the day that Ricardo died, I – it is almost as if that day means absolutely nothing to me because on that particular day, his birthday, and it's also my mother's birthday on that day, I feel really hurt. It's hard for me to talk about my child.

MS BURTON: Thank you Ms Levy we can really feel how much you still mourn for him and how many unanswered questions there are for you about why this should have happened. I can only say that there were other people who suffered the same loss at that time and certainly does seem very, very hard when he was just a child playing in your garden. We have a very lovely photograph of the children at his school carrying the coffin at his funeral, have you got that photograph.

MS LEVY: Yes.

The principal commented about what a promising child he was, so we can well understand that you and his family and friends still miss him a great deal. You have told us that the person who shot your son was identified and convicted and that you feel very – that he was given a very short sentence for what he did. You also talked about the way that you were not allowed to remain in court during the inquest hearings and you must of felt very – very bad to have been excluded as you say luckily your mother and sister were there. We've taken note of the information that you've given us and our investigating staff have followed up on the details. Is there anything more you would like to say or any questions you would like to ask us? **MS LEVY:** I would like to say that I am alone I have four children, in 1992 I lost their father he also died, he was murdered and his murder still hasn't been apprehended and I've been left behind alone with four children to raise. And I have a grant from the Government and I don't work I am a housewife. I would like to know whether something can be done about Springbok Patrols.

MS BURTON: We – we will take note of that and see what we can do to follow it up. I have no further questions.

CHAIRPERSON: Ms Levy just one question, you were eight months pregnant when this happened. – Yes.

And you told us that Ricardo was concerned about you and your unborn baby. – Yes. What happened with your pregnancy as a result of this incident? – Well I nearly lost the baby as a result of this, because my blood was pumping properly and after Ricardo's funeral I was kept in hospital and I then gave birth by means of cesarean section.

So you gave birth prematurely and the baby had to be born by means of a cesarean. – Ja.

Is this as a result of your condition due to the shock of your son's death? – Yes.

Thank you Ms Levy, you want to make some closing remarks Mary, thank you.

CHAIRPERSON: Ms Levy just one question, you were eight months pregnant when this happened.

MS. LEVY: Yes. **CHAIRPERSON:** And you told us that Ricardo was concerned about you and your unborn baby. **MS. LEVY:** Yes. **CHAIRPERSON:** What happened with your pregnancy as a result of this incident? **MS. LEVY:** Well I nearly lost the baby as a result of this, because my blood was pumping properly and after Ricardo's funeral I was kept in hospital and I then gave birth by means of cesarean section. **CHAIRPERSON:** So you gave birth prematurely and the baby had to be born by means of a cesarean. **MS LEVY:** Ja. **CHAIRPERSON:** Is this as a result of your condition due to the shock of your son's death? **MS. LEVY:** Yes. **CHAIRPERSON:** Thank you Ms Levy, you want to make some closing remarks Mary [Burton – eds.], thank you.

MS BURTON: Once again Ms Levy to thank you very much for coming today and for coming to make a statement to us and we have taken note of what you've said and your families needs and we will do everything that we can to see ways in which you may be helped. Thank you very much. – Thank you.

25

JOHN DEEGAN, *TESTIMONY AT THE TRC SPECIAL HEARING
ON CONSCRIPTION, 1997*

MR DEEGAN: Thank you very much to the Chairperson and to the panel and to the TRC for giving me this opportunity to be here today. It's not my first contact with the TRC, I submitted 27 pages of confession to the TRC last year but I just couldn't go through with the process it was just too painful. My personal life didn't allow for it either so I'm very grateful to be here today. Thank you very much.

I'll just start by giving a brief background on myself. I come from a conservative White middle-class suburban background. I grew up mainly in Gauteng, in Edenvale. My father was very involved in police force, had been since 1947. I grew up in Edenvale and then we moved to Pietermaritzburg where I went to school, High School. We did the normal subjects, I did Science subjects. I actually wanted to be an artist but there were other ideas in the family about that. At school I did shooting, it was my sport, and it was one way of getting out of rugby until they caught up with me and then I played rugby. Basically that was the culture and background that I come from. I think we all know it well, the rugby supporting White South African middle-class culture.

I matriculated at the age of 16 in 1977. I was too young to go to the army and the call-up papers had come in then, I think in Standard Eight or Standard Nine we had to fill in our details and send our details away, so I was too young to go with my peer group, my fellow matriculants. In retrospect it seems crazy but I actually wrote the army and asked if they would make a special dispensation in my case. They weren't really interested until I'd turned 17 at least.

At the same time there was pressure on me through my family to join the South African Police force. My father held rank in the police reserve at that time. He had left the police force in 1949 but he'd carried on his involvement in the police reserve doing reservist duties. My older brother at that time was in the Security branch at John Vorster Square. [...]

I went for training at the Police College in 1978 in Pretoria, six months basic training in subjects like law and a few other academic subjects mainly we did drill, shooting practice, riot training and that kind of thing.

I returned to John Vorster Square after the passing out parade, it was the only time I wore a blue uniform was on that day in 1978, December where I started duties as an investigator on the so called "blanke seksie" or the White section at the security branch John Vorster Square. [...]

In 1981 I started hearing stories coming back from the border, from Namibia and it sounded just like what I needed at that time. The guys were saying that it was freedom up there you could get away from the basics of disciplined structures of the force at the time, you could go up there, there was freedom, there was more money, they were having a good time. So at the age of about eighteen, 19 then, I went to Oshakati in South West Africa, Namibia and reported at the security branch offices there.

My first day on the border, well the first day we were allowed to unpack and relax, and my first working day was the next day and we had to offload a truck with thirteen bodies. It was outside the security branch offices in Oshakati. This big Bedford truck pulled up and they flapped down the tailgate and all these bodies were inside, thirteen SWAPO geurillas Terrs, as they were called then terrorists in other words and they were very badly decomposed and very badly shot up. And

we had to take these bodies out of the truck, finger print them, photograph them and put them back in the truck. We then took them outside of the town, out of Oshakati, out of the white town into the township cemetery which was on the edge of the township and I was standing on the ground at the tailgate of this truck and these bodies were thrown off the back of the truck at my feet. It was a very gruesome experience. Six of the bodies were thrown into one hole and seven into another.

That was day one for me on the border and it obviously changed my reality forever after that. That was just what one would call a three month camp. While I was up there I started really getting into the whole idea of being in the bush. I was a nature lover have always been and I liked the idea of having freedom with no officers around and nobody to really tell me what to do. I had a choice of which base I could stay on if I came back permanently and this was discussed with the Commanding Officer at the time, the Commanding Officer of the security branch and this is what I did. I put in a transfer while I was on border duty to come back there permanently and I returned to John Vorster Square in 1981 and I went almost immediately back to Oshakati and resumed duties as a security branch investigator in Ovambuland in the operational area. I was based in Mabelantu which was an army base but we had a security branch house outside of the base and that's where we would perform our duties, which included gathering information on SWAPO activities and also going out and investigating SWAPO murders, atrocities, landmine incidents, murders and that sort of thing and we also would have follow-up's. [...]

We would work in shifts and the prisoners were kept awake, beaten, shouted at, deprived of food and water and toilet facilities and given electric shocks, not always together but selected according to how the prisoner was responding.

As I remember we were crowded into a particular office where a school teacher was being interrogated a huge explosive blast rocked the office and the lights flickered and went out. More blasts followed and it is obvious that we were under rocket attack. One of my colleagues shouted at the prisoner "kyk wat maak jou vriende", see what your friends are doing to us and then started punching and kicking him and we all spontaneously joined in, including myself, we started kicking and assaulting this person this prisoner, we all spontaneously joined in.

The next day I was approached by a senior officer who said to me "julle het gisteraand kak gemaak", last night you really made shit didn't you? And when I asked why he replied that he and a second officer had been called out early that morning to dispose of the body of the prisoner that we had assaulted as he had died during the night. I was scared and I realised that I was a murderer now, but the official lack of response to the incident made me realise that this had happened before.

So I killed somebody and there was no going back after that, I was one of them I was part of the culture. That was in 1981 I still had another year or so of my national service to complete and I stayed in Oshakati all that time doing interrogations, not in Oshakati but based from Oshakati. I was in Ombalantu but from my side there was no other incident where I killed anybody, but certainly I was involved in torturing people, interrogating them using various methods but I never used methods like electric shocks or anything like that. I would approach it in a little more psychological level and try and win the person's confidence or trust, the old good cop bad cop routine and I was the good cop except sometimes things would get out of hand and I would respond angrily and start getting physical and actually assaulting prisoners.

In 1982 my national service, as I understood it, four years was the choice, in the police force for two years and as conscriptee in the army came to an end and I decided to join the Natal Parks Board which had been almost a life-long dream of mine to be a game ranger, so I joined the Natal

Parks Board at the age of about 21. Then and as a game ranger at St Lucia in the recreation division I took launch tours up the estuary and to St Lucia Lake and back. I really loved it I enjoyed what I was doing there and it was good to be outdoors but the border had done its damage already and my time in the police force had already done its damage, I couldn't relate to people. I had a lot of problems with my fiancée, we were due to get married in August '82, I called off the marriage at the last minute. [...]

I joined at Matubatuba police station and asked for ... I'd already organised with the Commanding Officer of Operation Koevoet or Ops K as it was known or Koevoet as it's known and they were expecting my application and it was all processed and done through Matubatuba police station and Pretoria Head Office, and in September 1982 I found myself back in Ovambuland in Zulu Yankee, which was the call sign for the team that I was in, I was in Koevoet. And the only thing I can think of why I went back was – okay, I was running away from a lot of personal problems that I was trying to deal with, but there was also a sense that the society down here, we called it the States and we called the border Nam like Vietnam and Nam as in Namibia, that the people in the States just really didn't care, they didn't know what we were doing really. There was such a media blackout at the time. The stories filtered back but they were so horrific that families, friends and girlfriends didn't really want to hear about it and the sense that I certainly got was that, that was happening up there, it was a conflict and back here everything was normal and no-one really wanted to hear about it and I just felt very alienated and very alone as opposed to being back in the bush and having the freedom to basically do what I like, to be in the outdoors with the minimum amount of authority.

So I found myself in Koevoet and I was with Zulu Yankee for a few months and then through a death one of the White members, Andre, I can't remember his surname was killed he was in a team called Zulu Yankee. I took his place behind a 50 Browning and a double 762 machine guns mounted on a Casspir and that's what I did for the next year is follow-up, contact, interrogation and everything that Koevoet did. I was one of them, I was part of their culture and the only thing I can think about now is that we discussed it up there, a lot of us, obviously we had time after we had contacts and we had a lot of contacts with the enemy, we didn't really discuss death in any real way except in an abstract sense, but we didn't really care, we just really didn't care about ourselves about our families, we didn't care about the cause, the flag, patriotism and all the things you heard mentioned today were some possible reasons for joining. I only heard this morning's submissions I missed this afternoon's unfortunately, but a lot of the points that came up did count in the beginning where we went from a patriotic fervour and sense of coming through school and cadets and shooting and the whole thing was we were "psyched" into it, but after a while we just didn't care we really just didn't care about anything. Life was very cheap and we were basically automatons, we would just kill and that's how we got our kicks, and that's – we were adrenaline junkies basically. I still have a problem with that today because I left Koevoet in 1984 in 1983 December, after a particular incident which I can relate at this time but, ja, we didn't care.

We were hooked on adrenaline, and it was like a process where we would pick up tracks, pick up information and we would get more and more hyped and more hyped until everything was at such fever pitch everybody, and I'm talking about the whole team or teams involved in following up on the actual tracks and that's really what we lived for it was that excitement, and the killings obviously I have deep remorse now but at the time that was the end result that was what we had to do and we did it well, we did it efficiently, we were the best. That's what Koevoet is all about.

I met Eugene de Kock there, obviously he was Koevoet, he started that unit with various other people, so I knew him on a social level as well as on a professional level although he had his

own team. He was a Captain at that time. Eugene de Kock and people like him out there were my colleagues, my friends, we worked together.

If I can just read another excerpt from my submission [...] “On one occasion after capturing an insurgent we began to track his companion whose name was Congo. He was a well-known political commissar and after tracking him for some time his tracks went to this kraal and they didn’t come out. I knew that he was inside this kraal complex and I was in charge of this team at the time as my team leader was away on leave. The tracks went in, the tracks didn’t come out so it was obvious he was inside so the owner of the kraal, a very old man with white hair and thick glasses, I remember him very well and his family and small children, grandchildren were there and I asked this old man which hut this SWAPO guerilla was in and he obviously didn’t want to say because the local population, as in any war were just caught right up in the middle, they got it from both sides. They got it from SWAPO and they got it from us. If they didn’t give information to either side they were just treated in the worst possible way so he didn’t want to say anything so I gave an instruction to flatten a whole lot of huts. There were no people in these huts but these Casspirs drove over the huts and he started getting really edgy and moving towards this hut and away from it and towards and away and then we identified that possibly this was the hut where this Congo, this political commissar was hiding out.

I gave the instruction for them to flatten the hut with the Casspir and that we would open fire at the same time. It’s an overkill situation that was typically Koevoet. We would shoot as much concentrated fire into a space as possible, we didn’t know how many people might be in there with him or what they were armed with and so on, so it was overkill just in case.

As we opened up this rifle barrel of the person next to me was shot by the person next to him so the rifle barrel actually became bent and useless. He was firing an automatic and his gun blew up and it sounded like a hand grenade and what went through my mind was that this person in the hut had thrown this hand grenade at us. We were sprayed with shrapnel from the barrel of this gun blowing up and obviously this loud bang that went with it gave me such a shock that I ripped off the stock, I had an AK47, and I just kept firing, my hand was being burnt by the barrel but I was just crazy at that time and we were all firing.

Eventually we ceased fire and took the roof off this hut and there this man was lying very badly wounded. Our medic Shaun started putting a drip in him and patching him and trying to save his life and that’s when I lost it completely, and I remember but I don’t remember actually doing it but from accounts, from people actually telling me afterwards and from what I remember it was almost like an outer body experience where I could see myself after this had happened. There was a whole team standing there and I could see myself with a gun in my hand but what I actually did was I took out a gun and 9mm parabellum and I was interrogating this man and he wouldn’t respond. He was badly wounded and he was going into unconsciousness and I just remember feeling the most incredible rage and anger that he was ignoring me and that he was lying at the time because he said “kandi shishi” “kandi shishi”, he doesn’t know anything. Then I brought the person that we’d captured the day before, they’d been travelling together and I said look here’s your companion, we know your name is Congo we know everything about you the game’s up, you’re wounded let’s get this over with tell us where your gun is, tell us where your rendezvous point is and then it’s over. And he still denied it and I took out my pistol in a rage and I put a bullet between his eyes, I shot him – I executed him.

After that it was as if I was looking at the scene from above and I could see myself standing there with this gun in my hand and everyone looking a bit shocked and the family from the kraal standing there and they were also very, very shocked and the kids were just very shocked. I walked

away and I just said to the team clean up and I said to the owner of this kraal you must bury this body now it's your responsibility, this is your problem and I went back and I radioed in to our Commanding Officer who was in the radio room at the time and I said to him I want to come in because actually on the way to the vehicle I decided this is it. I've seen myself from another perspective, really like an aerial view of myself and I just couldn't believe who I was at the time, and I'd had enough I wanted to come in and he said follow up on your capture's information and I'll see you on Wednesday. This was a Sunday morning.

[...] We went back to the base got very drunk for about 2 days and then we went back to base and I went and saw my Commanding Officer and I said to him that's enough I'm leaving now. And he said that's fine where do you want to go? And I said Pietermaritzburg security branch and he said okay I'll organise it.

About 3 weeks later I was back in the States and back in the security branch and very unwelcome by the branch Commander who said he didn't appreciate these Koevoet killers just arriving on his doorstep. He didn't want us, he didn't like the way we worked and there was a different way of working in South Africa now. I think P.W. Botha at that time was making "verligte" [politically "enlightened" – eds.] noises, reforms and things, so they were trying to get in with that political scenario and we weren't appreciated at all. I was eventually asked to leave the security branch, not asked to leave, told to leave. [...] My resignation in April 1984 took a month to get through and that ended my police career, but obviously not my involvement with the police because every year I would have to do a 3 month call-up, or a month at a local police station or 3 months on the border and I spent the rest of my time until 1989 they caught up with my system, I worked out a system of avoiding the call-up by moving, just by moving all the time. We had to notify the local police station or I had to notify them wherever I went so that they could call me up in an emergency, so what I would do is I would wait until my call-up date, for example 25th of July 1989 would be my call-up date and I would organise a job, a house or my whole life in another town and then 2 weeks or so before the call-up date I would say I'm moving. I would then go to the next place and I knew that it would take time for my file to be transferred there, and the whole process to take place so my call-up wouldn't actually happen at that time, and it would be deferred a year and then I'd move a year later so I've basically been moving since about 1984. [...]

Just to close it off. My life since then has been very, very difficult it's had a big element of self destruction. I've been through two marriages and I have a daughter, but really I've just destroyed the people around me, my friends, my family and I think it's enough now. [...]

Firstly, I haven't applied for amnesty I don't want amnesty. I think the process of the law must take its course as it would in any society. I'm not asking for any special treatment or dispensation. I'm a citizen of this country and I also want to come to the party, I also want to be part of the new South Africa, but I feel or have felt before today that I'm just a phoney if I just keep quiet and keep this to myself. It's not helping me, it's not helping my family and it's not helping the country in general. My wish list, my hope of coming forward today is that other people like me, particularly people who were in Koevoet, but any other special forces members any conscriptees, anyone who even if you just put petrol in a Buffel and feel bad about it, come forward and tell your story. It doesn't matter that the amnesty date is over, what isn't over is the whole process that we're in. We're still in a process and today I realise that this submission I'm making is not going to end the process, it's not going to neatly tie it up for me and I can put it away and get on and have a happy life. It's part of a healing process that I've been trying for self-healing since even before I left the police force, but certainly since I left the police force I realise I have personal problems and that I have to deal with that. [...]

So what I hope for, for the future then, is to find out answers to a lot of questions, but obviously within a structure, with the help of the TRC and hopefully with the Government's backing we can possibly get a veteran's association off the ground which Marius and others have been working on for some years now. It hasn't been formalised but there is a constitution there's something on paper, it's concrete. All it has to do is get approval and we put it into gear and basically what it means is that it's not a bunch of ex-soldiers getting together having a braaivleis and swapping bush stories. What it is, is SWAPO, ANC, APLA, UmKhonto weSizwe, Koevoet, Rekkies, all the units every single unit everybody who ever was trained in any way militarily getting together and just trying to make some kind of sense of the mess we made, and doing something about it. Like we talk about reparation and remorse and all this but until we actually do something like tangible and physical it's all words, it means nothing. So I'd really like to see the South African Veteran's Association if that's what it's going to be called, get off the ground and hopefully we can convene a national meeting at some point where we can express the aims of that and make it open to absolutely everybody who feels they might have a problem with PTSD [post-traumatic stress disorders] or anyone who was just connected with this whole conscription, with the whole military thing.

[...] I've more on my wish list but I think I've used up my time now and I'd like to thank you very much for this opportunity. Thank you. [...]

CHAIRPERSON: Thank you [...] John, I really appreciate your coming. The normal reaction to extreme experiences of trauma is to just banish it and forget about it particularly if there's a culture of encouragement by people who are seen to have been in the leadership of institutions such as the one within which we are operating, but you have not allowed the banishment of the memory of the trauma. Part of the reason for us to hold these hearings is to understand very deeply the kinds of experiences that people like yourselves went through, but beyond that, to try and encourage those who were in the leadership of those institutions to minimally explain to people like yourselves as a form of reparation and reconciliation between your own identities now and your identities then. We are hoping that they will be touched as well, because you mention for example the senselessness of it all and you're right, many of the things are totally unspeakable, and we are really thankful that we've had the opportunity to get a glimpse of some of those unspeakable activities there.

26

NOZIBONELO MARIA MXATHULE, *TESTIMONY AT TRC WOMEN'S HEARING*
 CONVENED BY THE HUMAN RIGHTS VIOLATIONS COMMITTEE, 1997

CHAIRPERSON: Our next witness is Nozibonelo Maria Mxathule. What is your language preference?
MS MXATHULE: Tswana. **CHAIRPERSON:** Tswana. Okay, I will assist you in taking an oath.
NOZIBONELO MARIA MXATHULE: Duly sworn in, states.

CHAIRPERSON: Thank you. Can you assist us with the channel please, as to where. **INTERPRETER:**
 Tswana is on channel four. **CHAIRPERSON:** Channel four. **INTERPRETER:** Swana is on channel
 four. **INTERPRETER:** English on channel two.

CHAIRPERSON: I will ask you to tell the Commission a little bit about yourself and how you got
 involved and then also to talk to your story.

MS MXATHULE: I thank you for this opportunity to appear before the Commission and also tell my
 story about the past. I therefore thank you. I will start about the 1991 matter, about Mr Willard and
 Douglas Mandla. Douglas Mandla was a person that I struggled with in the ANC and was an informer
 or rather friendly with the police. We were not quite aware that this person was betraying us. In 1991,
 on the 4th of May at about nine o'clock Mr Willard called at my place. He used the next door's
 telephone number. I stay at 1003. When he phoned I answered the telephone. Ambrose Ndlovu was
 there. As he answered the telephone he asked him who he was. He said I am Picilie. He said he
 wanted me to come and assist him to remove a room divider, because they were fitting in ceramic tiles
 in the bedroom. They shifted the room divider into the diningroom. The third piece of the room
 divider was taken to his bedroom. This son said, I said to this son that go and tell Picilie that I will not
 be able to come to his place, I am working. I was cleaning the kitchen floor at that time.

When this child arrived, said Picilie wants to see you. I said, no, I would not be able to go
 there, go and assist that person, because this boy was visiting me during school holidays. When he
 came back the second time he stated that this person is your neighbour, I do not know the person.
 However, the boy was angry. When I enquired why he did not explain. I went out of the house. As
 I entered this person's place, we moved the first piece of the room divider. We got the second one.
 The third one was in his bedroom. He entered first into the bedroom. As I was about to pull the
 room divider he kicked the door and then I started asking what he was doing.

He said you are aware and you could see what I was doing. He pulled me, started kicking. Now
 we were fighting and struggling for him not to close the door. He managed to kick me. I was
 fighting back. He grabbed the hand gun on top of the speaker. He tried to hit me three times on
 the head, but I used my left hand to block that blow. He could not manage to hit me. I was
 bleeding on my leg and I did not stand any good chance to defend myself. I managed to push him
 the other way and as I tried to run away he called at me and I found that he had a gun in his hand,
 but he could not manage to shoot at me.

There was this one Lungile, who was a Comrade, in the diningroom. We were together in the
 struggle. As I entered the gate Lungile left Picilie's house through the diningroom's door. I told

what happened, but she said that this person was just about playing games with me. I was bleeding then, rather menstruating on that day. As I entered the house, I phoned, my house I phoned his wife, Jubatine, who had worked at Klerksdorp. His wife came. As they came in they jumped over the fence. His wife came to my place. We talked to each other and stated that she will meet Picilie and Picilie's father and his mother so that when we address this issue, Picilie should be present.

After four days I asked Lungile as I have been bringing my father back and forth here and he is quite sickly. She told me I am late. His, her husband does not stay at home and that is how the matter was dealt with up till today. The reason for this having happened was that because my husband is a cripple. His right hand is lame. He never even came to ask for forgiveness from me. This has happened over seven years. We do not even speak, we are not even on speaking terms with each other up till today. I can forgive him. I know you can forgive somebody even though they had, they might have hurt you in the past. I so wish he could come to me, where I stay and ask for forgiveness. I would forgive him.

The second point, in March 1986, on the date I have written on my submission or statement. I think it is, it was on the second or the third or fourth, we were from a funeral in Kanana, after burying three or four Comrades with whom we were in the struggle with. We went to the funeral by taxi. On our way back from that funeral, there was also a funeral at Jubatine involving four kids who were shot by the police. We attended the funeral and we came back. On our way back we were walking on foot, because we feared something, that the police staged a roadblock along the route. We took a different route, because Jubatine and Kanana are closer to each other.

As we approached Dawu at about past ten, late in the night, before we came to Jubatine we held a meeting. We left for Jubatine. En route to Jubatine the police came after us, chased us. They managed to arrest a few. We sought refuge at some of the houses. In Mr Plaatjies street the police appeared. There were White policemen amongst these Black policemen. We, some of us sought refuge at Mrs Boyeni's house. Most of us were left behind. Some managed to run away. I hid myself underneath the car. They managed to get some of the Comrades from different houses. They pulled me underneath the car, kicked me and assaulted me. They really tramped on me.

Those that I managed to see as they took us in combis and caspirs. They took us to a guest house. At this guest house they let us in. We were bleeding. They ordered us to strip naked. They were in a line, a row. They told us to face the wall. We stripped naked, all of us, against the wall, boys and girls the same. They assaulted us. They assaulted us timeously, because I was already dizzy at that time. They threw us out on the grass and poured water on us and left us there. At about six o' clock to seven in the morning they woke us up and ordered us to leave. We could not, it was difficult. Some of us were taken by caspirs and some had already passed away. We were lying on the lawn. Some of us were taken to the mortuaries.

At the moment I have a hearing problem. I am not physically healthy, but the policemen I identified as CID April, CID Tsetsie, Sergeant Copella, Mohauw Gadiema, CID Kutumela. They are still around and they are still working in the same positions or rather in the same work they did previously.

CHAIRPERSON: Thank you very much for sharing with us your experiences. Just to organise your story, I will try to ask you a few questions really aimed at making sure that we get a clear picture of what you have said. Did you say you were a member of any political position? If so, did you hold any position?

MS MXATHULE: I was a member of the Youth Congress. **CHAIRPERSON:** If you say "Bacheng", are you referring to a youth structure? **MS MXATHULE:** I am referring to the Youth Congress.

CHAIRPERSON: Youth of which organisation? **Ms MXATHULE:** The ANC Youth League.

CHAIRPERSON: Were there any other women who were actively involved like yourself or were you the only woman in your area? **Ms MXATHULE:** There were quite a few of us and some of them are still around.

CHAIRPERSON: When you started off you told about an experience where a man was trying to enter the door. Can you just give a clear context of that, because the way it came it was not clear enough as to what was the reason behind that. **Ms MXATHULE:** This person attempted to rape me, because he had lust for me. **CHAIRPERSON:** For how long had you known this person and in what context?

Ms MXATHULE: I attended school with this person from Grade A up till standard five. He left town and then he attended school in Transkei. That is how we could not continue our studies together, because he left for Transkei.

CHAIRPERSON: But he was not doing that in a political context, he was just doing it as a man who wanted to do that to you as a person? I am trying to get that clarity.

Ms MXATHULE: Yes, because when I explained this to his father, he explained to my father that your child is, they are use to each other.

CHAIRPERSON: Again, I would like us to be clear on this. So, this man wanted to rape you not because it was a, there was no political context. He was just doing it, because he is use to doing that.

Ms MXATHULE: The riots were not yet over in Jubatine at that time. We were still involved in the political struggle.

CHAIRPERSON: So, this man was a trained policeman? **Ms MXATHULE:** Yes, he was a trained policeman. He was not stationed at Klerksdorp, he was in, he was stationed at Stilfontein, not in Klerksdorp.

CHAIRPERSON: Can we, can you tell us a little bit more about your experiences at the guest house.

Ms MXATHULE: At the guest house they ordered us to strip naked and face the wall. The policemen started assaulting us, ordering us to kiss the wall, some of them kicking us. They assaulted us a lot.

CHAIRPERSON: Maybe if you can just give us a context of that. How were you taken to the guest house? Were you in the company of other women as well?

Ms MXATHULE: At that time we were still young girls. We were members of the ANC's Youth League. We were still teenagers.

CHAIRPERSON: When you look back now how, why did they pick on you on that day?

Ms MXATHULE: They knew that there was a funeral we were supposed to attend and we, therefore, would attend that funeral. That is why they were always on the look out for us, especially on that day.

CHAIRPERSON: If you are still, if you can still remember, how many women were with you at the guest house? **MS MXATHULE:** We were quite many boys and girls.

CHAIRPERSON: Maybe for the purpose of your appearance today, can we just try to assist you to remember what happened to you and other women, in particular. In your statement you do talk about what they did to you. You mentioned the spraying with cold water and can you just try to remember what they did to you and any other women on that day, in particular, if you can remember.

CHAIRPERSON: There was, there is a friend of mine who stayed in Carletonville. They raped her. Three policemen raped her and others who were in our company on that day.

CHAIRPERSON: You talk about a friend who was raped by three policemen. Did they do that in your presence on your arrival. Can you just assist the Commission to visualise what happened.

MS MXATHULE: She explained to us that they raped her and she did go to the hospital. At the hospital they gave her pain tablets and she left the hospital.

CHAIRPERSON: In your knowledge did she report to the hospital that she was detained and raped by the police? **MS MXATHULE:** At that time I did not ask her whether she did explain that she was raped, because I was also sustaining injuries and I could not walk myself.

CHAIRPERSON: There are a few women who were with you although you cannot remember exactly how many were there. Here in your statement you do say here you were stripped naked, sprayed with cold water and sjambokked. Can you remember any other things that they did to you?

MS MXATHULE: Yes, I can remember some of the incidents that took place. They kicked us, they assaulted us, they kicked at us and ordered us to kiss the walls.

CHAIRPERSON: For how long did you go through this experience? Was it something which they did within a hour? Was it something which was done for days? Can you just tell us more about that.

MS MXATHULE: This happened for a day. If I remember quite well, they left us at about 12 o' clock. When they arrested us they assaulted me and others from where they arrested us.

CHAIRPERSON: So, for how long were you in detention? **MS MXATHULE:** What are you, pardon, may you repeat your question please. **CHAIRPERSON:** I am looking at your statement and looking at what you say was done to you, but it is not clear as to how much were you kept in detention.

MS MXATHULE: They assaulted us afterwards. Those who could not manage to walk were thrown outside on the lawn and we left that place early in the morning at about six o'clock to seven o'clock. They ordered us to leave the guest house.

CHAIRPERSON: After that you did not get into trouble with them again? **MS MXATHULE:** I never had any problems with the police. I only had a problem with Mr Willard who wanted to rape me and assaulting me. That is the only problem I sustained afterwards.

CHAIRPERSON: Okay, thank you very much. I will then give this opportunity to other Commissioners to ask you a few questions which will help us to get clarity of your story. Joyce Seroke.

MS SEROKE: Maria, we want you to assist us to have the political context of the first story you told us about. You heard that Sheila Meintjies during her submission here, she said that at some of the days, there is a very thin line between domestic violence and political violence. When this Willard police, this policeman, Willard, called you to his house and attempted to rape you at gunpoint, did he do this because he knew you were a Comrade or he just did it because he wanted to have sex with you? Maybe because he did not, despised your husband because he was a cripple or rather you were a Comrade and he was a policeman and that offended him that you were a Comrade or he just did it, because he had lust and because your husband was disabled.

MS MXATHULE: He did this because he knew I was a Comrade and my husband was also a Comrade and he was a crippled or disabled. He could not defend us and he was involved in the struggle with one of our friends.

MS SEROKE: Now, you state that this other Comrade who stated that he was just playing games with you. Was he also belonging to your youth group, the ANC Youth Congress or whatever?

MS MXATHULE: Yes, even during meetings we were together. Sometimes we got arrested or we would be chased by the police and some would be arrested. However, if he was arrested with us he would be released later.

MS SEROKE: Okay. Also, coming to the second story you told us. For us to find the political context of this, of one of the activists. When the police chased you and led you to the guest house, because you attended an activist's funeral. That was the reason for them doing that to you, it is that they arrest you.

MS MXATHULE: Yes, we were from a funeral.

MS SEROKE: When they ordered you to strip naked in front of your fellow Comrades who were males, how did you feel as women, that you stand naked in front of men?

MS MXATHULE: They also ordered the males to strip naked and they ordered us to kiss the wall and face the wall and start assaulting us.

MS SEROKE: Did you report this incident to the police that the police did that act to you and you did nothing?

MS MXATHULE: At that time the Comrades' cases were never attended to. The same like this of Mr Willard, I submitted and furnished a statement to the police. After some few days we were told that this person has passed away. I was told to come after two days. After a day I would come to the police station. The next time when I arrived I was told that I am becoming a nuisance.

MS SEROKE: Now, this incident that happened where you were taken to the guest house, did you report it to the police? **MS MXATHULE:** Yes, I did, but nothing transpired of it. **MS SEROKE:** I thank you very much.

CHAIRPERSON: Yasmin Sooka. Just one last question from me again. So, what has happened to your Comrade who said, use to go around with the police who was harassing you? Is he still actively involved? What ultimately happened to him?

MS MXATHULE: He has left politics, but he is still a friend or friendly with the police.

CHAIRPERSON: When you say he still goes around with the police do you mean he, you said he was also part of your group of Comrades, but also assisting them. So when he is still with them, is he still playing a dual role or he is clearly now on one side, on the camp of the police?

MS MXATHULE: To date he is still an informer and he is still a Comrade. I use to see him next to, in Mr Willard's yard. I stay, I do not stay very far from Mr Willard's place.

CHAIRPERSON: Thank you very much for coming forward. It must have been difficult for you to come and share about those experiences especially in view of the fact that some of the violations that you are talking about occurred in the context of people you believed in. We will, certainly, pass on your statement to the Investigative Unit and look at each and every aspect very, very carefully and we will keep you informed, if, after we have investigated all what you have said. Thank you very much for coming. Is there anything which maybe you came forward hoping the Commission, wanting the Commission to know as your wish?

MS MXATHULE: Yes, there is. There is something I wish the Commission might be of assistance to me with. At the moment I am not able to have children. Sometimes my kidneys get swollen, my feet get swollen and my back aches.

CHAIRPERSON: Well, what we have been doing with most people who appear before the Commission, even before the Commission finalises its victim finding process, we encourage people to access Government departments of hospitals. We have been, since we started, meeting with different MEC's to make sure that people are not turned back mainly because they do not have money or not, but we encourage people to try and stick to one hospital. Like, in your case, if you have a condition which you associate to, with your human rights violations we will ask you to approach the local hospital, stick to them, allow them to do whatever investigations that will help, even in case you are found to be a victim when the question of reparations is looked at we will know exactly what has happened, the nature and the extent of damage. Thank you very much.

 27

 QUENTIN CORNELIUS AND MICHAEL JANUARY, *TESTIMONY TO AMNESTY*
COMMITTEE REGARDING HEIDELBERG TAVERN MASSACRE, 1997

[...]

EXAMINATION BY MR PRIOR: Mr Cornelius, thank you for appearing. Is it correct that you have prepared your own submissions which form part of the bundle of documents that was handed up to the Committee?

MR CORNELIUS: That is correct. **MR PRIOR:** Do you have a copy of the submissions that you intend to present in your evidence? **MR CORNELIUS:** I do. **MR PRIOR:** And you wish those submissions to be incorporated as part of your evidence? **MR CORNELIUS:** That is correct.

MR PRIOR: Just for the record, how old are you now? **MR CORNELIUS:** I am 24 years.

MR PRIOR: Are you married? **MR CORNELIUS:** No, I am not married. **MR PRIOR:** And where do you reside at present? **MR CORNELIUS:** I live in Randburg, Johannesburg.

MR PRIOR: Thank you. Will you please proceed with presenting your submissions to the Committee.

MR CORNELIUS: Mr Chairman, I just want to go through the piece of my position and feelings regarding this amnesty application. From the 30th of December 1993, my life has never been the same for obvious reasons, being in a wheelchair, having lost the use of my legs due to the fact that I was shot in cold blood, at point blank range by the three applicants. There is a lot a person can deal with and I thank God for the courage given to me and that got me where I am now.

If it was not for that courage and strength and my optimism, I would not have been here today. It is however, made very difficult when you have root nerve pain and various other forms of pain on a daily basis, pains that you can hardly explain to somebody, that I would never have had if this did not happen.

I have lost a kidney and various parts of my intestines as well, as a result of the shooting. This has been the reason and the cause why I initially ended up in hospital for several months and have subsequently been in hospital again a couple of times, because of various complications.

Nobody will ever know what it is like, what suffering a person has to go through until it has happened to you. I would like to have each of the perpetrators look me in the eye and choose whether they would not mind having a rifle stuck in their spines and the trigger being pulled on them in cold blood, to leave them emotionally and physically scarred and disabled as I have been or would they rather stay in jail and serve their sentences for the crimes that they committed?

There was a freedom fight in this country for many years before, our current President, Nelson Mandela was set free in the early 1990's, in fact I think it was 1991. He became President of this country due to the democratic elections that was held in April of 1994, only four months after this horrific attack was launched on us.

All political parties had by that time, come to agreement already that they are on the road to democracy in this country, including the perpetrators' party, including the PAC that had part in the interim constitution that was accepted on the 3rd of December 1993, almost or just less than a month before this attack was still launched.

Why was this attack executed, given all these things? The time period and the fact that we already embarked on a road to democracy? It was years after everybody had already accepted, several years after it was accepted and realised that the freedom struggle was over and in my opinion, and I believe that this is the common belief under South Africans, this attack was launched in a period when the struggle was over, there was no reason for any group or fraction to prove a point, by launching such attacks.

This was completely out of and after the supposed accepted time frame when such terrorist attacks was executed to prove a point as part of the struggle, but the struggle was already over.

This point was proved, and I can't understand why this attack was still sent through. For this very reason, I am not prepared and I cannot find it in my heart, to forgive them at this point in time. I therefore oppose this application for amnesty. I do not believe that any murderers or criminals should be granted amnesty. The murderers and criminals have been tried, convicted and sentenced by a Supreme Court in this country. It proves to the ordinary person on the street and every other criminal, that it is just another one set free, or another three will be set free on our streets to roam as many other criminals in my belief, are still free on the streets.

The fact that the command was given by your higher authorities, still does not give any, and I repeat I want to stress that it does not give any person the right to go out and shoot young, innocent people that sat in a Tavern that night, that had no connection whatsoever with the Security Forces in this country. I had no political affiliation to anybody, I was merely visiting a very good lady friend of mine that has been killed in this attack, Lindi Anne Fourie, and I cannot see in my heart, ever, that any person has got that right to walk in and take another person's life in cold blood when you don't even know who you are shooting at.

Lives have been taken and lives have been maimed because of these orders handed down. There is in my opinion no reason whatsoever, to be such cowards, as to attack a pub full of cheerful young students in the middle of the most cosmopolitan area, Observatory, in Cape Town, on the eve of new year, whilst they are enjoying their youth together with youths of all other races, colours and creeds and all this whilst we were on our way to the first democratic elections in this country.

I request of the perpetrators and their leaders, and I would like to echo what Mrs Fourie said, that was the higher command, the higher parts in the PAC and I believe, I heard what you said Mr Chairman, that it will be looked at further, and I do hope that it will be looked at further, but I request of them all, to explain to us why this was done, and if they have any logical reasoning for such a senseless attack at that time.

Mr Chairman, I oppose this request for amnesty.

In conclusion, I just want to mention for the record, that I am not going into any detail whatsoever, as to my emotional suffering, physical pain, absolute distress and anger, fear I went through during those couple of months in hospital and the following years up to now, the absolute indescribable sacrifices and pain that my parents, my brother and my sister went through, pain and anger and fear that my family and friends experienced. The humiliation of trying to adjust back into a very unforgiving society as an invalid, dependant on people for almost everything that you have to do, having to cope with the very unfriendly environment every day of your life. Needless to say I could write, mention of write another 200 pages just on those few points, Mr Chairman, however, I have been able to cope in many respects and I will continue in my positive way as I believe I have been.

In conclusion to all of this, I am just interested in one thing, Mr Chairman, I want to see justice served. That's all, thank you. [...]

MR PRIOR: Mr Chairman, I call Michael January. The witness' submissions are made at item 1 on the submissions by victims, pages 1 to 25. Thank you Mr Chairman.

MICHAEL JANUARY: (sworn states) **EXAMINATION BY MR PRIOR:** Mr January, how old are you at present? **MR JANUARY:** At present I am 30 years old. **MR PRIOR:** Are you married?

MR JANUARY: No, I am not married.

MR PRIOR: Is it correct that you were injured at the Heidelberg Tavern during the attack by the applicants, on the night of the 30th of December 1993? **MR JANUARY:** I was injured in the Heidelberg Tavern on the night of the 30th of December 1993. **MR PRIOR:** Is it correct that you have compiled your own submissions together with certain annexures supporting your claim for compensation? **MR JANUARY:** That is correct.

MR PRIOR: And it has been explained to you that we will not deal in any detail with the claim for compensation but this will on your request, be referred to the Reparations Committee?

MR JANUARY: That is what I understand, yes.

MR PRIOR: You indicated to me as well, that you wanted to read out onto the record, to the Committee your submissions as you had prepared them, is that correct? **MR JANUARY:** Yes, that is correct. **MR PRIOR:** Would you please proceed?

MR JANUARY: Thank you Mr Prior. Before the attack on the, Mr Chairman, I will just be paraphrasing my submissions, because they are quite extensive, I will just paraphrase them. Before the attack on the Heidelberg Tavern, I was a businessman. I was the sole proprietor of a business which supported myself and also in a large measure, supported my parents who at the time were on pension. The business I owned where I also employed specifically my younger brother and it was his sole source of income at that time.

MR PRIOR: What kind of business was it? **MR JANUARY:** The work was computer related. We did a full range of services from desk top publishing through to installations of computers.

On the night of the incident, the 30th of December 1993, myself and my cousin, Grant January stopped at the Heidelberg Tavern in Observatory. Within minutes of entering the Tavern, we had barely sat down, there were loud popping noises which I immediately identified as gunfire.

I wasn't at that point sure whether the gunfire was inside or outside the Tavern, but judged it safe to or the safest course being to take cover under the table at which I was sitting.

Early in the shooting, I was hit in the back of my left leg which caused extensive injuries to my leg and pelvis. I will briefly outline the nature of those injuries. The bullet resulted in a shattered thigh bone and I got a 40 cm steel pin which runs from my knee to my hip joint. I have also since about a year after the incident, on the 8th of November 1994, I had a nerve graft to try and repair extensive nerve damage within my left leg, but this has not had much effect. With the result that my left leg is still pretty useless today and I walk with a limp.

I have been recommended by a family Doctor to walk at least with a stick. For the first year I used crutches exclusively, but since 1995 I have been able to walk without the use of crutches and although on recommendation I should be using a stick, I find this impractical for the type of work I do at the moment.

While I was in hospital and on crutches and in the first few months after I was shot, the nature of my injuries was such that I was unable to continue with my business. It resulted in the loss of that business. My brother was without work and my parents were without the support I had provided them. In fact the situation had been reversed, it was now my parents who supported me and my brother was left to find employment elsewhere, which he eventually did.

Needless to say, being a cripple today as it were, I have suffered extensively in terms of pain, discomfort, I've had a complete change of lifestyle, the loss of my business, the loss of income and the work I do today, in no way can be compared to what I used to do before I was so injured.

In this last four years, I have also lost many friends and alienated family members as a result of behaviour and personality changes due to depression, frustration and bitterness. Many days I was unable to get myself out of bed in the morning, because I felt not only had I lost the use of my leg, I had also lost my business, my income, my whole future as it were. Often I felt that there was no reason to go on, or to do anything.

Even today I suffer from continuous discomfort and after a long day of work, I often have to ask a family member for a massage to ease back pain and pain in my hip. The loss of sensation which I have suffered in my left leg, is extremely dangerous as well, as I often step in things or bang my leg or foot against obstructions without realising that I have done so.

If I am lucky this only results in a fall which is not too bad, and I have learnt to cope with it, but sometimes I have hurt myself more than I realised.

Regarding my position on amnesty I would also like to say the following. It has been an exceptionally difficult four years since my disability. I have suffered from a great many things. I have undergone various operations.

I lost my business, etc. I have continually prayed to God to give me strength to face these hardships and the courage to forgive the men who inflicted this disaster on my family. This forgiveness did not come easily and for many years I dreamt of vengeance as it were, of somehow getting my own back, but I can now say that the Lord God, my Saviour, has given me the strength to unconditionally forgive these men regardless of whether they are asking for forgiveness or not. I unconditionally forgive them for what they have done to me personally, however, I obviously cannot – it is not my place to forgive them for what they have done to the other people who have suffered as a result of their actions. Or as it were for what this country has had to go through as a result of the actions.

I cannot say with any truth that I have forgiven the people who sent them. Neither can I say with any truth that I have forgiven the system that left my family and me to suffer for the last four years. We did not receive so much as a phone call to provide us with relief in the last four years, not from any person in Government or any Commission set up by the Government. This is the bitterness that drives me to thinking of the Truth and Reconciliation Commission as no more than a mechanism of the system to forgive itself and whitewash the suffering that myself, my family and the people of this country, have endured.

Despite having forgiven the men who shot me, I still wish to hear the truth. Why were we victimised, what did they hope to achieve by what they did to us? I can't honestly think that they believed that what they did to us, has achieved anything.

I hope that these men will not receive amnesty unless they come forward with the whole truth and expose all the (indistinct) behind this event. I don't know if the Truth Commission will follow up all the people responsible, or even if all of them have applied for amnesty. As a result of attending, further to the submissions that I have made and which I have summarised, I also wish to say that as a result of attending these hearings now and listen to the applications and read in

fact some of the applications that has been made, I find it most disconcerting that the applications these men have made, are very vague.

In fairness to them, I would say that regarding the position they were in, they were probably not given enough time to make a full application, but the impression certainly as in this hearing is that the full disclosure has not been made.

More facts are continually being extracted in these hearings and added and amended to the applicants' statements but which for some reason, was not part of the original statement, that these applicants have made. For their sake, I hope that this is not construed as deliberate attempts to be vague, but for example Mr Madasi's admission that he was inside the Tavern, was a crucial piece of information which should have been in his original statement.

I hope that this does not negatively impact on Mr Madasi's application.

I do also feel that I know something of where these men come from emotionally and politically as I myself have experienced oppression in the schools and in the townships in which I was raised. And yet for all that our family have experienced, I can say that my family has experienced a lot under Apartheid and under the racist regime of the National Party, yet, we never turned to the course they took.

It has often been said by various people in Government, that the actions of freedom fighters should be considered in the light that they were fighting a just cause, a just and noble cause, being the freedom and justice for all the people of this country. However, in the light of that cause shouldn't the actions they take to further that cause, reflect the nobility and the justice of the cause for which they are fighting?

I don't think indiscriminate murder can properly be considered in the light of a just war. Many freedom fighters, many soldiers for the cause of liberation, have done sometimes many brave things and very courageous things and all of this, in a very noble course and I think that many of them, would not want to be considered as indiscriminate murderers.

My differences are not with these individuals though, but with the mentality of an organisation which led its soldiers and allowed those soldiers to attack its own Government. We all know that the peace negotiations were well on the way by the time this attack took place. In fact the National Party, the racist regime, had already transferred power to the Transitional Executive Council and the elections was almost inevitable, but this organisation had the gall to allow these men to be tried and sentenced while its leaders embraced the gravy train as it has been called.

Where are these leaders today? They are hiding behind these men who are being duped into losing their chance at amnesty while the leaders continue on that gravy train. I am opposed to amnesty, not on the grounds of truth or the disclosure of these men, but that amnesty cannot be given to us the survivors.

Mr Prior has attempted on various occasions to explain to me the nature of these proceedings and amnesty, and he explained to me that the word amnesty as derived from the Greek word amnesia, which means to forget. Well, we cannot forget.

A just war is understandable, but granting amnesty to people who killed indiscriminately will be condoning the actions of every single individual worldwide, who has ever planted a bomb on an airplane, machine gunned a restaurant or killed innocent people in the name of political idealism. I don't think that is the message South Africa wants to send out to the world that killing innocent people is justifiable, politically. If you are going to be fighting a just war, then you must consider your actions in the light of the cause for which you are fighting.

I would almost go so far as to say that the actions, not necessarily by the three gentlemen I have in front of me, but the actions of their leaders by sending them on such an attack, I would almost go so far as to say that the actions are treasonous in that their attempt was to derail the peace process and to derail the elections and would have resulted in great bloodshed for this country.

So their actions are treasonous to the people of this country and I don't believe that the attack on the Heidelberg has in any way, furthered their cause. In fact, I believe that it was a set back to their cause and in that light, their actions are treasonous to the cause for which they fought, or claim to have fought.

That is all I have to say at this point, Mr Chairman, thank you.

28

ANALYSIS OF GROSS VIOLATIONS OF HUMAN RIGHTS, *TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, 1998*

1. The Committee on Human Rights Violations (the Committee) was established on 16 December 1995 at the first meeting of the Commission. It was composed of Archbishop Desmond Tutu (chairperson of the committee), Yasmin Sooka and Wynand Malan (vice-chairpersons), Alex Boraine, Mary Burton, Bongani Finca, Richard Lyster, Dumisa Ntsebeza, Denzil Potgieter and Fazel Randera.
2. At its first meeting, the Committee considered the appointment of ten additional committee members, as provided in the *Promotion of National Unity and Reconciliation Act* (the Act). Consideration was given to regional needs as well as the wish to ensure the broadest possible representation in terms of skills, culture, language, faith and gender. The following members were appointed to the Human Rights Violations Committee: Russell Ally, June Crichton, Mdu Dlamini, Virginia Gcabashe, Pumla Gobodo-Madikizela, Ilan Lax, Hugh Lewin, Yolisa (Tiny) Maya, Ntsikelelo Sandi, Joyce Seroke, and, in the final months, Mothofela Mosuhli.
3. The Committee met at an early date to discuss and begin to implement its duties and functions as laid down in the Act. It was guided by the underlying principles of compassion, respect and equality of treatment in all its dealings with people who were to be defined as “victims of gross violations of human rights”.
4. Its first responsibility was to establish a mechanism by which the “complete picture” of gross violations of human rights was to be drawn. There were enormous expectations, from the public and also from within the Commission, that public hearings would be held which would expose a considerable part of this picture. It was even hoped that a first public hearing could be held as early as February 1996, but it soon became apparent that a great deal of preparatory work had to be done first. Looking back with the wisdom of hindsight from the perspective of July 1998, it is amazing that a public hearing was in fact achieved as early as April 1996.
5. Information had first to be gathered. A number of sources were available, with substantial documentation that could be accessed from organisations which had endeavoured to keep records of abuses that had taken place during the period under review. These were studied and augmented by submissions later received from such organisations. This information was invaluable for research purposes and was used for the corroboration of statements (although some difficulties were experienced, for example, with incompatible databases). At a later stage in the Commission’s life, a much debated resolution was taken to use these secondary sources for corroboration purposes only, and not for the identification of ‘victims’ for the purpose of reparations.

THE PUBLIC HEARINGS

6. Thus, the preparation and organisation of the first public hearing became the primary goal of the Committee in the first months. Together with the whole Commission, it had decided that particular emphasis would be placed on hearing the experiences of victims of gross violations from the people themselves. It would seek out all such people, old and young, living in urban or rural areas, and provide a forum for many voices that had previously been silenced.
7. The first public hearing was held in East London in April 1996. The choice of a centre in the Eastern Cape was no accident, but a deliberate decision to focus attention on an area which had borne the brunt of some of the heaviest repression by the security forces of the previous government, in direct response to some of the most militant resistance.
8. The four days of hearing set a model for future hearings (later reduced to three days), and it is worth describing in some detail the planning and arrangements that took place.
9. The selected venue was the East London City Hall, an imposing Victorian-style building in the centre of the city. Stringent security measures had to be put in place, and were provided and maintained by the South African Police Services (as at all subsequent public hearings). Provision had to be made for the media. Food and accommodation had to be provided for the deponents and for at least some of their families who attended to support them. Transport had to be arranged, entailing heavy costs and considerable logistical difficulties, and interpretation services had to be arranged for simultaneous translation into all the languages to be used. The placing of tables for the witnesses and for Commission members received careful attention — witnesses were to take pride of place and there was to be no suggestion of their being ‘in the dock’ as in a court. They were also always to be accompanied by a Commission ‘briefer’ and, if they chose, by a family member or other supporter. The deponents were brought together during the weekend before the hearings in order to prepare them, and the Committee worked closely with members of the Reparation and Rehabilitation Committee in this process.
10. All the hearings were to have a ceremonial aspect: the chairperson’s opening remarks were often preceded by prayer, by the lighting of a memorial candle, by hymns or songs. When Archbishop Tutu presided, he wore his purple robes, lending his own special presence to the occasion. This religious aspect of the hearings was sometimes criticised, especially for its mainly Christian focus. It became clear, however, that this was not inappropriate in a country where a considerable majority of the population is Christian. In later hearings, when Archbishop Tutu himself was not present, other religious leaders were often asked to pray. Often, too, local community groups would introduce songs and ceremony (in the little country town of Hanover a choir sang a song composed specially for the Commission).
11. In East London, a special inter-faith ceremony was held the day before the hearing, and the hearing itself opened to a packed hall humming with anticipation.
12. The four days were extremely emotional and dramatic. The witnesses included the families of the well-known ‘Cradock Four’, community leaders assassinated in 1985; individuals and the families of those who were killed or injured in bombings carried out by revolutionary activists; and people who were detained, tortured, or victimised in other ways. Deponents were sometimes stoical, almost matter of fact, but others succumbed to tears or expressed their anger as they relived their experiences. The panel of commissioners and committee members was visibly overcome. The public sat silent and spellbound during the testimony, but was occasionally moved to angry murmuring. Tea and lunch breaks were marked by singing and chanting of political slogans.

13. The large media contingent included national and international representatives, and filled to overflowing the room provided for them. By the end of the week, awareness of the work of the Commission had burst upon the newspapers, television screens and radio broadcasts in a way that began to change the perceptions of millions of people.
14. Thus was the pattern set for the many hearings of the Commission. They were held in large cities or small rural towns, in city halls or educational institutions or church halls. They were made possible by the meticulous work and planning of the various logistical teams in the regions and by the assistance of many people in the local areas.

PREPARATIONS FOR THE HEARINGS

15. The preparatory work began with the dissemination of information about the Commission and its work, followed by the gathering of statements and background information.
16. Preparatory discussions, during what was usually an eight-week cycle, often coincided with preparations made by the Reparation and Rehabilitation Committee to lay foundations for counselling and other assistance which could be obtained from local sources.

PUBLIC INFORMATION

17. Public meetings and workshops were held in each area selected for a hearing, organised with the assistance of local municipalities, faith organisations, non-governmental organisations (NGOs), civic bodies or any other appropriate grouping. Commissioners would explain the aims of the Commission and the way it would work, and would answer questions and attempt to allay fears or respond to criticism. Announcements would be made about the advent of statement taking in the area, and where statements could be made. The media and communications staff assisted with leaflets, banners and press releases.

THE GATHERING OF STATEMENTS

18. The Commission devised a form, referred to as a 'protocol' or 'statement form', for recording the statements made to the Commission by people who believed they had suffered gross violations of human rights. It appointed and trained 'statement takers' to listen to the accounts related by such persons, and to record them in a manner which would facilitate their entry into the Commission's database.
19. For thousands of people, statement takers represented their first and often their only face-to-face encounter with the Commission. They were selected for their ability to listen to the stories told by people in their chosen language, to distil the essential facts, and to record them in English (since for practical reasons this was the language the Commission had decided to use). Equally important was their ability to listen with empathy and respect, so that the interview itself became part of the therapeutic and healing work of the Commission. Interviews often took several hours, and involved both the deponent and the statement taker in an intense process of reliving anguishing experiences. Many deponents clearly found this to be a catharsis, but others were still bitterly angry or deeply wounded. Some were referred to supportive organisations for counselling and treatment.

20. The statement takers thus carried a heavy burden of responsibility and were the front rank of those who gathered the memories of the pain and suffering of the past. They themselves required support as the work took its toll on them, and the Commission made counselling and, if necessary, further therapy available to them.
21. Statement takers were based in each of the four regional offices of the Commission, and the public was informed about where to find them. They also moved out into surrounding areas, responding to requests or to recommendations from the Research Department or other sources of information. Their numbers were increased by volunteers (who were also trained by the Commission) and at a later stage by a project of 'designated statement takers' drawn from community-based NGOs.
22. In this way the Commission was able to fulfil its aim of reaching the widest possible number of people located across the entire country, making itself accessible to them, protecting their safety and privacy and allowing them to communicate in the language of their choice.

THE SELECTION OF WITNESSES FOR PUBLIC HEARINGS

23. After the statements had been taken and submitted to the information management team for entry onto the database, the Human Rights Violations Committee in the region would select a number of them for public hearing. The criteria used were: a) the hearing should reflect accounts from all sides of the political conflicts of the past; b) the entire thirty-four-year mandate period should be covered; c) women as well as men should be heard, and the experiences of the youth should also be considered; d) finally, since not all the people of the area could be heard, there should be an attempt at least to provide an overall picture of the experience of the region so that all people could identify in some way with what was demonstrated.
24. Deponents making statements were always asked whether they would be willing, if invited, to testify in public. The majority of them were willing, even eager, and many were angry or disappointed if they were not selected. The exceptions were people who feared possible repercussions. In fact, it is noteworthy that there were not many such repercussions, and fears of intimidation or retaliatory attacks appear to have been largely unfounded. Where there was any such risk, the Commission's Witness Protection Programme was available. The bomb threat made to the East London hearing was a sobering illustration of what might come, but such threats were not realised. [...]

NOTICE TO ALLEGED PERPETRATORS

26. Any alleged perpetrator named in a statement had to be given due notice that he/she was thus implicated and given an opportunity to respond. This led to one of the legal challenges to the Commission.

LEGAL CHALLENGE TO THE PUBLIC HEARING

27. The first legal challenge to the Commission confronted it on the first day of the first public hearing in East London. The lawyers representing Mr Gideon Nieuwoudt et al demanded that the Commission must not hear the testimony of Mr and Ms Mthimkulu about the death of their son, Sipiwe Mthimkulu, a prominent student leader who was detained and tortured several times, allegedly poisoned with thallium and who disappeared in 1982. The lawyers claimed that Mr Nieuwoudt had the right to be represented in a hearing and to defend his good name from being falsely implicated. They threatened to interdict the Commission from hearing Mrs Mthimkulu's testimony. The Commission finally conceded and requested Mr and Mrs Mthimkulu not to testify – to their great distress. This was the beginning of a number of court challenges faced by the Commission throughout its life. Mr Gideon Nieuwoudt et al subsequently applied for amnesty for the abduction and killing of Sipiwe Mthimkulu whose body they claimed they had burnt to ashes that they afterwards threw into the Fish River.

THE IMPACT OF THE HUMAN RIGHTS VIOLATIONS HEARINGS

28. For the 18 month period during which they were a major part of the work of the Human Rights Violations Committee, the hearings became the public face of the Commission. They captured the imagination of the public and attracted both praise and criticism. The focus on the suffering of individuals and the reminders of the reconciling aspects of mourning and of forgiveness were in some cases a deterrent to people who were unwilling to come forward to make statements. Thus, political activists did not regard themselves as 'victims' who needed to weep or to forgive or be forgiven, but rather as participants in the struggle for liberation, who had known they would suffer for their cause.
29. Furthermore, deponents who had made statements but who had not been invited to testify in public felt in some way that they had been overlooked. It required a great deal of effort to assure them that their statements would be equally carefully investigated, and that they would receive equal attention from the Human Rights Violations Committee in terms of making findings in their case.
30. One of the significant features of the hearings was the simultaneous translation into any of the local languages being used. As the months progressed, the interpreters rapidly developed their skills and sensitive understanding. When the Commission ends, they will continue to be a valuable resource to the country. Nevertheless, the nature of the work meant that they absorbed a great deal of the pain and anger of the witnesses.
31. The public hearings took their toll on all members of the Commission – the staff involved and also the commissioners who served on the panels. Debriefing sessions were provided for those who wished to participate. The impact also spread more widely, to the journalists covering the process and to the wider society.
32. The public hearings were successful in two major aspects. They met one of the statutory objectives of the Commission, that of "restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims"; and, together with the public hearings of applications for amnesty, they revealed the extent of gross violations of human rights and made it impossible for South Africans ever again to deny that such violations had indeed taken place.

OTHER PUBLIC HEARINGS

33. In addition to hearing testimony from victims of violations, the Committee held other public hearings, which allowed it to explore the motives and perspectives of the different role players. A mechanism for this was provided in the Act (from Sections 29 to 32), empowering the Commission to require persons to appear before it at open or closed hearings for the purpose of establishing and gathering the facts.
34. The Commission interpreted this provision in the broadest sense and was able to establish forums for a variety of topics. Public hearings were held to enquire into the roles of the state, the liberation movements, the political parties and various different sectors of society. Investigative hearings were also conducted into events of particular significance – the Bisho massacre, the ‘Trojan Horse’ incident (in Athlone, Cape Town, on 15 October 1985), and others. Many more such hearings were proposed, but not all could be held, for lack of time. The purpose of these hearings was to enable the Commission to gain a deeper understanding of the complete context within which violations had been able to take place.
35. These hearings were structured differently from the individual victim hearings, where no cross-examinations took place. In the investigative hearings, people were *subpoenaed* to appear; they could be questioned by lawyers and victims, as well as by the commissioners and staff.
36. Where it was necessary, for investigative purposes, or to protect people who might be implicated, hearings were held *in camera*, but whenever possible they were held in open session. The Committee sought to be as transparent as possible. As an illustration of this, when the closed hearing into the Mandela United Football Club was challenged by the lawyers representing Ms Winnie Madikizela-Mandela and by the Freedom of Expression Institute, they were allowed to argue their case in public. The closed hearing still took place, but a subsequent open hearing was held.
37. Furthermore, the Commission held open hearings on specific topics which enabled it, and the public, to explore other key sectors of society and to understand the ways in which such gross violations were able to occur.

THE WORK BEHIND THE SCENES

38. The people who testified in public made up less than one-tenth of all the people who made statements. It is important to stress that all the statements received the same degree of attention by the Human Rights Violations Committee. In order to provide this attention, it became necessary to curtail the public hearings and focus on the mass of statements and on making findings in every case.

THE PROCESSING OF THE INFORMATION

39. Once a statement had been registered on the database, the deponent was sent a letter of acknowledgement, thanking them for having made it, and giving the reference number to be used in the case of any enquiries.
40. Thereafter, each stage of the process (the corroboration, and later the finding) was captured on the database.

CORROBORATION

41. Each of the statements had to be investigated so that the Commission could be assured of its veracity. This task was carried out by the Investigation Unit and is fully described in its report.
42. The Human Rights Violations Committee relied extensively on the team of investigators to obtain corroborative evidence to substantiate the statements it received. A great deal of this work consisted of seeking documentary evidence – court records, inquest records, police occurrence books, prison registers, hospital or other medical records. All too often, this was not available: either the normal passage of time or deliberate concealment had led to its being destroyed. When such material could not be found, either the deponents themselves or witnesses had to be tracked down and statements obtained from them. [...]
44. In a limited number of cases, no corroboration could be obtained, not even a statement from an eyewitness. For most of these, the Committee was reluctantly obliged to declare that it was ‘unable to make a finding’ and notify the deponent accordingly. Such deponents still had the right to revert to the Commission with any further arguments or documentation they could put forward. In other cases, details of date, place, event and perpetrators were sufficiently accurate and consonant with known incidents to allow a finding to be made on ‘a balance of probabilities’.
45. In the final, overall national ratification of the findings made [...], commissioners relied on the principle of inclusivity and concern for the victims, and endeavoured to reach positive findings whenever the circumstances allowed this, even where available information was extremely scanty. [...]

DEFINITION OF ‘GROSS VIOLATION OF HUMAN RIGHTS’

48. This definition limited the attention of the Commission to events which emanated from the conflicts of the past, rather than from the policies of apartheid. There had been an expectation that the Commission would investigate many of the human rights violations which were caused, for example, by the denial of freedom of movement through the pass laws, by forced removals of people from their land, by the denial of the franchise to citizens, by the treatment of farm workers and other labour disputes, and by discrimination in such areas as education and work opportunities. Many organisations lobbied the Commission to insist that these issues should form part of its investigations. Commission members, too, felt that these were important areas that could not be ignored. Nevertheless, they could not be interpreted as falling directly within the Commission’s mandate. [...]

THE PROCESS OF MAKING FINDINGS AND NOTIFYING DEPONENTS

58. Once all corroboration had been completed, the regionally based members of the Human Rights Violations Committee considered them and made ‘pre-findings’ in every case, deciding either that there was sufficient proof to find that a gross Human Rights Violation had occurred, or that it had not. A 10 percent sample of these pre-findings went through a national check, to ensure that regions were operating on the same criteria so that the findings would be uniform, and also to double-check for possible mistakes.

59. Again, all decisions were captured on the database, and complete registers were drawn up and referred to the Reparation and Rehabilitation Committee.
60. A Notification Unit was then established, which again brought together the work of the two committees. All deponents were notified by letter of the finding relevant to their statement, and very often it was necessary to notify additional victims who had been mentioned in the statement. When the finding was positive (that is, a decision was made that a gross violation had occurred), such persons were invited to complete and return the application form for reparations.
61. Some people were identified as victims through the process of amnesty – when they were mentioned by an applicant and a decision was taken by the Amnesty Committee. These were dealt with in the same way.
62. Where a 'negative' finding was made, deponents were also notified by letter and given information about the grounds on which the decision was made. These fell into five broad categories: a) the event fell outside the mandate period of the Commission; b) there appeared to be no political motive; c) the violation was not sufficiently severe to qualify as a 'gross violation'; d) the person killed or injured was a combatant on active duty; e) there was insufficient evidence to allow a finding to be made.
63. Deponents were informed that, if they had additional information that might persuade the Committee to review the finding, they should submit it within a period of three weeks.
64. This introduced a new area of work in the last months of the Commission, where a Review Committee was established to deal with such appeals.

FINDINGS CONCERNING PERPETRATORS

65. All alleged perpetrators about whom findings were contemplated were sent letters in terms of Section 30 (2) of the Act, giving them an opportunity to respond. Findings in these matters are covered in the chapters on the four different regions (in Volume Three).

INDIVIDUAL FINDINGS

66. It was decided that every person found to have been a victim of a gross violation had the right to have their name and a brief account of the violation in the report of the Commission.

29

CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, 1998

CONSEQUENCES OF GROSS HUMAN RIGHTS VIOLATIONS ON PEOPLE'S LIVES

1. The apartheid system was maintained through repressive means, depriving the majority of South Africans of the most basic human rights, including civil, political, social and economic rights. Its legacy is a society in which vast numbers of people suffer from pervasive poverty and lack of opportunities. Moreover, those who were directly engaged in the armed conflict (whether on the side of the state or of the liberation movements) suffered particular kinds of consequences.
2. The consequences of repression and resistance include the physical toll taken by torture and other forms of severe ill treatment. The psychological effects are multiple and are amplified by the other stresses of living in a deprived society. Hence, lingering physical, psychological, economic and social effects are felt in all corners of South African society. The implications of this extend beyond the individual – to the family, the community and the nation.
3. When considering the consequences of gross human rights violations on people's lives, it is hard to differentiate between the consequences of overt physical and psychological abuses and the overall effects of apartheid itself. This makes it difficult to make causal links or to assume that violations are the result of a particular experience of hardship. In many instances, however, violations undoubtedly played the most significant role as, for example, when a breadwinner was killed or when the violation caused physical disabilities, affecting individual and family incomes. [...]

PSYCHOLOGICAL CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS

10. South Africa's history of repression and exploitation severely affected the mental well-being of the majority of its citizens. South Africans have had to deal with a psychological stress which has arisen as a result of deprivation and dire socio-economic conditions, coupled with the cumulative trauma arising from violent state repression and intra-community conflicts.
11. Trauma has both a medical and psychological meaning. Medically it refers to bodily injury, wounds or shock. In psychological terms, it refers to "a painful emotional experience or shock, often producing lasting psychic effect." [...]
12. Exposure to extreme trauma can lead to a condition known as post-traumatic stress disorder. This may be caused by: a) direct personal experience of an event involving actual or threatened death, serious injury or other threat to physical integrity; b) witnessing an event that involves death, injury or threat to the physical integrity of another person; c) learning about unexpected or violent death, serious harm or threat of death or injury experienced by a family member or close associate. [...]

13. Perpetrators of human rights violations used numerous tactics of repression, with both physical and psychological consequences. These found their expression in the killing, abduction, severe ill treatment and torture of activists, families and communities. Psychological damage caused by detention was not merely a by-product of torture by state agents. It was deliberate and aimed at discouraging further active opposition to apartheid. Jacklyn Cock says:

Torture is not only considered as a means of obtaining information on clandestine networks at any price, but also a means of destroying every individual who is captured, as well as his or her sense of solidarity with an organisation or community. [...]

16. Psychological abuse in torture can be divided into four types: a) communication techniques such as verbal abuse; b) attempts to weaken mentally through, for example, solitary confinement or drugs; c) psychological terror tactics, including threats against families or witnessing the torture of other detainees; d) humiliation, such as being kept naked or undergoing vaginal examinations. [...]

PSYCHOLOGICAL PROBLEMS

20. Internationally, the best-documented psychological consequences of human rights violations relate to the effects of torture. Torture can lead to wide ranging psychological, behavioural and medical problems, including post-traumatic stress disorder whose symptoms include “re-experiencing of the traumatic event, persistent avoidance stimuli associated with the event and persistent symptoms of increased arousal not present before the traumatic event.” [...]
21. Post-traumatic stress disorder is not, however, the only consequence of torture and human rights violations. Other problems include depression, anxiety disorders and psychotic conditions. The effects are multidimensional and interconnected, leaving no part of the victim's life untouched. Exposure to trauma can lead to sleep disorders, sexual dysfunction, chronic irritability, physical illness and a disruption of interpersonal relations and occupational, family and social functioning.
22. In many statements made to the Commission, deponents described symptoms of psychological disturbance. Although many deponents and victims referred to their symptoms, it was not possible to diagnose actual disorders or problems based on the statements and testimony at hearings. However, the following examples illustrate the kinds of psychological problems that resulted from gross human rights violations. [...]
31. Jose Saporta and Bessel van der Kolk have identified two common consequences of traumatic events.
- A. The first is incomprehension, where the sense of the experience overwhelms the victim's psychological capacity to cope. Traumatic experiences cannot be assimilated because they threaten basic assumptions about one's place in the world. After the abuse, the victim's view of the world and self can never be the same again.
- B. The second feature is what is called disrupted attachment. This is often exacerbated by an inability to turn to others for help or comfort in the aftermath of trauma. It thus represents the loss of an important resource that helps people to cope. Traumatic rupture is an integral part of the torture experience. Victims are kept in isolation and their captors threaten them with the capture and death of family and friends. If they are then forced into exile, they feel further alienated and estranged. Traumatised individuals often show

enduring difficulties in forming relationships. They tend to alternate between withdrawing socially and attaching themselves impulsively to others. [...]

36. Political activists were less prone to post-traumatic stress disorder, owing to their commitment to a cause and their psychological preparedness for torture. Mr Mike Basupo was arrested for his activities in 1986. He referred to the strength that may be drawn from such commitment:

The circumstances I was under and many people were subjected to was very painful. However, we must remember that, even if you were released from detention under such circumstances, you would not give up. You would continue with the struggle for liberation. [...]

37. International studies have shown that non-activists, even if subjected to lower levels of torture, display significantly more severe symptoms of post-traumatic stress disorder. The less the psychological preparation for the trauma of torture, the greater the distress during torture and the more severe the subsequent psychological problems. [...] The Commission's statistics provide evidence of this phenomenon.
38. Psychological re-experiencing of the event can have debilitating consequences for survivors trying to rebuild their lives. [...]
43. Recurring thoughts of traumas that have been experienced continued to invade the lives of many South Africans. Mr Madala Andres Ndlazi's sixteen-year-old son was shot by the police on 16 June 1986. At the Nelspruit hearing, he told the Commission that memories of his son's death haunted him to that day:

I found my child brought to the home. I found him in the dining room. He was lying dead there in the dining room. When I looked at him, it was very painful for me to see how injured he was – and I controlled myself together with my wife as Christians. We knew very well that we will have to die one day but we know there are many ways to pass away from this earth. But the way in which my son, Sidney Ndlazi, was injured, it makes me very painful. I cannot forget this. It is almost ten years now.

44. Many members of the state forces, both conscripts and career officials, also described their experiences of post-traumatic stress disorder. Some perpetrators may also be considered victims of gross human rights violations and there is a need to address their struggle to live with the consequences of their experiences and actions. Others found themselves caught up in and traumatised by situations over which they had no control. Mr Sean Callaghan told the Commission at the health sector hearing:

[I was] confronted with a patient who had no arms or legs, was blind and was deaf. [He] had been in a mortar pit launching 80mm mortars when one of them exploded in the pipe. That was the first patient I ever saw in the operational area.

Right there and then I realised that, as an eighteen year old, I am not going to be able to handle this after six months of training. I had applied for medical school ... and I went for an interview with Wits medical school during [my] leave, and said to them, "I don't want to be a doctor anymore, not after what I've seen" ...

I was hyper-vigilant. I was having screaming nightmares every night for at least six months. I was very anti-establishment, anti-social. I was cold. Whenever I heard a loud noise, I would dive to the ground. When I heard helicopters, I would look for somewhere to hide.

45. The tendency for the original trauma to reactivate after many years is a troubling and challenging aspect of post-traumatic stress disorder and reveals its persistence. The long-term relationship between physical disease and post-traumatic stress disorder in torture survivors is complex and presents a challenge for researchers in the field.
46. High rates of co-morbid (simultaneous) symptoms have also been found, including major depression, dysthymic disorder (a less severe form of major depressive disorder), antisocial personality disorder and substance abuse. [...] Surprisingly, few deponents referred to alcohol or substance abuse as an outcome. This could be due to the high levels of acceptability of the use and abuse of alcohol in South African society or a lack of probing by the Commission's statement takers.

TREATMENT IN THE SOUTH AFRICAN CONTEXT

47. In South Africa, the area of mental health has been historically neglected. There are few trained psychologists and clinical social workers, and few attempts have been made to provide culturally appropriate mental health care to all South Africans. At the time of reporting, mental health care still consisted largely of institutionalisation. [...]
48. Moreover, dire social circumstances have made it difficult for individuals to deal with past psychological traumas. At times, current problems are merely symptoms of long-term traumatising, compounded by impoverished living conditions. In South Africa, successful therapeutic interventions are difficult, because of the inability to protect the individual from further trauma. [...]
50. It is therefore difficult to distinguish between the response to the psychological effects of the violation and other stressful events in the life of the victim. Studies do, however, provide evidence that, in some individuals, exposure to violence has psychological effects independent of other associated factors causing stress.
51. It is also suspected that diagnoses of mental illness were also used to silence activists or opponents by condemning them to institutions where they were under the control of the state. Doctors and mental health professionals are alleged to have advised torturers on how to identify potential victims, break down their resistance and exploit their vulnerabilities.
52. The above factors led to resistance to seeking formal psychological treatment. Statement takers found that the suggestion of a referral for psychological treatment was often met with a rebuttal such as, "I am not mad". [...]
53. Others who sought treatment found difficulty in obtaining it. [...] Mr Sean Callaghan [...] told the Commission:

Around that time, I remember phoning my mother and telling her that I wasn't sure if we were actually going to survive the night because we had got to the point of being completely suicidal. We had come to the end of our tether. We had been involved in that kind of thing – seeing patients, seeing people killed for twelve months already – and all I wanted to do was go and heal people and not kill them ...

We went to see the local psychiatrist who was resident in Oshakati and the major in charge of South African Medical Services up there, and we were basically told to grow up and carry on; there was nothing wrong with us ... There was no debriefing. There was no "what happened to you?" There was no "this is what you can expect when you go home. This is how you should try and integrate yourself back into society."

I do remember a letter, I think, being sent to our parents with ten points on it, saying something like: "You had better lock your alcohol and your young girls away because these young boys are coming back home". But that was the extent of the support we got ...

I saw a psychiatrist ... He declared me fit for battle and sent me home [saying] that there was nothing wrong with me. The point is that I wasn't fit to be a father and I wasn't fit to be a husband, but I was certainly fit to pull the trigger of a gun.

Essentially, I think I am pretty healed. I think I have come to the point of being whole. I have my emotions back. I am a father. I am a husband and I can do those things pretty well. But no thanks to the SANDF or SADF for helping me. [...]

ARREST OF FAMILY MEMBERS

86. Detentions and restrictions had devastating effects on families, communities and society at large. The effects of detention are extremely dehumanising as the detainee becomes powerless and his or her life is no longer predictable. Detention separates the individual from family, friends, comrades and colleagues. A general sense of impotence and low self-esteem may result. Added to these stresses are fears and worries about the welfare and safety of family and friends. Mr Tshabalala's cousin, Edward Viyu Charles, was a United Democratic Front (UDF) activist in Welkom. He was constantly harassed and, in 1987, was killed by the police. At the Bloemfontein hearing, Mr Tshabalala described how the entire family was threatened:

They were people who kept on harassing him. Those were the law people. They were using death threats and they threatened that they would wipe the whole family out. [...]

90. The search for children who had been arrested also placed a heavy burden on mothers and other family members, who often went from one police station to another at great emotional cost.

The effect on the mothers was devastating. The feeling of impotence was regarded as a failure on their part to protect their child and most certainly affected inter-generational relationships of dependence, trust and security. [...]

91. Upon their release, many already stressed individuals were freed into a stressed society. Others faced the additional burden of restrictions – including house arrest, being prohibited from participating in the activities of organisations and being prevented from attending meetings. Restrictions made recovery from detention more difficult, as the individual had to deal with the after-effects of detention, as well as the effects of the restrictions. Social networks suffered and the isolation of the restricted person continued outside the cell. Many victims came from families that were already under financial pressure and whose economic welfare had been affected by the detention of one of its members. Moreover, the costs of transport to and from the police station in order to report in accordance with the restriction order added to other demands on the family budget. Restriction orders also made it difficult to obtain employment or to continue with schooling or studies. [...]

SOWING DISTRUST IN THE COMMUNITY

94. A part of the state strategy in suppressing communities was to undermine the unity of resistance through a system of informers (both real and alleged). This was highly effective in creating a climate of suspicion and breaking down trust both within and between families and communities. Ms Edith Mjobo (see above) told the Commission that:

They [the police] used to come to try and bribe the person, the people in the township, because they told the people in the township that my son was a 'terrorist' and if someone could come and tell the police where he was, they would get money.

95. The consequences of being exposed as an informer were social isolation and, sometimes, physical danger. Communities were constantly on guard against informers in their midst. Moreover, being falsely accused could have extremely distressing consequences for the affected person and his or her family. [...]

INTER-FAMILY CONFLICTS [...]

100. Intergenerational conflicts also occurred in white families involved in defending the apartheid status quo. Mr John Deegan, a South African Police (SAP) Security Branch conscript and later a member of Koevoet, described his attempts to communicate his traumatic experiences to his more conservative father:

Although I tried to tell him that there were incidents that I was involved in that caused me great guilt and remorse, he would not believe that his son could have been involved in anything so dishonourable.

101. Emerging young leaders challenged traditional patriarchal hierarchies and elders increasingly lost control over the activities of younger people. Mr Morgan Sabatha Phehlani was a councillor whose home and business were burnt down by youth in intra-community conflict in 1991. In his view:

That's the trouble that we are having in the smaller towns, you know, that you find these youngsters — they call themselves ... young leaders; they are leading a section. But looking at them, you find they are so terrible; they are hooligans; they are undisciplined.

102. The emotional and financial pressure experienced by families sometimes led to strained relations with young activists in the home. Detention and political activism gave some young detainees a sense of independence and autonomy, and they found themselves unable to revert to their earlier roles in the family. Others felt that their families would not understand what they were doing or why, and wanted to protect them from the knowledge of their activism. The reality that parents often did not know what their children were doing was reflected time and again during hearings and in statements. At the Bloemfontein hearing, Ms Pumla Marina Mashoang, whose son was killed by the security forces for his role in the South African National Students Congress (SANSCO) in 1988, said she was not clear about her son's role:

I believe he was holding a prominent position because he had a van that he had been given, so I think he was organising for the Free State. [...]

107. Thus, in many families, even where activism did not generate outright conflict, a shroud of secrecy often affected intergenerational relationships. In some families, political activism was seen as operating in a sphere outside of family life. This was sometimes linked with parents' feelings of helplessness about the public realm of politics. This lack of communication was aggravated by disruptions to family life, caused by the absence of parents who worked as migrant labourers, domestic workers, or because group areas legislation and other apartheid laws prevented them from living with their families. [...]

THE BURDEN OF DEATH

112. The death of family members has many negative consequences. The effects of the loss are exacerbated by the responsibility of having to inform other family members of the loss as well as by the financial burden of funeral expenses. At the Heideveld hearing, Mr Kama described the anguish of his family after the police killed his brother-in-law:

Who would contribute to his funeral, where would his funeral be held and how would we take the body home? ... And even then, we were still left with the burden of informing the mother plus the burden of knowing what to do with the body.

113. The low value many police officers placed on black people's lives was evident in the death of Ms Nobeki Mbalula, who was shot and killed in a random police shooting in Cradock. When the family confronted the police and told them that they had shot a woman who was breast feeding a baby, the police response was, "the corpse can breast feed the baby."

114. After killing Nobeki, the police continued to harass the family.

On the Monday, they came to the house. They kicked down the door; they ate food; they took food from the fridge and ate.

115. The death led to additional burdens on the extended family.

I had this baby to look after. Because I had no help, I had to take these children to my sister-in-law's ex-husband.

116. The distress caused by the death of a family member was, in some cases, exacerbated by a sense of betrayal by trusted forces, such as the liberation movements. At the hearing on prisons, Mr Joseph Seremane gave testimony about the execution of his brother, Chief Timothy, in the ANC camp known as Quatro.

I come here on behalf of my family. I come here to express my feeling of betrayal by compatriots and comrades. I come here to express our disappointment and the way we feel cheated of a dear little brother, a promising young man, a brilliant young man. [...]

119. Many who were able to bury their family members had the funeral terms dictated by those who had killed them. Ms Tony Lillian Mazwai's son died in 1988 while he was in exile. She described the atmosphere at his funeral.

I was informed that my son was a well-trained guerrilla and that the people who attend the funeral have to be limited to 200 in number ... They insisted there should be no speeches, no freedom songs, nothing. It was like a war. It seemed as if it was a battle. There's a big gate next to Josa. There was a convoy, police, soldiers, hippos, everybody.

120. The lack of respect for traditional rituals around death caused many people a great deal of pain. Not only were funerals disrupted, graves were also not respected. At the Nelspruit hearing, Mr Mtsorombane Carlson Ngwenyama described events that took place in 1964 when his community was being forcibly removed:

In 1964, the message came to us that the graves were to be exhumed. The owners of these graves were not even informed ... As I am a parent today, I am having twelve children but they don't know the grave of my mother ... As blacks this is a problem to us because it is our tradition that they must know; they must worship their elders.

121. Thus, there was a lack of respect not only for the living but also for the dead, with repercussions for generations to come. [...]

FAMILY VIOLENCE

132. Domestic violence is associated with social strain and disintegration and often with a weakening or disruption of traditional norms governing interpersonal behaviour in families. Studies demonstrate that war experiences or prolonged detention may result in problems in marital relationships. This may be due to the direct effects of trauma-coping behaviour, the inability of trauma survivors to function in expected family and social roles, and/or conflicts associated with changes in gender and family roles resulting from prolonged detention or migration. Family disintegration, such as the death of a parent or parent-in-law, also means the removal of those who would traditionally have mediated such conflict. [...]
133. The effects of exposure to trauma have been linked to domestic violence in the home. At the Venda hearing, Mr Abel Tsakani Maboya alluded to domestic violence by an activist. His cousin, who was in the underground movement in Tanzania and had endured numerous detentions, committed suicide after a dispute with his wife.

He used to quarrel with his wife every time, that is the information that I got ... I don't know what made him to fight with his wife, maybe it comes from what he experienced from jail or some other things.

134. Mr John Deegan described the problems he experienced in taking up his role in the family after returning from service on the Namibian border in the early 1980s:

I had a lot of anger and I couldn't relate to people in the RSA at home any more ... I just burst out into rages with my family and with my fiancée ... [I] started to do weird stuff like that. [...]

THE CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS ON COMMUNITIES

135. Apartheid's racial and ethnic-based social engineering resulted in both the construction and destruction of communities. Legislation such as the *Group Areas Act*, the *Land Act* and influx control laws were all attempts to define and regulate communities. Apartheid created communities that were racially, linguistically and ethnically determined. Resources for the development of these state-defined communities were differentially allocated resulting in the deprivation, particularly, of African communities. These racial categories were adopted by communities themselves, resulting in generally understood divisions between white, African, Indian and coloured groups.
136. Clearly, differences of various kinds existed within these groups. However, in the period under the focus of the Commission, some of these internal differences were masked. The white community generally shared a common sense of defending and maintaining the status quo

while the black community united in a common resistance to their oppression. The state therefore viewed communities as homogeneous and polarised entities.

137. From the mid-1980s, intra- and inter-community violence began to emerge and differences between communities along class, ethnic, linguistic and political lines led increasingly to violence. The security forces manipulated these differences through the recruitment and collaboration of vigilantes, which generally represented the more conservative elements in black communities.

BLACK COMMUNITIES

138. In 1960, the year that marks the starting point of the Commission's mandate, the state embarked on the rigid enforcement of apartheid legislation, in particular the *Group Areas Act*. It was an era characterised by mass forced removals and the consequent dislocation of communities. Resistance to forced removals generated fierce conflicts which resulted in grave human rights abuses as the state violently enforced its policies.
139. The townships and residential areas constructed in this period were grossly under-serviced. Many were without basic services such as water, electricity, adequate housing, roads, schools and clinics. Lack of services and appalling living conditions generated tensions that laid the ground for much of the conflict that was generated in South Africa's contemporary history. From rural farming areas to homeland settlements to urban townships, living conditions and economic deprivation provided fertile ground for conflict. The battle for national liberation and civil and political rights cannot, therefore, be separated from countless localised battles rooted in socio-economic deprivation.
140. Many communities mobilised around issues relating to poor living conditions such as inadequate housing, water, infrastructure and the lack of services. The death of three Robertson residents in 1990 bears testimony to the kinds of violations experienced as a result of such protest by communities. At the funeral of these young men, a pamphlet was produced and circulated. It read:
- Their death is due to police action before, during and subsequent to community protests against those unacceptable living conditions in the community despite several efforts and memorandums from the community to the local Municipal authorities to improve these conditions. [...]*

142. Community mobilisation influenced the state's view of entire communities as homogeneous entities. This often resulted in the arrest, detention, torture or killing of individuals who were seen as symbols of the resistance. Thus, according to the construction of communities as 'us' and 'them', and articulated in the South African context in racial terms, the white state constructed black South Africans as the enemy. Mr Anderson Lizo, a youth from Upington, was a victim of this indiscriminate persecution. In 1985, while waiting for friends after a rugby game at school, he was picked up by the Commanding Officer of Upington, known as the Rooi Majoor (Red Major). It was assumed that he had information on the organisers of resistance in the local township, Paballelo. Although only fifteen years of age at the time, he was repeatedly thrown off a high bridge into a river in an attempt to elicit information. [...]

145. Funerals became both a symbol of the effects of the repression and an opportunity for mobilisation. Consequently, the state sent police to monitor and disrupt many funerals, perpetuating the cycle of violence. More killings occurred at funerals, and then there were more funerals. This was a particularly brutal manifestation of the South African conflict, especially in the light of the importance of funeral rituals in the black community.
146. The sense of powerlessness experienced by communities was increased by the culture of impunity within which the police and security forces operated. Ms Anna Sam described how the Commanding Officer of Upington, Rooi Majoor, “could go into your house and shoot somebody but nobody could stop him”. [...] This perception of omnipotence was used by the state to undermine communities and discourage resistance and counter-mobilisation. Indiscriminate victimisation was intended to serve as a warning of the dangers of dissent. [...]

INTER- AND INTRA-COMMUNITY VIOLENCE [...]

149. From the late 1980s, vigilantism and inter-community violence became a feature in many communities.
150. Destabilisation was adopted as a tactic on both sides of the conflict. In communities around the country, people mobilised around the slogan ‘Forward to People’s Power’. Forms of opposition included the removal of illegitimate authorities and included strategies for destabilising the government at all levels. The call to make the townships ungovernable was heeded by activists who attempted to mobilise communities and replace what were described as ‘illegitimate’ structures with block committees, street committees, self-defence units and people’s courts.
151. Community councillors became the fated symbols of the spiralling social problems within communities. Overcrowding, inadequate housing, limited sewerage and water facilities coupled with unemployment, poor education facilities and a host of other problems were aggravated by the provocative rise in service charges and rentals. Mr Mkiwane, a former councillor in Sebokeng, aptly described the mood of the day when he said, “their cup of dissatisfaction was full to the brim.”
152. Councillors were perceived as collaborating with the state and came to be seen as symbols of oppression and exploitation. This was one of the premises upon which so-called ‘black on black’ violence was founded. Community councillors came to be seen as the ‘faces’ of the system, thereby reducing the visibility of the state in the conflict. [...]
154. For councillors, the consequence was banishment from their communities. Those who left their posts found it difficult to find subsequent employment and many were unable to return to their previous homes for fear for their lives. [...]
158. Once again, the abnormal became normal as violence, fear and insecurity engulfed communities in South Africa. In the Vaal, from March 1992 to February 1993, about 1 650 murders took place; 2 900 violent confrontations involving weapons other than firearms and 6 700 cases of assault were reported. According to Ms Joyce Seroke, violence was experienced in the form of random IFP/ANC violence in the community, drive-by shootings, third force attacks and train massacres.
159. Many youth were recruited into vigilante groups, which enjoyed the protection and support of the police. This led to further polarisation of communities. Reverend Khumalo of Ermelo told the Commission how the church attempted to intervene:

There [was] a group of young men who were called the Black Cats. There was a time when it was said they were being protected by the police and they were living at the police station. We went there as a group of pastors and we talked to the policemen of the danger of separating these young men from their community.

160. In KwaZulu-Natal, inter- and intra-community violence degenerated into near civil war and communities were torn apart. The conflict was characterised by assassinations, attacks on entire families and the burning down of family homes. Thousands of people were forced to flee their homes and took refuge in forests, squatter settlements or with relatives. [...]
164. Thus, homelessness and displacement have multiple consequences. Homelessness in KwaZulu-Natal affected three times as many people as in any other region and has particular implications for communities in KwaZulu-Natal.

RURAL COMMUNITIES [...]

168. In rural communities, racism and conservatism entrenched vastly unequal social and economic relations. These were entrenched through the awesome power wielded by the small white communities, who were able to control and regulate black lives from the cradle to the grave. People who grew up on farms were often regarded as the farmers' possessions. Many breadwinners lost their jobs because they became involved in politics and were seen as troublemakers. For farm workers, the loss of a job often threatened homelessness for the entire family. Thus, political activity generated divisions within families, as some attempted to maintain their fragile existence through acquiescence in the oppressive situation and others continued to resist, regardless of the consequences. At the Worcester hearing, Father Michael Weeder said that, when he first arrived in the Boland, he observed this fear of challenging the system.

What I mistook for apathy and submissiveness was just another means of coping, of surviving ... people leading quiet lives of desperation. [...]

170. Resistance did, however, occur. In Oudtshoorn, for example, there was a growth in community organisations between 1973 and 1983. Those in leadership positions were under constant police surveillance, and suffered arrest and harassment. In 1985, open conflict broke out and, on 2 May, SADF troops moved into Bongoletu township. The conflict escalated and anyone associated with the state became a community target. [...]
172. Resistance generated pride in oppressed communities which, through their opposition to the system fought, not only for justice, but also to reclaim their dignity. [...]

WHITE COMMUNITIES

181. Apartheid policies resulted in the division of South African communities along racial lines. At a post hearing workshop of the Commission, Mr Tjol Lategan said:

Politics beset every fibre of our community, in our schools, in our churches, in our agricultural unions, in our cultural organisations, every bit of the community got politicised and polarised.

182. Through apartheid, the white community retained political and economic power. The unequal distribution of resources meant that white communities benefited through well-served suburbs, accessible education, access to government and other employment opportunities and

countless other advantages. Whilst only a minority of white people engaged in the direct perpetration of violence, many gross human rights violations were committed in order to retain these benefits.

183. The mobilisation of members of the white community to uphold the system began when they were still children. The state-owned media presented a distorted view of South Africa. Militarisation of young white males began at school through the system of cadets, which was a training ground for their subsequent conscription. This militarisation has had many negative consequences – not least with regard to the level of violence prevalent in contemporary society.
184. Many perpetrators worked in a context in which the end was seen to justify the means. Attacks on white targets by the liberation movements further strengthened this resolve. Many white communities felt a sense of fear and insecurity, which was legitimised through landmine attacks in the rural areas and other incidents such as the Church Street and Magoo's Bar bombings.
185. Many who are now seen as perpetrators viewed themselves as defenders of their nation and were, at the time, showered with praises and rewards for achieving their goals. Their actions appeared justified in what they viewed as a war context.
186. Former leaders subsequently distanced themselves from those who were doing the work of the state. As Eugene de Kock said in mitigation of sentence, "One would now believe that I was the only individual who fought the ANC." Once loyal subjects of the former government expressed the view that their leaders had abandoned them. This has exacerbated fear of the Commission. At a workshop in Ermelo, Dominee Gerhard Barnard described the sentiments in some white communities:

The people don't see it as a reconciliation commission but as a punitive commission; somebody has to be punished and this is where our Afrikaners had to take their punishment ... I realised that the fear which arose is not the fear of confessing, but the fear of what is going to happen to the evidence. In what ways will people be punished in the future? [...]

190. The absence of white South Africans at the Commission hearings has been disappointing. If true reconciliation is to take place, white communities will have to take responsibility and acknowledge their role as beneficiaries of apartheid. The consequences of this lack of participation are likely to perpetuate the polarisation of South African communities and further obstruct processes of reconciliation.

CONCLUSION

191. This chapter has tried to assess the effects of thirty-four years of oppression and resistance. It has addressed some of the psychological and physical consequences of gross violations of human rights as reported to the Commission. The Commission heard testimony from a broad range of people, many of whom testified about violations experienced by others. Mothers, sisters, fathers, brothers, relatives and friends came forward to speak of their pain and anguish. Their testimonies spoke of the ripple effects on families and communities of the system of apartheid and the oppressive manner in which it was implemented.
192. People came to the Commission to tell their stories in an attempt to facilitate, not only their own individual healing processes, but also a healing process for the entire nation. Many of those who chose not to come to the Commission heard versions of their own stories in the experiences of others. In this way, the Commission was able to reach a broader community.

 30

*FINDINGS FROM SPECIAL HEARINGS ON WOMEN,
TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, 1998*

[...] SILENCES

36. A primary aim of the Commission was to end the silences around the atrocities under apartheid. A primary aim of civil society's intervention around gender was to end the silences around the gendered nature of those atrocities.
37. One of the silences was that of women who had themselves suffered gross human rights violations, but spoke only as relatives of men who had suffered. Hence, for example, in the first week of hearings in the Eastern Cape, the widows of the Cradock Four spoke about their murdered husbands. Each had herself been arrested and harassed, but their own stories did not become the subject of the hearings. Later in the hearings, Dr Liz Floyd and Ms Nyameka Goniwe spoke about the abuses suffered by their partners, Mr Neil Aggett and Mr Matthew Goniwe. They, too, mentioned their own roles and suffering only in passing.
38. Several of the women who spoke at the special hearings began their testimony by stating their reluctance to come forward. Some said that they felt their sufferings were less severe than those of many other people. Ms Jubie Mayet, who had been banned and detained, said she was reluctant "because my experiences under the old regime were nothing compared to what so many countless other people suffered." Ms Nozizwe Madlala, detained for a year in solitary confinement, said that when people ask her if she was tortured, "I usually answer in the negative, for my own experience of torture was much milder than that of many others."
39. At the time the abuses occurred, many women (and men) remained silent about their sufferings. Ms Wilhelmina Cupido, reported that after her sister, Ms Coline William's, detention, Coline "said she just want to go on with her life, she just want to leave it there and carry on." There could be multiple reasons for this silence — a desire to protect her family, a desire to protect herself by keeping silent about 'illegal' activities, and/or a desire to forget a terrible experience.
40. Others might have kept silent because they felt there were not ready listeners. Thus Ms Zubeida Jaffer described how most people react:

They'll smile at me and say: "Oh, you're the journalist, you were detained..." Then they'll say to me: "But I am sure they never did anything to you". I think it's maybe too much for people to think that things [like this can happen]. I think also because I am a woman there is always the assumption that they wouldn't have touched me ... "[they] didn't really do anything to you, did they?"
41. In opening one of the special hearings, Ms Thenjiwe Mtintso spoke about the difficulties of describing one's suffering in a public arena. Ms Mtintso had previously spoken openly in a face-to-face interview as part of the CALS research. She was not, however, prepared to speak about her personal experiences in the open hearings. She congratulated the women who were prepared to "open those wounds... The personal cost may be high. They may have to go back home and deal with the pain that has opened today."

42. Many claim that, by talking things through, people come to terms with what has happened and the pain is lessened. In opening the Cape Town hearings, Trauma Centre psychologist, Ms Nomfundo Walaza questioned this conventional wisdom:

We talk very glibly about the fact that we can show our weaknesses in a way that will render us much more strong later on. Some women are sceptical that the process will uncover the wounds that are healing and render them even more vulnerable than they started off with...

43. After hearing Ms Zubeida Jaffer's testimony, Commissioner Mary Burton commented on how someone "who is known as a strong person in the community" had been brave enough to give "a glimpse into a vulnerable side" of herself.

SILENCES ABOUT SEXUAL ABUSE

44. One of the particularly difficult areas of silence is sexual abuse. The Commission saw its provision of the opportunity "to relate their own accounts" as a way of restoring "the human and civil dignity" of victims. For many women, relating the story of their sexual abuse would in no way serve this purpose. It would, instead, leave them feeling a loss of dignity.
45. It is, perhaps, surprising that as many women as did spoke about being raped or otherwise sexually abused. As Ms Jessie Duarte put it, "the Commission is actually asking people to open the empty cupboard and expose that there are no groceries in the cupboard and then they have to live with that".
46. She noted the way in which the liberation movements had contributed to the silence during the 1980s, in that "if women said that they were raped, they were regarded as having sold out to the system in one way or another". [...] She noted that women were among the cruellest in enforcing these attitudes.
47. Ms Thenjiwe Mtintso suggested that men use sexual abuse to show the weakness of the men on the opposing side "because women are supposed to be these people that are protected by these men". She suggested that sexual violence is also used by those in power to destroy the identity of women who have rejected traditional roles, for example, by engaging in 'masculine' roles in the struggle. Seifert suggests that in a war situation men, or the 'nation', might well collude in silencing talk of sexual abuse.

(T)he commemoration of female war victims would pass on the violation of manhood into peacetime. This would be a continuous reminder that 'national manhood' has been humiliated by the enemy. What is chosen instead is the mechanism of repression. [...]

48. Where the sexual abuse was perpetrated by men within the liberation movements, there were further pressures not to speak. Ms Thenjiwe Mtintso described how "comrades who were contacts inside the country would come outside to report ... They would put up a comrade in a particular place and comrades would sleep with them. And that's rape. That for me is rape".
49. She described how, despite her own high position, one of her male comrades said to her:
- You know, it's going to get to the point that I am going to rape you. And it's going to be very easy to rape you ... and I know there is no way that you are going to stand in front of all these people and say I raped you. [...]*

50. In presenting the ANC report to the Commission, Deputy President Thabo Mbeki acknowledged that men in the camps had committed "gender-specific offences" against their

woman comrades. He said that the perpetrators had been punished, but did not describe either the offences or the punishment in any detail. In the light of these silences, Commissioner Hlengiwe Mkhize remarked that “the submission fail(ed) women”.

51. Some of those who spoke about sexual abuse said that this was the first time they had done so. Ms Thandi Shezi said that this would be the first time her mother would hear about her having been gang raped by security police. She said that one of the reasons she had remained silent was because, as so often happens with rape victims, she had felt that she was in some way to blame: “I thought I’d done something that I deserved to be treated like that.” Ms Kedibone Dube said that after her abduction and rape, she had only told her family that she was kidnapped. Other women said that they had only been able to talk after undergoing counselling.

SEXUAL ABUSE

52. Given the close relationship between sex and gender, one of the more obvious differences in the way women and men might experience gross human rights violations is the extent to which they suffered from sexual violations, and the nature of those sexual violations. Of the 446 statements that were coded as involving sexual abuse, 398 specified the sex of the victim. Of these 158, or 40 per cent, were women. Rape was explicitly mentioned in over 140 cases.
53. The Commission regarded rape as ‘severe ill treatment’ regardless of the circumstances under which it occurred. Solitary confinement was the other abuse categorised in this way. The women who described how they had been raped while in detention were, in effect, often describing a double experience of those abuses regarded as most severe. Ms Thandi Shezi first had her hands and feet chained while she was assaulted.

Then they unchained me, and Sam took the white sack and put it on my head... they poured acid on this water that they were pouring on me and that acid got into my eye and today I can't see properly in the other eye ... they used this electrodes to choke me ... until I bit my tongue and my tongue got torn ... And one of them said, “We must just humiliate her and show her that this ANC can't do anything for her”... then the whole four of them started raping me whilst they were insulting me and using vulgar words and said I must tell them the truth.

54. Ms Phyllis Naidoo reported that, in 1976, when assisting child detainees, she came across several young women who had been raped and impregnated by the officers who detained them. Despite her offer of assistance, “they wouldn’t (abort). They feared the special branch.”
55. Several women described how they had been sexually abused, although not necessarily raped, while in detention. Ms Evelyn Masego Thunyiswa was twenty-two years old in 1977 when she and others were detained by police on their way to Steve Biko’s funeral. She told the story at the special hearing on children and youth:

The other one came to me... and said, “Stand up! I want to see your vagina”, and they started hitting me with fists. After that, they electrocuted us... I can't remember where did they apply this to my body because, when they switched it on, I felt as if my private parts were falling... While [I was] crying, they were sitting in front of me laughing.

56. Ms Funzani Joyce Marubini was a member of the Youth Congress in the Northern Province at the time of her detention in 1986. She and five other women were arrested.

They did not give us food, they did not give us water, they shut the toilets so that we could not go in there to relieve ourselves... that night, they came and woke us up and they switched off the lights and said

we should lie on our stomachs. They started assaulting us with sjamboks [whips] ... assaulting us on our buttocks up to the time that our panties were torn and our under-garments were exposed.

57. Their assailants said the reason they had undressed the women was that “they said they wanted to show us as to where Mandela is”.
58. Ms Nomvula Mokonyane was arrested and put into solitary confinement eleven days after her wedding and two months into her pregnancy. The district surgeons disputed the fact that she was pregnant. They said that her Fallopian tube was blocked “and they had to make sure that they unblock them so that then you can begin to have menstruations; and if you begin to resist that then torture will take its own course.” Ms Sheila Segametsi Masote also miscarried in detention after being kicked and left “all bleeding, blood oozing down your legs and drying up there.”
59. Ms Hilda Bernstein documented the torture of Black Consciousness leader, Ms Joyce Dipale, while in solitary confinement for 500 days. Dipale’s torture included electric shocks on her naked breasts, buttocks and genitals. She said that she “got used to the pain, but never the humiliation.” [...]
60. Ms Elaine Mohamed was made to strip, do star jumps, and was fondled by doctors and prison officials. During the hearings, Ms Virginia Mbatha described how her captors “would fondle me in whatever part of the body that they wanted to and I couldn’t do anything because my hands were tied to the back”.
61. Women who were not actually raped spoke about the ever-constant fear that they would be. Ms Joyce Sikhakhane Ranken described how, while in prison, she “was terrified that one day I would be gang raped by those bullies.” Ms Thenjiwe Mtintso described an incident in which she was captured by a group of eight security force members and taken to Kei Bridge.

They asked me to get out of the car and they all got out. And I had not minded being beaten or anything or even died in the process, but rape, just as far as I was concerned, this was... going to be a gang rape and they were just going to leave me here...”. [...]
62. Ms Yvonne Khutwane of Worcester described how she was first humiliated by repeated questions about her sex life. She broke down and cried when one of the young soldiers who had arrested her put his hand inside her vagina: “I was afraid [because] we have heard that the soldiers are very notorious of raping people”.
63. There were many stories of how women were degraded when menstruating. Most commonly, women would be forced to stand, with or without pads, with blood running down their legs while being tortured. Ms Phyllis Naidoo was forced to use newspapers instead of pads: “It was horrible, and terribly demeaning.” For Ms Joyce Sikhakhane Ranken, “the feel and smell of the sticky blood [was] a reminder of imminent slaughter at the hands of your torturers”. When Ms Elaine Mohamed was told she was not allowed to use tampons, a policeman “shook the pad and hit it against the wall saying ‘Put it on’”. Ms Mohamed also reported that another woman had rats pushed into her vagina. She said that rats would come into her own cell and eat her soiled pads. “I’d just pick up the bits of my pads, but that experience was terror for me. I always felt that the rats were gnawing at me”. [...]
64. Stories of rape and sexual abuse were not confined to those that occurred in detention. In the Durban hearings, speaking from behind a screen, a woman described how she was gang raped by youths from an opposing political organisation. Her husband was forced to watch the entire attack. When she awoke in hospital, she was told that she needed a hysterectomy. Like some others, this woman felt she was in some way responsible: “Sometimes I feel like I invited the trouble myself. I feel very degraded and dirty. And especially because I am a Christian.”

65. Ms Gloria Ella Mahlophe related how her sixteen-year-old daughter went with two other young girls to a meeting in Thokoza.
When they arrived in Thokoza, they were put inside the hostel. They started undressing them, taking off their clothes. After they've undressed them, they raped them. After they raped them, they took them and threw them outside the hostel, at the back of the hostel and they started shooting at them. They were trying to chop them with some huge bush knives.
66. Fourteen-year-old Ms Winnie Makhubela, the child of Ms Mahlophe's brother, was the only one of the three young women to survive. In her testimony, Ms Makhubela said that the meeting was attended by women as well as men, and that the women "started applauding and they were very happy when they saw this happening to us. They slapped us when we tried to plead to them to help us."
67. Another anonymous witness from KwaZulu-Natal also described herself as apolitical, but said she lived between an Inkatha Freedom Party (IFP) and ANC area, and that "they used to tell themselves that in my house that's where Inkatha people were staying." One day, on her way to hospital, the woman was offered a lift by a man who then abducted and raped her. This rape was followed by further rapes by other men. The woman was sixteen when this happened, and had been hoping to preserve her virginity as her mother had done. However, the rape resulted in pregnancy "and now I have a child whom I don't know his father". Further, when this woman tried to report the incident to the police, "the judge told me that I was just a concubine in that area, [that] I am lying, they didn't rape me."
68. Ms Kedibone Dube, who also said she "wasn't a comrade", spoke about her experience when Inkatha invaded Swanieville in 1992. A man, promising to take her to safety, took her instead to a house in which no one was living.
And each and everyone pulled their own girls there and they were sitting together with their girls. And I said to him, "I'm not going to sleep here, I want to go home." He said, "I will take you to the Xhosa people and the Xhosa are going to kill you." And he beat me up the whole night until he raped me.
69. Ms Khosi Dora Mkhize of Mpumalanga said that, when she and her family were attacked in 1987, they were living in an ANC stronghold. However, she said, "I didn't know anything about politics". In the middle of the night, a gang attacked the house, seemingly without reason. Three of the attackers raped her as well – she suspects – as her sister. The assailants stabbed her mother to death, and then burnt down the house. Ms Mkhize said she had never told anyone, even her sister, about the rape. Today, she said, "I totally do not trust a man... I regard him as an enemy". This legacy was echoed by Ms Thandi Shezi, who said that her experiences had left her unable to have a good relationship with a man: "They say to me I'm frigid. Because if I get involved with a man I get very scared." [...]

WOMEN AS PERPETRATORS

125. The women who spoke at the hearings spoke as primary or secondary victims of abuses. There were, however, also women who perpetrated abuses on others. In her address to the hearings, Ms Thenjiwe Mtintso pointed out that nowadays:
We go to the women's conferences and hug and kiss, we are kissing with some of the perpetrators. It is okay that we kiss, but it is not okay that they do not come forward and talk about the role that they played.

126. She included among the perpetrators those who supported the “boys on the border” by sending them packages, by giving space to them in the media, and by otherwise “egging them on”. She was clear that “patriarchy must not be allowed to shield these women, because they claim they did this for their partners, for their husbands, for their brothers.”
127. Ms Ann-Marie Wallace, on the other hand, spoke as the mother of a white soldier who was killed. She spoke about the pain of losing a son in this way, but also about her and her community’s ignorance of what men were doing in the army. She said that they “had come to accept that it is the law. Your children get called up for two years and that’s it.” She noted that her son, too, “did not have time to learn that it was all lies. According to him, he died a hero because that’s all he knew.”
128. Of the 7 128 applications for amnesty received by the Commission, only 56 were known to come from women and 4 665 from men, while in 2 407 cases the sex of the applicant was unknown. Thus only 1 per cent of those where the sex was known came from women. Of the 40 women’s applications available for analysis, two had been granted amnesty, 24 had been refused and 14 cases were still awaiting a decision at the time of reporting. The two whose applications were granted were ANC members. One had planted bombs and been involved in theft, while the other had been found guilty of possession and distribution of weapons.
129. Amongst those still awaiting decisions were seven women who had applied for amnesty under the ANC’s collective responsibility application, or had otherwise failed to specify the exact nature of their act. Of the 38 who had been refused, the most common offences were murder (five applications) and theft or fraud (eight applications).
130. One of the most intriguing applications came from a young Indian woman, who applied for amnesty for what she describes as her “apathy”. The application stated that those applying on these grounds recognised that they:
- as individuals can and should be held accountable by history for our lack of necessary action in times of crisis ... in exercising apathy rather than commitment we allow(ed) others to sacrifice their lives for the sake of our freedom and an increase in our standard of living.*
131. The applicants argued that apathy fell within the Commission’s ambit as an act of omission. The application was, however, refused on the basis that it did “not disclose an action or omission which amounts to an offence or a delict in respect of which amnesty can be granted.”
132. From the men’s side, one of the more bizarre applications was that of Mr Michael Bellingham. Mr Bellingham was one of the more than 30 security policemen who applied for amnesty for the bombing of Khotso House, Cosatu House and ‘Cry Freedom’ cinemas. [...] Bellingham requested amnesty for the murder of his wife on the grounds that she had threatened to reveal his political role. [...]
133. Several of those who testified at the hearings spoke about the extent to which those who had perpetrated abuses against them were women. They spoke, in particular, about women warders in prisons. The CALS interviews provided further evidence on this topic.
134. Most of those who had suffered explicit torture had done so at the hands of men, most of whom were white. Mr Thandi Shezi explained that “the female used to hand over their assault and brutalisation to their male counterparts”. However, Ms Nomvula Mokonyane said that it was women who pumped water into Fallopian tubes. She could not understand this betrayal:
- This woman knows exactly what the effects of that pain will be on that other woman. It is hard to know if you will be able to reconcile with that woman perpetrator. [...]*

135. In the main, women warders exhibited cruelty in the way they treated prisoners outside of the explicit torture sessions. Thus, Ms Deborah Matshoba described as ‘torture’ the way that women warders threw her (bad) food at her. Her exasperation was such that one day she grabbed the hair of the woman concerned and “started bashing her head against the bars”. Her resistance won her a new warder, as well as exercise time and a weekly shower. Ms Matshoba noted that, when women warders were black, one was able to “conscientise them as time went on and to appeal to their senses and you would sensitise them to the point that they would realise that you are there for them.”
136. Ms Elaine Mohamed said she felt betrayed by the way the women police would “flick with their nails on my nipples, saying, ‘It’s a shame nobody wants you. You’ve obviously never had a boyfriend. No one touched these breasts, else why are they so firm?’” [...] Ms Phyllis Naidoo said that while, at first, she thought that women warders would be better because they would understand the women detainees’ fears of rape and violence, her experience of the “horrors” in Durban Central changed her mind.
137. Ms Stephanie Kemp, on the other hand, remembered some kindness. She remembered a 19-year old warder “with uncommon sensitivity” who took the risk of telling her John Harris had been hanged. She remembered the then matron of Kroonstad Prison, Ms Erica van Zyl, who “sent the special branch away. She sat down with me and said that as long as I was in her prison, she would not allow the special branch near me.”
138. At the Human Rights Violations hearing in Port Elizabeth, Ms Ivy Gcina told of the kindness of her warder at North End Prison, a Ms Irene Crouse:
- The same night I saw a light at night and my cell was opened. I did not see who was opening my cell. I did not look at the person. She said to me, “Ivy, it is me. I am Sergeant Crouse. I have fetched your medicine”. She rubbed me. She made me take my medicine. I told her that I could not even hold anything but I can try. I told her I was going to try by all means. She said “It is fine, do not worry yourself. I will help you”. So she made me take the medicine and then she massaged me. Then after that I could at least try and sleep.*
139. A few days later the local newspaper, the Eastern Province Herald, carried a front page, full size picture of Ivy Gcina hugging Irene Crouse: The report read:
- Tortured activist Ivy Gcina was yesterday reunited with her Angel of Mercy – the kind jailer who held her hand and tended her wounds after hours of brutal interrogation by security police. “I never thought you’d remember me”, said Irene, 37, as the two women threw their arms around its other on the stoep, crying and laughing at the same time. Ivy, 59, replied: “But after I was assaulted it was you who was there to help me, who entered my cell at night. Can you ever forget someone like that?”*
140. “We met as human beings, as women,” Ivy recalled. “There was such communication there. Ensuring I had a clean towel, asking me how I was. The relationship was so good.” Irene felt she was “only doing her duty” when she helped Ivy.
141. Ms Deborah Matshoba recalled how a white, male, Afrikaans-speaking uniformed policeman had assisted her by smuggling her asthma spray and tablets to her, and later smuggling her out to see a doctor.

142. Outside of the prison context, Ms Agnes Gounden and Ms Zodwa Lephina Thobela described how nurses had assisted and protected them when security police wanted to interrogate them. However, as emerged in the health hearings, nurses (most of whom are women), although not active perpetrators, often turned a blind eye to what was happening. Ms Betty Ncanywa, who worked at Livingstone Hospital in the 1980s, explained that they had been instructed not to obstruct the work of the security forces — that they must “try to refrain from politics, otherwise my future would be in jeopardy”.

CONCLUSION

143. This chapter draws primarily on the testimony of women who made presentations during the three special hearings organised in Cape Town, Durban and Johannesburg. It also draws on the associated submissions to the Commission and on statistics generated from the Commission's database of deponents and applicants. As elsewhere in the Commission, the relatively few women whose experiences are recorded must represent many, many more who did not want to present their own stories, or were not able to do so for some reason. Nevertheless, the limited evidence available confirms the fact that women were active in all roles – as perpetrators, and in the full range of different victim roles. It also indicates ways in which women's experience of abuse might have differed from that of men.
144. The chapter suggests further that the definition of gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women. In this respect, the full report of the Commission and the evidence presented to it can be compared to reports on South African poverty, which make it very clear that while women are not the only sufferers, they bear the brunt of the suffering.¹

¹ For Findings on Women, consult the TRC Final Report, [Volume 5 – eds.]

31

FINDINGS FROM SPECIAL HEARING ON CHILDREN AND YOUTH, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT, 1998

INTRODUCTION

1. In light of the direct impact of the policies of the former state on young people and the active role they played in opposing apartheid, the Commission decided to hold hearings on the experiences of children and youth. Many of those who testified before the Commission were 18 years old or younger when the gross violations of human rights occurred. [...] However, it was considered important that those who were under 18 years of age during the life of the Commission be given the opportunity to testify. Indeed, before these special hearings, few children under the age of 18 had approached the Commission to tell their stories. [...]

CHILDREN SUBJECTED TO GROSS HUMAN RIGHTS VIOLATIONS

3. The hearings provided an opportunity to focus on the impact of apartheid on children and youth. Over the years, children and young people were victims of and witnesses to many of the most appalling gross human rights violations in South Africa's history. The effects of exposure to ongoing political violence may have had serious effects on the development of many of these children. It was, therefore, considered imperative that the trauma inflicted on children and young people be heard and shared within the framework of the healing ethos of the Commission. Recognition of the inhumanity of apartheid was seen as a crucial step towards establishing a human rights framework for children and young people in order to ensure that they be given the opportunity to participate fully in South Africa's new democratic institutions. [...]
5. No concerted attempt was made by the Commission to encourage those young people who did attend the hearings to speak of themselves as heroes who had sacrificed their education, their safety and often their long term opportunities through their active resistance to apartheid.

PARTICIPATION OF CHILDREN UNDER 18 YEARS OF AGE

7. In terms of the CRC, a child is a person under the age of 18 years of age and is entitled to special protection by government and society. A critical debate arose before the hearings as to whether or not children under the age of 18 should appear and testify at the hearings. It was felt that the formal structure of the hearings might intimidate children and subject them to additional trauma. In order to discuss this issue, the Commission held a series of meetings and workshops and sought the opinions of international organisations such as the United Nations Children's Fund (UNICEF) and over 30 South African NGOs working with children and youth. The final

decision of the Commission was that children under the age of 18 would not testify. Instead, NGOs and other professional people working with children were asked to testify on their behalf. The Commission did, however, make extensive efforts to involve children directly in the hearings and in the collection of data before the hearings. [...]

REGIONAL HEARINGS

9. Throughout the country, school children participated in the hearings and listened to the evidence presented. At the KwaZulu-Natal/Free State hearing, school children from a number of schools presented a play and other schools performed songs. A dramatic presentation by school children of the Soweto uprising was a highlight of the hearing hosted by the Johannesburg office, moving members of the audience to tears. This hearing was opened by Ms Graça Machel, chairperson of the UNICEF Study on the Impact of Armed Conflict on Children, who brought an important international perspective on this issue. In the Eastern Cape, musical presentations by school choirs assisted in the process of reconciliation while, in Cape Town, three high school students read a submission by Professors Pamela Reynolds and Andrew Dawes on the impact of apartheid on children.

CREATIVITY AND FLEXIBILITY

10. The special hearings on children and youth were more flexible than other hearings of the Commission, in that they allowed participants to reflect on or critically analyse the root causes of apartheid and its effects on children. Most parties providing testimony supplied written submissions ahead of the hearing and were asked to summarise their submissions orally and answer questions posed by the panel. The hearings also allowed for the participation of children in ways other than by testifying; this included finding creative ways to access and share the children's experience. Before the KwaZulu-Natal/Free State hearing, for example, children spent a day telling their stories and making drawings that reflected their experiences. These were shared at the hearings the following day.

OVERVIEW OF THE EXPERIENCE OF CHILDREN AND YOUTH

11. The South African social fabric was shaped by apartheid laws and structures that exposed the majority of South Africa's children to oppression, exploitation, deprivation and humiliation. Apartheid was accompanied by both subtle and overt acts of physical and structural violence. Structural violations included gross inequalities in educational resources along with massive poverty, unemployment, homelessness, widespread crime and family breakdown. The combination of these problems produced a recipe for unprecedented social dislocation, resulting in both repression and resistance. This contributed to a situation that made possible the gross human rights violations of the past. [...]
15. These conditions led to the recognition by many of South Africa's children that they were being denied opportunities to take up their rightful place as South African citizens. According to testimony at the Athlone hearing, children had to make choices about whether to avoid,

participate in or lead the resistance. Many of South Africa's children did not stand passively by, but actively disputed the legitimacy of the state. In doing so, they contributed to the dismantling of apartheid.

16. Very early on, the former state became aware of the pivotal role of children and youth, identifying them as a serious threat and treating them accordingly. Dr Max Coleman spoke of the waging of an undeclared war against children and youth, in which they became the primary targets of detention, torture, bannings, assassination and harassment of every description.
17. The rise of young people to leadership positions was also seen as a challenge to the patriarchal authority of some of the older men, leading to intergenerational conflict between the young comrades and conservative elders. In the process, violence was unleashed against, witnessed, and perpetrated by the young. Many young people felt that the only means of dealing with systemic violence was to fight back, which led to many situations of counter-violence. Ms Sandra Adonis, who became an activist at the age of 15, commented at the hearing in Athlone:

Although we have done things that we are not very proud of, but the reasons why we have done it we are proud of them, because today we can stand with our heads up high and say that, together with the nation, we have done it.
18. The role of children and youth was crucial in opposing the apartheid system. However, in the process, they were drawn into an arena that exposed them to three particular kinds of violence: state oppression, counter-violence and inter- and intra-community violence.

STATE OPPRESSION AND COUNTER MOBILISATION

19. The role of youth in resisting apartheid dates back to the formation of the militant African National Congress (ANC) Youth League in 1943. The militancy of the youth provided the impetus for the Defiance Campaign of 1952 and the drafting of the Freedom Charter in 1955. In the 1960s, students were amongst those who rose up in their thousands to protest against the pass laws. The state's response to these peaceful protests was mass repression. Many youth saw no option but to leave the country in order to take up arms and fight for liberation. Umkhonto weSizwe (MK), formed in 1961, drew many of its recruits from the ranks of the youth.
20. Children and youth faced the full force of state oppression as they took on their role as the 'foot soldiers of the struggle' – as what were called the 'young lions'. Youth challenged the state by organising and mobilising their schools and communities against illegitimate state structures. Mr Potlako Mokgwadi Saboshego, a student activist from the East Rand, described the role of students thus:

After some time, the parents stood back because, when we held meetings at school, the police would come and interfere with those meetings and they would shoot teargas and, together with our parents, we would become victims of the police interference. [...]
22. In June 1976, the student revolt that began in Soweto transformed the political climate. One hundred and four children under the age of 16 were killed in the uprising and resistance spread to other parts of the country. Dissent by the children and youth of South Africa cast children in the role of agents for social change, as well as making them targets of the regime.

Classrooms became meeting grounds for organisations such as the Congress of South African Students (COSAS), which was formed in 1979 and ultimately boasted a membership of over a million students. The security police clampdown on COSAS resulted in the arrest of over 500 of its members by the time of the declaration of the state of emergency in July 1985. [...]

27. The security establishment engaged in the informal repression of children by hunting down 'troublesome' youth and developing an informer network. This latter had dire consequences for youth organisations. Stories are told about the transfer of detained children to rehabilitation camps where it is thought that they became informers and participated in counter-mobilisation structures and other state security projects. In the words of Mr Mzimasi Majoyo at the Eastern Cape hearing:

Our friends were made to spy on us ... be it girlfriends or boyfriends, were forcibly turned to spy on us for the benefit of the monster. [...]

WHITE YOUTH

40. White youth lived in an altogether different reality. According to Mr Pierre Reynolds of the Democratic Party (DP) Youth:

Classified white under the apartheid regime, I and my peers, enjoyed privileges because of the colour of our skin. We were born with and we were brought up with racist prejudices ... we enjoyed the benefits of apartheid.

41. Mr Reynolds attributed the lack of white youth resistance to the system of patriarchy, whereby the young were kept under control by their elders, their cultures, institutions and state systems.
42. Young white males were also conscripted into the defence forces. [...] Through government control of the national media and strategies such as police visits to white schools, young white people were subjected to propaganda. Fear of the 'other' was implanted in children under the guise of an imminent 'Communist' plot, articulated through slogans such as 'total onslaught'. All this contributed to a situation in which most white males concluded that it was their obligation to serve in the armed services.
43. White children were offered few alternatives to being part of the white elite. Group Areas and other legislation effectively segregated them from their less privileged peers. They had virtually no contact with black children and lived largely in the racially protected environments of school, family and church. Conflict and political volatility were seen as a threat to the deliberately narrow world order with which they were familiar. White conscripts were used to uphold the status quo, with violence if necessary.
44. The militarisation of young white boys began at an early age with systems like the cadets, through which they were taught basic military discipline and skills. Indoctrination, coupled with widespread racist state propaganda, was largely effective in preventing widespread resistance to enforced conscription. Again, according to Mr Reynolds:

In the 1980s, I and my contemporaries – my peers – were at the mercy of a system designed to socialise and condition us into the ranks of perpetrators of apartheid. We were told the army would turn us into men. It was the white man's circumcision school.

45. Some white youth who fought in defence of a white South Africa were convinced by their military and political masters that both their own suffering and the acts of violence committed in the process were undertaken for a just cause. Others faced the dilemma of being conscripted to fight a war in which they did not necessarily believe. A minority became conscientious objectors, condemned as traitors to the nation and faced with the choice of leaving the country or being sentenced to six years' imprisonment.
46. Some white youth joined the struggle against apartheid through membership of and participation in resistance organisations such as the End Conscription Campaign (ECC) [...], student movements, such as the National Union of South African Students (NUSAS) or by joining political organisations. Like other activists, they became targets of state violence. [...]

KILLINGS OF CHILDREN AND YOUTH REPORTED TO THE COMMISSION

49. [...]The majority of victims of killings reported to the Commission were young men between the ages of 13-24. This can be seen as a reflection of the perceived threat posed by young males to the state, but is linked with other 'gendered' issues about women and their willingness to testify about their own abuses. [...]

DETENTION AND IMPRISONMENT OF CHILDREN AND YOUTH

54. In large-scale and often arbitrary police action, thousands of children, some as young as seven years old, were arrested and detained in terms of South Africa's sweeping security and criminal legislation. Sometimes, entire schools were arrested en masse. [...]
55. It is clear from the body of evidence presented that large numbers of children were detained during the period covered by the Act. Detention was a major weapon in the former state's armoury of terror and repression. At times, during the years of greatest conflict, children under the age of 18 years of age represented between 26 per cent and 45 per cent of all those in detention. All the available figures indicate that the largest number of children and youth was detained between 1985 and 1989, during the two states of emergency. Of 80 000 detentions, 48 000 were detainees under the age of 25. [...]

TORTURE OF CHILDREN AND YOUTH

61. Torture usually occurred at the hands of the security forces whilst children and youth were in detention. Types of abuse reported by children included food and sleep deprivation, solitary confinement, beating, kicking, enforced physical exercise, being kept naked during interrogation, suspension from poles and electric shocks. Other forms of torture included verbal insults, banging a detainee's head against a wall or floor, use of teargas in a confined space, enforced standing in an unnatural position, beating on the ears, near suffocation and cigarette burns. These forms of torture were compounded by a lack of intellectual stimulation, false accusations, threatened violence to the detainee and his or her family, misleading information, untrue statements about betrayal by friends, pressure to sign false documents, interrogation at gun point and other violations. [...]

CONSEQUENCES OF APARTHEID AND GROSS HUMAN RIGHTS VIOLATIONS

The impact of apartheid on children and youth

84. South African children were exposed to countless horrors and suffered considerable trauma because of apartheid. Their role and involvement in the resistance struggle placed them on the firing line. The Commission's documentation shows that children and youth were the dominant victims in all categories of gross human rights violations described in the Act. For almost every adult that was violated, probably two or more children or young people suffered. Children and young people were killed, tortured, maimed, detained, interrogated, abducted, harassed, displaced as well as being witnesses to these abuses.
85. Children growing up in extremely violent situations are frequently deprived of the structural support that allows for their meaningful experience of social and cultural life; the fabric of their societies and institutions is affected. For many South African children, family and friendship support networks were shattered by the policies of apartheid. Family life was often damaged, making it difficult for parents to take care of their children and to be emotionally available to listen to them. [...] Many children became alienated from their parents and the trust, faith and communication that should have existed between the generations was sorely tried.
86. When considering the experiences of children under apartheid, it is important to remember that the Act provided for victims of defined gross human rights violations to testify and make statements to the Commission. This chapter therefore concerns the statements and testimonies of deponents who were defined as victims in terms of the legislation. This focus on victims is not, however, intended to diminish the active role of children and youth. Children were agents of social change and harnessed vast amounts of energy, courage and resilience during the apartheid era. For many young people, active engagement in political activity resulted in the acquisition of skills such as analysis, mobilisation and strategising, as well as the ability to draw strength from friends and comrades in times of hardship. Many of today's leaders come from a politically active history and have displayed a remarkable capacity for forgiveness and reconciliation. [...]
95. For many white youth who were conscripted into the Defence Force, the nature of the war had varied psychological effects. Guerrilla warfare was attended by many stresses, especially for people from urban areas who were suddenly confronted with the reality of fighting a bush war. These experiences were compounded by the physical brutality to which they were subjected during their basic military training – which itself resulted in numbers of deaths. Others were engaged in violence and repression as conscripts in the townships. Many of these former combatants have since displayed symptoms of post-traumatic stress disorder. [...]
96. Child soldiers and activists who were exposed to or involved in extensive acts of violence may have become desensitised to suffering. Many have been deprived of opportunities for physical, emotional and intellectual development. After the conflict was over, it was difficult to take up life as it was before, especially where there was a lack of education, training, decent living conditions and jobs. Effective social reintegration depends on support from families and communities. [...]

CONCLUDING REMARKS

117. Those who grew up under conditions of violence will carry traces of their experiences into adulthood. Many have suffered the loss of loved ones. Many carry physical and psychological scars. The life opportunities of many have been compromised through disruptions to their education. Some have transplanted the skills learnt during the times of political violence into criminal violence, as they strive to endure ongoing poverty. However, perhaps the most disturbing and dangerous aspect of this legacy for the future of the nation is the fact that those who sought to transform the country, and in the process gave up so much, see so little change in their immediate circumstances.
118. The period of struggle also, however, nurtured resilience, wisdom, leadership and tolerance. Many young people rose above the suffering they experienced. Some defiantly and bravely saw themselves as fighting for the freedom of their people – sacrificing education and opportunities for self-improvement and joining liberation armies and resistance movements.
119. Many of these young people have become men and women of extraordinary calibre. Despite their suffering, they have shown extraordinary generosity and tolerance and have reached out to their former oppressors in a spirit of reconciliation.¹

¹ For Findings on Children and Youth, see TRC Final Report, Volume 5 – eds.]

SOURCE INFORMATION AND ADDITIONAL READINGS

General note and background readings

The selections of testimony here are all drawn from the TRC on-line archive (http://www.doj.gov.za/trc/trc_frameset.htm). Where possible, we have included specific information about the dates and locations of the hearings in the event that there is a desire to consult the full transcript.

There is a larger and growing literature addressed to the form and content of the testimony presented by victims to the South African TRC. For a startling, penetrating, and sometimes controversial account, see Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (New York: Random House, 1998). For a careful and elegant examination of how women approached the question of whether to give testimony and the difficulties involved in both speaking out and keeping silent, see Fiona C. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003).

Document 19

Truth and Reconciliation Commission of South Africa Report, Volume 7.

Document 20

Truth and Reconciliation Commission of South Africa Report, Volume 5, 1998, Chapter 1, Appendix 1.

Document 21

Joyce N. Mtimkhulu, Testimony to the Human Rights Violations Committee, 26 June 1996. Mtimkhulu's appearance before the TRC is important for a variety of reasons, not least because her initial attempt to testify was blocked by a court order that followed from an application made by Gideon Nieuwoudt.

Document 22

Notutu Lizzie James, Testimony to the Human Rights Violations Committee, 10 February 1997, Cradock Hearing, Day 1.

Document 23

Busiswe Kewana and Thomzama Maliti, Testimony to the Human Rights Violations Committee, 24 April 1996, Heideveld Hearing, Day 3. We thank Xhosa specialist, Mr A L Kruger, University of Cape Town, for his assistance with this document.

Document 24

Hilda Levy, Testimony to the Human Rights Violations Committee, 6 August 1996, UWC Hearing, Day 3.

Document 25

John Deegan, Testimony at the TRC Special Hearing on Conscription, 23 July 1997, Cape Town.

Document 26

Nozibonelo Maria Mxathule, Testimony at TRC Women's Hearing Convened by the Human Rights Violations Committee, 29 July 1997, Johannesburg Hearing, Day 2.

PART II

THE DIFFICULT WORK OF FINDING TRUTH AND PROMOTING RECONCILIATION

Document 27

Quentin Cornelius and Michael January, Testimony to Amnesty Committee Regarding Heidelberg Tavern Massacre, 31 October 1997, Cape Town, Day 5.

Document 28

Truth and Reconciliation Commission of South Africa Report, Volume 5, 1998, Chapter 1.

Document 29

Truth and Reconciliation Commission of South Africa Report, Volume 5, 1998, Chapter 4.

Document 30

Truth and Reconciliation Commission of South Africa Report, Volume 4, 1998, Chapter 10.

Document 31

Truth and Reconciliation Commission of South Africa Report, Volume 4, 1998, Chapter 9.