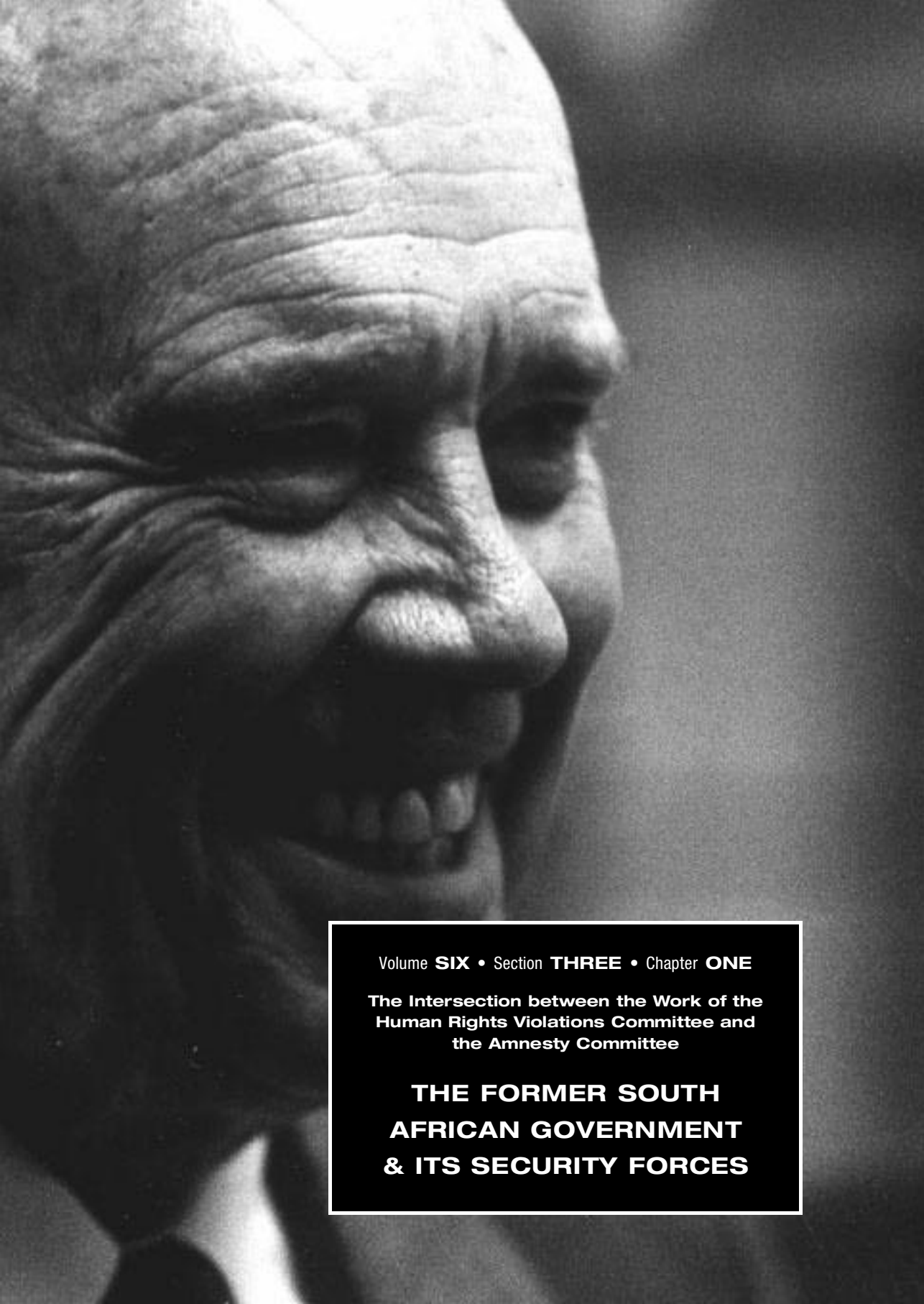

Volume **SIX** • Section **THREE** • Chapter **ONE**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE FORMER SOUTH AFRICAN GOVERNMENT & ITS SECURITY FORCES

The Former South African Government and its Security Forces

PART ONE: OVERVIEW OF AMNESTY APPLICATIONS FROM MEMBERS OF THE SECURITY FORCES: 1960–1994

■ INTRODUCTION

1. The Truth and Reconciliation Commission (the Commission) found the state – and in particular its security agencies and affiliated policy and strategy formulation committees and councils – to be the primary perpetrators of gross violations of human rights committed during the thirty-four years it was mandated to investigate. [1]

2. Some 50 per cent of all amnesty applications received from members of the security forces related to incidents that occurred between 1985 and 1989. No applications were received in respect of incidents that occurred in the first decade of the Commission's mandate and few applications were received for the pre-1985 and post-1990 periods. Despite this, evidence received by the Commission shows that the security forces were responsible for the commission of gross human rights violations during both of these periods.

3. Most of the applications were received from members of the Security Branch, both from Security Branch headquarters and from the nineteen regional Security Branch divisions. These applications and the ensuing amnesty hearings provided new and compelling detail about how the Security Branch understood and participated in the political conflict.

4. On the other hand, despite the fact that the South African Defence Force (SADF) was responsible for numerous violations, especially outside of South Africa,

1 For an overview of the role of the security forces in suppressing resistance and countering armed actions by the opponents of apartheid, refer to Volume Two, Chapter Two, p. 42; Chapter Three, p. 165; Chapter Seven, p. 577. Refer also to the Regional Profiles in Volume Three. For a summary of the findings made against the state, refer to Volume Five, Chapter Six, p. 212ff.

very few SADF members and operatives applied for amnesty. The major SADF applications related to incidents committed inside South Africa that were either already in the public domain or were connected to applications by Security Branch applicants.

5. Inside the country, the SADF was involved in the development and management of national security policy, especially with respect to the National Security Management System (NSMS) and the development of the strategy of counter-revolutionary warfare, which provided the framework in which gross violations of human rights took place.

6. The dearth of applications reflects the general reluctance of SADF members to participate in the amnesty process.

7. The small number of applications for external operations contrasts strikingly with the Commission's conclusion that the regions beyond South Africa's borders bore the brunt of the counter-revolutionary warfare waged by the South African security forces, including the police, the defence force and intelligence.[2]

8. No members of the National Intelligence Service (NIS) applied for amnesty. This was consistent with their stated position that, as members of a non-operational structure, they were not directly involved in the commission of gross violations of human rights.

STATISTICAL OVERVIEW[3]

9. A total of 293 members of the former government's security forces applied for amnesty. Of these, 256 (87.4%) applied for offences committed while they were South African Police (SAP) force members; thirty-one (10.6%) applied for offences committed while they were SADF members; two applied for offences committed while they were SAP members and later SADF members; two applied for offences committed while they were in the Department of Prisons; one applicant was the Minister of Law and Order and two applicants' specific affiliation is not known. The overwhelming majority (229, or 78%) of the SAP members were based in the Security Branch at the time of the violation.

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2 Volume Five, Chapter Six, p. 257, para 16; Volume Two, Chapter Two.

3 The statistics in this section are based on amnesty matters for which the Amnesty Committee made written decisions. It thus excludes all those who were refused amnesty administratively at the outset of the process because the applications failed to meet the most basic criteria for amnesty. Thus all obviously criminal matters, and matters otherwise out of mandate (e.g. offences committed after the cut-off date) were immediately excluded and applicants received pro-forma refusals. As a consequence, the statistics in this section do not correlate with those referred to in the report of the Amnesty Committee.

10. Only thirty-one of the amnesty applicants were members of the SADF. Moreover, the greater part of this batch of applications related to violations committed by SADF members inside South Africa. Only five SADF applicants applied for amnesty for external violations, despite the large numbers of violations reported as a result of their activities in neighbouring countries.[4]

11. Two of these applications were from white conscripts. Medic and conscript Sean Mark Callaghan applied for and was refused amnesty for acts of omission regarding his role while attached to a Koevoet unit during 1983, and conscript Kevin Hall was granted amnesty for his role in killings committed as part of a unit on patrol during the mid-1970s.[5]

FACTORS IMPEDING AND ENCOURAGING APPLICATIONS

12. The most striking aspect about the applications from the state is that, on the whole, security force members who applied to the Commission for amnesty were not supported by politicians and policy-makers at whose behest they had operated. While there were significant applications from command levels, this was by no means exhaustive and the majority of applicants were the 'trigger-pullers'.

13. In the early days of the Commission, most members of the former security forces viewed the amnesty process with antipathy and deep suspicion. Many of them were bitter and confused. They had committed their careers (and indeed their hearts and minds) to defending the interests of the former regime. Now that the ANC was in power, they found themselves in the spotlight, torn between the need to account for their actions and their fear as to what might happen if they did. Many were angered by what they saw as betrayal by their former political masters as every man scrambled to save himself. Moreover, despite the fact that the negotiated settlement, the Interim Constitution and the ensuing legislation required that the amnesty provisions be even-handed, state perpetrators of human rights violations continued to be wary of the Amnesty Committee and the Commission as a whole.

14. A number of factors eventually persuaded state operatives to participate in the process:

4 Volume Two, Chapter Two.

5 See further Volume Four, Chapter Eight.

Threat of prosecution

15. The granting of amnesty based on individual disclosure was built on what was described as the 'carrot and stick' approach. In other words, if you came forward and told all (other factors being equal), you would be granted amnesty. If you did not, you could face prosecution for your crimes. Hence, some members of the security forces submitted applications for amnesty because they knew they would be found out and prosecuted.

16. There is no doubt that, without the prosecution of Colonel Eugene de Kock, the Commission would have received far fewer amnesty applications. In October 1996, De Kock, the former commander of the C1/Vlakplaas[6] unit, was found guilty on eighty-nine charges and sentenced to two life terms plus 212 years' imprisonment. De Kock was one of the first to submit an application for amnesty to the Amnesty Committee, leading to a stream of applications from co-perpetrators. Indeed, the number of applicants in De Kock-related incidents accounts for 48% of all Security Branch applications.

17. The Amnesty Committee also received applications from Northern Transvaal security force operatives and several from the SADF following an extensive investigation by the Transvaal Attorney General's Office. Similarly, when the Eastern Cape Attorney General's Office investigated the disappearance of the 'PEBCO[7] Three' and the killing of the 'Cradock Four', a number of applications were received from the Eastern Cape Security Branch.

18. Likewise, following an investigation by the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation led by Judge Goldstone, and a later investigation by the Natal Attorney-General's Office into the activities of the Port Natal Security Branch, a number of applications were received from members of that branch.

19. Conversely, in a number of instances, it is clear that applicants chose not to apply for incidents where they believed that there was little investigative interest or likelihood that the state would make headway with a case against them. Applications from Civil Co-operation Bureau (CCB) operatives, for example, referred to only a handful of incidents committed in the Western Cape, despite their involvement in a far wider range of unlawful activity both inside and outside South Africa.

6 See Part Three of this chapter.

7 Port Elizabeth Black Civic Organisation.

Protection from civil liability

20. Although amnesty granted by the Amnesty Committee provides protection from civil liability, the various South African indemnity laws do not.[8] The former security forces enjoyed extensive indemnity under the law, which covered actions arising from unrest policing and the apprehension of political suspects. Such indemnity did not, however, apply to abuses committed during covert operations. Many members applied for amnesty in order to avoid being privately sued.

Official interventions

21. Urged by a former state attorney, Mr Jan Wagener, General van der Merwe, the former Commissioner of Police, approached the Commission to discuss the concerns of security force operatives. He afterwards convened a meeting of members of the former Security Branch and assured them that they would have the backing of the generals for actions undertaken in the course of their duty, provided that such actions had been authorised.

22. Discussions were also held between former SADF generals and the Amnesty Committee. The generals were concerned about the fact that, while the legislation gave both the Amnesty Committee and the Commission a mandate beyond South Africa's borders, amnesty granted by the Amnesty Committee did not preclude a foreign state from seeking to pursue prosecution. Because an amnesty granted in South Africa has no validity in international law, the former SADF leadership advised its members not to apply for amnesty for actions outside South Africa.

23. Amnesty applications from former SADF members were channeled through a 'nodal point' set up by the South African National Defence Force (SANDF)[9] and run entirely by former members of the SADF. The purpose of the nodal point was to channel requests from the Commission. Members of the former SADF were encouraged to work through the nodal point when applying for amnesty. As noted earlier, few applications for amnesty were received from SADF-linked

8 In order to open the way for negotiations, new indemnity provisions were introduced to allow for the return of the exiles and the release of those serving sentences for political offences. For a detailed description of the indemnity laws and processes that began during the negotiations period and ended only when the Commission began its work, see Volume One, Chapter Four.

9 After 1994, the national defence force changed its name from the South African Defence Force (SADF) to the South African National Defence Force (SANDF).

operatives, and the Commission received a strong impression that the nodal point acted as a gate-keeper rather than facilitator for amnesty applications.

VIOLATIONS BY CATEGORY

24. Security force applicants applied for a total of 550 incidents, eighty-six of which encompassed a number of separate acts.[10] Examples of these were assaults/torture during interrogation between 1984 and 1989; the arson/bombing campaign by the Northern Transvaal Security Branch in 1986 to 1988; various Stratcom[11] activities between 1977 and 1994; supplying the Inkatha Freedom Party (IFP) with weapons between 1991 and 1992, and the intimidation of named civilians from 1974 onwards.

25. The 550 incidents involved or resulted in the following 1583 acts:[12]

Abductions	80
Attempted abductions	2
Arms caches	9
Bombing and arson	83
Attempted bombing and arson	4
Cover-up[13]	8
Body mutilation/destruction	44
Disinformation/discrediting actions	21
Fraud and theft	34
Attempted fraud/theft	9
Illegal weapons	4
Intimidation	72
Killings[14]	889
Attempted killings	143
Torture/assault	98
Other	42

10 As early as 1996, the Amnesty Committee decided to deal with incidents rather than individual acts in order to make it possible to deal with groups of applicants who had been involved in the same incident but who may have committed a number of different acts. Thus, when dealing with applications, the Committee decided to focus on specific incidents, with each incident logically comprising a number of different acts/offences.

11 Strategic communication or Stratcom: a form of psychological warfare waged by both conventional and unconventional means.

12 These statistics count major acts rather than each offence associated with an incident. For example, the 'Cradock Four' incident would be counted as abduction, killing and body mutilation. In numerous incidents, applicants applied for a range of associated offences, such as use or transport of an illegal weapon, crossing a border illegally, and so forth. These associated acts have not been counted.

13 This figure counts applicants who applied only for covering-up an offence – for example, applications from Stratcom operatives for being associated with the cover-up related to the death of Mr Neil Aggett in detention in February 1982. It must be noted that virtually every offence committed by a member of the security forces includes an element of subterfuge and cover-up. In this regard, this statistic represents a massive under-count.

14 This figure includes the killing of 624 persons in one single incident – see para 36.

26. The eighty-six incidents for which there were a number of acts or victims or outcomes can be classified according to the following violations:

Abduction	2
Bombing and arson	1
Body mutilation/destruction	1
Disinformation/discrediting actions	4
Fomenting violence	27
Fraud and theft	5
Illegal weapons	4
Intimidation	21
Killing[15]	3
Attempted killings	6
Torture/assault	17
Unspecified	4
Weapon modification	7

27. The majority of incidents (446) were committed while the applicants were employed by the SAP's Security Branch:

Violations by date

28. Some 50 per cent of all incidents for which amnesty was sought occurred between 1985 and 1989. A far smaller number of applications was received for incidents occurring during the pre-1985 and post 1990 periods, and none for the first decade of the Commission's mandate period:

1960–1969	0
1970–1979	29
1980–1984	86
1985–1989	274
1990–1994	83
Multiple periods	47
Unspecified	31

15 Acts of intimidation of a single person or family over a limited period of time have been counted as one specified act of intimidation although several separate acts may have been involved. However, where a single person or family or organisation was targeted over a lengthy period (often over years) this has been counted with the 'process' or 'umbrella event' violations.

Violations by region

29. The 550 incidents were spread over the regions as follows:

Homelands	19
Orange Free State	24
Cape	48
Natal	49
Transvaal	307
Outside SA	73
Multiple place[16]	19
Unspecified	11

30. Over 100 of the 307 incidents (56%) that occurred in the Transvaal appeared in two applications covering Stratcom activities. The overwhelming majority of incidents took place in the Transvaal.

31. Seventy-three, or some 13 per cent, of incidents took place outside of South Africa: Angola (2), Botswana (14), Lesotho (8), Mozambique (5), Namibia (10), Swaziland (29), Tanzania (1), United Kingdom (1), Zambia (2) and Zimbabwe (1). The majority of external incidents for which there were applications (some 40%) took place in Swaziland, which was regarded as a police rather than a military domain.

Violations by rank

32. It was possible to determine only 862 ranks out of a possible 1222 across the 550 incidents. Just over 48 per cent of all applicants were lower-ranking personnel at the time the violation was committed, while just under 52 per cent were commissioned officers (lieutenant and above). The overwhelming majority of incidents for which there were applications involved several applicants of varying ranks and appear no different from routine operational profiles. This challenges the view that violations were committed by small renegade groups of operatives.

33. The fact that senior personnel drew on trusted operatives of considerably lower rank in a routine chain of command suggests that such operations were part of normal police duties. Moreover, three former heads of the Security Branch

16 Some incidents took place over more than one region or country. For example, several MK operatives were abducted from Swaziland and tortured, assaulted or killed in Transvaal or Natal.

applied for amnesty, two of whom went on to become Commissioners of Police, the highest position in the SAP. One former cabinet minister responsible for Law and Order also applied for amnesty.

Violations by race and gender

34. All of the applicants were male, and some 255 (86%) were white. Only seven of the black security force applicants were *askaris*[17] A significant proportion of black applicants had already given statements to the Attorney-General and several were potential state witnesses.

35. All the black security force operatives who applied for amnesty were of extremely low rank, often despite lengthy periods of service. This is doubtless the result of the racism inherent in the former SAP.

TYPES OF VIOLATIONS (MOST COMMON CATEGORIES)

Killings and attempted killings

36. Killings were by far the largest category of violation for which amnesty applications were received. However, the numbers need to be approached with caution. One soldier applied for a single incident that resulted in 624 killings, during the SADF raid on Kassinga in Southern Angola on 4 May 1978.[18] Almost all of the remaining 265 relate to the killing of political activists, especially those believed to have had links with the ANC and Umkhonto we Sizwe (MK).

37. In sharp contrast, most of the killings recorded in the human rights violations data are associated with public order policing or so-called 'riot control'.[19] Only two amnesty applications were received in this category.

38. The number of attempted killings reflects those individuals targeted in failed operations as well as those injured 'in the crossfire' where such information was specified. In many instances, however, no such detail was given and this figure is thus a significant under-count. For example, this figure does not include

17 Former members of the liberation movements who came to work for the Security Branch, providing information, identifying and tracing former comrades.

18 Johan Frederich 'Rich' Verster was refused amnesty for his involvement in the Kassinga massacre on 4 May 1978 and granted amnesty in chambers for several attempted killings of SWAPO personnel and other incidents that took place in Namibia.

19 Volume Two, Chapter Three, pp.174–87.

those present in a building or residence when it was attacked, unless they were named as having been injured.

39. Similarly, incidents involving 'weapon modification' are counted separately, unless deaths or injuries were specified or known of. 'Weapon modification' involved tampering with or modifying a weapon with the intention of making it lethal to the user, and thus constitutes attempted killing.

40. Forty-four of the applicants in the 'killing' category applied for amnesty for the mutilation and destruction of the bodies of their victims. The purpose of such mutilation was to disguise the fact that the victim had been killed. In some instances, bodies were completely destroyed by burning or the repeated use of explosives. In others, bodies were placed on limpet mines or landmines, which were then detonated in order to make it appear that the victim had blown himself up while laying them.

41. The eighty-three successful and four attempted cases of bombing and arson are counted separately. These include forty-eight attacks on homes using petrol bombs or other explosive devices, twenty-one cases of bombing of non-residential buildings as well as several attacks on installations or government buildings. Only six of the eighty-four cases were arson attacks on vehicles.

42. It should be noted, however, that the statistics do not in any way represent the full extent of this practice. Members of a covert unit of the Northern Transvaal Security Branch applied for an unspecified number of attacks on activists' homes using either petrol bombs or other more lethal explosive devices in several townships during 1986 and 1987. One applicant estimated that he was involved in between thirty and forty such attacks, another in as many as sixty.

Torture and assault

43. The Amnesty Committee received applications specifying only ninety cases of torture or assault. In addition, seventeen applications or investigations involved the use of torture and assault against an unspecified number of victims. A small number of applications involved torture in formal custody. These figures stand in sharp contrast to the 4792[20] torture violations recorded in HRV statements.

20 This figure is based on torture violations inside South Africa (i.e. excluding ANC camp torture) as reflected in the Final Report.See further Volume Two, Chapter Three, p. 190, para 103.

44. These low figures may be partly explained by the fact that perpetrators seldom seem to have regarded torture as a major violation. Evidence of torture often emerged only during amnesty hearings and then as part of an amnesty application for an abduction or a killing, not as a human rights violation in its own right. Numerous applicants admitted that psychological and physical coercion was routinely used in both legal detentions and unlawful custody.

45. Further, although the Amnesty Committee received a number of applications for killings in unlawful custody, it received applications for only two of the fifty-nine known deaths in legal detention[21]: those of Mr Steve Biko and Mr Stanza Bopape. In addition, several detainees [22] appear to have been formally released, but handed over to members of C1/Vlakplaas or other Security Branch operatives and killed.

Intimidation and disinformation

46. The majority of the ninety-one incidents in this category relate primarily to the so-called Stratcom activities of the Witwatersrand Security Branch. Acts of intimidation included harassing individuals by damaging their property; constant and obvious surveillance; making threatening phone calls, and firing shots at houses or throwing bricks through windows. Apart from one or two isolated incidents, no similar applications were received from regions outside of the Witwatersrand, despite the fact that such forms of intimidation were fairly routine elsewhere.

47. The twenty-five incidents involving discrediting or disinformation also relate mainly, though not exclusively, to Stratcom activities. These were not exclusively carried out by the Witwatersrand Security Branch.

Fomenting violence

48. Twenty-seven applications confirmed earlier suspicions about the state's involvement in fomenting the violence and bloodshed that engulfed areas of South Africa in the 1990s. The Amnesty Committee heard evidence that support, arms and training were given to the IFP – mainly by Vlakplaas/C1 – and that

21 See Volume Two, Chapter Three, pp. 208–-11.

22 These include two unknown PAC detainees [AC/2001/194]; MK Scorpion (possibly Mr Ronald Madondo – AC/2000/151); Mr Gcinisizwe Kondile [AC/1999/037], Mr Johannes Mabotha [AC/2000/084] and an unknown detainee [AC/2000/081].

support and arms were provided to the homelands in order to back attempted coups and promote destabilisation amongst the police and the military.

49. Six such incidents occurred during the 1980s and involved the provision of paramilitary capacity to the IFP (Operation Marion) and an attempt to set up an Inkatha-like organisation in the Eastern Cape/Ciskei/Transkei area (Operation Katzen).

PART TWO: ANALYSIS OF AMNESTY INFORMATION: 1960–1994

EXTRAJUDICIAL KILLINGS

50. The Commission identified several types of extrajudicial killings: targeted killings or assassinations; killing following abduction and interrogation; ambushes; entrapment killings, and killing of own forces.

51. Applications were received for 114 incidents involving 889 killings. The Kassinga raid alone accounts for 624 deaths. The killings took place in the following time-periods and regions:

• 1970–1979:	Cape	1
	Transvaal	2
	Outside SA	627
• 1980–1984:	Cape	3
	Transvaal	13
	Natal	2
	Outside SA	13
• 1985–1989:	Cape	20
	Transvaal	67
	Natal	42
	Orange Free State	4
	Homelands	15
	Outside SA	44

Targeted killings

52. Applications were received for the assassination of seventeen high-profile political leaders both inside and outside South Africa. [23] In addition, applications were received for the attempted or planned assassination of several others. [24]

53. Applications were received for targeting the homes of activists living inside the country, leading to the deaths of twenty-eight people. Of these, at least twenty-four were killed in two attacks in Natal and KwaZulu [25] In what became known as the 'KwaMakhutha massacre', thirteen people, mostly women and children, were killed by an IFP hit squad, armed and trained by the SADF as part of Operation Marion, on 21 January 1987.[26] Kommandant Jan Anton Nieuwoudt [AM3813/96; AC/2001/264] and Andre Cloete [AM5726/97; AC/2000/224] of the SADF were respectively granted and refused amnesty for their role in Operation Marion.[27] An SADF operative was refused amnesty for his part in the attack.

54. In the 'Trust Feeds massacre',[28] which took place on 3 December 1988, eleven people attending an all-night funeral vigil were killed in an attack on a house believed to be occupied by United Democratic Front (UDF) supporters. The attack was planned by the local Joint Management Centre (JMC) in collaboration with local IFP leaders. None of the victims was an UDF supporter. The chairperson of the local JMC was granted amnesty for the attack.

55. Applications were received from Northern Transvaal Security Branch operatives [29] for the deaths of four people killed during their campaign of bombing local activists' homes in the Pretoria region. None of the four killed was a target in the attacks.

56. Applications were received for the targeting and killing of eighteen individual MK or APLA personnel outside South Africa. Targeted killings were generally

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23 Outside South Africa: Ruth First, Jabulile Nyawose, Petros Nyawose, Jeanette Curtis Schoon, Vernon Nkadimeng. Inside South Africa: Griffiths Mxenge, Siphiwe Mtimkulu, Topsy Madaka, Qaqawuli Godolozi, Sipho Hashe, Champion Galela, Matthew Goniwe, Sparrow Mkhonto, Fort Calata, Sicelo Mhlawuli, Fabian Ribeiro, Florence Ribeiro.

24 Dikgang Moseneke, Smangaliso Mkhatshwa, Abdullah Omar, Gavin Evans, Albie Sachs.

25 From 1972, KwaZulu comprised twenty territorial fragments scattered throughout the province of Natal. During the period of transition in the early 1990s and as the KwaZulu Administration was dismantled, all areas in the province came to be known as KwaZulu/Natal and, following the April 1994 elections, as KwaZulu-Natal.

26 Volume Two, Chapter Five, pp.464–9.

27 Volume Two, Chapter Five, pp. 464–9.

28 Volume Two, Chapter Three, p. 198ff.

29 AM5183/97;AM2776/96;AM2773/96;AM2777/96;AM2775/96.

conducted at night and, in several instances, resulted in persons other than the target being killed. In at least two incidents, children were the victims.

57. In addition, applications were received for the killing of persons in two large-scale cross-border raids. Security Branch Headquarters, Western Transvaal and Soweto Security Branch operatives applied for amnesty for their role in identifying targets for the SADF Special Forces raid into Gaborone, Botswana on 14 June 1985, in which twelve people were killed.[30] Members of C1/Vlakplaas and Security Branch Headquarters applied for amnesty for the killing of nine people in a raid into Maseru, Lesotho on 19 December 1985.[31]

58. Applicants testified that when cross-border raids were being planned before the mid-1980s, *ad hoc* groups would be set up to identify and collect intelligence. Such groups would consist of representatives from the relevant Security Branch Headquarters desk, as well as Security Branch divisional offices with specific intelligence expertise, the NIS, SADF Military Intelligence and Special Forces. Thus, for example, the following structures engaged in target identification for the Gaborone raid: the Africa Desk at Security Branch Headquarters; the Western Transvaal, Soweto and Transvaal Security Branch offices; NIS; SADF Military Intelligence (in all probability the Home Front sections of the Directorate of Covert Collection (DCC) as well as of the Directorate (South Africa) and Special Forces.

59. Although the applicants professed that it was not policy to target civilians not associated with MK or living in the country where targets were based, they admitted that civilians were 'caught in the crossfire'. Moreover, despite applicants' claims that a number of targets were removed from the original Botswana raid list because of the presence of children and Batswana citizens, both children and non-South African civilians were killed in the raid.

60. A number of applicants from different regions testified that, in 1985/86, a more formalised structure known as TREWITS was established to conduct target identification [32]. Although based in Section C2 at Security Branch Headquarters, personnel from both SADF Military Intelligence and NIS was

30 AM4032/96;AM4122/96;AM4126/96;AM4149/96;AM4152/96;AM4389/96;AM4513/96;AM7040/97; AM4125/96 and AM4386/9.

31 AM0066/96;AM3764/96;AM3765/96;AM4385/96; AM4396/96 and AM4157/96.

32 See Volume Two, Chapter Three, pp. 275–98 for a discussion on the establishment of TREWITS and target development.

permanently seconded to TREWITS. Applicants also referred to regional TREWITS meetings made up of representatives from the different intelligence structures.

61. Three applications were received from former SADF personnel in connection with their work on target identification structures. One was received from Commandant Jan Anton Nieuwoudt, a member of the Home Front Section of Military Intelligence, responsible for target development.

62. The second application was received from Jacobus Adriaan Huisamen, who served as an SADF Military Intelligence representative on TREWITS in the early 1990s. His application was refused administratively at the outset of the process, as it failed to identify specific violations that had resulted from the targets he had developed. In his application and supporting documentation Huisamen made available to the Commission's investigative unit, he made it clear that he believed that target information provided by TREWITS was used operationally and led to the commission of gross violations of human rights that included killing.

63. In 1986, Captain Henri van der Westhuizen, a member of Military Intelligence involved in target identification, began working closely with the Security Branch in Ladybrand. He was later assigned responsibility for working on target intelligence on MK in Lesotho. At this stage he was based in the projects section of Military Intelligence whose primary focus was monitoring the activities of the ANC. He played a role in establishing a target development group that functioned first as part of Military Intelligence and later (from 1987) as part of Special Forces Headquarters. This group worked in close liaison with TREWITS.

64. Captain van der Westhuizen testified that intelligence was collected on ANC and SACP personnel and facilities in Lesotho. Once sufficient information had been collected, it was presented to the General Staff of the SADF for possible action. Evidence from Security Branch applicants in joint operations with Special Forces supports the view that, at least as far as external targets were concerned, authorisation took place at a high level in the SADF.

65. Applications were received for the targeted killings of fourteen of the fifty-two MK personnel[33] listed on the ANC submission as having died in Swaziland 'at enemy hands'. The majority of these applications were joint C1/Vlakplaas and Eastern Transvaal operations.

33 In fact there are sixty-two names. However the list includes those killed in the two Piet Retief ambushes in 1988 as well as some duplication where persons have been listed under both MK and birth names.

66. Captain Hendrik 'Henri' van der Westhuizen applied for amnesty for the attempted killings of Mr Albie Sachs in Mozambique in 1987 and 7 April 1988 respectively. His application was granted [AM9079/97; AC/2001/257].

67. No applications were received for the following targeted killings of high-profile political activists: Mr Abram Okgopotso Tiro (Botswana, 1 February 1974); Mr John Dube, aka Boy Mvemve (Zambia, 12 February 1974; Dr Richard Turner (Durban, 8 January 1978), Mr Joe Gqabi (Zimbabwe, 31 July 1981), Ms Victoria Mxenge (Durban, 1 August 1985); Mr Toto Dweba (Eshowe, Natal, 20 August 1985); Ms Dulcie September (France, 29 March 1988); Dr David Webster (Johannesburg, 1 May 1989), and Dr Anton Lubowski (Namibia, 12 September 1989).

68. No applications were received for the attempted killings of Mr Godfrey Motsepe (Belgium, 2 February 1988 and 27 March 1988), Ms Joan and Mr Jeremy Brickhill (Zimbabwe, 13 October 1987); Mr Lazarus Chikane (1989), and Fr Michael Lapsley (Zimbabwe, 28 April 1990).

69. Of the twenty-one[34] people recorded in the ANC submission as having been killed in Botswana, eleven were killed in the 14 June 1985 Special Forces raid on Gaborone. No applications were received for six of the remaining ten killings. Botswana was regarded as the responsibility of the SADF. C1/Vlakplaas and the Western Transvaal Security Branch both testified to close co-operation with the Special Forces group tasked to work on disrupting the ANC's activities in Botswana.

70. No applications were received for the following large-scale cross-border raids:
    a Matola, Mozambique, 30 January 1981 by SADF Special Forces: sixteen people were killed;
    b Maseru, Lesotho, 9 December 1982 by SADF Special Forces: forty-two people were killed;
    c Matola, 23 May 1983 by the South African Air Force: six people were killed;
    d Zambia, Zimbabwe and Botswana, 19 May 1986 (the so-called EPG raids) conducted by the SADF, and
    e Umtata, 17 Oct 1993 by the SADF: five youths were killed.

34 The MK submission list gives twenty-three names but two are duplicated.

71. No amnesty applications were received with regard to twenty-nine of the forty-five[35] people recorded as having been killed in the 9 December 1982 raid on Maseru. Applications were received for only nine of the remaining sixteen people who were killed in the subsequent December 1985 raid. No applications were submitted for the remaining seven deaths.

72. No applications were received for four or possibly five killings in Mozambique, excluding the deaths in the Matola raid. No applications were received for five of the seven deaths listed in Zambia.

73. As noted above, Security Branch operatives involved in the process of target identification made application for their involvement in the June 1985 Gaborone raid. Special Forces members who conducted the raid did not apply.

Ambushes

74. The Amnesty Committee received amnesty applications for seven ambushes. Five ambushes took place between 1986 and 1988. Informers and/or agents played a role in five cases. In the remaining two, captive MK personnel were used to lure targets to the place where the ambush took place. The following cases illustrate the nature of these violations:
    a Two unknown MK Special Operations operatives were killed in the Western Transvaal in 1972. The incident followed the arrest of a number of Special Operations personnel, one of whom was allegedly induced to lure two operatives into South Africa. The applicant, Willem Schoon, was granted amnesty [AC/2001/193].
    b On 14 August 1986, two MK operatives, Jeremiah Timola (aka Tallman) and Mmbengeni Kone (aka Bernard Shange), were killed by C1/Vlakplaas and Eastern Transvaal Security Branch operatives while infiltrating South Africa. A Security Branch source, Shadrack Sithole, responsible for their transport, was also killed. At the same time, the two MK operatives responsible for transporting them to the Swaziland border were ambushed on the Swazi side of the border and one of the two, Mr Mzwandile Radebe, was killed. The survivor, Mr Vusumuzi Lawrence Sindane, escaped but was captured a day later. All of the applicants were granted amnesty for the killing of the MK operatives, but three applicants were refused amnesty for the killing of Mr Shadrack Sithole, the Security Branch source.[36]

35 Forty-eight names appeared on the list, but three are duplicated.

36 See Volume Two, Chapter Three, pp. 246–8 for further detail.

c Ms Lita Mazibuko was responsible for the transport arrangements of two groups of MK personnel in June 1988. Her handlers at Piet Retief Security Branch provided transport and drivers. Both groups were ambushed and killed on 8 and 12 June 1988 after which Mazibuko was paid for her services. She was subsequently apprehended by MK intelligence and severely tortured. Her handler, Flip Coenraad Theron, testified that, on her return to South Africa, she reported to him and was paid a further sum for her involvement.

Deaths in unknown circumstances

75. According to an MK list, 197 combatants died inside South Africa during the Commission's mandate period, the overwhelming majority of them being killed in combat situations. The MK list includes the names of the twenty-eight people for whose killings amnesty applications were received.

76. The Commission accepts that many operatives infiltrating South Africa were armed and that in this process, situations of combat arose. However, the possibility that some of these were not actually skirmishes but ambushes cannot be ruled out. Aside from the element of surprise, the security forces were able to choose the ambush ground, the targets were outnumbered and the security forces were able to deploy highly-trained personnel in the form of Special Forces, C1/Vlakplaas or the Special Task Force. In short, claims of deaths during attempted arrest should be regarded with scepticism.

77. In many instances, those who were killed were not identified at the time and were buried as paupers. Some were identified but their families were not informed of their deaths. As a result many post mortems and inquests were not properly conducted or subjected to independent scrutiny.

Entrapment operations and incidents in which weapons had been tampered with

78. Entrapment operations often involved supplying ANC and MK operators with modified weaponry such as hand grenades, limpet mines, landmines, guns and ammunition. Members of the Technical Section of Security Branch Headquarters admitted in amnesty hearings that a common *modus operandi* was to modify weaponry to make it lethal to users by such methods as zero-timing. There are numerous instances of combatants being killed by their own weaponry.

79. The Amnesty Committee received applications for seven entrapment operations in which forty-five youth activists were killed. These operations tended to target youth groups like South African National Student Congress (SANSCO) and the Congress of South African Students (COSAS), which were active in townships that the Security Branch regarded as hot spots. Such youth groups were infiltrated with a view to identifying and eliminating key leaders.

80. Using *askaris* posing as MK operatives, the security forces offered young men arms, training and transport out of South Africa. The *askaris* then lured them into ambushes or gave them zero-timed explosive devices with which they blew themselves up. Arrest was not regarded as an option in any of these operations: the intention was always to kill.

The 'COSAS Four'

81. Three COSAS members were killed and one was seriously injured in an entrapment operation organised by the West Rand Security Branch in Krugersdorp on 15 February 1982.[37] The operation entailed detonating explosives in a pump-house on an abandoned mine where an *askari*, whom the youths believed to be an MK operative, had promised to give them basic military training.

82. The applicants were, by majority decision, refused amnesty for this operation. The Committee felt that the decision to eliminate the group was not justifiable and that the applicants had failed to make use of other options available to them, such as arrest and arraignment, or preventive detention under the prevailing security legislation [AC/2001/198].

Operation Zero Zero

83. In June 1985, an entrapment operation[38] was conducted in the East Rand townships of Duduza, Tsakane and Kwa-Thema by a joint team from Security Branch Headquarters. General Johan van der Merwe, then second-in-command of the Security Branch, sought and received approval for the operation from then Minister of Law and Order, Louis le Grange.

84. The group of youths was infiltrated by Constable Joe Mamasela, who masqueraded as an MK operative.[39] Mamasela showed the young men how to detonate a

37 Volume Two, Chapter Three, pp.257–8.

38 Volume Two, Chapter Three, pp. 259–61, and Volume Three, pp. 628–631.

39 Although Constable Joe Mamasela played a role in many such incidents, he never applied for amnesty.

hand grenade and supplied them with grenades whose timing devices had been reduced to zero seconds. The person with whom Constable Mamasela had initially established contact, Congress Mtsweni, was given a zero-timed limpet mine to ensure that he did not survive to identify Mamasela. At midnight on the night of 25 June 1985, eight of the COSAS members were killed and seven were seriously injured as they attempted to throw the grenades at their chosen targets. Fifteen Security Branch operatives, including the head of the Security Branch and other senior personnel, applied for and were granted amnesty for the operation [AC/2001/058].

85. ***The 'Guguletu Seven'***

On 3 March 1986, seven operatives were killed in Guguletu, Cape Town, by a combined C1/Vlakplaas, Western Cape Security Branch and Riot Squad team. The group of youth activists had been infiltrated by C1/Vlakplaas operatives (working in conjunction with the Western Cape Security Branch), who provided them with weapons and training. Only one of the seven had apparently previously received military training from MK. The applicants presented conflicting evidence as to whether the intention had been to arrest or kill the activists. Two C1/Vlakplaas applicants were granted amnesty for this operation [AC/2001/276].

The 'Nietverdiend Ten'

86. On 26 June 1986, a joint operation by the Northern Transvaal Security Branch and SADF Special Forces led to the killing of ten youths from Mamelodi near Nietverdiend in the Western Transvaal.[40] The youths believed they were en route to Botswana for military training.

87. The applicants testified that this was one of several joint operations undertaken by Special Forces and the Northern Transvaal Security Branch. The role of the Security Branch was to identify the targets and that of Special Forces to carry out the operational aspects.

88. In this case, Constable Joe Mamasela, who had transferred to the Northern Transvaal Security Branch after his former C1/Vlakplaas commander Brigadier Cronje became divisional commander, was responsible for identifying the individuals. On the night of 26 June 1986, Mamasela drove ten young activists to the location in the Nietverdiend area.

40 Volume Two, Chapter Three, pp. 264–5.

89. The youths were ordered out of the minibus at gunpoint and injected with a chemical substance by Commandant Dave Trippet (deceased). Now unconscious, they were bundled back into the minibus and driven into Bophuthatswana by Special Forces operative Diederick Jacobus Vorster. A limpet mine and an AK47 were placed in the minibus, an accident was staged and the minibus was set alight.

90. The bodies were burnt so severely that identification was difficult, and there is some confusion about who was killed in this incident. These difficulties were compounded by the fact that the operation was followed by a second entrapment operation, also involving youths from Mamelodi, who became known as the 'Kwandebele Nine' (see below).

91. Mr Vorster testified that, following these operations, he had requested not to be deployed on such missions, both because of security concerns and because he did not believe that such operations were the proper function of a soldier. The applicants were granted amnesty.[41]

The 'Kwandebele Nine'

92. On the night of 15 July 1986, just two weeks after the killing of the 'Nietverdiend Ten', nine youths were shot dead and their bodies set alight in a house in Kwandebele.[42] The youths had been expecting Constable Joe Mamasela, who had offered to provide them with arms and training, but when they opened the door to him, Northern Transvaal hit squad members burst in. The youths were lined up and shot. Captain Hechter poured petrol over the bodies before setting them alight. The applicants were granted amnesty for this operation [AC/1999/248; AC/1999/030; AC/1999/033].

Jeffrey Sibaya and Mpho

93. In June 1987, Constable Joe Mamasela, posing as an MK operative, lured Mr Jeffrey Sibaya and a man known as 'Mpho' (possibly Mr Moses Lerutla) out of the township. Believing they were being taken for military training, the men followed Mamasela to a place north of Pienaarsrivier where they were beaten, kicked and then strangled to death by Northern Transvaal Security Branch operatives. Their bodies were subsequently placed on a landmine on a road in Bophuthatswana, which was then detonated. The applicants were granted amnesty for this operation [AC/1999/030; AC/1999/032].

41 AM3761/96;AM3759/96;AM3760/96; DJ Vorster AM5641/97;AM3799/96;AM5443/97;AM5471/96; AM4149/96;AM4125/96;AM2776/96;AM2773/96.

42 Volume Two, Chapter Three, p. 264.

The 'Soweto Three'

94. The Soweto Intelligence Unit (SIU) received information that a local Soweto activist, Casswell Richard Nceba, and other Soweto Youth Congress (SOYCO) members were involved in a campaign of intimidation, including attacks on the homes of policemen and informers. They also believed it possible that the group was in contact with MK structures. As a result, an *askari* attached to the SIU, Constable Moleke Peter Lengene, infiltrated SOYCO.

95. Constable Lengene supplied the group with AK47s, hand grenades and an SPM limpet mine. He later drew in two Vlakplaas *askaris* who provided training in the use of these weapons.

96. At this stage, the commander of the SIU, Lieutenant Anton Pretorius, approached the divisional commander of the Soweto Security Branch, Brigadier Sarel Petrus Nienaber, who granted permission to launch an entrapment operation. On 2 July 1989, three members of the SOYCO group were supplied with zero-timed limpet mines: Mr Nceba was killed when the zero-timed limpet mine detonated, Mr Bheki Khumalo was shot dead and Mr Richard Ngwenya died from injuries sustained after being shot.

97. The applicants were granted amnesty for the operation [AC/2001/007]. However, when granting them amnesty the Amnesty Committee had the following to say:

We must express our concern at the practice of giving training to these activists in the use of sophisticated and dangerous weaponry and then justify the need to act pro-actively by killing them, advancing the reason that they (activists) had become dangerous resultant to that training. In the present matter, Nienaber stated that the police created 'a monster' when they gave training to the activist. We agree with these sentiments. It however begs the question whether there were indeed no other available methods short of 'creating a monster' that could have been effectively used to obtain the required information [AC/2001/007].

98. In most of the above cases, the applicants admitted that they had not known the identity of the targets at the time. On their own evidence, they made little attempt to establish the identities of the individuals concerned, nor to check whether the Security Branch already had information about them and whether prosecutions would have been possible. On the other hand, one also needs to approach the version of events the applicants presented to the Amnesty

Committee with some caution. It may well be that applicants intended to give the Amnesty Committee the impression that they were mere pawns in the hands of their superiors, rather than active players with a far greater knowledge and understanding of the operations in which they were involved.

Killing of own people

99. The Amnesty Committee received security force applications for sixteen deaths in this category.

100. Four of the killings occurred in the 1980/81 period: two were *askaris* killed by C1/Vlakplaas because their loyalties were questioned, and two were alleged informants.

101. Applicants from C1/Vlakplaas, Security Branch Headquarters, Northern and Eastern Transvaal and the Eastern Cape Security Branches applied for amnesty for the killing of four black policemen, the wife of a policeman, two *askaris* and two sources between 1986 and 1989. C1/Vlakplaas and Port Natal Security Branch sought amnesty for the killing of three *askaris* in the post-1990 period. In addition, C1/Vlakplaas operatives applied for amnesty for the killing of two former *askaris* who had escaped.

102. With the exception of one *askari* who was killed by white members of C1/Vlakplaas on a drunken spree and two who were killed during ambushes, the remaining *askaris* appear to have been killed for fear that they might disclose evidence about hit squad activities.

103. Only in one instance, that of the 'Motherwell Four', were the perpetrators charged and convicted.

104. In addition to the above killings, C/1Vlakplaas and operatives from the Technical Division of Security Branch Headquarters applied for amnesty for the attempted killing of former Vlakplaas commander, Captain Dirk Coetzee. Although the attempt failed, it resulted in the killing of human rights lawyer Bheki Mlangeni.

Killings during an arrest or while in custody

105. Amnesty applications were received for approximately twenty-three killings committed while people were either being arrested or in custody. Eleven people

died while they themselves were being arrested, and five others were also killed during arrests. A further three died as a result of torture or assault[43] and four were killed during their detention or on their release.

Abductions/disappearances

106. Evidence from amnesty applications and hearings reveals that the Security Forces (including covert units, the Security Branch and the SADF) engaged in abduction operations inside and outside South Africa. The main purpose of the abductions was interrogation, killing or recruitment.

107. Of the eighty[44] abductions for which amnesty applications were received, only three people were abducted prior to 1980. Two of these were subsequently charged and one was returned to Swaziland. Twelve people were abducted between 1980 and the end of 1984. Abductions increased sharply between 1985 and 1989, and a total of sixty-two applications were received for this period. Forty-one of the people abducted were killed, two or possibly three were recruited and the fate of the remainder is unknown. Applications were received for two abductions and killings in 1990. In some cases, fairly high-profile individuals were abducted with a view to killing them, and interrogation seems to have played a secondary role. In other cases, those abducted were interrogated, beaten and released.

108. Several abductions were associated with the assassination of fairly high-profile activists. These include Messrs Griffiths Mxenge, Siphiwe Mthimkulu and Topsy Madaka, the 'Pebco Three' and the 'Cradock Four'.

109. Thirty-nine out of the total number of eighty abductions were MK or ANC-linked. Twenty-four of these occurred inside South Africa, where the usual method was interrogation followed by killing. Eighteen of the victims are known to have been killed, seven by the Northern Transvaal Security Branch and ten by the Port Natal Security Branch, while the fate of four[45] remains unknown. The remaining two of the twenty-four internal abductees survived.

110. All the internal abductions for which amnesty was sought occurred after 1986, with sixteen in 1987 and 1988. The dramatic upsurge in the killing of internal

43 Steve Biko, Stanza Bopape and Sam Xolile, aka Valdez Mbathani.

44 This figure excludes the abductions allegedly carried out by the SADF in Kwandebele.

45 Moabi Dipale, Nokuthula Simelane, Moses Morudu and Peter Thabuleka.

activists confirms the Commission's earlier finding that the practice of killing people outside South Africa became widespread in response to the intensified internal uprising of the mid-1980s.[46]

111. Seventeen of the abductions involved MK operatives based outside South Africa's borders. Of these, only Mr Cleophas Ndlovu and Mr Joseph Nduli, who were abducted in 1976, were formally detained and charged. Mr Herbert Fanele Mbale was abducted in 1972 and was returned to Lesotho following a formal protest from the Lesotho government.

112. A strong motive for the remaining external abductions seems to have been that the targets were regarded as key persons in MK's military machinery. The intention was to interrogate and if possible recruit them. Where the attempt at 'turning' failed, the victims were killed. Amnesty applicants confessed to three such killings, namely those of Messrs Jameson Ngoloyi Mngomezulu, Mbovane Emmanuel Mzimela (aka Dion Cele) and Ms Phila Portia Ndwandwe (aka Zandile). A further five, and possibly six[47], are said to have been recruited. The exact fate of the remaining five[48] is unknown.

113. In addition to the above MK abductions, the brother of an MK operative was abducted and killed by C1/Vlakplaas[49] and another internal activist[50] was killed while being abducted or arrested by the Transkei Security Branch and C1/Vlakplaas *askaris*.

114. Three amnesty applications dealing with the abduction and torture of local activists were received from SADF members in different regions of the country. In his application, Major Gert Cornelius Hugo referred to Orpheus, an operation that was designed to destroy the leadership and second tier leadership of the UDF. Hugo testified that the targets were abducted and taken to one of several abandoned premises at Barkly Bridge, Newton Park and Fairview, Port Elizabeth, where they were interrogated and tortured. According to Hugo, who was involved in providing logistical support, the operation began in the Eastern Cape in 1986 but later became a national operation and continued through 1987.

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46 Volume Two, Chapter Three, pp.287–9, and Volume Five, Chapter Six, p. 214ff.

47 Gaboutwelwe Christopher Mosiane, Vikelisizwe Colin Khumalo, Michael Dauwanga Matikinca, Ernest Nonjawangu (the 'Bhunye Four' abducted from Swaziland in April 1984), Glorius 'Glory' Lefoshie Sedibe, aka September, and possibly Jabulani Sidney Msibi, again both taken from Swaziland

48 All were abducted from Lesotho, the 'Ladybrand Four' (Joyce Keokanyetswe 'Betty' Boom, Tax Sejaname, Nomasonto Mashiya and Mbulelo Alfred Ngono), abducted in late December 1987 or early 1988, and Simon Mokgethla, aka Old Timer, abducted in mid-1986 [AC/2001/257].

49 Japie Maponya, brother of Odirile Maponya, aka Mainstay.

50 Batandwa Ndondo.

115. When the Commission asked the SADF about Operation Orpheus, the SADF denied its existence. However, applications received from Messrs Johan Edward Moerdyk [AM2001/031; AM7218/97] and Frans Nyoni Mandlazi [AM5027/97; AC/2001/277] concerning abductions in Kwandebele and the Eastern Transvaal reveal a similar *modus operandi* to that described by Hugo. Although Mandlazi was granted amnesty for the incidents for which he applied, Moerdyk's application was refused, as he had sought amnesty for knowledge of rather than participation in such abductions and torture.

Torture

116. As discussed above, a very small proportion of security force applicants applied specifically for torture violations. When prompted, however, several applicants gave vivid and sometimes horrifying testimony of torture techniques used by members of the Security Branch and the SAP. One applicant described it thus:

> CAPT. ZEELIE: *... there were methods used, common assault, slapping with an open hand or with fists. Then there was also the tube method that was used and at that stage we used a wet bag that was pulled over a person's head ... and basically the person was suffocated for a short while. And then we also used shock methods where, at that stage, two electrical wires which were connected to a telephone-like device, was attached to the person. We would at that stage put a stick between a person's teeth so he can bite on it and then the telephone handle was turned and this sent a shock through the person, and at that stage that also sort of suffocated the person.*
>
> *And then what I can recall now is the method of a broomstick where a person is handcuffed and his hands are pulled over his knees and the broomstick is pushed in-between, through his arms and legs and he's hung between two tables, and it is in that position that he is questioned...*
>
> *... you took the person's mind and you made him believe that something could happen to him ... I took a hand grenade and it was a hand grenade that has been secured, there's no explosives in it, there's no detonator that could go off. And then that hand grenade, this is what I did, I would for example, take it and have the person hold it between his legs while his hands are bound behind his back and then psychologically you made him believe that if he opens his legs the hand grenade will drop to the floor and it will blow him up. .. and then, for example, we also used methods where persons would be assaulted by an interrogator and then the assault would be ceased and then perhaps the following*

day you would use another interrogator and that interrogator would be the so-called 'nice guy' and he would speak nicely to the person and then psychologically that man will, this guy who is nice to him, he would trust this guy more and supply information to him …

… I will honestly say that it was general practice in the Police and specifically in the final years where I was involved in the Security Branch. There was never any person that was ashamed to say that he had assaulted a person or had applied certain techniques in order to obtain certain information. (Bloemfontein hearing, 9 October 2000.)

117. General Erasmus, who was Divisional Commander of the Eastern Cape and Witwatersrand Security Branches at the time of Mr Stanza Bopape's detention and death, told the Committee that he accepted that violence was used as part of interrogation. He confirmed that, while members of the Security Branch were never instructed to use torture, members of the police engaged in such practices with the tacit approval of their seniors (Pretoria hearing, 4 June 1998).

118. Yet, despite such testimony, two former commanding officers of the Security Branch and the SAP, Generals Johan Coetzee and Johan van der Merwe, denied that torture was condoned at a senior level. General Coetzee said that, where persons were found using such methods, the case would be investigated and, where sufficient evidence existed, the offending party would be charged. However, aside from one incident in which two police officers had been charged and convicted, he was unable to specify any other incident or produce any documentation or evidence showing that such action had been taken.

119. General van der Merwe, who applied for amnesty for his involvement in the cover up of the actions of Security Branch members involved in the killing of Mr Bopape, told the Amnesty Committee that torture and deaths in detention 'would be a very serious embarrassment for the South African Police and the national government'. He testified, however, that there was some sympathy for members who used torture 'in an effort to obtain information which could have led to the saving of lives'. Yet he insisted that they would have had to face the consequences of their actions. Police members who engaged in torture were aware of the seriousness of the offence and the 'dangerous position that could have come about if this matter was handled in the wrong manner'. He believed that offenders would not repeat their mistakes and, for this reason, he did nothing further about it. Ultimately, General van der Merwe conceded that his refusal to warn police members that the practice of torture would not be tolerated

amounted to a condonation of the practice and the protection from senior officers (Pretoria hearing, 1 September 1998).

Arson and sabotage

120. The 1980s saw a pattern of state-directed sabotage and arson, authorised from the highest levels of government. The Amnesty Committee received applications for eighty-three incidents of bombing or arson.

Attacks on buildings

121. Attacks on offices included the 1982 bombing of the ANC offices in London, Cosatu House and Khotso House, all operations that were authorised at the highest level.[51] At the amnesty hearing into the bombing of Cosatu House, the Congress of South African Trade Unions (COSATU) produced evidence of forty-six attacks on their offices around the country.

122. Applications for amnesty were received for over twenty attacks on offices or buildings, including the following:
    a The bombing of Community House in Salt River, Cape Town on 29 August 1987. Tenants of the recently completed building were to include COSATU and several anti-apartheid organisations and non-governmental organisations (NGOs). Operatives from the Western Cape Security Branch, Security Branch Headquarters and SADF Special Forces applied for and were granted amnesty for this incident [AC/2002/150 AC/2002/042].
    b An arson attack on Khanya House, the Pretoria offices of the South African Catholic Bishops' Conference on 12 October 1988, leading to the building being extensively damaged by fire. Members of C1/Vlakplaas and the Technical Section of Security Branch Headquarters applied for and were granted amnesty for this incident. A number of people were in the building at the time of the attack [AC/2000/215].[52]
    c An explosion at the offices of the Early Learning Centre in Athlone Cape Town on 31 August 1989, minutes before the Cape Youth Congress were due to hold an executive meeting there. Members of Region Six of the CCB, an SADF Special Forces covert unit, were refused amnesty for lack of full disclosure [AC/2001/232].

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51 Volume Two, Chapter Two, p. 157; Volume Two, Chapter Three, p. 289; Volume Two, Chapter Three, p. 29.

52 AM5283/97;AM3765/96;AM3745/96;AM0066/96;AM4129/96;AM5184/97;AM4361/96;AM5452/97; AM4076/96;AM3916/96;AM3811/96;AM3922/96;AM3812/96;AM5451/97;AM3584/96;AM3764/96; AM5183/97;AM4358/97;AM3721/96.

Attacks on homes

123. There were also applications for forty-eight attacks on houses by petrol bombing, other 'home-made' devices or, in the case of credibility operations,[53] modified grenades. A covert unit of the Northern Transvaal Security Branch, acting in concert with certain members of the SAP's Special Investigation Unit into unrest, was responsible for a number of petrol bomb and pentolite bomb attacks on the homes of activists in Mamelodi, Atteridgeville, Tembisa, Ekangala, Moutse and Pietersburg. At least three people are known to have died in these attacks.

Stratcom[54] operations

124. Several applications related to activities in the mid-1970s by Stratcom operatives. These applications provided details of a range of threatening actions including vandalising cars and property and making threatening phone calls. Condoned by commanders, this behaviour developed into more serious attacks such as throwing bricks through windows, blackmail, loosening bolts on car wheels and firing shots at homes.

Credibility operations

125. Attacks on installations were used to provide credibility for deep-cover agents and sources. This was the method used by the SIU during the 1980s. Applications were received from members of the SIU for approximately fourteen credibility operations, including several grenade attacks on houses using modified grenades, as well as a range of attacks on installations. These included blowing up railway lines, attacks on administration board offices and detonating dummy explosive devices on the property of a councillor and a university official. A more serious operation included the placing of explosive devices outside migrant hostels.

Illegal weapons

126. Amnesty applications for dealing with the illegal movement of arms were dealt with in Chambers.[55]

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53 Credibility operations were designed to provide cover for deep cover agents.

54 Strategic communication or Stratcom: a form of psychological warfare waged by both conventional and unconventional means.

55 See this volume, Section One, Chapter Three for more information about chamber matters.

127. Some applications in this respect related to operations where the Security Branch was attempting to establish the credibility of a source or agent. Others involved Stratcom operations like the Krugersdorp incident where an arms cache of Eastern Bloc weapons was planted and then 'discovered,' providing the pretext for an SADF raid into Botswana[56] A number of applications involved establishing private arms caches in the 1990s, ostensibly to provide access to weapons in the event of the failure of negotiations and the outbreak of civil war.[57]

128. At least seven applicants from C1/Vlakplaas applied for amnesty for unlawfully transporting massive quantities of arms of Eastern Bloc origin from Koevoet in Namibia to South Africa. These were weapons that had been seized in the course of the Namibian war and were transferred and stored in an armoury belonging to Vlakplaas.[58]

129. However, the bulk of applications relating to the provision of unlawful weapons concern the supply of weaponry to the IFP in the 1990s.[59] These applications[60] came principally from C1/Vlakplaas and described how weapons seized in Namibia were supplied to the IFP on the East Rand and Natal. Several C1/Vlakplaas applicants also applied for amnesty for training the IFP in the use of such weaponry. Some of the applicants testified that the provision of arms was done with the approval of Security Branch Headquarters and was in line with a policy of support for the IFP.

130. C1/Vlakplaas operatives also applied for amnesty for the provision of weapons for the attempted overthrow of the then Chief Minister of the Transkei, General Bantu Holomisa. Testimony at the amnesty hearings confirms that this was done at the request of SADF operatives.[61] Kommandant Jan Anton Nieuwoudt of the SADF applied for amnesty for the attempt to overthrow General Holomisa in the Transkei in November 1990, but later withdrew his application.[62]

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56 AM4120/96;AM4152/96;AM4362/96; AM0066/96 and AM4396.

57 AM3766/96 and AM4358/96.

58 AC/2001/162; AC/2001/178; AC/2001/192; AC/2001/199; AC/2001/202; AC/2001/210; AC/2001/214.

59 See Volume Two, Chapter Seven,pp. 605–10 for further detail on the provision of weapons to the IFP.

60 AM5666/97;AM3764/96;AM3762/96;AM2775/96;AM2538/96.

61 AM 0066/96; AM3764/96;AM3766/96; AM5183/97 and AM4358/96.

62 The Amnesty Committee also received several applications from members of C1/ Vlakplaas for their role in providing Kommandant Jan Anton Nieuwoudt with arms to be used in the coup. At the time Kommandant Nieuwoudt was based in IR-CIS, allegedly a private company that provided an intelligence capacity to General Oupa Gqoza, Chief Minister of the Ciskei, but in fact a front for the SADF.

131. The Amnesty Committee heard that the armoury was moved from Vlakplaas during the Harms investigation (East London hearing, 19 April 1999) and transferred first to Daisy farm (owned by Security Branch Headquarters) and then to Mechem, a subsidiary of Armscor. However, operatives continued to have access to the armoury long after they ceased to be members of the SAP. In one instance, Mr Phillip Powell of the IFP received from Colonel de Kock six 10-ton truckloads of weapons, said to be a fraction of the remaining armoury. At the time of this handover, in October 1993, Colonel de Kock was no longer a member of the SAP.[63]

132. Evidence that emerged before the Amnesty Committee confirmed the long-held view that the Security Branch was involved in the conflict in the 1990s. Colonel de Kock and others of his operatives asserted in their applications that the provision of arms was authorised by the commander of Group C, Brigadier 'Krappies' Engelbrecht and the head of the Security Branch[64], General SJJ 'Basie' Smit.

133. Mr Gary Leon Pollock, who was based first at Alexandra Security Branch (a sub-branch of Witwatersrand) and later at the Natal Security Branch, confirmed that these actions were in line with Security Branch policy at the time. He testified that, following what he described as 'the severe lowering of morale and confusion among Security Branch personnel that accompanied the negotiations phase,' generals from Security Branch Headquarters visited the Alexandra Security Branch. The generals assured members that their 'tasks were still the same' and would in fact be increased to strenthen the bargaining positions of the National Party in the negotiating process. These 'tasks' involved creating an environment of instability and eroding the credibility of the ANC.

134. Pollock, who testified at the Security Forces hearing in November 2000, applied for amnesty for number of incidents, which included the supply of weapons to the IFP; warning IFP hostels of impending police raids; discharge of firearms in Alexandra at night to intensify residents' insecurity, and furnishing the IFP with the names of ANC members.

63 Volume Three, Chapter Three, p. 318ff.

64 By that stage known as Crime Combating and Investigation following the re-organisation of the SAP in the 1990s.

JOINT OPERATIONS OF THE SECURITY BRANCH AND SPECIAL FORCES: EXAMPLES OF CASES WHERE SPECIAL FORCES DID NOT APPLY FOR AMNESTY

135. Members of the SADF did not seek amnesty for any external operations, even where the planning of such operations took place inside South Africa. In a number of cases, however, applications were received from Security Branch operatives for their role in operations conducted with or by Special Forces operatives. In other words, we learn about the following cases from applications by the Security Branch and not from the SADF itself.

Nat Serache

136. On 13 February 1985, a Special Forces team attacked the house of Mr Nat Serache in Gaborone, Botswana. According to applicants, MK members infiltrating South Africa used Mr Serache's home as a transit facility. Several days before the attack, a planning meeting attended by General Stanley Schutte, then head of the Security Branch and General AJ 'Kat' Liebenberg, then head of Special Forces, was held at a Security Branch safe house in Ottoshoop, Transvaal. The attack was launched that night, injuring Mr Serache and another person.

Vernon Nkadimeng

137. On 14 May 1985, Vernon Nkadimeng (aka Rogers Mevi), a senior ANC/SACTU official,[65] was killed in a car bomb explosion in Gaborone, Botswana. The divisional commander of the Western Transvaal Security Branch, Brigadier Wickus Loots, and the commander of the Zeerust Security branch, Captain Rudi Crause, applied for amnesty for their role in providing target intelligence on Mr Nkadimeng and MK Jackie Molefe to Commandant Charl Naude, then operational commander of Barnacle, approximately one month before the operation.

The Gaborone raid, 1985

138. On the night of 14 June 1985, the eve of the ANC's consultative conference in Kabwe, Zambia, Special Forces conducted a government-sanctioned cross-border raid into Gaborone, Botswana, killing twelve people. Security Branch

65 South African Congress of Trade Unions

operatives from Security Branch Headquarters and the Western Transvaal and Soweto divisions applied for amnesty for identifying targets and supplying intelligence. The applicants testified to attending high-level meetings at Security Branch and Special Forces Headquarters at which generals from the SAP and SADF were present. One operative testified to accompanying Military Intelligence and Special Forces personnel to Cape Town to brief Ministers le Grange and Malan several days before the raid.

139. A Special Forces operations centre was set up at Nietverdiend near the Botswana border, and SADF forces were assembled to strike at Botswana should the Batswana Defence Force retaliate.

Aubrey Mkhwanazi and Sadi Pule

140. On 31 December 1986, the Western Transvaal Security Branch heard from a source that two MK operatives, Aubrey Mkhwanazi (aka Take Five) and Sadi Pule, were staying in a house in Ramoutse, Botswana. Acting immediately on this information, they were authorised by Security Branch Headquarters to approach Special Forces with a view to conducting an operation. A raid was launched that night, leading to the death of a 72-year-old Batswana national, Maponyana Thero Segopa. Both of the intended targets had apparently been warned of an impending attack and were not in the house at the time.

The McKenzie car bomb

141. On 9 April 1987, Ms Mmaditsebe Phetolo, a Batswana national, and two children were killed when a car bomb exploded outside their home in Gaborone, Botswana. The explosion was the result of a failed operation undertaken jointly by the Northern and Western Transvaal Security Branches and Special Forces/ Barnacle operatives. The bomb had been placed in a secret compartment in a vehicle belonging to a Northern Transvaal Security Branch source, Charles McKenzie. McKenzie, who had successfully infiltrated MK Special Operations in Botswana, had transported arms into South Africa for MK.

142. According to applicants, the intended targets of the operation were Messrs Johannes Mnisi (aka Victor Molefe), Lester Dumakude and Ernest Lekoto Pule, all Special Operations operatives. The plan was to deliver the vehicle to the MK operatives and to detonate it by remote control while they were in the vehicle. Alternatively the bomb would detonate when the secret compartment in which

the arms were stored was opened. However, McKenzie was already suspected of being a spy and was apprehended by MK on his arrival in Bostwana. McKenzie was allegedly not aware of the bomb. His vehicle was parked in a street in Gaborone, Botswana, where it exploded several days later, killing Ms Phetolo, her seven-year-old daughter and infant niece.

143. As Special Forces operatives were responsible for the Botswana leg of the operation, it is not known whether the explosion happened accidentally or whether Special Forces detonated the bomb.

144. Amnesty applications were received from Brigadier Cronje and two Section A[66] operatives, from two members of the Western Transvaal Security Branch who assisted with the operations, and from General Johan van der Merwe, who authorised it.

The Oasis Motel

145. Applicants from the Western Transvaal and Soweto Security Branches testified that they took part in two aborted operations with Special Forces in August or September 1987. The aim had been to kill several prominent MK and SACTU leaders based in Botswana who were allegedly in the process of setting up MK or Industrial Combat Units within the Post and Telegraphic Workers' Association (POTWA), a trade union in South Africa. Special Forces called off the first attempt for reasons unknown to the applicants. In the second operation, an explosive device was set up in the room of the Oasis Motel, where the targets were due to meet a source of the Soweto Security Branch, SWT 180. When they did not arrive for the meeting, the device was dismantled.

The Bulawayo operation

146. On 11 January 1988, a car bomb exploded outside a house in Harare, Zimbabwe. During the subsequent trial it emerged that the incident had been an operation conducted by the Zimbabwe cell of the CCB.

147. According to evidence at the trial, Mr Kevin John Woods, a Zimbabwean citizen recruited by the NIS, had received information that MK was using the house as a transit facility. He later received instructions from Pretoria to liaise with the

66 Section A monitored the activities of Indian, coloured and white activists and organisations.

CCB cell with a view to launching an attack on the transit facility. The CCB cell assembled a car bomb and recruited Mr Amon Mwanza, an unemployed Zimbabwean citizen, to drive the car to the targeted house. The car was detonated outside the house, killing Mr Mwanza and severely injuring a resident of the house.

148. Kevin Woods and three members of the CCB cell, Barry Bawden, Philip Conjwayo and Michael Smith, were sentenced to death for this operation. The sentence was later commuted to life imprisonment. Mr Woods, the only one of the four to apply for amnesty, later withdrew his application.

Patrick Vundla and the arms cache

149. A number of Security Branch operatives applied for their role in one, or possibly two, operations involving the establishment of an arms cache in Krugersdorp on 28 March 1988 [AC/2001/228 & AC/2001/119]. The applicants were Messrs JH le Roux [AM4148/96], JC Meyer [AM4152/96] MJ Naude [AM4362/96], EA de Kock [AM0066/96], JC Coetzee [AM4120/96] and WF Schoon [AM4396/96].

150. Brigadier Schoon, head of Group C at Security Branch Headquarters, told the Committee that he was approached by the Chief of the Army, General AJ 'Kat' Liebenberg, and asked whether the Security Branch could establish and then 'discover' an arms cache of Eastern Bloc weapons. The arms cache could be ascribed to MK units in Botswana, thus providing a pretext to launch an attack. The SADF seems to have been having difficulty in getting political authorisation for the proposed operation and was hoping that this would tilt the balance in their favour. Brigadier Schoon's allegation could not be tested, as General Liebenberg was no longer alive and none of the SADF personnel had applied for amnesty for this incident.

151. An arms cache was duly established at Krugersdorp and later 'uncovered' by the Security Branch. Brigadier Schoon and one of his operatives accompanied Generals Liebenberg and Joubert to Cape Town to be on standby should they be required to brief the relevant ministers. The proposed attack was authorised and conducted on 28 March 1988. The target and outcome of this attack is not clear.

152. On the same day, a separate 'hot pursuit' operation was launched on an alleged transit house in Botswana. This followed the capture of one and the killing three

days later of three MK operatives near Derdepoort, Thabazimbi by an SADF patrol. Mr Vuyo Moleli (aka Kagiso Mogale or Vito), the captured operative, was handed to the Western Transvaal Security Branch. During interrogation, they established that his unit had stayed overnight at a transit house in Botswana. They then handed him over to Special Forces who launched an attack on the house, killing a senior MK commander, Mr Patrick Sandile Mvundla, (aka Naledi Sehume) and two women, both of whom were Batswana nationals. Mr WJ Loots [AM4149/96; AC/2001/228] was granted amnesty for this incident.

153. While it is possible that the above two incidents are in fact one, detail from the amnesty hearing seems to suggest two separate incidents.

Other operations

154. Some of the other operations in which SADF personnel have been implicated by Security Branch personnel include:
    a The bombing of two houses in Mbabane, Swaziland, on 4 June 1980 in which MK operative Patrick Mmakou and a seven-year-old boy, Patrick Nkosi, were killed.
    b The abduction from Swaziland and subsequent torture of ANC member Dayan 'Joe' Pillay on 19 May 1981.
    c The killing of seven COSAS activists and the injuring of eight people on the East Rand on 26 June 1985 in a Security Branch operation code-named Operation Zero.

PART THREE: KEY SECURITY FORCE UNITS INVOLVED IN GROSS HUMAN RIGHTS VIOLATIONS

SECURITY BRANCH HEADQUARTERS

155. The Headquarters of the Security Branch was based in Pretoria. Until 1992, the Security Branch was organised centrally, with headquarters in Pretoria and nineteen regional divisions (excluding South West Africa).[67]

67 In the 1990s, the Security Branch was renamed Crime Intelligence and Investigation and fell under the same division as the old Criminal Investigation Department (CID), and several of the regional divisions were combined. However, for the sake of simplicity and because the bulk of applications fall into the pre-1990 period, this report has not distinguished between the pre- and post-1990 periods.

156. A total of eighty-one applicants applied for amnesty for offences committed while based at Security Branch Headquarters. Forty-seven of these applicants were based in C1/Vlakplaas.

Case study: C1/Vlakplaas

157. Thirty-five of the forty-seven Vlakplaas members who applied for amnesty were white Security Branch operatives and seven were black. Only five C1-based *askaris* applied for amnesty.[68]

158. Vlakplaas is a 44-hectare farm just outside Pretoria. C1 was ostensibly a rehabilitation project for 'reformed members' of the liberation movements. However, beyond the employment of *askaris* as trackers of MK and APLA combatants, there is no sign that any rehabilitation took place.

159. From its inception through the 1980s, C1/Vlakplaas was deployed in the following ways:
    a assisting in the tracking and identification of members of the liberation movement who had received military training and were active in MK and APLA structures;
    b conducting covert cross-border operations (Swaziland remained the pre-eminent area of activity, always in close liaison with the Eastern Transvaal Security Branch division), and
    c conducting internal covert operations, either where a political decision or the command structure of the Security Branch decided on a covert operation or during the routine deployment of *askaris* in regions. In some instances this was at the request of the divisional or local branch; in others as an outcome of the tracking work being undertaken.

160. *Askaris* were former members of the liberation movements who came to work for the Security Branch, providing information, identifying and tracing former comrades. A number were also operationally deployed.

161. Former members of the liberation movements became *askaris* if they defected from the liberation movements of their own accord or if they were arrested or captured. In some cases, attempts were made to 'turn' captured MK operatives using both orthodox and unorthodox methods during interrogation. Other

68 At least two others applied for amnesty but subsequently withdrew their applications.

askaris were MK operatives who had been abducted by the Security Branch from neighbouring states.[69] Several abductees remain disappeared and are believed to have been killed. The threats of death used to 'turn' *askaris* were not idle. Amnesty applications revealed that several operatives were killed for steadfastly refusing to co-operate.

162. *Askaris* were primarily used to infiltrate groups and to identify former comrades with whom they had trained in other countries. At the Pretoria hearing in July 1999, Mr Chris Mosiane testified:

In the initial stages askaris were used as police dogs to sniff out insurgents with white SB [Security Branch members] as their handlers. Black SB were used to monitor the ***askaris****.*

163. *Askaris* were initially treated as informers and were paid from a secret fund. Later, they were integrated into the SAP at the level of constable and were paid an SAP salary. While deployed in the regions, they were paid an additional amount, which was usually generated by making false claims to a secret fund. After successful operations they usually received bonuses.

164. The *askaris* used Vlakplaas as an operational base and resided in the townships where they attempted to maintain their cover as underground MK operatives. Although a few *askaris* escaped, most were far too frightened to attempt it. At his amnesty hearing, Colonel Eugene de Kock[70] testified that he had set up a spy network amongst the *askaris* and used electronic surveillance. He told the Amnesty Committee that he had also established a disciplinary structure to deal with internal issues and other infractions by *askaris* and white officers. However, *askaris* who exceeded their authority in operational situations or criminal matters were seldom punished.

165. Generally *askaris* were extremely effective. Because of their internal experience of MK structures, they were invaluable in identifying potential suspects, in infiltrating networks, in interrogations and in giving evidence for the state in trials.

166. A large number of white C1 operatives were drawn from Koevoet, the SAP Special Task Force or had specific counter-insurgency experience. Several had explosives training while a small number were former detectives who could 'arrange scenes' after covert operations in order to ensure they would not be traced to the security forces.

69 See Chris Mosiane interview, below.

70 See further details on Eugene de Kock below (para 170 onwards).

167. In August 1980, Captain Dirk Coetzee was appointed commander of Vlakplaas. Under his command, C1/Vlakplaas members were drawn into other operational tasks, both within and outside South Africa. Coetzee and two black Vlakplaas operatives applied for amnesty for a number of operations.

168. Captain Jan Carel Coetzee assumed command of the unit after Dirk Coetzee was transferred to the uniform branch of the SAP at the end of 1981. Lieutenant Colonel Jan Hatting 'Jack' Cronje became commander of Vlakplaas in early 1983, with Jan Coetzee serving as second in command. Cronje, who had been a part of the SAP contingent in Rhodesia in 1974 and 1975 and afterwards did 'border duty' at Katimo Mulilo in SWA/Namibia, brought to the unit a far wider experience in the use of unconventional methods of counter-insurgency warfare.

169. Brigadier Cronje applied for amnesty for numerous offences committed during his subsequent appointment as divisional commander of the Northern Transvaal Security Branch, but for only two operations conducted as commander of C1/Vlakplaas. Both these operations confirm the continued use of C1/Vlakplaas as an operational unit. The first was the 22 November 1983 cross-border attack on Mr Zwelibanzi Nyanda, a member of MK's Natal urban machinery in which both Mr Nyanda and fellow-MK operative Keith McFadden were killed. The second was Operation Zero Zero, an entrapment operation which led to the deaths of eight and severe injuries to seven COSAS youths.

170. In 1983, during Cronje's term of office, another veteran of the Rhodesian and SWA/Namibian wars, Captain Eugene de Kock, was transferred to C1.[71] He remained as commander of C1 until 1993, when he left the SAP as a colonel with a payout of over R1 million.

171. In May 1994, Colonel de Kock was arrested and subsequently convicted. He applied for amnesty [AM0066/96] for incidents associated with[72]:

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71 Constable Eugene Alexander de Kock joined the SAP in January 1968 and spent nine months at Police College before being sent to Rhodesia to do 'border duty.' In 1978, he was deployed to the Security Branch office at Oshakati and on 1 January 1979 was transferred to the newly established Koevoet unit, attached to Security Branch Headquarters. De Kock himself engaged in numerous 'contacts' in the four years he spent as the head of a highly successful Koevoet unit. While still at Koevoet, De Kock had been identified as one of the operatives to take part in the bombing of the ANC offices in London, for which he was awarded the highest decoration, the SAP Star for Outstanding Service.

72 AC/1999/0242; AC/1999/0345; AC/1999/0349; AC/1999/0350; AC/2000/040; AC/2000/057; AC/2000/084; AC/2000/085; AC/2000/086; AC/2000/089; AC/2000/087; AC/2000/090; AC2000/152; AC/2000/215; AC/2001/002; AC/2001/004; AC/2001/006; AC/2001/047; AC/2001/049; AC/2001/058; AC/2001/063; AC/2001/081-MK; AC/2001/094; AC/2001/095; AC/2001/108; AC/2001/141; AC/2001/146; AC/2001/148; AC/2001/167; AC/2001/171; AC/2001/179; AC/2001/225; AC/2001/227; AC/2001/228; AC/2001/231; AC/2001/241; AC/2001/252; AC/2001/272; AC/2001/273.

- over seventy killings, of which twenty-six were committed outside South Africa, including five of *askaris* or ex-*askaris*;
- nine abductions, three of which were committed outside South Africa;
- sabotage of five buildings;
- supply of weapons for attempted coup in the Transkei, and
- supply of weapons to the IFP.

172. During his amnesty hearings, De Kock repeatedly said that he took overall responsibility for the operatives under his command.

173. Fifteen of the killings for which De Kock sought amnesty were committed in the post-1990 period and fell into three broad categories. The first category reflected a continuation of C1's earlier cross border operations and involved the killing of six people in Botswana in April 1990 (the Chand incident). The second category related to the killing of own forces where it was feared they would disclose the nature of previous covert operations or, in the case of the attempted killing of Captain Dirk Coetzee, where they had already done so. The third category consisted of two incidents in which nine people were killed and which arose from operations related to the new focus for combating crime. In the first incident, Vlakplaas operatives applied for amnesty for covering up the killing of four alleged arm smugglers on 21 April 1991 in an abortive entrapment operation near Komatipoort. In the second incident, De Kock and his operatives ambushed a vehicle near Nelspruit on 26 March 1992, killing all four unarmed occupants, allegedly to foil a planned armed robbery. The leader of the group, Mr Tiisetso Leballo, a former driver of Ms Winnie Madikizela-Mandela, was later apprehended, interrogated and then shot dead. The applicants, who were denied amnesty, claimed that they believed the planned armed robbery to have been aimed at securing funds for the ANC.

174. In addition to killings, applicant De Kock and some of his team applied for a range of offences relating to the supply of weapons to the IFP in Johannesburg and Natal and to SADF operatives and agents involved in the attempted overthrow of Chief Minister Bantu Holomisa in the Transkei.

175. The Amnesty Committee also received applications for the killing of seven *askaris* from Dirk Coetzee and Eugene de Kock of C1/Vlakplaas and several of their operatives, and from Port Natal Security Branch operatives: Nkosinathi Peter Dlamini and Ace Moema were killed while Coetzee was commander of Vlakplaas, and Pat Mafuna was killed on an unknown date between 1982 and 1986. Moses

Nthelang was killed in a drunken frenzy after he reported having lost his firearm. The remaining three (Brian Ngqulunga, Neville Goodwill Sikhakane and escaped *askari* Johannes Temba Mabotha) were killed in the post-1990 period. Following the disclosures of Butana Nofomela and Dirk Coetzee in 1989, there was increasing fear that *askaris* would reveal the workings of C1/Vlakplaas.

176. The story of Mr Tlhomedi Ephraim Mfalapitsa, aka Francis Tladi [AM3592/96] provides insight into the experience of *askaris.* Mr Mfalapitsa left South Africa in 1976 and joined the ANC in exile. He underwent military training, was deployed on missions into South Africa and finally ended up at military headquarters in Zambia.

177. After the bombing of Nova Catengue camp in 1979, the ANC became extremely edgy about security. It was at this stage that Mr Mfalapitsa found himself party to the torture of suspects during interrogation and witnessed the killing of an operative by other members of his unit. He testified to the Amnesty Committee that he became increasingly disillusioned with the ANC and, in November 1981, returned to South Africa and handed himself over to the SAP:

    I told the South African Police that I am not interested in joining either side of the conflict. I wanted them to debrief me and set me free because there was nowhere else to go and this is my country. And it was my experience and my arrest in Botswana, I saw many people who were stateless, who had no place to go. … And then, they refused me. They said they could not let me, after having been in military structure in which Joe Modise is the Chief of the armed forces of the MK. So I helped and I was forced to join the South African Police. (Johannesburg hearing, May 1999.)

178. In January 1982, Mr Mfalapitsa was enrolled as an *askari* at C1/Vlakplaas. Shortly afterwards, he was approached by a neighbour's son, Mr Zandisile Musi, who asked him for help in leaving South Africa. Musi, whose two brothers had left South Africa with Mfalapitsa, had no idea that he had changed sides. Unsure whether this was a trap, Mr Mfalapitsa reported the request and was instructed to continue posing as an MK operative.

179. C1 commander Jan Coetzee asked for and received authorisation for an entrapment operation. On instructions from Coetzee, Mfalapitsa offered to train Zandisile Musi and his friends. On the appointed day, he took the four youths to an outbuilding on a disused mine near Krugersdorp where explosives had already been laid. Mfalapitsa left the building and the explosives were detonated, killing three and severely injuring Musi.

Eastern Transvaal Security Branch

180. The divisional headquarters of the Eastern Transvaal Security Branch was based at Middelburg, with branches in Ermelo (a sub-branch in Piet Retief), Witbank, Nelspruit, Secunda, Lebombo and Burgersfort. Members of the Eastern Transvaal Security Branch were also based at several border posts, including Oshoek, Golela, Houtkop, and Nerston.

181. Seventeen members of the Eastern Transvaal Security Branch applied for amnesty for fifteen incidents committed between the late 1970s and 1988. These incidents included twenty-five killings, seven abductions and at least three instances of torture and/or severe assault.

182. With minor exceptions, the applications relate to cross-border action against MK operatives in Swaziland or entering South Africa from Swaziland. The ANC submission records a total of at least fifty-two deaths of Swaziland-based MK operatives 'at enemy hands'. A further eight on the list were killed near Piet Retief while infiltrating South Africa, as were several other MK combatants. The above applications account for only fourteen of these.

183. Members of the Eastern Transvaal Security Branch sought amnesty only for operations that were conducted jointly with other Security Branch divisions, principally C1/Vlakplaas, and for which the Amnesty Committee had already received applications.[73] Amnesty was granted in thirty-eight cases, partially granted in two and refused in one instance.

184. One case involved ANC intelligence operative Jabulani Sidney Msibi, a former bodyguard of ANC President Oliver Tambo. The situation arose because members of the Branch suspected that they had been infiltrated by the ANC. When suspicion fell on a Nelspruit Security Branch operative, Warrant Officer Malaza, he allegedly confessed, naming Msibi as his handler. He was then instructed to set up a meeting with Msibi in Swaziland. Msibi was abducted and taken to Daisy Farm.

185. Although the Eastern Tramsvaal Security Branch claimed that Msibi became an informer, De Kock denied this at his amnesty hearing. Addressing Mr Msibi's family, he said:

73 Note, for example, a late amendment to the application by FHS Labuschagne during the section 29 process, which the Amnesty Committee later rejected.

And I just want to tell you that his dignity and his integrity, his faith and his loyalty in the ANC, remained unscathed consistently and that is how he died. He was the sort of man who I, at any time, would have wanted in my life with me at my darkest hours. That is the kind of person I would have wanted with me. In my limited capacity as a human being, he has all the respect that I could muster and I believe that if any of my members have the courage of their conviction and if they would speak the truth, they would underwrite what I have just said, that he is worthy of respect of the party and the people whom he served at that time.

Within my limited capacity as a human being and my even more limited capacity due to my special circumstances, I would like to say that regarding me, he was one of the ANC's and the country's most loyal supporters. He stubbornly refused that anything should break him or his loyalty, and I would just like to tell the family that. (Hearing, August 2000.)

186. Shortly after his release from detention, Mr Jabulani Msibi was killed in unknown circumstances.

Far Northern Transvaal Division

187. The Far Northern Transvaal Security Branch was based at Pietersburg and had branches in Nylstroom, Thabazimbi, Ellisras, Louis Trichardt, Messina, Tzaneen, Phalaborwa and Giyani. Its area of operation included three international borders: Mozambique, Zimbabwe and Botswana.

188. Nineteen applicants from the Far Northern Transvaal Security Branch applied for amnesty for two separate incidents.

189. The first was for the killing of six MK operatives at Alldays on 10 July 1986 and for perjury committed during the inquest into the deaths. This matter was investigated by the Transvaal Attorney-General after one of the participants in the ambush made a statement to the effect that he had led the six into the ambush without any intention of arresting them. Several of the applicants had been advised by the investigating team that charges of murder were being considered. Only five out of fourteen applicants were granted amnesty for the Alldays ambush [AC/1999/176].

190. A second set of applications involved two acts of illegal entry and theft from the ANC and COSATU offices in the 1990–92 period. One applicant sought amnesty

for both incidents. Six applicants were granted amnesty for the latter incident [AC/1997/071; AC/2001/234].

Western Transvaal Security Branch

191. The divisional headquarters of the Western Transvaal Security Branch was based in Potchefstroom, with branches and sub-branches at Zeerust, Rustenburg and Klerksdorp. Security Branch operatives were also based at the Derdepoort, Kopfontein and Buffelsdrifhek border posts with Botswana.

192. Eleven members of the Western Transvaal Security Branch applied for amnesty. The eleven included two divisional commanders and the branch commander of Zeerust. The thirteen incidents applied for involved thirty-three killings, numerous attempted killings and several counts of assault or torture.

193. Amnesty was granted in thirty-four instances, refused in two and partially granted in three.[74]

Soweto Security Branch

194. A key component of the Soweto Security Branch was the SIU[75], which ran a number of covert agents and sources both inside and outside the country.

195. Twenty-two members of the Soweto Security Branch, including three divisional commanders and at least eleven members of the SIU, applied for amnesty for twenty-nine incidents committed between 1980 and 1992. These incidents involved at least twenty-two killings, two abductions/torture and approximately fourteen sabotage and/or credibility operations.

196. Four of the killings resulted from Soweto Security Branch operations. Soweto Security Branch members either provided intelligence for or participated directly in the other operations.

197. Most of the incidents applied for were so-called 'credibility operations', conducted by members of the SIU in order to build up the credibility of sources

74 With regard to target identification for the Gaborone Raid, applicants were granted amnesty for the targets in respect of which they specifically remembered supplying information.

75 Soweto Intelligence Unit.

or to facilitate infiltration by deep-cover agents. These operations covered a range of activities such as the establishment of arms caches, the sabotage of offices and installations and attacks on homes and hostels.

198. Amnesty was granted in seventy-six instances, refused in four, conditionally granted in five and granted/refused in three. No decision was handed down in one instance, in which the applicant had died.

199. During the hearing concerning the abduction of Ms Nokuthula Simelane, aka Sibongile, a 23-year-old University of Swaziland student and member of MK's Transvaal Urban Machinery, sharp differences emerged between the various applicants as black members of the SIU challenged the version of white applicants.

200. The Amnesty Committee heard evidence that, in the early 1980s, two deep cover agents of the SIU, RS269 (Sergeant Langa, aka Frank or Big) and RS243 (Sergeant 'Terror' Mkhonza, aka Scotch) infiltrated MK's Transvaal machinery with the help of an informer, SWT66 (Nompumelelo).

201. Early in September 1983, Mkhonza was instructed by his MK contact to meet Sibongile (Ms Nokuthula Simelane) at the Carlton Centre, Johannesburg. After the meeting, Mkhonza led her to the basement parking area where they were seized by waiting SIU members and bundled into the boot of a car. Ms Simelane was, according to all applicants, severely assaulted and brutally beaten.

202. She was subsequently transferred to a farm near Northam in the current North West. Here she was held in a room in an outside building for a period of approximately four to five weeks. Lieutenant Willem 'Timol' Coetzee, Warrant Officer Anton Pretorius and Sergeant Frederick Barnard Mong were tasked with interrogating and recruiting Ms Simelane. When she was not being interrogated, Ms Simelane was under constant guard by black members of the SIU. At night, she was cuffed and chained to her bed with leg irons. The black members, who were responsible for guarding her, slept either in or outside her room.

203. Black SIU applicants, Constables Veyi and Selamolela, testified that she was repeatedly and brutally tortured throughout her stay on the farm, finally becoming 'unrecognisable'. The white applicants denied this vehemently.

204. According to their evidence, the victim had been severely assaulted during the first week and had, on more than one occasion, been put in a dam after soiling

herself while being tortured. However, they alleged that, after the first week, she agreed to work for them and that they spent the remaining weeks of her 'detention' preparing her for her work as an agent. Thereafter, they claimed that they returned her to Swaziland with the help of Sergeants Mothiba and Langa, both since deceased. After that they lost contact with her.

205. This testimony was challenged by Veyi and Selamolela, who testified that the victim's physical state made it extremely unlikely that she could have been in a fit state to be returned to Swaziland. Constable Veyi testified that he had last seen Ms Simelane bound and in the boot of Lieutenant Coetzee's car and that Sergeant Mothiba had told him that she had been killed.

206. In refusing amnesty to applicants Coetzee, Pretorius and Mong, the Amnesty Committee said of Ms Simelane:

During her detention for a period of approximately five weeks, she was continuously and very seriously assaulted by the group of Security Police, under the command of Coetzee, who held her captive. All attempts to extract information concerning MK or its operations as well as attempts to recruit her to become a Security Police informer, were fruitless. Due to the prolonged and sustained assaults, Ms Simelane's physical condition deteriorated to the extent that she was hardly recognisable and could barely walk. Ms Simelane was last seen where she was lying with her hands and feet cuffed in the boot of Coetzee's vehicle. She never returned to her familiar environment in Swaziland ... and has disappeared since. It is not necessary for the purpose of this matter to make a definitive finding on the eventual fate of Ms Simelane. [AC/2001/185.]

Witwatersrand Security Branch

207. The divisional headquarters of the Witwatersrand Security Branch was based at John Vorster Square in Johannesburg. Seventeen of its members sought amnesty for various offences committed between the late 1970s and 1992. Two members of the Eastern Transvaal Security Branch, one of whom was the divisional commander, applied for amnesty for assisting with the disposal of the body of Mr Stanza Bopape, a detainee who died in Witwatersrand Security Branch custody.[76]

76 See Volume Two, Chapter Two, pp. 212–14, and Volume Three, Chapter Six, pp. 620–24.

208. The nature of the violations for which amnesty was sought included scores of Stratcom operations (see below); eleven specified acts of torture and/or assault and a number of unspecified acts of torture and/or assault; numerous instances of attempting to cover up offences committed by the police; involvement in some seven acts of sabotage and bombing (including the bombings of Cosatu House and Khotso House); several attempted killings; several instances of supplying weapons to the IFP in the early 1990s, and one killing.

Stratcom and Intelligence Johannesburg

209. Intelligence Johannesburg (IJ) was a unit at John Vorster Square whose functions included routine intelligence tasks such as surveillance and recruitment, unlawful tapping of telephones and interception of mail. IJ was also involved in a number of activities connected to Stratcom operations.

210. The Amnesty Committee received an application from Lieutenant Michael Bellingan [AM2880/96], who was attached to IJ between 1984 and 1986. Two other applications regarding Stratcom operations were received from members of the Witwatersrand Security Branch, Paul Francis Erasmus [AM3690/96] and Gary Leon Pollock [AM2538/96]. All three applicants applied for a range of unlawful operations, broadly classified as disinformation, propaganda and 'dirty tricks'.

211. Stratcom (Strategic communication) was a form of psychological warfare waged by both conventional and unconventional means. Its earlier activities involved random acts of intimidation such as the vandalising of property, the making of threatening phone calls and so on. Later it involved actions such as the unlawful establishing of arms caches in an attempt to establish the credibility of Security Branch agents or to provide a pretext for actions such as the SADF raid into Botswana in 1985.

212. From 1984, following the appointment of Brigadier Gerrit Erasmus as head of the Security Branch, Stratcom actions became less random and more co-ordinated. This shift coincided with the formal adoption of Stratcom as state policy in 1984 and the establishment of a sub-committee Tak Strategiese Kommunikasie (TSK – Strategic Communications Branch) as part of the Secretariat of the State Security Council, with representatives from the Security Branch, Military Intelligence and the NIS.

213. Former Minister of Law and Order Adriaan Vlok testified that Stratcom was an official policy of the government and conceded that it was engaged in unlawful actions. An example of a Stratcom action, he told the Amnesty Committee, might include spreading disinformation about an individual in order to cause people to suspect him of being an agent or even attack him.[77]

214. Applicants Erasmus and Bellingan testified that there were two kinds of Stratcom, loosely referred to as 'soft' and 'hard' Stratcom. Propaganda and disinformation made up the 'soft' side of Stratcom while 'hard' Stratcom referred to 'active measures'. Mr Bellingan cited the examples of the bombings of Cosatu House and Khotso House and the 'Cry Freedom' incident. He said that the use of 'hard' Stratcom came about as a consequence of intensifying resistance, which led to the adoption of the strategy of counter-revolutionary warfare.

215. The bulk of the incidents for which the applicants sought amnesty fell broadly within the range of 'soft' and 'hard' actions. They included: graffiti, fake pamphlets, pouring paint remover over vehicles, disrupting protest gatherings though the use of stink bombs or teargas, theft, threatening phone calls, blackmail, framing, assault, slashing of car tyres, bricks through windows, loosening wheel nuts and bolts of vehicles, firing shots at houses, and arson and petrol bomb attacks on vehicles, homes and buildings.

216. Erasmus, Bellingan and Pollock all testified that one of the aims and strategies of Stratcom was to sow division among 'the enemy'. According to Bellingan, intelligence reports were used to expose ideological rifts in organisations and then find ways to exploit the differences. The effect would be to 'divert their time and effort and resources away from us and as far as possible, against each other'.

217. Several of the incidents for which applicant Pollock sought amnesty fall into this category. He testified that the strategy of the Alexandra Security Branch in the early 1990s was to increase tensions between the IFP and those Alexandra residents perceived to be ANC supporters. Incidents included driving through Alexandra at night firing randomly, and furnishing the names of ANC members to the IFP.

West Rand Security Branch

218. The divisional headquarters of the West Rand Security Branch was based at Krugersdorp, with branches at Roodepoort and Vereeniging. Five members of

77 Pretoria hearing, 20–30 July 1998.

the Branch applied for amnesty for six incidents. These include one abduction (which ended in a killing); three attempted killings; the establishment of an arms cache used as a pretext for a raid on Botswana in which three persons were killed, and two acts of sabotage (see above).

219. Amnesty was granted to all but one of the five.

East Rand Security Branch

220. The East Rand Security Branch was based in Springs, with branches in Benoni and Germiston. Amnesty applications for two incidents were received from five applicants, including both divisional commanders. The incidents involved eight killings and at least seven attempted killings (all in Operation Zero Zero) and an attack on the home of a political activist. All applicants were granted amnesty.

Port Natal Security Branch

221. The divisional headquarters of the Port Natal Security Branch was based at CR Swart SAP Headquarters in Durban, with branches or operatives based at Port Shepstone, Scottsburgh and Stanger.

222. Port Natal Security Branch played an extensive role in relation to MK activities in and from Swaziland. Like its counterparts in other parts of the country, it set up a Terrorist Detection or Tracing Unit in the mid-1980s. The unit was headed by then Major Andrew 'Andy' Russell Cavill Taylor and established a significant *askari* base, drawing additionally on the resources of the Pietermaritzburg-based Natal Security Branch and operating throughout the province. Most amnesty applicants applied for offences committed while they were part of this unit.

223. The *askari* unit operated from a number of safe houses and farms in Natal and established its main centre at a farm near Camperdown. The unit's primary task was tracing, apprehending and interrogating MK suspects, but as an operational unit it was also able to take proactive and reactive measures.

224. One of the ANC's submissions to the Commission notes a significant number of losses amongst its Natal operatives during the 1980s, with the number of operatives killed or disappeared rising sharply in 1987 and 1988. The rising number of deaths in these years coincides with the establishment of the Natal *askari* unit.

225. Sixteen members of the Port Natal Security Branch, including the divisional commander and the head of the Terrorist Detection Unit, applied for amnesty for twenty incidents committed between the late 1970s and 1991. These incidents involved more than ten abductions and seventeen killings, almost exclusively committed by members of the Terrorist Detection/*askari* unit between 1986 and 1990. The Amnesty Committee also received several amnesty applications for numerous acts of torture in the 1970s, including one from Colonel Taylor.

226. Applicants were granted amnesty in fifty-two instances and refused in four (the abduction and killing of Ms Ntombi Khubeka – see below). In five instances no decision was made as the applicant, Colonel Taylor, had died before the hearing.

227. Six members of the Port Natal Security Branch based in the Terrorism Investigation Section and two C1/Vlakplaas operatives applied for amnesty for their role in the abduction, death and subsequent disposal of the body of Ms Ntombikayise (Ntombi) Priscilla Ngcobo (née Khubeka) in April or May 1987.

228. Ms Khubeka lived in KwaMashu near Durban, and was suspected of acting as a co-ordinator between the external and internal units of MK. Two C1/Vlakplaas *askaris*, Xola Frank Mbane and a Mr Dube, made contact with her.

229. Mr Mbane drove Ms Khubeka to Battery Beach from where she was abducted by the Port Natal team, blindfolded, bound and taken to an abandoned shooting range at Winkelspruit, south of Durban. Still blindfolded, she was interrogated by a team consisting of Colonel Andy Taylor, Captain Hentie Botha, Sergeant Laurie Wasserman, Sergeant Cassie van der Westhuizen, Joe Coetzer and Warrant Officer 'Bossie' Basson.

230. Captain Botha testified that the interrogation lasted approximately fifteen to twenty minutes and that Taylor struck her approximately ten to fifteen times with a sjambok. Sergeant van der Westhuizen's testimony suggests that the interrogation lasted an hour. Both of these accounts were disputed by *askari* Mbane, who alleged that the interrogation lasted for about two hours and that he could hear her 'screams of pain' from where he waited outside.

231. Ms Khubeka's dead body was dumped near the Bhambayi informal settlement, some distance away from her home. Later Captain Botha established that her family was unaware of her death and appeared to believe that she had gone into exile. It was subsequently rumoured that she had left the country for

Mozambique because of the attentions of the Security Branch. It was only after the application was received by the Amnesty Committee that it became possible to discover what had happened to Ms Khubeka. Cases like this demonstrate the value of the principle of requiring full disclosure before amnesty is granted.

232. The Commission exhumed remains believed to be Ms Kubeka's from a pauper's grave at Charlottedale Cemetery in Stanger. In a post-mortem examination, a pathologist concluded that the remains matched those of Ntombi Khubeka. A single metallic object of approximately 10 mm in length fell from the skull and was later identified by a ballistics expert as a spent 7.65mm bullet. The University of Glasgow made a positive facial identification of the skull. Following a challenge by the applicants, the findings were confirmed by the SAPS Forensic Science Laboratory in Pretoria.

233. Applicants Botha, Du Preez, Wasserman and Van der Westhuizen were refused amnesty for failing to make full disclosure. Applicants Radebe and Baker, who were neither present during the interrogation nor involved in the disposal of the body, were granted amnesty for her abduction.

Natal Security Branch

234. The Natal Security Branch was based in Pietermaritzburg, with branches or operatives based at Ladysmith, Greytown, Kokstad and Matatiele. Natal Security Branch operatives were also based at the Sani Pass and Boesmansnek Border Posts with Lesotho. Amongst the Branch's divisional commanders was Brigadier Jacobus Hendrik 'Jac' Buchner.

235. As mentioned above, the Natal Security Branch participated in the work of the *askari* unit and owned one of the farms from which the unit operated. It was on this farm near Elandskop that the bodies of three abductees were exhumed.

236. Applications were received from five members of the Natal Security Branch for six incidents committed between 1980 and 1988. These incidents included four killings, an attack on a homestead belonging to an IFP member as part of establishing credibility for a source, and an attempted abduction.

237. Amnesty was granted to all applicants for all incidents excluding an attempted abduction in Swaziland.

Northern Natal Security Branch

238. The Northern Natal Security Branch was based at Newcastle, with operatives based at Vryheid, Empangeni, Eshowe, Jozini, Ndumo, Melmoth and Nongoma.

239. Two applications were received from the Northern Natal Security Branch for an abduction and two killings, one in 1980 and one in 1985. Both applicants, warrant officers at the time, were granted amnesty for the 1980 killing, but the applications for the 1985 abduction and the killing of Mr Jameson Ngoloyi Mngomezulu were refused.

Eastern Cape Security Branch

240. The divisional headquarters of the Eastern Cape Security Branch was based in the Sanlam building in Port Elizabeth, where several detainees lost their lives at the hands of the Security Branch. The headquarters later moved to Louis Le Grange Square. Branches and sub-branches were based in Uitenhage, Cradock, Grahamstown and Fort Beaufort.

241. Twelve members of the Eastern Cape Security Branch, including two divisional commanders, applied for amnesty for eight incidents. A Security Branch informer, Patrick Mncedisi Hlongwane, also applied for amnesty for a number of incidents. Applications were also received from members of the C1 (Vlakplaas) unit and from the Technical Division of Security Branch Headquarters for their participation in Eastern Cape Security Branch operations.

242. Incidents applied for include nine or possibly ten abductions and fifteen killings that occurred between 1977 and 1989. Only three of the victims appeared to be directly linked to MK structures (Gcinisizwe Kondile, Siphiwe Mthimkulu and Topsy Madaka). Eight of the remaining twelve were prominent political figures (Steve Biko, the 'Pebco Three' and the 'Cradock Four'), three were Security Branch operatives and one was an informer (linked to the 'Motherwell Four').

243. Applicants were granted amnesty in ten instances and refused in eighteen[78] Mr Hlongwane was refused amnesty for all acts associated with his activities as an informer for the Eastern Cape Security Branch in the 1980s.

78 Steve Biko, the 'Pebco Three', the 'Cradock Four', the 'Motherwell Four', the torture of Mkhuseli Jack.

Border Security Branch

244. The Border Security Branch was based in East London, with branches at Queenstown, Aliwal North, King William's Town and Elliot.

245. The Amnesty Committee received an application from a former Divisional Commander of the Border Security Branch, then Colonel Johannes Lodewikus Griebenauw, and one from one of his subordinates for their role in assisting the SADF in an operation code-named Katzen.[79] They were both granted amnesty. Major General Griebenauw, then still a Colonel, also applied for amnesty for his role in securing jobs in the SADF for two Transkei Security Branch operatives who were facing charges arising from the killing of MK operative Sithembele Zokwe in Butterworth in the Transkei on 11 June 1988. This application was refused, as no offence was specified.

Western Cape Security Branch

246. The divisional headquarters of the Western Cape Security Branch was based at Caledon Square and later in Loop Street in Cape Town.

247. Five members of the Western Cape Security Branch applied for amnesty for five incidents and an unspecified number of incidents involving torture. The five incidents included three acts of sabotage, one killing and one attempted killing. Several of the applicants belonged to the Terrorist Tracking Unit.

248. Amnesty was granted in all but two incidents.

Orange Free State Security Branch

249. The Orange Free State Security Branch was based at Bloemfontein with a branch at Ladybrand and a sub-branch at ThabaNchu and Bethlehem. Orange Free State Security Branch operatives were also based at several border posts with Lesotho.

250. Nine applicants from the Orange Free State Security Branch applied for twelve specified incidents. These included four abductions, four attempted killings, torture, and a number of attacks on houses or vehicles using petrol bombs. Applicants

79 Johannes Lodewikus Griebenauw [AM5182/97], Phillip Jacobus Fouche [AM6742/97].

in three incidents were divisional commanders: then Lieutenant-Colonels Johan van der Merwe, Dirk Genis and Eben Coetzee. An informer, later a police recruit, sought amnesty for some of the above incidents as well as an additional eight incidents. Amnesty was granted in eleven instances and refused in eighteen.

Northern Cape Security Branch

251. The Northern Cape Security Branch was based in Kimberley and included a branch at Vryburg.

252. The branch commander of Vryburg applied for and was granted amnesty for an attack on a church conducted in co-operation with C1/Vlakplaas.

Northern Transvaal Security Branch: A case study

253. The Northern Transvaal Security Branch was based in Pretoria and was responsible for Pretoria and its environs, including the black townships of Mamelodi and Atteridgeville. The Branch had sub-branches in Brits and Bronkhorstspruit, from where it monitored Kwandebele. Brigadier Jan Hattingh 'Jack' Cronje was the divisional commander during the key period for which most applications were received. During this period, Brigadier Cronje also served in an official capacity on the JMC.[80]

254. Thirty members of the Northern Transvaal Security Branch applied for amnesty for sixty incidents committed between 1981 and 1990. Several operatives, including the Divisional Commander, also sought amnesty for a number of attacks on the homes of activists in the mid-1980s. In addition, two applications were received from members of the Western Transvaal Security Branch, six from the SADF Special Forces and five from members of other SAP units for a number of joint operations or incidents in which they had participated. An application was also received from the commanding officer of the Security Branch and from the Chairperson of a security sub-committee of the Northern Transvaal JMC for incidents that they had authorised.

255. Approximately twelve of the incidents involved torture or serious assault. There were twenty-two abductions; forty-five killings, three of which took place outside South Africa's borders; sixteen bombing/arson attacks on homes, and an

80 Joint Management Committee.

undisclosed number of attacks on the homes of activists, either with petrol bombs or with more lethal explosive devices.[81]

256. Amnesty was granted in 120 instances, refused in nine, conditionally granted or granted/refused in five. No decision was taken in two instances where the applicant was deceased and in one where the application was withdrawn.

257. Most of the violations for which amnesty was sought emanated from a covert group under the command of Lieutenant Jacques Hechter.

258. Attacks on the homes of activists took place primarily in Mamelodi, Atteridgeville, Brits and Tembisa. Targets of abductions and killings tended to be MK operatives or those suspected of being linked to MK members. Targets for intimidation tended to be those involved in mass campaigns. In several instances, these attacks led to deaths.

259. A pentolite bomb was thrown at the home of the Ledwaba family shortly after midnight on 18 September 1986. There were nine people in the house at the time of the attack, including a 62-year-old woman and children under the age of fifteen. The target of the attack, Ms May Ledwaba, was unharmed but Mr Walter Ledwaba, a relative, was killed and Mr Julian Selepe lost a hand and suffered severe damage to his leg [AM4158/96; AM2776/96; AM3759/96; AM2773/96].

260. In February 1987, the home of Mr Scheepers Morodu, chairperson of the Mamelodi Students' Congress, was petrol-bombed. Mr Morodu was uninjured, but his eleven-year-old niece, Sanna Puleng Letsie, was killed. Lieutenant Willem Johannes Momberg, Sergeant Eric Goosen, Captain Jacques Hechter, Brigadier Jan Hattingh Cronje and Brigadier Gilles van de Wall, who chaired the security sub-committee of the Northern Transvaal Joint Management Centre, applied for and were granted amnesty for this incident [AC/2001/061].

261. Approximately three months later, Scheepers Morodu was detained by the Northern Transvaal Security Branch. During interrogation, Lieutenant Hechter and Sergeant van Vuuren subjected him to various forms of torture, including electric shock, suffocation and assault. Eventually he agreed to become an informer. At the amnesty hearing into his torture, Mr Morodu testified that:

81 These are not mutually exclusive categories: many incidents involve multiple violations, where a person may be abducted, tortured and then killed. Similarly killings include those killed during an attack on a home.

This act ruined my life and I could not walk safe in the township and each and every person suspected me … I wouldn't have collaborated with them and they knew that for a fact when they interrogated me and that is why they brought in Mr Mamasela to come and talk to me – whereby I even refused. And when one of them left the office, Joe Mamasela told me in no uncertain terms that I am going to die if I don't work with them. (Pretoria hearing, 21 March 1999.)

262. Morodu also testified that he has had to continue to receive medical treatment as a consequence of his torture:

My last operation was last October 31st ... According to that doctor they said my nose was the bone which separates the two nostrils was went to the other side. I think it is as a result of them kicking me in my face.

263. The covert operational unit was also involved in a number of abductions and killings. Lieutenant Hechter testified at the Masuku hearing on 26 March 2000 that:

It started with petrol bombs and then, as we began to target the more serious activists, it went over to bomb attacks and then there were specific activists who were removed and eliminated from society.

264. The covert unit was also involved in the following operations:
    a On 6 May 1987, Mr Joe Tsele, a UDF activist, was shot dead in his home in Bophuthatswana by Joe Mamasela.[82]
    b On the night of 15 July 1986, nine youths were shot dead and their bodies set alight in a house in Kwandebele. This operation happened just three weeks after ten youths had been killed near Nietverdiend (see above).
    c In the same month, Messrs Jackson Maake, Andrew Maponye Makope and Harold Sello Sefolo were abducted and taken to an abandoned Portland Cement Company property near Pretoria. Here they were interrogated and shocked with high voltage electricity until they were dead, one by one. Mr Sefolo, the last to die, witnessed the deaths of Mr Maake and Mr Makope. The bodies of the three were taken and placed on a landmine on an abandoned road in Bophuthatswana. The landmine was then detonated.[83]
    d Shortly after the above operation, an unknown person was abducted and taken to a deserted area in Bophuthatswana. Applicant Constable Sampina Bokaba testified that Hechter questioned Sefolo and, dissatisfied with his

82 Volume Two, Chapter Three, pp. 232–3.

83 See Volume Two, Chapter Three, pp. 238–9.

responses, tied a wire around his neck and strangled him, with the assistance of Warrant Officer van Vuuren. Sefolo's body was then dumped in the veld with a tyre placed around his neck. Petrol was poured over him and he was set alight.[84]

e In 1987, an unnamed man believed by the Security Branch to be a member of MK was picked up for questioning. He was driven into Mamelodi by between six and eight operatives, including Brigadier Cronje, the Divisional Commander of Northern Transvaal Security Branch, and asked to identify houses where MK members were hiding. When he was unable to identify a single house, he was assaulted by the operatives. Captain Prinsloo testified that he throttled the captive until his body became limp and sank to the ground. Lieutenant Momberg and Sergeant Goosen picked the victim up and placed him on a landmine, which was then detonated. Lieutenant Momberg, who lit the fuse, testified that he heard the explosion as he 'walked away from this scene towards the bus and climbed in'. The group then went back to Pretoria (Pretoria hearing, 1999).

f Amnesty applicants confirmed that Sergeant David Mothasi and Mrs Busisiwe Irene Mothasi were killed by members of the covert unit at their home in Temba, Bophuthatswana on 30 November 1987, allegedly on the instructions of the Divisional Commissioner of Police, Brigadier Stemmet.[85] They further testified that there had been no instruction to kill Mrs Mothasi, and that her killing by Constable Joe Mamasela was unauthorised. In his section 29 appearance before the Commission, Mamasela claimed that his instructions were that both Sergeant and Mrs Mothasi and their five-year-old son were to be killed, but that he had spared the life of the child. Constable Mamasela did not apply for amnesty.

265. Lieutenant Jacques Hechter of the Northern Transvaal Security Branch (see above) also acted as the link with an SADF Special Forces covert operational unit that was involved in conducting joint operations with the Northern Transvaal Security Branch. Brigadier Cronje testified that Brigadier Schoon, head of Section C (terrorist investigations) at Security Branch Headquarters, instructed him to work with the SADF's Special Forces. This confirmed Brigadier Cronje's opinion that the Security Branch was now engaged in all-out war. At the Security Forces hearing that took place from 2–10 October 2000, he testified that:

84 Hearing 27 March to 7 April 2000. See Volume Two, Chapter Three, p. 238; AC/1999/032,AM2777/96, AC/1999/030,AM2776/96, AC/2000/107,AM5460/97.

85 See Volume Two, Chapter Two, p. 271.

[Special Forces] was the special combat unit working with covert actions. If Brigadier Schoon gave me instruction to work with Military Intelligence I would not have considered than an instruction [for] war, but the instruction to work with Special Forces was a direct instruction to get involved in direct military warfare. I accepted Brigadier Schoon's instruction and respected it as an instruction to get directly involved with military action in a military way. It was therefore no longer normal policing actions or tasks which I had to carry out. My responsibilities were therefore far wider.

266. The covert unit undertook at least three joint operations with SADF Special Forces (see below).

Section C

267. Like its counterpart at Security Branch headquarters, Section C was the so-called Terrorist Investigation Unit. As an investigative rather than intelligence-gathering unit, its function was to investigate all matters relating to MK and other armed formations.

268. Nine Northern Transvaal Security Branch operatives based in Section C applied for amnesty for a number of abductions and killings committed between 1986 and 1987.

269. During 1986, an MK elimination unit (sometimes referred to as the 'Icing Unit') was active in the Northern Transvaal and Bophuthatswana area.

270. On 18 March 1986, Mr Patrick Martin Mahlangu, who was allegedly linked to the Icing Unit, was abducted from his Mamelodi home by Vlakplaas *askaris* purporting to be MK operatives. He was taken to a place near Northam in the Transvaal and was strangled en route by Colonel Marthinus Dawid Ras. His body was placed on top of approximately eight kilograms of TNT, which was detonated in an attempt to make it appear as if he had blown himself up while laying a landmine.

271. In September 1986, four members of the Icing Unit (Messrs Jabu Masina, Ting-Ting Masango, Joseph Makuru and Neo Potsane) were detained and later sentenced to death. At around the time of their arrest, a fifth member of the unit, Mr Justice Mbizana (aka Mandla Shezi) disappeared and none of the other four

knew what had happened to him. Ten Northern Transvaal Security Branch operatives, including the Divisional Commander, Brigadier Cronje, the head of Section C, Major Sarel du Plessis Crafford, and his second-in-command, Captain Hendrik Prinsloo, applied for amnesty for his abduction [AC/2001/248]. Five of the ten applicants admitted in their applications that they had been responsible for killing Mr Mbizana.

272. On 14 October 1986, Captain Prinsloo (then head of Section C) instructed Constables Mathebula and Chenny William More of Section C to go to the house of Mr Moses Morudu, who was also suspected of being linked to the 'Icing Unit'. Their orders were to pretend to be MK operatives and to persuade Mr Morudu to go into exile. Morudu agreed to go with them and was handed over to white members of Section C. He was taken to a farm near Hammanskraal where he was held for approximately one week, during which time he was interrogated by members of both Section C and the covert unit, including Lieutenant Hechter and Constables van Vuuren and Mamasela.

273. Constables Mathebula, More and Matjeni applied for amnesty for this incident[AC/2000/010]. They testified that they had no idea of Morudu's ultimate fate, except that he disappeared from the farm after a week. The Morudu family believed that he had gone into exile but realised that something must have happened to him when he failed to return with the other exiles after 1990.

274. Another killing linked to Section C of the Northern Transvaal Security Branch was that of Mr Ernest Ramango, alleged to be a Security Branch source (Source 402) but suspected of being a double agent. Mr Ramango was picked up, interrogated and assaulted and given a poisonous drink. He was transported to Mamelodi in an unconscious state and placed on top of a landmine, which was then detonated. Captain JJH van Jaarsveld confirmed that Ramango had been one of his sources but had later reported to Major SdP Crafford [AM3761/96]. J P Roodt [AC5466/97] and D J Kruger [AM5233/97] applied for and were granted amnesty for the murder of Ramango and related offences [AC/1999/307]. Major Crafford [AM5468/97; AC/2000/110] also received amnesty for his role in this murder.

275. In June 1987, Jeffrey Sibaya and a man known as Mpho were killed by members of the covert unit and Section C[86]. Although no specific mention is made of Mr Sibaya's link to the 'Icing Unit', applicant Van Vuuren suggested that Mr Sibaya

86 See above, para 93.

had been connected to the death of Sergeant Seuntjie Vuma, for which members of the 'Icing Unit' had been sentenced to death [AM2777/96].

276. Mr Petros Lubane was suspected of being a courier for Mr Siphiwe Nyanda (aka Gebuza), head of the MK's Transvaal Machinery and allegedly involved in reconnoitering Wachthuis, the SAP headquarters. Mr Lubane was abducted by Constables More and 'Bafana' Mbatha on 17 September 1987 on the instructions of Captain Prinsloo. He was taken to a farm near Rust-de-Winter in the Transvaal, where he was held, interrogated and tortured for a number of days. After unsuccessful efforts to recruit him as an informer, Captain Prinsloo and Major Crafford decided that he should be killed. When authorisation was received from Divisional Commander Brigadier Cronje, Mr Lubane was given a poisoned beer. He fell unconscious and was placed in a hole in the ground before being shot in the head. His body was then blown up with explosives. The black constables were instructed to help their white colleagues comb the area for pieces of flesh. These remains were placed in the hole, which was now much larger because of the explosion. A second explosion ensured that all traces of Mr Lubane were obliterated.

277. Mr Lubane's family has requested that the site where he was killed be identified so that they can look for fragments of his remains and perform the customary burial rites.

The South African Defence Force

278. General Johannes Jacobus 'Jannie' Geldenhuys, Chief of the SADF, General Andreas Jacobus 'Kat' Liebenberg, Chief of the Army, Admiral Andries Petrus 'Dries' Putter, Chief of Staff Intelligence,[87] and Brigadier Christoffel Pierre 'Joffel' van der Westhuizen, Officer Commanding Eastern Province Command applied for amnesty for Operation Katzen, an attempt to establish a surrogate force in the Eastern Cape as well as the overthrow of the Ciskei government of Lennox Sebe. Amnesty was granted [AC/2000/192; AC/1999/243; AC/2000/037].

87 Admiral Putter subsequently withdrew this application.

279. The following members of the SADF applied for amnesty for their role in destabilising the homelands:
    a Captain Henri van der Westhuizen for his role in providing arms to General Oupa Gqozo (granted in Chambers) [AM5462/97; AC/2001/212];
    b Kommandant Jan Anton Nieuwoudt for his involvement in the attempt to overthrow Chief Bantu Holomisa in the Transkei in November 1990 (application later withdrawn); and
    c Clive Brink for his involvement in the killing of Messrs Onward Guzana and Charles Sebe on 27 January 1991 (application later withdrawn).

280. The Amnesty Committee also received several applications from members of C1/Vlakplaas for their role in providing Kommandant Jan Anton Nieuwoudt with arms to be used in the coup [AM8079/97; AM3766/96; AM4358/96]. At the time Kommandant Nieuwoudt was based in IR-CIS, allegedly a private company which provided an intelligence capacity to General Oupa Gqoza, Chief Minister of the Ciskei, but was in fact a front for the SADF.

Northern Transvaal Security Branch and Special Forces Joint Operations

281. Giving evidence before the Amnesty Committee, Major General Abraham 'Joep' Joubert [AM3799/96] testified that the new Chief of the Defence Force, General Johannes Jacobus 'Jannie' Geldenhuys, had informed him that the government planned to expand the state of emergency countrywide in June 1986. General Geldenhuys instructed him to draw up a plan showing how Special Forces could provide support for the Security Branch internally. While it is clear from other evidence brought before the Commission and the Amnesty Committee that co-operation between Special Forces and the Security Branch pre-dated 1986, such co-operation probably related to external operations for which the Security Branch provided target intelligence.

282. According to General Joubert, Officer Commanding Special Forces[88]:

    At this stage, everybody of importance had realised that the unconventional and revolutionary methods provided the only hope of success. The fact that Special Forces was involved on an internal level, confirmed this.

88 A veteran of the war in Namibia and Angola, recipient of the Southern Cross Medal and other awards, and past chair of the SWA Joint Management Committee.

By this time it was also clear that the ANC was not going to be stopped by normal conventional methods and that revolutionary methods would have to be used. As the institution for external operations, Special Forces would also have to intensify its external operations. (Amnesty hearing into the death of the 'Nietverdiend Ten' and other incidents: AC/1999/188.)

283. General Joubert testified that the decision to involve Special Forces internally confirmed the recognition that 'unconventional and revolutionary methods offered the only hope of success'.

284. Joubert's plan involved killing ANC leaders and others making a substantial contribution to the struggle, and destroying ANC facilities and support services. Because the SAP and not the SADF were primarily responsible for the internal security situation, the plan foresaw that the Security Branch would be responsible for the identification of potential targets for killing. Thereafter both forces would jointly decide on operations and their *modus operandi* which, once they had been authorised by the respective commanders, would be executed by Special Forces.

285. General Joubert envisaged that this plan would be implemented in three 'hotspots': the Northern Transvaal, the Witwatersrand and the Eastern Cape.

286. After outlining the plan to General Geldenhuys at a function at Armscor in April or May 1986, General Joubert received the go-ahead. He testified that he believed that the plan had been vetted by General Johan Coetzee, then Commissioner of Police.

287. Generals Geldenhuys and Coetzee were earlier questioned by the Commission in connection with the amnesty applications of Joubert and others.[89] They both denied authorising the plan and neither applied for amnesty, although they were given notice as implicated parties.

288. The involvement of Special Forces in 'unconventional and revolutionary' activities was clearly unlawful. This meant that such operations had to be conducted in a covert manner. They required a partial restructuring of the covert operational structures of Special Forces. Special Forces' covert operational capacity had been known initially as D40, later as Barnacle, and in the mid-1980s as the CCB.

89 Armed Forces hearing, 8–9 October 1997.

289. Amnesty applications in respect of General Joubert's plan related only to joint operations conducted with the Northern Transvaal Security Branch. It is not known what operations were conducted in co-operation with the Security Branch in the Witwatersrand area, although General Joubert denied that any other killings took place as a result of the above plan. A sworn statement that forms part of an amnesty application by a Soweto Security Branch applicant refers to two of the Special Forces applicants, one of whom is implicated in the bombing of a building.

290. Members of Northern Transvaal Security Branch and several Special Forces operatives sought amnesty for three operations conducted in terms of the joint plan, including the killing of the 'Nietverdiend Ten' on 26 June 1986, the killing of Mr Piet Mbalekwa Ntuli, minister in the Kwandebele government, on 29 July 1986 and the killing of Dr Fabian and Mrs Florence Ribeiro on 1 December 1986.

291. A further joint operation between Special Forces and Section A of the Northern Transvaal Security Branch was conducted in April 1987. This operation involved the attempted killing of MK Special Operations operatives in Botswana and resulted in the killing of three Batswana citizens. (See 'The McKenzie car bomb' above). Applications were received from Brigadier Cronje and two Section A operatives; from two members of the Western Transvaal Security Branch who assisted with the operation, and from General Johan van der Merwe who authorised it. In line with their policy of not seeking amnesty for external violations, members of Special Forces did not apply for amnesty.

Operation Katzen

292. Brigadier Christoffel Pierre 'Joffel' van der Westhuizen devised Operation Katzen[90] in response to intense pressure from high-ranking members of the security forces and the political leadership of the National Party to stablise the security situation in the Eastern Cape. In the short term, Operation Katzen aimed to fracture resistance politics in the Eastern Cape by creating an organisation along the lines of Inkatha. In the longer term, its ambitious plan was to lay the basis for a new constitutional dispensation in the region, allowing for African involvement in local and regional political structures.

293. Applicant Van der Westhuizen testified that the broad outline of this plan was in line with the thinking of State Security Council (SSC) structures at the time.

90 See Volume Two, Chapter Five, pp. 435–40.

Operation Katzen was approved by both the Chief of the Army, General 'Kat' Liebenberg, and his superior, the Chief of the SADF, General Jannie Geldenhuys, and put into operation.

294. By January 1987, the following actions had been taken:
    a *Iliso Lomzi* had been established by anti-Sebe forces as the pro-government 'resistance movement' and had undergone training.
    b Charles Sebe, who had been identified as the leader of *Iliso Lomzi*, had been sprung from prison in Middledrift by members of Special Forces/CCB.
    c Kwane Sebe, son of Lennox Sebe and head of the Ciskei Police Elite Unit, and his second in command had been kidnapped and were being held in the Transkei.[91]
    d A shadow cabinet for the Ciskei had been established and plans had been made to topple the government.
    e A Stratcom plan aimed at discrediting Lennox Sebe had been put into effect as part of the plan to remove him from power by force.

295. By now Brigadier van der Westhuizen had been transferred to the Witwatersrand Command. He told the Amnesty Committee that Operation Katzen was terminated at this time. Yet despite his protestations, an attempted coup did take place in February 1987. Although Brigadier van der Westhuizen claimed that this no longer had the support of the SADF, he conceded that it was the direct result of Operation Katzen.

296. Planning documents submitted to the Amnesty Committee in connection with Operation Katzen make generous use of terminology such as 'permanently disappear', 'take out', 'get rid of' and similar expressions. Applicant van der Westhuizen denied that such terminology was intended to mean killing, although he continued to make the somewhat fantastic assertion that only 'an uninformed person who could possibly read the Plan, could be encouraged to kill or kidnap or discredit' those so identified as targets for 'removal'.

297. Van der Westhuizen's testimony was contradicted by that of Brigadier Johannes Lodewickus Griebenauw, divisional commander of the Security Branch in the Border Region. Griebenauw testified that he had been instructed by his superiors to participate in Operation Katzen. He said that he had had reservations about

91 The Amnesty Committee also received applications from members of the Ciskei Elite Unit, who sought amnesty for the torture of several detainees who had been detained in the aftermath of Charles Sebe's escape from prison and in connection with the activities of *Iliso Lomzi*.

this, particularly after *Iliso Lomzi* started engaging in 'certain […] acts of terror' (East London hearing, 7 April 1999).

At that stage … I found it hard to swallow as a policeman, because on the one hand I was trying to combat terrorism and on the other hand, I was aware of people who were being trained as terrorists. (East London hearing, 7 April 1999.)

298. In November 1986, one of his operatives had reported back to him from Operation Katzen meetings held in the Transkei, giving him the impression:

that what we were now concerned with was killing, actual, physical killing and physical removal, and that was probably the biggest reason that I withdrew and why I asked Head Office that we as the police should withdraw completely. (East London hearing, 7 April 1999.)

Directorate of Covert Collections-linked applications

299. The applications from Directorate of Covert Collections (DCC) personnel indicate that the SADF's involvement in the destabilisation of the homelands did not end with Operation Katzen. However, as two of these applications were withdrawn and the third was decided in Chambers, little new detail emerged regarding the incidents in question.[92]

300. Besides these applications, a further two operatives linked to the DCC, Johan Frederich Verster and Leon Flores, formerly a Vlakplaas member, applied for amnesty for various operations aimed at discrediting the ANC in the 1990s.

301. The role and functions of the DCC came under the spotlight after a raid on DCC premises by the Goldstone Commission in November 1992. Following this raid, then President de Klerk ordered an investigation headed by South African Air Force general Pierre Steyn. Drawing on two earlier investigations conducted by the SADF's Counter-Intelligence Unit as well as the NIS, General Steyn concluded that DCC personnel were involved in a range of unlawful activities. These included the planning and execution of coups in the Ciskei and Transkei; manipulating important role players in the Transkei and Ciskei; involvement with the IFP; fanning unrest through killing, arming of political factions and intimidation actions; participation in planning to escalate violence in order to thwart the government's reform initiatives, and corruption with regard to illegal arms deals.

92 See Volume Two, Chapter Seven,pp. 616–23 regarding destabilisation of the homelands in the 1990s.

302. The investigation by General Steyn also revealed that several members of the CCB, including its second in command, Dawid Fourie, Wouter Basson, 'Staal' Burger and 'Chappies' Maree, had been employed by the DCC following its dismantling.

303. The applications by DCC personnel provided some confirmation of these allegations.

CCB Region Six

304. The activities of Region Six of the CCB surfaced during the investigations into the Lubowski and Webster killings. According to evidence presented to the Amnesty Committee, the SADF decided to establish an internal region of the CCB, namely Region Six, in 1988.

305. Eight applications for amnesty were received in connection with the activities of Region Six.[93] These involved the attempted killing of UDF Western Cape Chair Abdullah Omar, the planned killing of Mr Gavin Evans, an End Conscription Campaign member, the bombing of the Early Learning Centre in Athlone Cape Town on 31 August 1989, and the harassment of Archbishop Desmond Tutu in Cape Town in 1989.

306. Applicants from Region Six claimed that the operations applied for were the only internal operations of Region Six. They stressed that the CCB had been a long-term plan, the fruition of which was cut short by the disbandment of the organisation in 1990.

307. The identity of Region Six had remained top secret even within the network of CCB operatives. Because there was only one amnesty application, there is still very little knowledge about the internal operations of the CCB.

93 Major General Edward Webb, GOC Special Forces and 'Chairman' of the CCB; Colonel Pieter Johan 'Joe' Verster, 'Managing Director' of the CCB; Wouter Jacobus Basson, aka Christo Brits, co-ordinator of Region Six; Daniel du Toit 'Staal' Burger, manager of Region Six; Leon Andre 'Chappies' Maree, Region Six, responsible for Natal; Carl Casteling 'Calla' Botha, Region Six, responsible for Transvaal; Abram 'Slang' van Zyl, Region Six, responsible for the Western Cape, and Ferdinand 'Ferdi' Barnard.

PART FOUR: ACCOUNTABILITY, DISCIPLINE AND THE ROLE OF LEADERSHIP

ACCOUNTABILITY

308. In theory, the Commanding Officer of Security Branch Headquarters was accountable to the Commissioner of Police. However, because he had direct access to the Minister, he had considerable autonomy in authorising operations.[94] For example, in Operation Zero Zero (1985), the bombings of Cosatu House (1987) and Khotso House (1988) and the 'Cry Freedom' incident (1988), communication seems to have taken place directly between the Minister and the Officer Commanding the Security Branch.

309. The Officer Commanding's second in command could authorise operations when his superior was not present. Thus, Brigadier Jan du Preez, second in command in the early 1980s, is said to have authorised several operations, including the entrapment operation in which three COSAS youths were killed in February 1982. According to Brigadier Schoon, Brigadier du Preez was functionally senior to the divisional commanders with whom he shared the same rank.

310. Where both the Officer Commanding and his second in command were unavailable, it appears that in certain circumstances Brigadier Schoon, head of Group C (counter-terrorism) and one of the most senior officers at Headquarters, was able to issue such authorisation. He appears to have provided a crucial line of communication and authorisation, and several applicants in divisional offices cite him as their line of communication. Following the killing of the Ribeiros[95], General Coetzee testified that, as Commissioner of Police, he telephoned Brigadier Schoon directly following allegations of security force complicity and instructed him to make enquiries of Brigadier Cronje, the Divisional Commander in whose jurisdiction the killing had taken place, and to report back to him and the Security Branch chief.

311. During the execution of an operation, operational commanders were allowed considerable discretion. According to applicants, it was not always possible to set guidelines and standing orders because decisions frequently had to be made

94 It should be noted, however, that throughout the Commission's mandate period, Commissioners of Police were in most instances former Commanding Officers of the Security Branch.

95 Volume Two, Chapter Three, p. 231.

quickly. Brigadier van der Merwe told the Amnesty Committee that planning was usually done:

on the ground level by members who knew the circumstances and who were involved with the execution. [He] … just accepted that the people who were involved were experienced, competent and that they would have the ability to manage and execute it.[96]

312. Extrajudicial killings formed part of a counter-revolutionary strategy authorised by the state at the highest level.[97] Targets included civilians who were either political opponents or supporters of the liberation movements.

313. Applicants in numerous hearings testified that those who assisted MK operatives by providing logistical support such as finance and transport and safe houses were also regarded as legitimate or justifiable targets.

314. It would appear that most internal targets for elimination were decided at a divisional level, as emerged at the 'Pebco Three' and Ribeiro hearings. Lieutenant Jacques Hechter told the Committee that targets for elimination were decided on 'an *ad hoc basis*', particularly those who were high-profile activists or 'untouchables' who could not be prosecuted in a court of law.[98]

315. However, such decisions were made within a broader national context: the former in response to an instruction from the Minister of Law and Order to 'stabilise the Eastern Cape by all means' and the latter in response to an instruction by Security Branch Headquarters to work with Special Forces.

316. Colonel de Kock and other applicants said that, because external operations put operatives in a far more vulnerable position, they always sought approval for these from Security Branch Headquarters. Major Williamson testified at the Pretoria hearing on 15 September 1998:

the impression that I probably got at the time … was that if one was carrying out an operation which was on behalf of the State ... if a problem arose we would have the backing of the State. I never got the impression that it was like the movies you see where James Bond or somebody gets called in and the

96 Pretoria amnesty hearing, 21 April 1999.
97 Volume Five, Chapter Six, pp. 214–18.
98 Pretoria Hearing, 28 February 1997.

Minister says to him: 'I want you to go and kill somebody in the Bahamas but if you are caught we don't know who you are.' I had the feeling that we had the backing of the State and that if necessary they would take the necessary pain.

317. Many applicants testified that they worked in a culture where information about clandestine and covert activities was tightly guarded and details were not widely circulated beyond those requiring specific knowledge. Adherence to the 'need to know' principle was regarded as essential in order to maintain the integrity of intelligence gathered and to ensure that operations were not compromised. This was especially so in covert operations, where every attempt was made to ensure that actions could not be traced back to their origins. Unlike clandestine acts, where the aim was to prevent information leaking prior to an operation, secrecy surrounding covert operations had to be maintained in perpetuity. In this context then, asking questions of commanders and colleagues was regarded as taboo. Major Craig Williamson told the Committee that anyone asking questions 'on an ongoing basis … would definitely have been moved out of security branch headquarters'.

318. The 'need to know' principle extended to reporting on operations. Again, according to Major Williamson: 'what the commanders at that level and the politicians needed to know was the result of the operation and nothing further'. Applicants made it clear that their commanders expected to be told very little. But, said Williamson, 'the General had the right to know and the prerogative of using the right to know was the General's.[99]

319. However, said Williamson, there was 'a tendency in a social environment for lapses to occur'. Captain van Jaarsveld of the Northern Transvaal Security Branch pointed out that:

one of those anomalies in the Police … (the) need to know was sustained on an official level, but when people met informally, like at a braaivleis, they discussed these matters. (Pretoria hearing, 5 May 1999.)

320. The 'need to know' principle helped prevent knowledge emerging as to who was responsible for covert operations. At another level, however, it appears to have operated together with another well-known security principle, that of 'plausible deniability'. Testimony to the Amnesty Committee on a number of matters clearly revealed that, in deciding 'who needed to know', there was a

99 Pretoria hearing, 5 May 1997.

tendency to try to protect those higher up the command chain. At the Stanza Bopape hearing in Johannesburg (23–27 February 1998), General van der Merwe was asked why he had not informed his minister. He responded:

You must remember I was head of the security branch and the head security adviser and General Erasmus was head of the most important – and I think the burning point in South Africa – and we would have placed him in an impossible situation. They would not have had any other choice to comply with what we did. It would have been disadvantageous to them and it would have made them vulnerable and we would have used them as a rubber stamp and it would have been unethical. And because of that reason I took the decision on my own. And in all honesty I believed that it was in the best interest of the Minister and the government and the whole situation …

… let's just look at what would have happened in the practice if I decided to approach the Minister. Would he have been able to handle this on his own? Wouldn't it have been put to him that he should advise the President and the President would have approached the State Security Council. Where would all of this have ended? The Minister had no more capacity in order to decide about this issue than me. I was responsible for the maintaining of law and order. The Minister was purely the political head. So his capacities were more restricted… So the Minister by knowing about this, could not have attributed to improve the situation as far as I'm concerned. But if I asked him to help with this, in order to maintain the smokescreen he would have had to answer questions to Parliament and he would have made himself guilty of telling untruths. And right through the whole issue he would have followed the same behaviour we did, and for him and the government it could have been very dangerous. You must remember that we were willing to do this in the interest of that which we tried to achieve, which was public order. Something we considered very heavily at that stage. And also to protect the interest of the government. And if the Minister himself would have become involved it would have meant that those interests we wanted to protect, we would have jeopardised them.

321. In line with the above principles, orders were almost always verbal and tended to be conducted on a one-to-one basis. Written reports contained the barest detail. A lexicon of euphemisms, shrugs and winks developed. Discussions were brief, heavily dependent on body language and on a shared sense of purpose. Thus verbal, one-to-one commands ensured an absence of witnesses and documentary evidence, while obscure language allowed commanders to claim that they had misunderstood or misinterpreted a communication, providing enormous scope for denial of involvement and/or authorisation.

AUTHORISATION OF UNLAWFUL ACTIVITIES

322. Increasingly, as time went on, the security forces used unlawful and criminal actions, particularly extrajudicial killings, to respond to the political situation. By now, the condonation and tolerance of extrajudicial activity had led to a culture of impunity throughout the security forces.

323. The Commission noted a number of words and phrases in security policy documents, speeches in Parliament and elsewhere in the mid-1980s such as: '*elimineer*' (eliminate); '*uithaal*' (take out); *'fisiese vernietiging – mense, fasiliteite, fondse*' (physical destruction – people, facilities, funds); '*maak 'n plan*' (make a plan); '*uitwis'* (wipe out). Numerous amnesty applicants, including senior personnel, confirmed that they had understood such words to mean killing. Major Williamson told the Committee that he understood 'these words to have a simple meaning and that is to get rid of, kill, destroy'.

324. Despite this, former Minister Vlok and Generals van der Merwe and Coetzee continued to assert that at no stage did the State Security Council (SSC) authorise any policies that included extrajudicial killing. Indeed they went further, saying that the SSC neither authorised nor recommended any illegal action, although Mr Vlok did concede that certain Stratcom activities approved by the SSC could be regarded as unlawful. They did, however, agree that operatives could have 'misunderstood' their intentions. Mr Vlok said, for example, that the phrase 'destroy the enemy' could have been understood in a literal sense.

325. This position appears to have been an attempt to support Security Branch applicants in their efforts to gain amnesty while, at the same time, exonerating those in command and political authority. The Commission did not support the arguments put forward by former Minister Vlok and Generals van der Merwe and Coetzee.[100]

326. The applications referred to below, which covered a range of violations, involved direct political authorisation:

100 Volume Five, pp. 214–19.

a In 1982, amnesty applicant General Petrus Johannes Coetzee said he was instructed by then Minister le Grange to assemble a team to strike at the offices of the ANC in London in the United Kingdom, saying that this was 'the decision of the government' (Pretoria hearing, 22 February – 5 March 1999).

b In 1985, Minister le Grange allegedly authorised a plan,[101] codenamed Operation Zero Zero, to issue hand grenades to a number of young COSAS activists on the East Rand.[102] As a result of this operation, seven youths were killed and eight severely injured when they attempted to detonate the hand grenades as instructed.[103]

c In 1987, Minister of Law and Order Adriaan Vlok authorised the destruction of Cosatu House, national headquarters of the trade union federation, in central Johannesburg. A C1/Vlakplaas team, with assistance from the Witwatersrand Security Branch as well as the technical and explosives sections at Security Branch Headquarters, undertook the operation on the night of 3 May 1987, extensively damaging the building.[104]

d In July 1988, Minister Vlok authorised the placing of dummy explosives in several cinemas around South Africa, to provide a pretext for the seizure and banning of the film *Cry Freedom* about the death of detainee Steve Biko at the hands of the Port Elizabeth Security Branch. This action was undertaken after numerous unsuccessful attempts to force the government-appointed Publications Control Board to ban the film. In the words of Mr Vlok, 'we had walked the legal way … I judged the risk that this film would have and it would be so inciteful that this risk was too big'.[105]

e In August 1988, Minister Vlok was allegedly ordered by State President PW Botha to render Khotso House 'unusable', but to do so without loss of life. According to Mr Vlok and General van der Merwe, the Security Branch had evidence that arms were stored on the premises and that people with MK links had been seen entering the building. Mr Vlok further testified that, although he had not been given specific instructions to bomb Khotso House, neither he nor General van der Merwe was able to think of a legal way to carry out Mr Botha's instructions. He said, moreover, that Mr Botha's injunction to ensure that there was no loss of life led him to believe that Mr Botha was suggesting the use of unlawful means. The operation, conducted by C1 with assistance from the Witwatersrand Security Branch and the

101 As Le Grange is deceased, his authorisation cannot be confirmed. However, Delport gave evidence that Le Grange visited the East Rand shortly after the incident and congratulated him.

102 See 'Operation Zero Zero' in Part Two of this chapter.

103 Evidence relating to the entrapment differs between the applicants and the survivor.

104 Cosatu House hearing, 21–31 July 1998, and Volume Two, Chapter Three, p. 289.

105 Johannesburg hearing, 20–31 July 1998.

explosives section at Security Branch headquarters, took place on the night of 31 August 1988. Following this operation, both Minister Vlok and General van der Merwe were involved in the cover-up.[106]

327. The above incidents demonstrate that there was direct political authorisation for clearly unlawful activities that included killing. In addition, evidence was led that a number of cross-border operations had been authorised by the state, and General Coetzee testified to involvement in the 1982 Maseru raid and the 1985 Gaborone raid.

328. Applicants gave further evidence of high-level political authorisation at a meeting of the senior national and divisional leadership of the Security Branch in early 1985. The meeting was addressed by then State President PW Botha who commanded them to bring the security situation under control by 'whatever means possible'. This was interpreted as authorisation to use unconventional and unlawful methods.

329. One of the arguments presented by representatives of the National Party and certain high-ranking security and intelligence officials is that the CI/Vlakplaas unit was a renegade gang, acting outside of official policy.

330. It is indeed so that higher authorisation was not conclusively established in a number of operations conducted by C1. However, with regard to one matter, that relating to the killing of Mr Griffiths Mxenge in November 1981, the Amnesty Committee commented as follows:

With regard to [Dirk Coetzee], there was no direct evidence to confirm that he acted on the orders of Van der Hoven [Divisional Commander of Port Natal] or Taylor [Section C, Port Natal]. In fact, it is a matter of public knowledge that Van der Hoven and Taylor denied any involvement; they did so during their recent trial in which they were co-accused with the applicants on a criminal charge in respect of this very incident. While there may be some doubt about the identity of the person or persons on whose advice, command or order, the first applicant acted, the fact that he acted on the advice, command or order of one or more senior members of the Security Branch, admits of no doubt; particularly if regard is had to the following:

106 Khotso House hearing, 20–31 July 1998, and Volume Two, Chapter Three, p. 291.

- *He knew nothing about Mxenge and had never heard of him;*
- *He was not based in Durban, but in Vlakplaas near Pretoria. It is inconceivable that he would have, on his own, come all the way to Durban to launch an operation of this magnitude;*
- *Being from Pretoria, he must have been given the necessary logistical and other support on the orders of someone who was his superior;*
- *In order to carry out the operation he requested that Joe Mamasela, who was at that time based in the North West area, be brought to Durban. This was done; Mamasela was released and sent to Durban to be part of the squad;*
- *The murder was indeed covered up and the truth did not emerge until later when it was revealed by the first applicant. This give credence to the allegation of Security Branch involvement on a high level as alleged by first applicant;*
- *An amount of three thousand rand (R3 000.00) was paid to the second and third applicants and to Mamasela by the Security Police, for their part in the killing of Mxenge. [AC/1997/041.]*

331. The scenario sketched by the Amnesty Committee is, in the Commission's view, of more general applicability to many of the other killings committed by C1/Vlakplaas.

332. The consistent pattern of violations committed by both C1/Vlakplaas and other regions provides compelling evidence that operatives were pursuing a policy that was widely accepted and broadly authorised. Moreover, considerable evidence was led during amnesty hearings that supported the Commission's viewpoint that unlawful activity was widely condoned. The Commission bases this viewpoint on the following evidence:

Failure to discipline

333. There was a consistent failure to discipline those who behaved in an unlawful manner. Applicants cited numerous incidents in which senior personnel failed to take action against subordinates who had committed transgressions.

334. Brigadier Cronje, Divisional Commander of the Northern Transvaal, was present when Captain Hendrik Prinsloo assaulted an unknown MK operative. Yet, even when Captain Prinsloo began to throttle the victim, he made no effort to stop the assault. The victim died of strangulation.

335. On 6 May 1987, Constable Joe Mamasela is alleged to have shot dead Mr Joe Tsele when his instructions had simply been to check whether he was at home. Brigadier Cronje, who was present during the incident, testified that he had seen no point in reprimanding Mamasela as the covert unit had intended to kill Mr Tsele in any case.

336. On 30 November 1987, the covert operational unit killed police officer David Mothasi and his wife Busi Irene. Applicants said there had been no instruction to kill Mrs Mothasi. Joe Mamasela, who was responsible for the killing of Mrs Mothasi, was neither reprimanded nor disciplined.

337. On 12 June 1988, detainee Stanza Bopape died while being tortured with electric shock treatment. Those responsible reported the matter to their Divisional Commander, Brigadier Gerrit Nicholas Erasmus, who in turn informed the Officer Commanding the Security Branch, General Johan van der Merwe. Not only did Brigadier Erasmus and General van der Merwe then conspire to cover up the death of Mr Bopape, but they also failed to take any disciplinary actions against those responsible.

338. In June 1986, Mr Jabulani Sydney Msibi, a prominent MK operative, was abducted from Swaziland on instructions from Security Branch Headquarters. He was subsequently transferred to Daisy Farm where Captain de Kock and another severely assaulted him in the presence of Brigadier Herman Stadler, head of the Intelligence Section of Security Branch Headquarters. Brigadier Stadler instructed Captain de Kock to stop the assault, but took no further action.

339. In December 1985, General van der Merwe, then second in command of the Security Branch, authorised a raid on Maseru, Lesotho, that left nine persons dead, including three Lesotho citizens. When informed of this situation in early January, the Commissioner of Police, General Coetzee, took no action against General van der Merwe. This contradicts his testimony in an earlier Commission hearing, in which he testified that he had taken action whenever he received evidence of unlawful activity. On the contrary, Brigadier van der Merwe's promotion to General and his appointment as Commanding Officer of the Security Branch from the beginning of January 1986 went through as planned. In his defence, General Coetzee said that he had reported the matter to Minister le Grange and it had been up to the Minister to decide whether action should be taken. He further testified:

On that particular day in the context of what was happening then and then in the milieu that reigned there, if I had gone to the Minister and said 'and now I think criminal prosecution has to be instituted against General van der Merwe', he would have shown me the door and said 'listen here, you are out of your mind' because he believed it was in the interest of the country and that was the general thought or the general train of thought not only with the National Party but also with the government then. (Pretoria hearing, 3 March 2000.)

340. This provides conclusive evidence that he condoned the action.

Cover-ups

341. Further evidence that unlawful behaviour was widely condoned may be found in the many cover-ups that took place. In many instances, operatives – often with the sanction and assistance of those in higher command – played an active role in covering up unlawful activity. Types of cover-up included:

Placing arms at the scene of an ambush

342. On 8 June 1988, a joint C1/Eastern Transvaal team ambushed a vehicle they believed would be carrying armed MK operatives near Piet Retief. Three women and a man, all unarmed, were killed. In order to give the impression that a shoot-out had occurred, shots were fired from inside the vehicle and arms were planted in the vehicle.

343. Eugene de Kock testified that he had informed his superior, Brigadier Schoon, that there had been a 'problem with regards to the weapons', but that it had been rectified.

Appointing as investigating officers one of the operatives who had been involved in an incident

344. In many instances, applicants testified that they had both participated in an operation and acted as investigating officer afterwards, thus ensuring that the true facts did not emerge. In the two June 1988 Piet Retief ambushes, for example, then Captain Frederick Pienaar, commander of the Piet Retief sub-branch, initially acted as the investigating officer, despite the fact that he had been part of both operations. Further, in an arson attack on the Ledwaba home by the covert unit of the Northern Transvaal Security Branch, Sergeant Goosen,

who had accompanied Lieutenant Hechter on the operation, later attended the scene and described how he 'purposely destroyed evidence in order to protect the real perpetrators, including myself'.

Using Stratcom activities to turn attention away from the perpetrators and cast blame on other parties

345. In many cases, an attempt was made to lay the blame on a third party. For example, former minister of Law and Order Adriaan Vlok testified that he himself was party to the attempt to lay blame for the Khotso House bomb on MK operative Shirley Gunn. Ms Gunn was subsequently detained.

346. The use of Eastern Bloc weapons in many operations was a further means of disguising the identity of the perpetrators. It is significant that security force operatives had easy access to, and carried around an armoury of, such weaponry.

347. Northern Transvaal operatives testified that their *modus operandi* with regard to extrajudicial killings was to get rid of bodies by blowing them up. This not only destroyed evidence, but also created the impression that the victims had killed themselves while laying a landmine, making them appear incompetent and poorly trained.

348. In some cases, measures were taken to perpetuate the myth that a victim who had been killed was still alive. For example, following the killing of Messrs Siphiwe Mthimkhulu and Topsy Madaka, the Port Elizabeth Security Branch abandoned Mr Madaka's car near the Lesotho border and continued to harass their families to reinforce the impression that they were still alive. Similarly, before being killed by the Northern Transvaal Security Branch in 1986, Patrick Mahlangu was forced to write his family a letter which was then posted in Botswana, thereby creating the illusion that he had gone into exile. His family believed this and eagerly awaited his return in the early 1990s.

349. Some applicants testified to even more malicious behaviour. Those who applied for the killing of Ms Phila Portia Ndwandwe in October 1988 testified that they had spread a rumour that she had been recruited as an *askari*. Friends and family testifed that they had come to accept this painful fact and, following the disclosure of the facts surrounding her killing, were ridden with guilt by their failure to believe in her integrity.

350. In other examples of deception, Major Craig Williamson testified that the Security Branch had been responsible for the story that had surfaced, suggesting that Mr Joe Slovo had been responsible for the death of his wife, Ruth First.

351. Captain Willem Coetzee testified that he had given Major de Kock a letter to place at the ambush scene of three SANSCO[107] students in February 1989 to suggest that they had been killed by the ANC, following suspicions that they were informers.

352. As the above examples demonstrate, many of these Stratcom operations not only turned attention away from the perpetrators but cruelly increased the trauma of victims' families.

Giving false evidence to inquest and other courts and Commissions of Inquiry

353. The Amnesty Committee heard evidence of Security Branch members providing false information to inquest and investigative proceedings.

354. During the inquest into the Piet Retief ambushes, for example, false evidence included the fact that the first group had been unarmed. Further, Major de Kock's command of the second operation was not disclosed.

355. When questions were asked in Parliament about the *askari* who had killed MK suspect Batandwa Ndondo, the name of the *askari* was formally changed so that Minister Vlok would not be lying when he told Parliament that the individual was not in the employ of the SAP.

Complicity by other parts of police/security structures

356. Numerous applicants testified to complicity in unlawful activity by other security force structures. In several incidents, evidence was led about approaches to border patrol units or those stationed at border posts to ensure free passage for covert units. Furthermore, several names of investigating officers attached to the Detective Branch repeatedly came up as having played the role of 'sweeper' – in other words, being responsible for ensuring that the identity of perpetrators remained concealed.

107 South African National Student Congress.

Failure to ask questions

357. While Mr de Klerk and others have consistently denied knowing that the security forces were involved in illegal action, the Commission was struck by the fact that, in numerous cases, nobody appears to have asked any questions. Applicants themselves occasionally expressed their amazement at such disclaimers.

358. For example, former Minister of Foreign Affairs Roelof 'Pik' Botha, Dr LD 'Niel' Barnard, and General Coetzee all testified that when they had convened for the State Security Council at 11am on 20 December 1985, they had been unaware of the raid on Maseru the night before. They further testified that the raid had not been reported at the meeting nor had there had been any discussion about it. The astonishing failure even to mention the raid is best expressed by General van der Merwe, who testified as follows:

[By] lunch, it was headline news in the newspapers and no-one asked any questions.. One would have expected that if they did not know who it was, the State President would have at least asked the Chairperson of the CIC: 'What is going on here? A number of MK members were killed in Lesotho and this is an essential aspect of the threat with regard to us' and he would have wanted to know who was responsible for it.. [No] member of the SSC [who] had security background and who received information about this threat, could have pretended for any moment that the only people who had the capabilities of doing such things would be the Security Forces of South Africa. Anyone who pretended not to have that knowledge and wanted to blame any other body for this operation, would have been extremely naive and extremely ignorant at that stage. (Pretoria hearing, 29 February 2000.)

359. In his evidence before the Amnesty Committee, Mr Vlok testified that there were no questions in the State Security Council about the Cosatu House and Khotso House bombings. He testified that, at the next SSC meeting, he had been congratulated by the State President for the Khotso House incident. However, despite the fact that there had been specific input about the problems Khotso House was giving at the previous meeting, nobody asked any questions or commented on the destruction of the building.

360. This determination to ask no questions seems to have been replicated through out the command structures of the Security Branch. For example, when asked to get rid of 'a package' (the body of Stanza Bopape), Brigadier Schalk Visser,

divisional commander of the Eastern Transvaal, told Brigadier Gerrit Erasmus that he did not want to know the details.

361. According to Brigadier Cronje:

All actions under my jurisdiction which happened in this manner were taken up in situation reports which were sent through on a daily basis to my head office. The procedure was that further reports with this information would then have been passed on to the State Security Council. Events which took place under my command in the Security Branch in Pretoria were, therefore, passed on to Head Office and must have been taken up in reports to the State Security Council … I do not believe anyone in my Head Office could have been so naive as to believe that the ANC were killing and attacking their own people. They must have known what the true facts were. (Johannesburg hearing, 21 October 1996.)

362. Applicant Craig Williamson, who was a political appointee on the President's Council in the late 1980s, commented:

Once it got up to the NGBS (NJMC), it became the political control level where a deputy minister then received the information from the civil service below – and when I say civil service I include the security forces – and this information was then fed up via the [Work Committee] and the State Security Council and on a political level I believed directly either to Cabinet or to the State President … Once the information had arrived at the NGBS and then to the State Security Council, the information was in political hands. (Pretoria hearing, 14 September 1998.)

363. At the same time, the clandestine and covert nature of much of the Security Branch's work meant that, while certain information circulated and was discussed in formal forums, other mechanisms operated to ensure that sensitive information was kept under wraps. It became clear in many matters before the Amnesty Committee that, while the *fact* of an incident was passed on, in terms of covert rules, the *detail* in respect of Security Branch involvement was not.

364. On another level, of course, this is nonsense. A number of the people who were killed were extremely well-known and their deaths could hardly have been ignored. For example, Brigadier Schoon testified he had first learned of the death of Ms Jeanette Curtis Schoon and her daughter Katryn Schoon in the newspapers and at the morning 'Sanhedrin'. Asked who would have reported it, he replied 'The desk that dealt with that same file, that would be the A Section'.

Williamson testified that some time after that he had organised for an explosive device to be put into an envelope:

[T]here was an intelligence report to the effect that there had been an explosion … in the office of Ruth First and that she had been killed and at the next … Sanhedrin when this point was just noted, Brigadier Goosen looked up, looked at me, nodded his head and that was it. (Pretoria hearing, 14 September 1998.)

365. Not only would these incidents have been reported but, unlike most victims of MK action, most of these victims would have had Security Branch files, requiring an entry. For example, where members of the Soweto Intelligence Unit or the Northern Transvaal Security Branch were involved in attacks on individuals' homes, the attacks but not the authors were reported. However, to use the Northern Transvaal Security Branch as an example, it would have been inescapably evident to Group B at Security Branch Headquarters that the homes of some forty to fifty activists had been attacked by 'unknown perpetrators' between February and May 1986.

366. It is extremely unlikely that security and intelligence forces would have made no effort to know who was assisting them in their task, especially given the general policy to promote divisions. Asked whether people attending the 'Sanhedrin' could 'have believed that forces other than their own were ... responsible', Williamson replied:

During my time in the Security Forces, I certainly … didn't believe that it was the fairies … I believed that there was a co-ordinated counter-insurgency strategy being applied. (Pretoria hearing, 16 September 1998.)

Line of command

367. It can be seen from the above that the unlawful operations for which the Amnesty Committee received applications tended to conform to routine lines of command within the Security Branch and reflected a similar *modus operandi* across the country. This does not mean that all operations were centrally organised and directed by the SSC or Security Branch Headquarters. Although the overall strategy and planning was authorised at the highest level of the government and the state, under the prevailing culture of impunity many operations were initiated and carried out at the lower levels.

368. Whether operations were politically authorised or initiated at lower levels, they tended to function according to relatively routine lines of command and communication. For example, even in covert operations, those in charge often tended to follow the courtesy rule of informing commanders in whose area such activities were to take place, thus widening the circle of exposure and experience and encouraging further activity along similar lines. This was particularly so when the operation was politically authorised or conducted by a Headquarters component.

369. Lower ranks were inducted into covert and unlawful operations via their normal command structures, thus legitimising and normalising such activities. The heightened sense of being at war, combined with the strongly hierarchical structure of the Security Branch, made those who were drawn into such operations feel privileged and honoured.

370. Juniors were often drawn into operations without being aware of their nature or of the individual roles they were expected to play. Thus, for example, Captain Abraham Kendall, Branch Commander of Bronkhorstpruit Security Branch (a branch of Northern Transvaal), testified that he was asked to accompany Brigadier Cronje and Lieutenant Hechter to the house of the Chief Minister of KwaNdebele. While Brigadier Cronje and Captain Kendall were inside meeting the Chief Minister, Lieutenant Hechter placed a bomb under Mr Piet Ntuli's car. Asked whether he realised that Ntuli was about to be killed, Kendall responded:

I suspected that as Hechter was lying in the back of the vehicle, there would be dirty tricks. If I have to think back thirteen years, I cannot think that I thought that somebody was going to die. I wasn't part of that Security Branch, within the Security Branch plan, if we have to put it that way, I had never been a member of such activity. I was a small man, who carried small secrets around with me at that stage. (Pretoria hearing, 9 April 1999.)

371. Captain Kendall was later transferred to Security Branch Headquarters and applied for amnesty for instructing members of the Eastern Cape Security Branch to throw a petrol bomb at the home of the Revd Allan Hendrickse after he had embarrassed the tricameral parliament by going to a 'whites only' beach. Kendall also sought amnesty for his part in the 'Cry Freedom' operation.

372. Given the overwhelming evidence in this respect, the Commission concluded that the leadership of the Security Branch and a significant proportion of the military leadership were involved in unlawful covert operations. Former State President FW de Klerk has suggested that such activity was unauthorised and undertaken

by groups of renegades or 'bad apples'. The placing and promotion of personnel suggests that those in charge of the Security Branch were well aware of the existence and effectiveness of covert operations. Officers such as General Gerrit Erasmus, Brigadier Nicolaas van Rensburg and Major Hermanus du Plessis, all of whom had a long history of committing abuses, were not only promoted but, by the end of the 1980s, were based at Security Branch Headquarters. Thus, not only were their activities endorsed, but they were placed in a position where they were able significantly to influence and direct security policy from national headquarters.

CONCLUDING COMMENTS

373. The purpose of this chapter was to examine the extent to which the amnesty process enlarged the Commission's knowledge of the human rights violations committed by the state. By employing the 'carrot and stick' principle adopted in the founding Act, it was hoped that state perpetrators, amongst others, would take advantage of the opportunities offered by the legislation and, in the process, shed light on state involvement in gross violations of human rights.

374. This chapter has shown that the appeal to self-interest in the legislation was a wise one and that, where perpetrators saw the benefit to themselves, they came forward and applied for amnesty. From these applicants, the Commission and indeed South Africa was able to learn a great deal.

375. Unhappily the former SADF, advised that the Commission could offer them no safety from prosecution for the many violations its members had committed in countries outside South Africa, made pitifully few applications.

376. One of the most shameful aspects to emerge from the amnesty process was the failure of the political leadership to stand by those who committed violations at their behest and in their name. In several amnesty hearings, the disdain, contempt and betrayal of those who had expected better of their leadership is evident.

377. One of the more remarkable strengths of the Commission itself was that it has opened the way for the stories of individual people. The amnesty process continued the work of the Commission by helping to find people who would not otherwise have been found and by helping to lead families to a truth that would otherwise forever have been denied. Without some of these applications, many deaths and disappearances would have remained unexplained.

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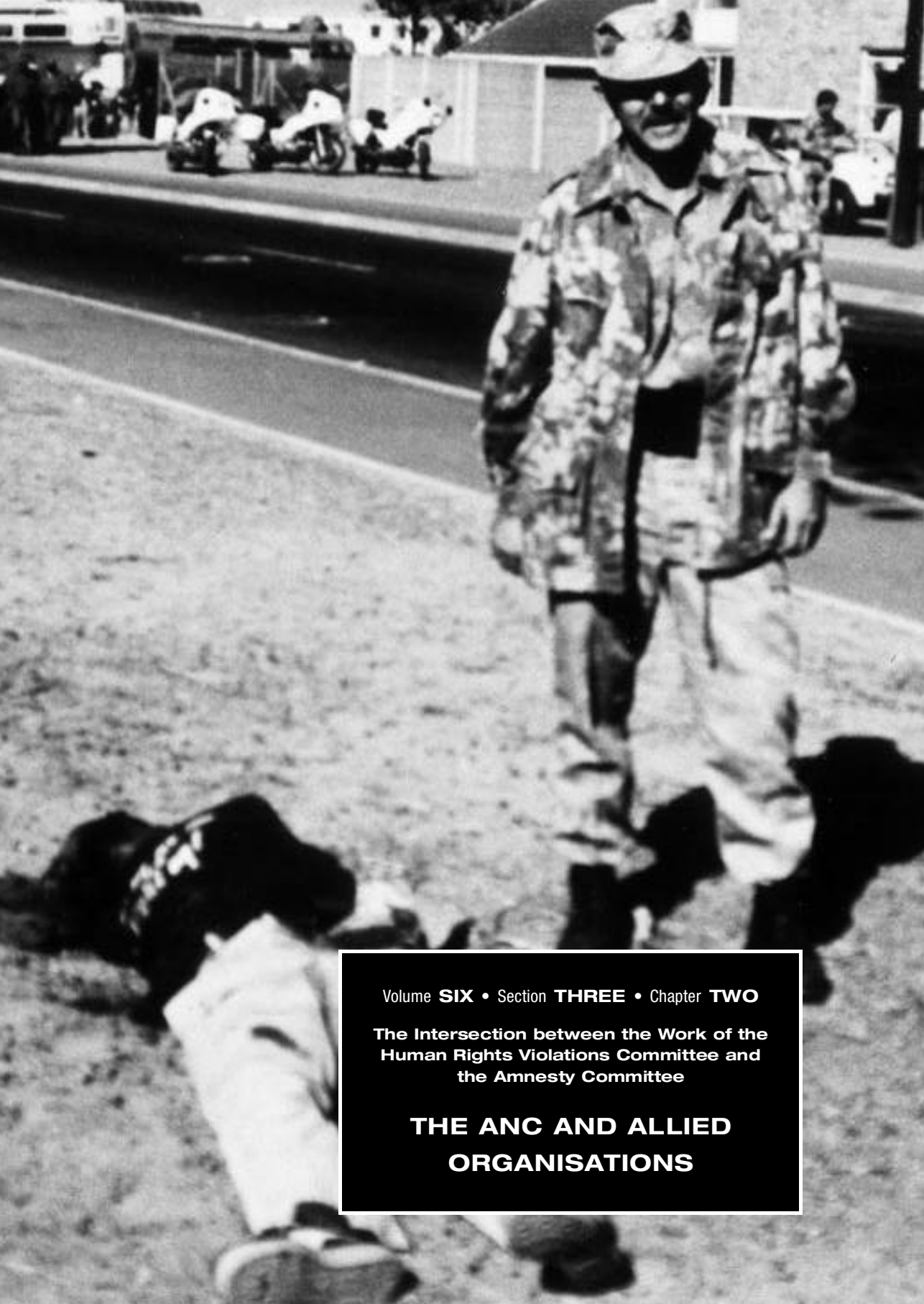

Volume **SIX** • Section **THREE** • Chapter **TWO**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE ANC AND ALLIED ORGANISATIONS

The ANC and Allied Organisations

PART ONE: OVERVIEW OF THE ANC AND ALLIED AMNESTY APPLICATIONS: 1960–1994

■ INTRODUCTION

1. The purpose of this chapter is to review the information that emerged out of the amnesty process of the Truth and Reconciliation Commission (the Commission) in respect of the African National Congress (ANC) and its allies and to consider its intersection with information that emerged through the processes of the Committee on Human Rights Violations (HRVC).

2. Broadly speaking, ANC-related amnesty applications can be divided into a number of categories. The first concerns applications from members of the ANC leadership. These were accompanied by a 'Declaration of Responsibility' and became known as the 'collective responsibility' applications. The second were applications from Umkhonto we Sizwe (MK) operatives. The third were applications from self-defence unit (SDU) members, who can claim some level of practical and moral authorisation from the ANC.[108]

3. A fourth category of applicants was made up of civilians who were members of, or who acted in the name of, or in support of the ANC. In this category, the political and moral responsibility of the ANC and those who acted in its name was considerably less. This is even so when considering applications from members of organisations that operated internally during the final years of the ANC's exile from South Africa. The most prominent example is that of the United Democratic Front (UDF). Although the UDF and its affiliate organisations associated themselves with the ANC and its goals and principles, they operated as independent organisations.

108 The ANC Declaration embraces SDU members.

4. This chapter will also distinguish between applications that relate to the period prior to the lifting of the banning order on the ANC (1960 to 1989) and those that relate to the period from 1990 to 1994 – that is, from when the ban on the ANC was lifted and negotiations began until 10 May 1994, the closing date of the Commission's mandate.

STATISTICAL OVERVIEW

5. A total of 998 persons who were members or supporters of the ANC or related organisations applied for amnesty for 1025 incidents. Only twenty-six (or 3 %) of these applicants were female.

6. The regional breakdown was as follows:

Transvaal	628	(61 %)
KwaZulu/Natal	170	(17 %)
Eastern Cape	61	(6 %)
Homelands[109]	56	(5 %)
Western/Northern Cape	33	(3 %)
Orange Free State	20	(2 %)
Outside South Africa	19	(2 %)

7. The annual breakdown was as follows:

1960–1969	20	(2 %)
1970–1979	35	(3 %)
1980–1984	113	(11 %)
1985–1989	339	(33 %)
1990–1994	493	(48 %)
Non-specific	25	(3 %)

109 Excluding KwaZulu, which is counted with Natal.

8. The 1025 incidents involved the following acts:[110]

Killings	464	(17%)
Killings[111]	24 incidents	(1%)
Attempted killings	1118	(42%)
Attempted killings[112]	67 incidents	(3%)
Assaults	56	(2%)
Abductions	58	(2%)
Robberies	84	(3%)
Arson, public violence, etc.	140	(5%)
Attacks using explosives	320	(12%)
Illegal possession of arms and ammunition	153	(6%)
Infiltration/distribution of weapons	24	(1%)
Other	151	(6%)

OVERVIEW OF APPLICATIONS

9. ANC-related amnesty applications far outnumber those from other protagonists in the political conflict, yet it can be seen from the figures that the number of applications was not large, fewer than a thousand in all. It is of some interest why people did or did not apply for amnesty.

Loyalty to the ANC

10. One reason ANC members gave for applying for amnesty was that the very idea of a South African truth commission originated from within the ranks of the ANC. Hence, many ANC applicants expressed a desire to participate in the amnesty process in order to support the new democratic government and its programme of political and economic transformation.

11. Yet, although the ANC had promoted the idea and led the legislation through parliament, the party appeared divided on the issue. Some of its leadership stated publicly that ANC members need not submit amnesty applications, on the grounds that the ANC had engaged in a just war against apartheid. Finally,

110 As early as 1996, the Amnesty Committee decided to deal with incidents rather than individual acts in order to make it possible to deal with groups of applicants who had been involved in the same incident but who may have committed a number of different acts. Thus, when dealing with applications, the Committee decided to focus on specific incidents, each comprising a number of different acts/offences.

111 Where exact number of victims is unknown.

112 Where exact number of victims is unknown.

following a meeting between the Commission and the ANC leadership, the ANC agreed to persuade its members to submit amnesty applications. This opened the road to substantial numbers of amnesty applications from MK operatives, as well as the 'collective responsibility' applications by ANC leadership figures.

Desire for reconciliation

12. For others, amnesty applications represented a commitment to reconciliation. Mr Frans Ting Ting Masango [AM7087/97] told the Amnesty Committee at the Pretoria hearing on 8 June 1999:

    We are all South Africans and the past should remain what it is, the past. There should be that reconciliation. We should go forwards with our lives and try to build together South Africa. That's why I basically applied for amnesty.

13. At the same hearing, Mr Neo Potsane [AM7159/97] expressed himself thus:[113]

    Well I want to put it this way now, when this idea of Truth and Reconciliation now first came into this country and was in actual fact adopted, I've always supported it. I supported it because I felt we cannot stand at one place pointing fingers at one another, looking at the past as something that is – should dominate our lives … I felt that was the opportunity that I will never let … pass me. I had to jump in and actually now also extend my hand of friendship to the victims or the people that suffered because of my actions in pursuit of democracy and I'm happy today that I'm here, sitting here explaining my actions so that you know, other people can understand why I did those things.

14. Some operatives expressed a wish to take responsibility for their actions, particularly towards their victims. In Pretoria on 14 June 1999, Mr Lazarus Chikane told the Amnesty Committee:

    My motive for being here is to actually show that the family finally knows who actually was part of the activities of eliminating their brother, their parent, their father and for that reason, I felt motivated to come here, simply because it wouldn't have been fair on them not to know who actually carried out this attack on their father. For that reason I feel that because there was no (indistinct), there was no investigation, or suspicion against me, it really touched me deeply, to have to come out and expose myself, to say I was part of that type of activity.

113 Mr Masango and Mr Potsane applied for and were granted amnesty for the killing of Mr David Lukhele, former minister of KaNgwane, in April 1986 [AC/1998/0048; AC/1999/0257; AC/2000/142]. They and two others had been convicted of the killing and sentenced to death, but their sentences had been commuted to twenty-five years' imprisonment on appeal. The four were released in the early 1990s in terms of a deal struck between the ANC and the former government.

Criminal and civil action

15. Many ANC members and MK operatives had already served prison terms and even spent periods on death row for the offences for which they sought amnesty. Some who had received indemnity from criminal prosecution during the early 1990s wished to avoid or prevent possible civil claims that might be brought against them.
16. Some who had already faced convictions and punishment expressed a desire to have their criminal records expunged, although many applicants appeared unaware of this dimension of the amnesty process.

17. Although few amnesty applicants for MK actions in the period 1960 to 1989 appear to have been motivated by fear of prosecution, political violence between 1990 and 1994 was the subject of ongoing prosecutions during the life of the Commission and provided a genuine incentive for amnesty applications. A number of ANC members had been sentenced to prison terms in the post-1994 period for incidents relating mainly to SDU activities or the political conflict in KwaZulu and Natal, and made amnesty applications as sentenced prisoners. Where charges were pending or trials were in progress, cases were suspended pending the outcome of their amnesty applications.

Problems experienced by MK operatives applying for amnesty

18. The dissolution of MK as an organised formation and the disintegration of its networks made it difficult to trace operatives. The Commission's founding Act, the Promotion of National Unity and Reconciliation Act, Act 34 of 1995 (the Act) required individual applications, and MK operatives were faced with making the difficult decision of whether or not to apply for amnesty – separated as they were from their former comrades, operating without structures of any kind and trained in a culture of underground work and secrecy.

    MR LALLA: *What you must take into account, that now we were at home, there was no Umkhonto we Sizwe, there was no structure, there was no command and control. We are now left on our own to pick up the pieces. How do I have responsibility of an individual when the structure legally has folded? (Durban hearing, 4 April 2000.)*
    ADVOCATE BOSMAN: *And do you know whether anybody else in that group had applied for amnesty at all for this incident?*
    MR MDLULWA: *I don't know, because we are all over South Africa, we are not*

communicating with each other. (Johannesburg hearing, 22 May 2000.)
MR BUHALI: *When the thing of the TRC started, first I was not fully briefed as to what is going to happen considering the TRC, and when I made the application I had not met my Commander then because I did not know his address. (Johannesburg hearing, 13 July 2000.)*

Low levels of civilian applications

19. By far the greatest number of casualties inside South Africa arose out of violent community conflicts into which ordinary residents were mobilised or drawn. This category was not reflected in amnesty applications from any side of the conflict, including that of the ANC and its allies.

Poor representation of SDU applications

20. Although SDU members applied in large numbers, these applications did not, in the view of the Commission, adequately reflect the full scope of SDU activity. One of the reasons for this was because SDU activity continued in certain areas after the cut-off date for applications.

21. In one significant case, the local ANC political leadership in Tokoza, which had had a strong relationship with the SDUs in the area, threw its weight into promoting amnesty applications. Meetings were held and questions answered. Assistance was provided with completing forms. As a result, approximately 200 SDU members from Tokoza applied for amnesty for very serious violations. Most had never been charged for these offences and were motivated by an appeal to their sense of political duty and the national imperative for reconciliation. The Tokoza SDU case points to the merit and feasibility of political parties investing energy at local level.

Low levels of applications in KwaZulu/Natal

22. As with the IFP, the scale of the violence in KwaZulu/Natal is not reflected in the volume of amnesty applications from the ANC in this region. Here again, the vast majority of incidents were inter-civilian.

23. It is possible that political developments after 1994 may also have played a role in inhibiting applications. In the immediate post-1994 era, the national ANC strategy for ending the bloodshed in KwaZulu-Natal was one of incorporation and appeasement of the IFP and a reluctance to inflame the still-simmering

conflict. This period of rapprochement resulted in a tendency to draw a veil of silence over the bloody past and a tacit agreement to suspend blame. According to the ANC:

The apartheid counter-insurgency machinery inserted itself into the IFP and, as it carried out its murderous campaign, cloaked itself in IFP colours, whereas the genuine leaders and members of the IFP had nothing to do with planning or carrying out any acts of violence originally conceived of by themselves.[114]

24. The 'special case' character of the region is also reflected in ongoing suggestions for a special amnesty for KwaZulu/Natal matters, possibly a 'blanket amnesty' for perpetrators in that region.

25. Moreover, as the majority of the KwaZulu/Natal ANC applicants were in jail at the time of making their amnesty applications, they suffered from the same serious problems faced by all applicants in prison, primarily a lack of legal advice. Although some prisoner applicants were assisted to some extent by the ANC, and the ANC leadership visited prisoners in an effort to facilitate their amnesty applications, this collective political advice did not adequately substitute for individual legal advice.

26. One of the consequences of this was that applicants were unable to obtain clarity on what acts or incidents to apply for. Thus an applicant might list only a single incident where a number of related offences should have been specified. For example, one applicant, Mr Skhumbuzo Chris Masondo [AM4183/96] believed he had only to apply for offences for which he had been convicted and he later spoke about many other offences at the hearing. These latter matters were excluded by the Amnesty Committee.

27. Another applicant testified about how helpless prisoners felt when faced with applying for amnesty:

MR LAX: *But you did understand that you were supposed to tell the full truth when you filled out this application?*
MR MSANI: *Yes, I did explain initially that in jail the brain doesn't function properly when we are in jail. We are like children when we are in jail. The brain*

114 Submission of the African National Congress to the Truth and Reconciliation Commission in reply to Section 30[2] of Act 34 of 1996, on the TRC, 'Findings On The African National Congress', October 1998, point 28.3, submitted by Thenjiwe Mthintso.

is actually sort of disturbed to a certain extent when you are in jail. (Pietermaritzburg hearing, 23 November 1998.)

28. Another problem was that many perpetrators involved in the same incident were scattered throughout the country in different prisons and were unable to contact one another. This tended to discourage applications, as applicants feared implicating others.

'Declaration of Responsibility'

29. In line with the ANC's position that its leadership accepted full political and moral responsibility for the actions of its members, large numbers of National Executive Committee (NEC)[115] members and those involved in ANC hierarchies submitted collective amnesty applications to the Commission. These were framed in a general ANC 'Declaration of Responsibility'. The declaration reads as follows:

We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the African National Congress (hereinafter referred to as the ANC), elected and/or appointed to serve in various structures including its highest organ, the National Executive Committee, do hereby make the following declaration:

During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.

In the course of our people's struggle, with the intent to induce the apartheid government of the National Party to abandon apartheid with its concomitant violent repression, and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, ***inter alia****, established its military wing, Umkhonto we Sizwe, through which it prosecuted an armed struggle.*

At all material times, Umkhonto we Sizwe operated under the political authority, direction and leadership of the ANC.

Due to its peculiar circumstances, and the attacks mounted upon it by its adversary, the apartheid government, the ANC established various organs at

115 The highest elected body of the ANC.

various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.[116] *Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and, in some instances encouraged the establishment of self-defence units (SDUs), which played a critical role in the defence of defenceless communities.*

In the event, and to the extent that any of the activities of any of the above-mentioned institutions and structures including the SDUs could in any manner whatsoever be regarded as the kinds of acts or omissions or offences envisaged in the Promotion of National Unity and Reconciliation Act, we collectively take full responsibility therefore applying for amnesty in respect thereof.. [AM5780/97.]

30. The 'Declaration' applicants did not specify particular acts but attempted to take collective responsibility for actions that may have resulted in gross human rights violations either by the ANC's military operatives or by the SDUs.

31. Although initially granted amnesty by the Amnesty Committee, these amnesties were subsequently overturned in the Supreme Court. The applications were considered again by the Amnesty Committee and were refused. The Committee found that the applications did not comply with the requirements of the Act as they did not specify particular acts, omissions or offences.

116 See list of Acronyms in this volume.

PART TWO: ANALYSIS OF AMNESTY INFORMATION: 1960–1989

UMKHONTO WE SIZWE (MK) AND THE ANC: 1960–1990

32. The Commission received a significant number of applications relating to the activities of MK in the period 1960 to 1989. One hundred and eighty persons, including eight females, sought amnesty for 420 incidents in the period 1960 to 1989.[117]

33 Applications ranged from individual operatives applying for amnesty for one or more acts, to units of operatives applying for a range of activities, to applications from command personnel based in the neighbouring states and in Military Headquarters (MHQ) in Lusaka, Zambia.

34. The regional breakdown of incidents was as follows:

Transvaal	285
Natal	80
Western Cape	7
Orange Free State	2
Eastern Cape	1
KwaNdebele	5
Transkei	5
Bophuthatswana	3
Venda	1
Non-specific[118]	31

35. The annual breakdown was as follows:

1960–1969	19
1970–1979	23
1980–1984	87
1985–1989	268
Non-specific[119]	23

117 A small amount of duplication may have occurred where applicants described the same incident in slightly different ways.

118 The last category includes incidents that took place throughout South Africa and/or neighbouring countries (e.g. weapons infiltration from Swaziland to Transvaal and Natal).

119 The last category also covers activities that took place over many years (e.g. the provision of weapons from 1978 to 1989).

36. Of the 420 incidents, 338 relate to actual attacks, while eighty-two relate to associated activities such as leaving South Africa illegally, escape from custody, possession of explosives or involvement in ongoing activities such as military training, infiltration of arms and operatives and aiding MK operatives. Included in the eighty-two are seven persons who applied for amnesty with respect to their convictions for terrorism without detailing specific acts. Three persons also sought amnesty for acts of sabotage.

37. The 338 attacks involved some 1276 separate incidents:

Killings	106
Attempted killings (specified)[120]	807
Attempted killings	22
Robbery (weapons and vehicles)	14
Attacks using explosives (sabotage)[121]	315
Arson (petrol bomb attacks)	6
Other	6

38. Possession of illegal arms and ammunition is not specified in these attacks since all such MK attacks involved such possession. Most applicants were granted amnesty in this regard.

39. Amnesty was granted for 412 of the 420 incidents, seven were refused, and one was partially granted and partially refused. Two applicants were struck off the hearings roll. Mr John Itumeleng Dube [AM5310/97] was refused permission to add two additional incidents to his amnesty application.

Overview of MK's armed actions: 1960 to August 1990

40. On 8 April 1960, some three weeks after the Sharpeville massacre, the former South African government banned the ANC along with the PAC. This put an end to decades of largely peaceful protest by the ANC and, over the year that followed, the ANC adopted a strategy of armed resistance. MK was officially launched on 16 December 1961.

120 This number is somewhat inflated by the use of judicial charge sheets which tend to list all persons involved as cases of attempted killing, even if they only experienced minor trauma such as shock. Hence this figure does not refer to injury only, although it does include all specified injuries.

121 Of the 315 attacks using explosives, thirty-two involved attacks on individual homes (usually those of police and community councillors) and sixteen involved landmines.

41. Between 1961 and 1963 there were some 190 actions, undertaken mainly by regional operatives in Johannesburg, Durban and Cape Town. These were almost entirely aimed at installations.

42. The Commission received five applications from MK operatives for this very early period of sabotage. These were from Mr Ronnie Kasrils [AM5509/97; AC/2001/168], Ms Eleanor Kasrils [AM7725/97; AC/2000/067], Mr Ben Turok [AM3723/96; AC/2001/013], Mr Muzivukile Curnick Ndlovu [AM5952/97] and Mr Billy Nair [AM5613/97; AC/2000/170], who applied for amnesty for over fifty acts of sabotage and related acts (such as theft of dynamite or escape from custody) in and around Durban and Johannesburg. All were granted amnesty.

43. Armed actions inside South Africa were, by and large, terminated with the arrest of key members of MK's high command in Rivonia in July 1963, all of whom were subsequently sentenced to life imprisonment. Mr Nelson Mandela, arrested a year earlier, was also sentenced to life imprisonment at the Rivonia trial. One of the Rivonia trialists, Mr Ahmed Kathrada [AM6240/97; AC/1999/0199] applied for and was granted amnesty for the offences for which he was convicted. No significant armed actions were undertaken by MK inside South Africa between 1964 and 1975, although several infiltrations led to arrests and the imprisonment or killing of MK operatives.

44. The 1976 student-led uprising inside South Africa injected new life into the ANC. From 1976 to 1984, there was a steady incremental growth in armed attacks, and approximately 265 incidents were recorded. These included attacks on police stations and assassinations.[122]

45. During this period the ANC's Special Operations Unit launched several high-profile armed attacks on economic and energy installations, infrastructure and police stations, as well as an attack on the South African Air Force headquarters in Pretoria, in which nineteen people died. In terms of casualties, this was the largest attack in MK history. Other high-profile attacks included the 1980 SASOL attacks, the 1982 attack on the Voortrekkerhoogte SADF base, attacks on police stations and the 1982 sabotage attack on the Koeberg nuclear power station.

122 For example AM5307/97,AM5886/97.

46. The Commission received amnesty applications in respect of seventy-nine incidents in this period. These were largely from the command personnel of Special Operations then based in Maputo, Mozambique, and the Transvaal military machinery based in Swaziland. In some cases, operatives also applied.

47. MK activity inside South Africa peaked between 1985 and 1988. The number of incidents increased from forty-four in 1984 to 136 in 1985 and 228 in 1986. Numbers continued to escalate, with 242 incidents in 1987, and peaked in 1988 with 300 incidents as a result of increased resistance to the municipal elections of October 1988. In 1989 the number of incidents dropped by nearly a third to 216. This period also saw a diversification of targets and an increase in attacks on public places where civilians were at high risk.

48. In February 1990 the ANC was unbanned, but the armed struggle was only suspended in August of that year. Armed actions continued, although they were fewer in number. According to police statistics, there were some eighty armed attacks between January and the end of May 1990. These resulted in three deaths (two police officers and one civilian) and eleven injuries (six police officers and five civilians). In general, the attacks were on the homes of perceived collaborators and police officers, police stations and fuel and electricity installations.

49. Police documentation obtained by the Commission suggests that the total number of incidents (including skirmishes, failed sabotage attempts and so on) for the period October 1976 to May 1990 totalled approximately 1555. [123]

50. The armed struggle was suspended by the ANC with the signing, on 6 August 1990, of the Pretoria Minute, the terms of which were spelt out in greater detail in the DF Malan Accord. MK was formally disbanded on 16 December 1993.

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123 These statistics were obtained from police documentation submitted to the Harms Commission of Inquiry and were drawn from the records of the Security Branch. The Commission concluded that these figures and details were numerically reliable as they had been compiled for police and not for public use. In other words, no purpose would have been served by falsifying them. Furthermore, no other incidents came to light through the Commission's work that did not appear on these lists, further confirming their general accuracy. Naturally, the Commission did not necessarily adopt the same characterisation of the incidents.

An important comment regarding numbers must be made here. The Commission has, through amnesty applications and its own investigations, established that there were a number of 'false flag' operations in which members of the security forces engaged in acts of sabotage. While these were included in the police statistics used above, the Commission has not included these known cases in the numbers cited above. There are, however, doubtless other 'false flag' incidents which remain uncovered, but it is unlikely that these would affect the general trends indicated above.

ANC Targets

51. ANC targets remained fairly constant and, with certain exceptions, MK operatives remained within these boundaries:
    a economic, communications and energy installations and infrastructure (electricity substations, oil refineries, telecommunications structures, etc.);
    b government buildings and infrastructure and other apartheid symbols (courts, post offices, government offices);
    c security force targets (personnel and physical structures of the police and military); and
    d individuals identified as 'collaborators' (councillors, state witnesses, suspected informers and defectors).
    e In addition, some targets related to specific campaigns being supported by MK, such as labour actions and anti-election campaigns.

52. The stated objective of MK was never to engage in operations that deliberately targeted civilians or indeed white people. Targets were not selected on the basis of race, and most attacks were aimed at the state, its organs and 'collaborators'. Attacks on 'collaborators' form a significant proportion of MK armed actions. According to Mr Aboobaker Ismail, who gave evidence at the hearing on the Church Street bombing in Pretoria on 4 May 1998:

    This was never a target, an attack against whites. We never fought a racist war. We fought to undo racism … We never set out deliberately to attack civilian targets. We followed the political objectives of the African National Congress in the course of a just struggle. However, in the course of a war, life is lost, and the injury to and the loss of life of innocent civilians sometimes becomes inevitable. The challenge before us was to avoid indiscriminate killing and to focus on enemy security forces … Whilst Umkhonto we Sizwe had the means to attack civilians, it would have been very easy to come to various houses and shoot people, Umkhonto never did that sort of a thing. It did not take the easy route. Instead it concentrated on military targets, on state infrastructure, often at the cost of the lives of its own cadres.

53. Despite these noble intentions, the majority of casualties of MK operations were civilians. These civilians included those that members of the ANC apparently regarded as legitimate targets: 'collaborators' in the form of councillors, state witnesses at the trials of ANC members, suspected informers and the like. In other words, they were 'deliberately targeted civilians'. For example, in the period 1976 to 1984, of some seventy-one deaths as a result of MK actions, nineteen were members of the security forces and fifty-two were civilians.

54. The ANC Kabwe Conference held in Zambia in June 1985 showed a hardening in the ANC's attitude towards civilian casualties. Two days before the Conference, South African security forces launched a cross-border raid on residences in Gaborone in Botswana, killing twelve people.[124] According to the ANC, none of the casualties were MK operatives. This attack on what the ANC described as 'very, very soft targets' formed the background to the Conference. The ANC submission to the Commission states that the Conference:

> r*eaffirmed ANC policy with regard to targets considered legitimate: SADF and SAP personnel and installations, selected economic installations and administrative infrastructure. But the risk of civilians being caught in the crossfire when such operations took place could no longer be allowed to prevent the urgently needed, all-round intensification of the armed struggle. The focus of armed operations had to shift towards striking directly at enemy personnel, and the struggle had to move out of the townships to the white areas.*

Security force targets

55. A large number of amnesty applications related to attacks on police, military personnel and buildings.[125] The bomb outside the Johannesburg Magistrate's court was planned and authorised by Siphiwe Nyanda, then head of the Transvaal military machinery and chairperson of the Swaziland Regional Politico-Military Council (RPMC). Nyanda decided to plant a mini-limpet mine in order to lure members of the South African Police (SAP) to the chosen area. A larger bomb placed in a car nearby would then be detonated by means of a remote control device. Four police officers were killed in the explosion and several others were injured, including a few civilians.[126]

56. Mr Heinrich Johannes Grosskopf [AM5917/97], a young white man from an Afrikaans background, left South Africa in early 1986 to join the ANC in exile. While in Lusaka, he was recruited to Special Operations. About six months were spent planning his infiltration, target and means of attack. Ultimately, the SADF's Witwatersrand Command was selected as the target. Mr Grosskopf gave his evidence at a hearing in Johannesburg on 20 November 2000:

124 See Volume Two, Chapter Two, page 146.

125 See, for example AM5303/97,AM7164/97,AM5293/97.

126 AM7500/97,AM5303/97,AM5313/97.

A great amount of thought and planning went into considering the political content and consequences of an attack on this military headquarters in central Johannesburg. ... The object of the operation was to attack military personnel inside Wits Command by blast damage to the building. The intention was therefore not to attack sentries or military personnel or civilians for that matter outside the command, the intention was to bring the car bomb into actual contact with the Wits Command building so that the effect of the explosion would be maximised.

57. They decided to plant a bomb in a car with an automatic gearbox that would be able to move itself up to Wits Command without a driver before the bomb exploded.

58. No one was killed in the blast, but about sixty-eight people were injured. Grosskopf subsequently travelled to MK military headquarters in Lusaka where he reported back to his superiors and was debriefed by MK personnel. Grosskopf, Aboobaker Ismail and Johannes Mnisi were granted amnesty for the attack [AC/2000/248; AC/2001/003].

59. A number of applications related to skirmishes in which security force personnel and MK members were injured or killed[127] or sabotage attacks on security force buildings and personnel.

Attacks on black security forces

60. Black security force personnel were prime targets for attack. The fact that they lived in the townships meant that they brought the apartheid regime onto home ground, making them extremely dangerous to local residents. They were seen as the enemy within. Many MK attacks on security force personnel took place while they were off duty, often while they were at home with their families. Of the sixty-one MK attacks on the security forces in 1986, twenty-three (roughly one third) were on the homes of police officers, and resulted in four deaths and nine injuries.[128]

127 See, for example, AM5298/97.

128 See, for example, AM 7193/97, AM6207/97AM5305/97,AM6059/97.

Attacks on collaborators with apartheid political structures

61. There were many attacks on the homes of people involved with the tripartite parliamentary elections and other structures that were regarded as illegitimate. For example, four of the five attacks carried out in 1986 and 1987 by Mr Velaphi Dlamini, a local MK operative in Soweto [AM3887/96; AC/1999/0317], targeted male and female councillors. Family members, children and visitors were sometimes casualties of these attacks.

62. The most common forms of attack were grenades thrown at or into houses at night, sometimes accompanied by shooting. Limpet mines were also occasionally used. MK applicants tended to describe such attacks as 'intimidation' rather than as attempted assassinations.

    MS MTANGA: *Mr Ndlovu, when you got your instructions were you told what was the intention? Was the intention just to throw the hand grenade and kill people or to just throw it?*
    MR NDLOVU: *Okay. My answer will be twofold. One, carrying an order you do what you're told but the intention was not to kill. But there was a likelihood that somebody could actually die, knowing the kind of weapon that I've used.*
    MS MTANGA: *How were you going to ensure that no one was killed?*
    MR NDLOVU: *I was not going to ensure when a person gets killed or not. The point I'm trying to make here, knowing the nature or the type of weapon that I used, somebody could have died but that was not the intention, to kill a person. (Mr Hluphela Morris Ndlovu, Pretoria hearing, 14 June 1999.)*

63. Eight of the thirty-three limpet mine sabotage operations carried out by the Ahmed Timol MK unit were on the homes of persons associated with local or parliamentary government structures such as the President's Council and the Management Committees. The limpet mines were timed so that they would explode outside houses between midnight and 04h00. No injuries or deaths resulted. Amnesty applicant Jameel Chand [AM7026/97] stated that:

    It was only after our Commander (Prakash Napier) had received confirmation that we would carry out the action. The unit always carried out the attacks between 11pm and 4am. We would also monitor the scene of the intended action. The limpet would be placed in a location that would not cause injury or death. If explosion did not take place within the time it was scheduled to have we would contact the police and inform them of the device. We would also do dummy runs and evaluate afterwards. (Amnesty granted in chambers.)

64. The killing of homeland politician Mr David Lukhele[129] provides an example of the assassination of a civilian politician that was approved by MHQ. Lukhele was a prominent leader in the KaNgwane homeland and was perceived as supporting the proposed incorporation of this homeland into Swaziland, a move fiercely resisted by many residents. For this he was regarded as a collaborator and members of the Elimination Unit identified him as a possible target.

65. They sought and received approval from MHQ in Lusaka and, on 6 June 1986, Mr Neo Griffiths Potsane entered Mr Lukhele's home in Mamelodi township and opened fire with an AK47, killing him, while Mr Obed Jabu Masina waited outside. The shots also killed Lukhele's sister, Ms Elizabeth Busisiwe Dludlu, and injured Lukhele's wife.

Attacks in public places

66. MK operatives detonated explosives in public places where civilians were present and died. Amnesty applications were received for a number of the most well-known 'public place' bombs. The applicants put forward a range of explanations for these attacks.

67. In the case of the Durban Why Not/Magoo's Bar bomb[130], the Benoni Wimpy Bar[131] bomb and the bomb detonated near the Juicy Lucy restaurant in Pretoria, applicants explained that their intelligence and reconnaissance had led them to believe that security force members frequented these places. Despite the fact that no or very few security force members were injured in these attacks, the applicants continued to hold the view that the venues were appropriate targets. The Amnesty Committee accepted that the operatives had acted 'in good faith' although they pointed out that, in retrospect, their intelligence had been faulty or simply wrong. Amnesty was granted in these cases [AC/2001/128; AC/1999/294].

68. Applicants in respect of two car bombs detonated in public places explained that these were placed outside the offices of security force structures: the South African Air Force headquarters in Pretoria and the Security Branch offices in Witbank. The civilians killed or injured were not the intended target. Similarly, the ANC landmine campaign was aimed at security force patrols even though the casualties were overwhelmingly civilian.

129 AC/1998/0048; AC/1999/0257; AC/2000/142.

130 AM7032/97,AM7139/97,AM7679/97,AM7096/97,AM4028/96,AM4026/96.

131 AM5300/97,AM5725/97,AM5301/97,AM4351/97.

69. Amnesty applicants for the Ellis Park stadium car bomb[132] and the bomb at the Wild Coast Casino[133] in the Transkei explained that these were intended to send messages to the white community and the Transkei homeland respectively regarding the futility of apartheid. Similarly, a number of facilities such as segregated 'whites only' bus stops were apparently selected in order to highlight apartheid discrimination.

Bombs outside security force offices

70. Car bombs were detonated outside buildings housing security force offices. The offices were located in the busy central areas of towns, in buildings shared by other civilian offices. Thus, although the intended targets were members of the security forces, the casualties were predominantly civilian passers-by. According to Mr Aboobaker Ismail, testifying at the hearing on the Church Street bombing (Pretoria, 4 May 1998):

    If we were to accept that nobody would be killed at any stage, then we wouldn't have executed the armed struggle. You often found that the security forces themselves had based themselves in civilian areas and the choice then is always 'do you attack them or not'?

71. The car bomb that exploded outside the headquarters of the South African Air Force in Pretoria became known as the 'Church Street bomb'. The explosion claimed more casualties than any other single MK attack, killing nineteen people, including the two MK operatives themselves, and injuring more than 200 people. Three persons applied for and were granted amnesty for aspects of this operation: Mr Aboobaker Ismail, Mr Johannes Mnisi (MK Victor Molefe) and Ms Hélène Passtoors [AC/2001/003 and AC/2001/023].

Landmine campaign

72. Landmine operations began in late 1985 under the overall command of MHQ and were approved by ANC President Oliver Tambo. In terms of ANC policy, only anti-tank landmines were approved for use; anti-personnel mines were specifically excluded. The targets were military personnel, both regular and combat

132 The explosive, which was detonated outside the stadium on 2 July 1988 using a remote control device, killed two spectators as they were leaving a rugby match. Thirty-seven others sustained minor and major injuries. Four operatives from MK's Special Operations unit, including its commander, were granted amnesty [AC/2001/161].

133 Two people were killed and several others injured in the explosion on 18 April 1986. Three MK operatives were granted amnesty [AC/99/0181 and AC/2000/240].

units made up of farmers in the militarised border zones near Swaziland, Zimbabwe and Botswana. The landmines were placed mainly in the border areas by operatives sent in via these countries.

73. The campaign was halted by the ANC in late 1987 due to the high number of civilian casualties. According to police records, at least twenty-one landmines were detonated, causing twenty deaths. Only one of those killed was a member of the security forces. The others were civilians, divided more or less equally between black and white. Nineteen security force members were injured during the campaign as against forty civilians, of whom twenty-nine were black and eleven were white. Three landmines were placed in the Western Transvaal, thirteen in the Eastern Transvaal and twenty-five in the Northern Transvaal. A further twenty landmines were discovered and defused.

74. Two batches of amnesty applications were received and granted in respect of the landmine campaign. The first was from two members of the command structure based in Swaziland, Mr Siphiwe Nyanda [AM6231/97] and Mr Solly Shoke [AM5303/97] and one of their operatives, Mr Dick Mkhonto [AM5304/97], who planted landmines in the Eastern Transvaal and applied for amnesty for at least seven incidents. The second batch was from three operatives who laid landmines in the Messina area in the Northern Transvaal in November 1985, resulting in eight explosions: Mr Mzondeleli Nondula [AM7275/97], Mr Mthetheleli Mncube [AM5829/97] and Mr Jabulani Mbuli [AM6046/97]. All were granted amnesty [AC/2000/111; AC/1999/0054, and AC/2001/093]. No applications were received with regard to the three incidents in the Western Transvaal or the handful of landmines placed in the Northern Transvaal in 1986 and 1987.

75. Mr Dick Mkhonto, one of the operatives involved in placing the landmines, spoke of careful reconnaissance at the White River hearing on 2 May 1999:

After the reconnaissance we found that that place was only used by the military and the police and there were no inhabitants around that area. The only people who were using that road, it was used for logistical supply for the people who were in the border, who are working around the fence of Swaziland and South Africa. Then it was taken into consideration that there were no civilians who are using those roads. We have stayed there for three days reconnoitring that place.

76. Despite this reconnaissance, the landmine was detonated by a vehicle driven by black civilians on 28 March 1987. Four of them were killed and the fifth was injured.

77. In a landmine incident[134] on 15 December 1985, the Van Eck and De Nysschen families were on holiday on their game farm in the Messina area when their vehicle detonated a landmine. Four children, aged between three and nine years, and two women were killed in the blast. Mr Johannes Frederick van Eck and his eighteen-month-old baby boy, Mr de Nysschen and his daughter survived this ordeal, although they were seriously wounded.

78. The former head of the ANC's military intelligence, Mr Ronnie Kasrils, initially applied[135] for amnesty for the provision of:

maps of border areas and the farm and security network. Instructions were given on reconnaissance methods and planning and on the collecting of data. When farm labourers and civilians were killed and injured in some of these explosions, MK Commanders, myself included, visited these areas with instructions to our operatives to exercise greater caution and be stricter with their reconnaissance. In the end these operations were called off. During this period I was working mainly with Paul Dikaledi (deceased) and Julius Maliba (deceased). (Hearing, 24 July 2000.)

ANC violations against its members outside South Africa

79. Although the Commission received significant information from the ANC through its submissions, its own commission reports and certain internal files, it received very few individual amnesty applications in respect of ANC violations against its own members outside South Africa. Twenty-one persons in all applied for incidents outside South Africa's borders. These applications came primarily from members of the ANC's Security Department (NAT) and camp commanders. Nine applications were later withdrawn. The remaining twelve applications covered nineteen incidents involving various offences against persons suspected of infiltration or defection in Angola (seven incidents); Zambia (nine); Mozambique (one); Botswana (one), and Swaziland (one). The incidents included four killings, three cases of negligence that contributed to deaths, one attempted killing, three abductions and twelve cases of assault of persons in the ANC's custody. Amnesty was granted to all twelve applicants in respect of all nineteen incidents.

134 Three MK operatives were granted amnesty [AC/2001/093].

135 When the applicant's legal counsel argued that the applicant was not in a position to identify particular incidents in respect of which he would qualify for amnesty, his application was struck off the roll.

80. The four killings are: the assassination of suspected defector Mr Sipho Ngema[136] in 1988 in Swaziland; the killing of suspected defector Mr Monde Mpatheni[137] after he and Mr Joe Mamasela were abducted in Botswana in 1981; the execution of Mr Thabo Naphatli Mokudubete (MK Rufus)[138] in Viana camp in 1984, and the killing of an unknown ANC member called 'Shorty'[139] in 1981 in Zambia.

81. Two members of the ANC's Security Department applied for amnesty for the deaths of three prisoners in their custody. According to the applicants, their negligence may have contributed to the deaths, and the applications described some of the dire conditions under which prisoners were held. Mr Thabo John Sphambo [AM5097/97; AC/2000/149] was granted amnesty for negligence contributing to the death of Mr Eric Pharasi in 1981 at Quibaxe, also known as Camp 13.[140]

82. Similarly, Mr Mzwandile Alpheus Damoyi [AM6303/97; AC/2000/149], a camp commander at Camp 32, applied for and was granted amnesty for the deaths of Mr Zaba Madledza and Mr Edward Masuku in 1984 and 1985. Madledza and Masuku were both inmates at the camp.

83. Amnesty applications were also made for several cases of beating during interrogation.[141]

84. Mr Moruti Edmond Noosi (MK Stanley) [AM6307/97] was granted amnesty for an assault on Mr Don Sipho Mashele (MK Ben Maseko) in the early 1980s. Noosi was a senior member of the administration of Camp 32 where Mashele was being held. Noosi admitted that assault was not permitted in terms of ANC camp regulations.

136 AM6403/97.

137 AM5294/97,AM5297/97.

138 AM7058/97.

139 AM3592/96 TE Mfalapitsa.

140 The ANC's confidential submission lists a Motlalentoa Pharasi (MK Elick Mabuza) who 'died as a result of excessively harsh treatment after committing breaches of discipline' in 1981.

141 AM5095/97,AM3592/97,AM5100/97,AM5295/97.

Discipline

85. The Commission did not hear of any specific cases where operatives were censured or punished for improper action or unauthorised operations. However, some amnesty applicants made general reference to operatives being recalled to MHQ or to the frontal command and being asked to account for or explain their actions. The approach adopted when operatives strayed beyond their mandate appears to have been one of 're-education'. The ANC submission to the Commission asserts that:

maintaining discipline in guerrilla and conventional armed forces is also fundamentally different. In the case of a guerrilla force, discipline flows from a thorough understanding of the political objectives of the armed struggle, not from the threats of court martial or punishment.

86. At the Durban hearing on 27 September 1999, Mr Aboobaker Ismail explained the ANC's approach:

Comrades were called in, they were talked to, people were asked to explain what they were doing, what their objectives were. In this case [Magoo's Bar], had comrade Robert come back, we would have spoken about it, looked at the way he went about it, what were the failures … what was he trying to do, what was the outcome of it, how could we have improved it? Any suggestion that we would simply mete out punitive action against operatives who in good faith went to carry out an operation, is not so. I don't think this was the style of the ANC, certainly that was not my approach to command.

87. Operatives responded in different ways when asked if they still considered that their targets had been 'legitimate'. Some insisted they had not changed their minds. However, when Mr Raymond Lalla [AM2756/97], head of intelligence of the Natal machinery based in Swaziland, was asked whether the two car bombs that exploded in Durban in 1984 hit legitimate targets, he seemed less confident.

MR MAPOMA: *Can it be fairly put that these targets which were ultimately hit were in fact wrong targets?*
MR LALLA: *I think it's a bit difficult for me to answer that question. I think the best person to answer the question was Rabbit himself and Rabbit perhaps could provide some explanation as to why and whether the legitimacy of it or not, but in my personal opinion, looking from afar, a lot of civilians lost their lives and personally I'm not sure whether I can call it a legitimate target. (Pietermaritzburg hearing, 4 September 2000.)*

88. Mr Lalla had been part of the structure commanding the operative ('Rabbit') authorised to launch car bomb attacks, but had not been involved in selecting the targets.

89. Another amnesty applicant, Mr Rodney Abram Moeketsi Toka [AM6034/97], testified that a mission in which a baby girl was killed when a grenade was thrown into the home of her father, a police officer, had been regarded as a failure by the unit:

The intelligence gathered was totally inappropriate … no man in his good senses can rather throw a grenade when he knows that there is only a baby and a mother in the house. (Pretoria hearing, 29 January 1999).

90. Early signs that the ANC was concerned about the nature of certain attacks made by operatives emerged in late 1987. Late that year ANC President Oliver Tambo called in all members of MHQ and expressed his concern at the number of unnecessary civilian casualties in certain attacks, particularly those involving the use of anti-tank landmines. The landmine campaign was then suspended. Tambo also tasked MHQ with ensuring that all operatives fully understood ANC policy in respect of legitimate targets. Failure to comply with these orders would be considered a violation of policy and action would be taken against offenders.

91. Senior commanders were then sent to all the forward areas to raise these concerns with MK structures and, where possible, to meet with units. The command structures in the forward areas were told to contact all command structures in their units, whether or not they had been involved in attacks of this nature, and to ensure that all units and operatives were entirely clear on ANC policy regarding legitimate targets.

92. In August 1988, the NEC issued a statement specifically dealing with the conduct of the armed struggle in the country. While the NEC reaffirmed the 'centrality of the armed struggle in the national democratic revolution and the need to further escalate armed actions and transform our offensive into a generalised people's war', it also expressed concern at the recent spate of attacks on civilian targets and stated that some of the attacks were carried out by MK operatives motivated by anger in response to state repression.

Unfinished business

93. The hearings pointed to the legacy of bitterness and pain felt by ANC members who had experienced the harsh hand of NAT. These experiences of assault left more than physical scars on the recipients. At the Johannesburg hearing on 17 July 2000, Mr Mashele (see above) testified that, despite remaining with the ANC as a disciplined member, he had never received an apology for being assaulted by Mr ME Noosi [AM6304/97].

MR MASHELE: *We met at Luthuli House [ANC Head office]. I met him, I asked him what he did there because I'm fully convinced it was not motivated by any good intentions, that he must apologise to me for that and this was done seriously because I wanted him to take an opportunity then to apologise to me. It was around 1994 or 1995.*
MS MAKHUBELE: *Yes and what was his response?*
MR MASHELE: *He never apologised, and moved away from me. Turned his back against me. …. I met him on maybe two or three occasions at the general practitioner, which is my practitioner, and you know, this thing is straining our relationship, especially when we meet because he just looks at me and he doesn't care. You see, he doesn't want to extend, you know, even a smile, to show that I recognise you, you see? And recently we met at a funeral, he also you know, exhibited the same – I don't know whether to call it arrogance or what.*

94. At the same hearing, Mr Noosi responded:

MR NOOSI: *I saw him at Luthuli House; that was when he said I should apologise to him personally.*
JUDGE DE JAGER: *What did he say why should you apologise, what have you done to him?*
MR NOOSI: *He said because I've assaulted him, I assaulted him.*
JUDGE DE JAGER: *And did he tell you what you've done to him?*
MR NOOSI: *No, he said I assaulted him and I said to him no, I can't apologise to you because I was not doing that for my personal interests, I was doing it for the organisation. If you want an apology, the ANC has apologised. That's what I said to him.*

95. The hearings also highlighted the trauma suffered by families whose members went into exile but never returned. In Johannesburg on 22 May 2000, the Mokudubete family told the Amnesty Committee of the difficulties they had

encountered in obtaining information from the ANC as to the fate of their family member, Thabo:

When the MK cadres returned from exile after the unbanning of the ANC, we received some rumours that he died in exile ... As a result of this we started making enquiries and follow-ups. We went to Shell House at ANC Headquarters but because each time we went there, we were meeting different people, eventually ended up not getting the full story. I know that at the end they typed an unsigned statement to say that he died in exile. On our own, we requested a death certificate from court and [it] was issued to us. At some stage Chris Hani visited my father and confirmed that my brother had died but they were still to make more investigations into his death, most unfortunately he [Hani] was killed before returning to us. Up to this moment, we do not know how my brother met his death. I would appreciate it from the applicant to tell us how my brother died.

96. Cases where ANC members were executed by their own organisation left a particular legacy of trauma. Eighteen-year-old Sicelo Dlomo, a member of the Soweto Students Congress and a volunteer worker for the Detainees' Parents' Support Committee, was shot dead in Soweto on 23 January 1988. He had experienced several periods of detention and had become well-known through his testimony on a video called 'Children of Apartheid'. Dlomo's mother, Ms Sylvia Dlomo-Jele, told the Commission:

I want these people who killed my child to be found out and I want them to appear and explain what happened. I think maybe that can really satisfy me and console my spirit. (Johannesburg hearing, 15 February 1999.)

97. It was widely assumed that the security forces had assassinated Dlomo. However, one of the Commission's investigators obtained information from sources within the police that a particular Special Operations operative, Mr John Itumeleng Dube, had killed Dlomo. On being questioned by the investigator, Dube confessed to his role and submitted an amnesty application for the killing, along with two other members of his MK cell. Dube [AM5310/97] testified that Dlomo had been recruited into one of his cells. He said he became suspicious of Dlomo and instructed a member of his unit to execute him in the presence of other cell members. They followed his instruction. Ms Dlomo-Jele experienced tremendous shock when she learnt that her son had been killed by his own friends and comrades, all of whom had remained close to the family after the killing. She died a month after the amnesty hearing. Dube and three others were granted amnesty for the killing [AC/2000/019].

98. MK operative Joel George Martins [AM6450/97; AC/2000/157] testified about how he assassinated ANC supporter Benjamin Langa in Pietmaritzburg on 20 May 1984. Langa, a member of a politically active family, was a local activist known to Martins. His brother, Mr Mandla Langa, was a writer of note in exile and another brother, Mr Pius Langa, was a prominent human rights lawyer involved in defending political activists on trial.

MR MARTINS: *I enquired why they had such an instruction and they told me that a certain Ralph who was their commander in Swaziland, had given them that instruction to kill Ben because Ben had basically sold out 'comrades'.*
MR VAN DEN BERG: *Did you question the instruction?*
MR MARTINS: *No, I did not question the instruction, I could not question it – if you'll recall, you know, the early 80s, you know, anything that came from the ANC was hardly questioned, especially from operatives in the country in a word, you know, this was an impeccable source where it came from an MK guy who had just come back from the front, so yes, I did not have a basis on which I could question it. … The three of us walked up to Benj's apartment. We got there, I knocked, Benj asked who it was. I answered that it was me. He knew who me was. He then said 'come in'. These two guerrillas walked in and, ja, they shot and killed him and immediately after that we ran to the car and we drove off. (Pinetown hearing, 17 June 2000.)*

99. Mandla Langa told the Commission about his sense that this matter had never really been dealt with:

There was at the beginning quite a lot of confusion. I have a memory of the time when this was announced and when this came out that it was because Ben had been labelled an informer and I remember that there was a sense of disbelief among my – I was in Lusaka at the time – among the comrades, my colleagues were there, you know, the broader community in exile, all the way since from 1984 through today I have not received any feedback from my comrades which could have made me know or understand or feel that they felt that Ben had been an informer. …. I have yet to find somebody who will say to me that they really did believe that Ben had been this or that. (Pinetown hearing, 17 June 2000.)

100. The ANC commander apparently responsible for giving the order, Mr Edward Lawrence, aka Fear or Ralph, later came under suspicion by the ANC and was detained and interrogated. Under questioning, he confessed to being a police spy and subsequently died in ANC custody. According to the ANC, therefore, the killing of Benjamin Langa had taken place on the orders of a government

agent, as opposed to a genuine ANC order. According to the ANC Submission to the Commission:

In a few cases, deliberate disinformation resulted in attacks and assassinations in which dedicated cadres lost their lives. In one of the most painful examples of this nature, a state agent with the name of 'Fear' ordered two cadres to execute Ben Langa on the grounds that Langa was an agent of the regime ... Once the facts were known to the leadership of the ANC, President Tambo personally met with the family to explain and apologise for this action.

101. However, security police amnesty applicants denied that Lawrence was an informer.[142]

102. Killings of suspected defectors also took place outside the borders of South Africa. Mr Kevin Mabalengwe Mandlakomo [AM6403/97; AC/2000/230] applied for and was granted amnesty for the assassination of Mr Sipho Ngema in a restaurant in Manzini, Swaziland, on 6 January 1988.

103. Mandlakomo was deployed to Swaziland in 1987 as part of a four-person unit made up of himself, Thabiso, Dumele Xiniya and Shezi. The other three are now deceased. Ngema was believed to have defected in 1986 and was suspected of having played a 'pointing out' role in the events leading to the assassination of senior MK official Cassius Make and others in Swaziland on 9 July 1987. Mr Mandlakomo described the killing of Ngema at a Johannesburg hearing on 20 November 2000:

MR MANDLAKOMO: *It was in a restaurant, a Mozambique Restaurant in Manzini. .... You know, people were drinking, some were eating and we found him. He was seated in a corner.*
MR KOOPEDI: *And what did you do? Did you say anything to him? What happened?*
MR MANDLAKOMO: *No, I just told him to identify himself to confirm that he was Sipho and he did.*
MR KOOPEDI: *And thereafter?*
MR MANDLAKOMO: *I shot him.*
MR KOOPEDI: *How many times?*
MR MANDLAKOMO: *Four times.*
MR KOOPEDI: *Where on his body did you shoot him?*
MR MANDLAKOMO: *At the chest and head.*

142 Evidence of Eugene de Kock, amnesty hearing into the killing of ANC operative Zweli Nyanda, 14 June 1999, Pretoria.

104. Mandlakomo and Dumele then left the restaurant and climbed into the getaway vehicle. The group then drove to Mbabane. No one was ever charged for the killing.

105. In an interview with the Commission, Vlakplaas Commander Eugene de Kock denied that Ngema was ever a source, but testified that one of the assassins had been. This allegation was not investigated.

POPULAR RESISTANCE: 1960–1990

106. The second cluster of applications relating to events prior to 1990 is from civilians who engaged in various forms of protest, both peaceful and violent. During the 1980s, the ANC called on South Africans to 'make the townships ungovernable'. Yet, while the UDF and its affiliates attempted to structure peaceful campaigns and programmes, their supporters often acted on their own initiative and translated the militant rhetoric and slogans of the UDF and ANC into violent actions.

107. While MK operations formed a significant component of resistance in the pre-1990 period, its estimated 1500 operations pale beside the scale of protest action by civilian opponents of the apartheid government inside South Africa. Police statistics[143] cite tens of thousands of cases of what they described as 'unrest', including over 900 cases of burning and 'necklacings' between September 1984 and 31 December 1989. While these figures must be viewed with caution, there is little doubt that the wave of protest that swept South Africa prior to 1990 was extensive, leaving hardly any town untouched.

108. Ninety-nine persons, all male, applied for amnesty for 'internal protest' and UDF-related activities covering 104 incidents or events in the pre-1990 period. Of these, twenty-one are not linked to the UDF, either because they predate its launch or because they are applications from persons not clearly aligned to the organisation.

143 See, for example, the submission to the Commission by the Foundation for Equality before the Law, headed by Major General Herman Stadler and other retired officers of the SAP, April 1996.

109. These 104 incidents include 214 separate acts as follows:

Killings	79
Attempted killings	34
Assault	18
Arson/public violence	27
Abductions	17
Robbery	14
Illegal possession of arms and ammunition	4
Other[144]	21

110. The regional breakdown is as follows:

Eastern Cape	38
Transvaal	36
Natal	15
Western/Northern Cape	11
Orange Free State	2
Venda	1
Unspecified	1

111. The annual breakdown is as follows:

1960–1969	1
1970–1979	11
1980–1984	11
1985–1989	61
1990–1994[145]	18
Unspecified	2

112. Amnesty was refused for eleven incidents, partially granted for three and granted for ninety.

144 The last category covers cases that generally did not involve gross human rights violations, including, for example, refusal to serve in the SADF, spraypainting of political slogans, illegal gatherings and the like.

145 Although this section covers the pre-1990 period, these incidents are included here as they specifically relate to the UDF. Most took place in the early months of 1990.

Group attacks

113. Many of these attacks were spontaneous and unplanned, but several had some organisational links. The application by Mr Mziwoxolo Stokwe [AM6538/96] offers a compelling example of the latter. At his amnesty hearing, Stokwe explained that a certain Mr Skune Tembisile Maarman, aged nineteen, was identified as an informer used by the police to identify 'comrades'. At the Port Elizabeth hearing on 17 July 1999, he described how Maarman was killed on 6 April 1985:

    One night we had a COSAS[146] meeting, when I was chairing, and in that meeting we took a decision to kill Maarman because he was dangerous to us. … And we sent a few 'comrades' to go and kidnap [him] from the disco. We were about 200, ± 200 people at that night. Mr Maarman was brought to us by the delegation and we stoned him into death. Thereafter we burnt him with a tyre on his neck. But only eight people were charged for the killing and I was accused number one.

114. After the arrests, information emerged that a woman who had also participated in the killing, Ms Cikizwa Ntiki Febana, was going to be a state witness at the trial. On 14 December 1985, she too was killed.

115. Stokwe expressed a wish to contribute to reconciliation and building a united community that knew the truth about the events of the past. The families of the victims supported his application, which was granted [AC/1999/240].[147]

116. In many instances, applicants explained that their actions were spontaneous and often came about in direct response to clashes with police. UDF supporter, Justice Bekebeke [AM6370/97; AC/1999/203], applied for and was granted amnesty for the killing of Municipal Police officer Lucas Tsenolo 'Jetta' Sethwale in Paballelo township in Upington in the Northern Cape on 13 November 1985. The turbulent events of the previous three days had enraged residents, and Mr Bekebeke described this as a 'crowd attack' during a period of conflict.

117. Mr Bekebeke was part of the well-known trial of the 'Upington 26' in which twenty-five residents were convicted of the killing in terms of the 'common purpose' doctrine. The twenty-sixth person was convicted of attempted murder. Fourteen of the accused were sentenced to death, including Mr Bekebeke. Many of the convictions and all of the death sentences were overturned on appeal. Mr Bekebeke was given a ten-year prison sentence but was released as a political prisoner in January 1992.

146 Congress of South African Students.

147 See also AM5487/97,AM6400/97,AM6401/97,AM6402/97,AM6601/97,AM0148/96.

Robberies on farms

118. The Amnesty Committee also heard applications from UDF supporters who planned and participated in robberies, often on farms, largely for the purpose of acquiring arms.

119. Five UDF supporters from Kubusi township, Stutterheim in the Eastern Cape, applied for and were partially granted amnesty for five attacks on white civilians, mainly living on farms, during the period January to March 1990 [AC/1999/0277]. The applicants were Messrs Randile Bhayi [AM0122/96], Jimmy Nokawusana [AM1977/96], Mziyanda Ntonga [AM2018/96], Melumuzi Nokawusana [AM2009/96] and Bonakele Bhayi [AM2770/96].

120. In their applications, they sketched the turbulent political history of the township since 1985, including serious clashes with security forces. They testified that local farmers served as police reservists and had played a role in other forms of political repression. As a consequence, groups of up to forty youths, including the applicants, had embarked on raids and robberies on white farmers. In most instances, the motive was to acquire weapons and ammunition. In some of the attacks, farmers or farm workers were shot and injured. Amnesty was granted for four of the attacks and refused for one.

121. In a similar case, three UDF supporters applied for amnesty for an attack on a farm in Paarl outside Cape Town on 15 April 1986. The three applicants, Mr P Maxam [AM1283], Mr T Madoda [AM0865/96] and Mr CS Ndinisa [AM3802/96], were members of the UDF-affiliated Paarl Youth Congress in Mbekweni township outside Paarl. The three applicants testified that the purpose of the robbery had been to obtain weapons to defend themselves against the police and the Azanian People's Organisation (AZAPO), which they believed was being supported by the police.

122. The three applicants, together with four or five other 'comrades', set out to rob the farm where they had been told weapons were available. During the robbery, Maxam shot and killed the domestic worker, Ms Anne Foster, and the gardener, Mr John Geyser. Madoda and Ndinisa expressed their shock at the killings, which had not been part of the plan. The group fled and several were later arrested, convicted and sentenced for the robbery and the killings. All three were granted amnesty for the robbery, but only Ndinisa and Madoda were granted amnesty for their role in the killings.

PART THREE: PERIOD OF TRANSITION: 1990–1994

■ INTRODUCTION

123. While it was possible to draw a sharp distinction between those involved in the clandestine military operations of MK and those engaged in other forms of protest in the pre-1990 era, such distinctions become far less clear in the early 1990s. During this period, the borders began to blur as MK operatives became involved in community SDU structures and activities and civilians were increasingly drawn into paramilitary activities. The categories described in this section must, therefore, be seen as overlapping, with players moving from one to another and frequently inhabiting two or more simultaneously.

124. The Pretoria Minute between the former government and the ANC was signed on 6 August 1990. It included an announcement that the ANC would suspend its armed struggle with immediate effect, based on the presumption that the negotiations process would, amongst other things, lead to a suspension of 'armed actions and related activities' by the ANC and its military wing MK.

125. However, in the light of the widespread violence that almost immediately erupted in the Pretoria-Witwatersrand–Vereeniging (PWV) area and spread to other parts of the country, the ANC gave its support to the formation of SDUs in order to protect communities from violent attack.

126. In September 1990, Mr Nelson Mandela publicly pledged the support of MK members to help form and train SDUs. The violence was so extensive that the ANC's Consultative Conference in December 1990 asserted that, 'in the light of the endemic violence and the slaughter of innocent people by the regime and its allies, we reaffirm our right and duty as a people to defend ourselves with any means at our disposal'. The Conference resolved 'to mandate the NEC to take active steps to create people's defence units as a matter of extreme urgency for the defence of our people.'[148]

127. The SDUs were conceived as tightly structured paramilitary units with a specific command and control system. Their members were to be highly trained and

148 Conference resolution on negotiations and suspension of armed actions, in the report on the ANC National Consultative Conference, Advance to National Democracy, Johannesburg, 14–16 December.

subject to a high degree of discipline. MK members were envisaged as playing an important role in the establishment of these structures.

128. While the ANC was concerned that formal MK involvement would jeopardise negotiations, it approved the involvement of individual MK members in community defence. MK Military Headquarters (MHQ) was to play a limited and secondary role, although certain members of MHQ were given the task of assisting SDUs with organisation, training and the provision of weaponry. Various clandestine units were set up for these purposes. The general approach, however, was that the overall control of the SDUs was to remain with community structures and that MK operatives were to participate as members of the community.

129. The ANC told the Commission that it had no records of MK's role in the SDUs, since they were not HQ-controlled structures:

MR ISMAIL: *Senior ANC leaders decided that selected SDUs should be assisted in those areas of the Reef which were hardest hit by destabilisation. Selected members of MK, including senior officials from the Command structures, were drawn into an ad hoc structure to assist with the arming of units and to train and co-ordinate efforts in self-defence in these communities; this was done on a need-to-know basis. (Pretoria hearing 4 May 1998.)*

130. Although the conflict in the 1990s took place primarily between the IFP and the ANC, its roots were deeply complex. Ethnicity, age, gender, language and social position played their part in the upheaval and fed into long-standing differences between urban dwellers and rural migrants. Migrants found themselves in conflict with town dwellers. In the reports of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation[149], Justice Richard J Goldstone commented at length on the structural, linguistic and social cleavages that fed into the conflicts in the Tokoza[150] area. The Goldstone report into violence in Tokoza noted that

the political rivalry between hostel-dwellers and shack-dwellers, Zulu-speakers and Xhosa-speakers, Zulus and Xhosas, and migrant workers and those who have their families with them, all tend to resolve themselves into a very simple IFP/ANC tension.

149 1992–95.

150 Report of the Committee of Inquiry into the Phenomenon and Causes of Violence in the Thokoza area, under the chairmanship of Mr MNS Sithole, November 1992.

131. These deep-seated dimensions of the conflict are a significant feature of the amnesty applications by SDU members (and many applications from all political groupings relating to the 1990s). While inherently a political conflict, testimony by applicants points to a range of complex social and other factors that formed part of the warp and woof of local conflicts.

CATEGORIES OF VIOLATIONS COMMITTED BY MK

Offensive armed actions

132. Some applications for armed actions apply to the period January to August 1990, before the suspension of armed struggle. Thereafter, certain MK operatives engaged in armed actions on their own initiative, often based on what they described as the 'command initiative' delegated to MK operatives. Although the bulk of MK applications relate to the activities of SDUs, a small number relate to incidents undertaken at the initiative of MK operatives. On the whole, these were 'own missions', unauthorised by the ANC. They include assassinations, armed robbery, skirmishes with security forces, internal clashes and the possession and provision of firearms, ammunition and explosives.

133. On 25 May 1993, the ANC Youth League (ANCYL) and the Congress of South African Students (COSAS) organised a march to the Bophuthatswana Consulate in Kimberley in the Northern Cape to hand over memoranda of protest to the Consulate and the SAP. As the marchers began to disperse, one of the protesters threw a hand grenade at the building. It bounced back towards the crowd and exploded, killing ANC marcher Mr Ezekial Mokone and wounding up to forty others.

134. Northern Cape Regional MK Commander Khululekani Lawrence Mbatha [AM3363/96] and ANCYL member Walter Smiles [AM3365/96] applied for amnesty for the incident. Mr Sipho Moses Mbaqa [AM0010/96] and Mr Nkosinathi Darlington Nkohla [AM0013/96], who were convicted of the attack, also applied for amnesty although they denied involvement in the incident.

135. Mbatha told the Amnesty Committee that he had instructed Smiles to throw the grenade. He said that as commander he had discretionary powers to act in circumstances where no direct instructions from the civilian leadership (from whom he took instructions) could be obtained, and that he had acted within the scope of his express or implied authority.

136. This operation was contrary to the ANC's suspension of armed struggle. It was not committed in the execution of an order on behalf of or with the approval of his organisation. On the contrary, the local ANC leaders under whose authority he fell conceded that he had given an assurance to the local Peace Committee[151] that the march would be a peaceful event. Indeed, the grenade was thrown while the local chairperson of the ANCYL was asking marchers to disperse peacefully.

137. Thus Mbatha acted contrary to the express undertakings given by his organisation. Any bona fide belief that he was acting within the scope of his authority was further contradicted by his behaviour after the event. He did not report to his leaders about the event which, had it been carried out within the policy of the organisation, would surely have been approved by them.

138. The Amnesty Committee found the evidence of Walter Smiles to be contradictory and unreliable. Both he and Mbatha were denied amnesty [AC/2000/053 and AC/2000/241]. Mbaqa and Nkohla were also refused amnesty as they maintained that they had not committed any offence or delict and thus fell outside the ambit of the requirements of the Act.

Robberies

139. The transition period (1990 to 1994) was a difficult time for many MK operatives. In exile, the ANC had provided basic necessities and provisions and supplies for operational purposes. Back home, MK structures dissolved, MK operatives dispersed and the old support base fell away.

140. In testimony before the Commission, it emerged that while robbery remained contrary to ANC policy, the ANC turned something of a blind eye to acts of robbery for operational purposes – that is, robberies to secure weapons or money for logistics.

141. For example, a senior MK operative, Mr Japie Aaron Mkhwanazi [AM6215/97] deployed an MK operative to establish an SDU to counter the IFP-aligned 'Black Cats' gang in Ermelo in the Transvaal. At the Ermelo hearing on 28 August 1998 he testified that he was aware that the operative had engaged in armed robberies:

151 Peace Committees were established across South Africa during the early 1990s to monitor political protests and state action and ensure liaison between the various groups involved so as to avoid violent confrontations.

I know that that is not the policy of the ANC; but the situation under which we lived at the time was that we had no alternative … The instruction that I gave was that he [MH Gushu] should form and arm the self-defence units. It was therefore up to him to take the necessary steps as to how the self-defence units should be armed and that's what decision he took: armed robbery.

142. Mr VL Dlamini, an MK operative who was active in SDUs in the Transvaal, concurred:

There is no policy [supporting] robbery in the ANC but with regards to the needs of the units on the ground you would try to raise funds in any way. Even then the leaders would not expressly give you authority to involve yourself in robberies but would only say that whatever you do you should not compromise the movement … (Johannesburg hearing, 30 September 1999.)

143. The security forces were the most obvious and popular targets for such robberies, although private persons and businesses were also targeted for vehicles and money. As a result, there were several amnesty applications for acts of robbery by both MK and SDU personnel, some of which resulted in injuries and deaths.

144. Mr Pumlani Kubukeli [AM5180/97], an MK operative deployed in Umtata in the Transkei, was tasked with the training and provisioning of new recruits. Due to budgetary constraints, it was decided that alternative means of obtaining the requisite finance should be employed. Kubukeli and two others robbed the Engcobo Wiers Cash and Carry store. There were no injuries or damage. The three were later arrested, convicted and sentenced to prison terms for armed robbery.

145. On 17 August 1992, four ANC members, including at least two MK members, shot and killed Mr André de Villiers outside his farmhouse in Addo, Port Elizabeth. Mr de Villiers was due to testify at the forthcoming inquest into the killing of activist Mathew Goniwe and others. Mr Thamsanqa Oliver Mali [AM0124/96] asserted that they had been told by Chris Hani to use their own initiative to acquire arms.

146. The robbery went wrong and Mr de Villiers was fatally wounded and other family members were fired at. A few days later the group was arrested and eventually sentenced to long prison terms. The leader of the group, Mr Xolani Ncinane, died in prison; another member escaped. The remaining two, Mali and Mr Lindile John Stemela [AM0125/96], applied for amnesty. Mali was granted

amnesty; Stemela, who was not an MK member but a recent SDU recruit, was refused amnesty [AC/1999/0234].

147. The ANC distanced itself to some extent from their application. At the Port Elizabeth hearing on 19 January 1999, ANC representative Thembisi Mbatha told the Commission that:

Our investigation with our Port Elizabeth office could not establish that a meeting between SDUs and the late comrade Chris Hani was held in early 1992. Secondly, it is sad that the name of Chris Hani, because he is not there to answer for himself, should be used to support the amnesty applications. According to our comrades in Port Elizabeth, the motive for the incident was armed robbery and not political at all. We have unfortunately not been able to trace the Xholani Tjebilisa to which they refer as their commander.

148. A more common form of robbery was to attack police or police stations in order to secure weapons. Mr Moses Vuyani Mamani [AM6141/97] was part of a group of four MK operatives who attacked and robbed the Frankfort police station in the Ciskei on 12 August 1992 in order to acquire weapons. One police officer was shot and wounded in the attack. Mr Mamani was granted amnesty [AC/1999/0354].

Skirmishes with police

149. Skirmishes with police usually occurred when operatives were in possession of weapons and wished to avoid arrest or were being pursued by police.

150. Mr Wilson Mokotjo Sebiloane [AM1701/96], a former COSAS activist, left South Africa to join the ANC in 1986. On 25 May 1991, one month after his return from exile, his vehicle was pulled over by the police. Fearing arrest, he attempted to shoot his way out, injuring both police officers. He was captured, convicted and sentenced to 13 years' imprisonment. Sebiloane was granted amnesty [AC/1997/0035].

Possession and distribution of arms and ammunition

151. Thirteen applicants applied for amnesty for the possession of arms and ammunition, while another seventeen applied for the infiltration and supply of arms.

Shell House shooting

152. Perhaps the best-known case involving ANC trained personnel in this period was the shooting outside the ANC headquarters at Shell House and its offices at Lancet Hall in Johannesburg on 28 March 1994. The event, in which IFP marchers were shot dead by ANC security guards, took place one month before the first democratic elections of April 1994.

153. Ten ANC security personnel applied for amnesty for the Shell House shooting, and three applied for the shooting outside the Lancet Hall offices. Two of the latter subsequently withdrew their applications.

154. Although it is clear that the applicants believed that they were under attack, the Amnesty Committee found no evidence of an attack on Shell House by the IFP marchers. Objective ballistic and medical evidence indicates that the shooting was without justification as most of the deceased were shot after they had turned back. The applicants admitted that they might have shot at the marchers as they were running away. All eleven applicants were granted amnesty [AC/2000/142].

SELF-DEFENCE UNITS 1990–1994

Background to self-defence units

155. In the period 1990 to 1994, self-defence units (SDUs) emerged in many urban townships in the PWV, Eastern Cape, Transkei and Ciskei, Western Cape, Orange Free State and in both urban and rural areas of KwaZulu and Natal. In the PWV and KwaZulu/Natal, the SDUs clashed primarily with the IFP. Elsewhere, a range of localised conflicts involving different protagonists took place. These included clashes with gangster and vigilante groupings (sometimes linked to the IFP), with more anonymous groups and with the police.

156. As violence engulfed many areas, it became increasingly clear that communities could not rely on the security and legal structures of the state to protect and defend them. As a result, many felt compelled to take steps to protect themselves. At the Durban hearing on 1 December 1998, amnesty applicant Jeff Radebe [AM7170/97] argued that:

These self-defence units in fact were imposed on us, by the inability of the security forces that were supposed to protect our people. Instead of protecting

our people, they were the ones that were guilty of atrocities against our people. As a result we had no choice but to make sure that we assist our people in defending themselves. I believe that it is a right of anybody in South Africa to defend himself or herself when attacked. That is the background against which we operated as the ANC.

157. The ANC submission to the Commission is frank about the direction SDU activity took:

Before long there were two kinds of SDUs in existence: genuine community defence groups, and violent gangs presenting themselves as ANC-aligned SDUs … Some SDUs became little more than gangs of criminals at times led by police agents, and inflicted great damage on popular ANC aligned-community structures.

158. Then Deputy President Thabo Mbeki told the Commission that:

there was a basic assumption … that there would be in those communities local political structures, local structures of civil society strong enough to be able to constitute these committees that would then take charge of the self-protection units. I'm saying that was an assumption … when that didn't happen and we moved in a different direction, its clear that we should perhaps have reviewed the matter of that control but we continued to proceed as though you could as ANC arm the units and surrender them to these local civil and political structures to control. An attempt was made to keep an eye on them. I am talking now from the national leadership, from headquarters, and there are instances where we had to intervene when there were all sorts of crazy things that were planned. It may very well be that we should recognise that the situation having changed from the original conception we needed to have taken steps in terms of a control which would be consistent with the changed circumstances, but there was a carry through of a particular concept of self-protection units which was perhaps then not founded on reality with regard to the control and so on within those communities. (Oral evidence at HRV hearing on ANC.)

159. It is probably in the supply of weaponry by MHQ that the strongest case for a link between the ANC and SDUs can be made. According to Mr Ronnie Kasrils [AM5509/97; AC/2001/168], the ANC established an MK unit to assist in arming the SDUs. The unit was made up of himself, Mr Aboobaker Ismail [AM7109/97; AC/2000/153] and Mr Riaz Saloojee [AM7158/97; AC/2001/128]. This unit created DLBs ('dead letter boxes', or arms caches) in the areas badly affected by

violence – including Durban, Pietermaritzburg, Vaal Triangle, East and West Rand, Eastern Cape, Ciskei and the Western Cape. Kasrils liaised with other MK personnel including Mr Jeff Radebe in Natal, Mr Robert McBride [AM7032/97; AC/2001/128] in the East Rand, Ms Janet Love [AM5509/97; AC/2001/028] in the Transvaal and Ms Felicity 'Muff'Andersson [AM6210/97; AC/1997/0057]. Mr Chris Hani also played a crucial role in passing on DLB diagrams and sketches to those responsible in the areas concerned. All of these persons applied for and were granted amnesty. According to Kasrils, the supply of weapons to SDUs throughout the country had ceased by the end of 1993.

160. Aside from three applications from KwaZulu and Natal, the Amnesty Committee dealt with applications from MHQ personnel administratively as they were not directly linked to gross human rights violations. There is, as a consequence, little detail available on the quantities of weaponry involved, the frequency of handover or the subsequent management or retrieval of such weaponry. There are indications that the distribution of weaponry to SDUs by MHQ was done in a fairly limited way. According to then Deputy President Mbeki, who gave oral evidence at the human rights violations hearing on the ANC:

There was not a big massive distribution of weapons by the ANC or MK to ordinary cadres, there wasn't. As that violence from 1990 onwards was mounting one of the strongest demands that came from within the constituency of the ANC was arm the masses. Many of us sitting here had to do very stormy and rowdy and heated meetings contesting that, saying that there are no masses that are going to be armed. But it was a demand to say here we are, you people in the midst of all of this violence you decide to suspend armed action and therefore you demobilise or deactivate MK, and then here we are being killed, and where are the weapons, arm the masses so that the masses can defend themselves. As I say, that many of us sitting here participated in many public meetings where this demand was made very strongly and then we said no, there are no masses that are going to be armed because we are concerned about the consequences of arming everybody. … As a movement we resisted the notion of arming too many people.

When weapons were distributed by people from MK … they were in fact distributed to specific people. It was not like sort of handing out sweets in the street, and clearly the people to whom those weapons would be given would be people that in your best judgement are people who have got the necessary political capacity and the discipline to handle those weapons properly.

161. This assertion is to some extent borne out by the amnesty applications received from MK Command personnel and operatives. Testimony from amnesty hearings indicates fairly strongly that SDUs acquired the majority of their weapons from private sources[152] and not from the ANC.

162. Although the ANC kept its distance from the command and control of most of the SDUs, it was forced to intervene in several instances when SDU structures drifted into criminality or internecine conflicts.

Lines of command and operational practices

163. SDUs were by no means a homogeneous category. Rather they reflected the character of local political developments in particular townships and the diversity of the conflicts they engaged in.

164. In most cases, SDUs had some form of contact with ANC structures, albeit in an *ad hoc* and unstructured way. Some existed in areas where there were no strong ANC branches that could provide political leadership. Some of these were led by MK operatives who had returned from exile and faced strong pressure to initiate and train SDUs. Such MK operatives were unlikely to be high-level ANC personnel.

165. Some – notably the Tokoza SDUs and some of the KwaZulu and Natal SDUs – worked closely with the ANC's political structures. Regular meetings and liaison took place between the ANC branch and the SDU commanders. In many instances the local political ANC structure might even have initiated the formation of the SDU and was able to play a monitoring and disciplinary role. Yet even in these cases, the political link with the ANC was primarily local rather than regional. It was the local ANC branch that played the supervisory role, and the quality of that supervision depended largely upon the quality of leadership and political maturity of the branch leadership. Moreover, the existence of such political control did not lessen the ferocity of the conflicts or the offensive character of the attacks carried out by the SDUs. Thus, despite political control, the Tokoza SDUs engaged in extreme forms of violence.

166. A third version of SDUs may have regarded itself as part of the ANC but, in reality, had little structural or political connection with the organisation. Such SDUs

152 See, for example, AM5594/97.

tended to be established by local communities through civic organisations, street committees or mass meetings. These SDUs might borrow the language and sometimes the structure of more formal ANC SDUs, using terms such as 'orders' and designations such as 'commander'. Such SDUs were particularly evident in the informal settlements in and around townships. Incidents associated with these SDUs tended to be characterised by spontaneous crowd activity and violent collective action. The weaponry involved was often unsophisticated.

Types of violations

167. The SDU amnesty applications cover a very wide range of offences and attacks on a range of targets. Each region had its own particular features. The offences applied for fall into the following broad categories.

Arson attacks on homes and communities

168. Arson attacks were employed as a means of forcibly displacing opponents or suspected 'collaborators' from their homes or, in the case of informal settlements, from entire areas.

169. Mr JM Mabuza [AM7633/97; AC/1999/0053], applied for and was granted amnesty for several arson attacks on homes in the Katlehong area that were believed to be occupied by IFP members or supporters. Some of the attacks were carried out with the assistance of local residents. In his testimony at the Palm Ridge hearing on 8 December 1998, he describes one such incident:

MR MABUZA: *Yes, I was at school, just before lunchtime, as we are still busy at school, we were hearing gunshots outside and we were quite uncomfortable and we couldn't go on. We just decided to go home. On my way home, I was seeing hit squads and the people were being shot at, but fortunately I managed to get home unharmed, but just before I could get home, I saw a house that was on fire. Next to that house, there was a dead body. I went into the house and I put my books there and I took my pistol and I went out. Just in front of my house, there was a group of people that were known to me. I enquired about what was happening in the community. They told me that the fight between the ANC and IFP had started. They said to me I must stop asking questions because things were bad. We went to house number 256 at Hlongwani, that was the same street where I was residing. There were IFP members that were residing there, we used to see them going to the rallies, IFP rallies and meetings*

… We wanted to destroy IFP, because it also managed to destroy us in 1990 as we were unarmed as a community.

MR SHEIN: *But who did you find there?*

MR MABUZA: *We got women there, there were women and children, but I am not a coward, I don't kill women … The community was very angry, as I was still talking to these people, they started to stone the house, and I had to get out of the house. When I went out to the group of people, some women followed me and though the community was very angry, they did no harm to women. I know that my community is not composed of cowards, they don't kill women. …. That is when the house was set alight and the windows were already broken. I can't remember whether it was Aubrey or someone else who put petrol in one of the bedrooms and the dining room. …. I am the one who set the house alight.*

Attacks on hostels

170. Hostels were also attacked. Applicants applied for amnesty for attacks on IFP hostels, which usually involved an exchange of gunfire between SDU members and IFP hostel-dwellers. In one unusual incident, Tokoza SDU members attacked a police patrol and took control of a Casspir[153] Amnesty applicant Mr Radebe [AM0200/96] describes the attack:

We decided that we will shoot the police because of their acts. We shot indiscriminately, we kept shooting, until we got an opportunity to injure some of the policemen. But one policeman I saw in the morning, I realised he was dead. We decided to take the Casspir and use it for counter attacks to the hostel-dwellers, because they had attacked previously during the day. Nyauza was the name of the colleague who drove the Casspir. We proceeded to Katuza hostel, alighted from the Casspir and we knocked at the doors and the windows of the hostel, and we shouted they should wake up and open the doors, we are here to attack. And as they woke up they switched on the lights and we started firing towards them and threw the petrol bombs into their room. It took about some time because we did that to numerous hostel rooms, and we decided it's time to go back now. We went back to the Casspir and we drove towards the first hostel, and we found them standing there amazed as to what was happening, and I do believe that they thought these were police and we started at shooting at them since they were not running away. We shot towards them and we drove towards Phola Park. Just towards Phola Park we decided to stop the Casspir and alight from the Casspir, and walked into the neighbourhood. (Hearing, 8 February 1999.)

153 Armoured personnel carrier.

Abductions followed by executions

171. Abductions of suspects were a particular feature of the East Rand SDUs. The suspects would be taken for questioning and assaulted in order to extract a confession. These appeared invariably to be followed by summary execution. Amnesty applicants often asserted that, after abduction and assault, victims would admit or 'confess' to being IFP members.

Targeted killings

172. Particular persons who had been identified as IFP members or supporters would be targeted for assassination. A public assassination might take place on the spot or at some later date.

173. In one incident, Mr Jerry Chimanyana Motaung [AM5594/97], an MK operative in an SDU in Vosloorus, targeted and attacked two women suspected of being IFP members and of having provided information to IFP hostel-dwellers. However, when questioned at the Johannesburg hearing on 13 October 1998, the applicant was unable to provide any evidence for his suspicions:

MR MHLABA: *Did Patricia and Gladness pose any threat to the wellbeing of the political organisation which you were trying to further the objectives thereof?*
MR MOTAUNG: They never had any interference in our work.
MR MHLABA: *Then why were they attacked Mr Motaung, can you just recap on that, because it is not very clear?*
MR MOTAUNG: *Patricia Motshwene and Gladness Mvelase were members of the IFP, we saw them at the funeral of the IFP and we at the township were fighting against the IFP and these people of the IFP were attacking people and killing people in the township. That is when we realised that the people who were staying in the township, were giving information to other people in the hostel, who were members of the IFP. That is why we took a decision that these people should be killed, because they were giving out the information to the people who were staying at the hostel. These were the people who were more dangerous because they would monitor our movements and give information to those who were living at the hostel.*
ADV GCABASHE: *Could I just ask Mr Motaung, did you have evidence that Patricia and Gladness were involved in those spying activities, that they were giving information to people at the hostel?*
MR MOTAUNG: *We didn't have evidence to that effect, but our understanding*

was that the people who were staying in the township were more dangerous than those in the hostel.

Internal clashes

174. The SDUs were vulnerable to infighting and internal clashes, both amongst themselves and with other ANC members or structures such as the ANCYL. The Tokoza SDU regarded this problem so seriously that it adopted a policy of an 'eye for an eye' or 'kill and be killed': that is, any SDU member that killed another SDU member would himself be killed.

    MR SOKO: *Such a policy helped us not to lose a lot of our members, especially the SDU members. We laid this rule down so that there could be some semblance of order and there should be a framework within which we worked as SDU members not to kill each other, so that people could be prevented from killing each other. (Lucky Soko, Hearing at Palm Ridge, 30 November 1998.)*
    MR RADEBE: *I explained earlier on that there was a hard and fast rule or policy, that is you had taken somebody's life, your life should also be taken. (Patrick Mozamahlube Radebe, Hearing at Palm Ridge, 24 November 1998.)*

175. The most notorious example of this type of intra-organisational conflict was the abduction and killing of nine ANCYL members by a Katlehong SDU on 7 December 1993. The victims, some of whom were 17 years old and younger, were shot, hacked and stabbed to death. Thirteen SDU members were refused amnesty for this violation [AC/1998/0013].

176. The ANC established an SDU in Khayelitsha, Cape Town, to take control of a situation in which local ANCYL members had engaged in violent and/or criminal activities. However, the SDU itself became involved in incidents of violence. Mr Zwelitsha Mkhulwa [AM0665/96] and Mr Ndithini Thyido [AM0755/96] applied for amnesty for the attempted killing of ANC member, Mr Bongani Mpisane, in 1993. A young child, Solethu Ngxumza, was accidentally shot dead in the shooting. Amnesty was refused [AC/1997/0034].

177. Members of an SDU in Philippi, also in Cape Town, were involved in the killing of senior ANC and MK member Mziwonke 'Pro' Jack, in Nyanga on 19 June 1991. Mr Jack's nephew, Andile, was wounded in the attack in which three men opened fire on their vehicle at close range. This was portrayed at the time as an assassination by the security forces or their 'surrogates'. However, the ANC

came to suspect the involvement of its own members and instituted an inquiry. Mr Xola Tembinkosi Yekwani [AM7970/97] applied for amnesty for his role in the shooting. His application was refused [AC/2000/003].

Crowd killings

178. Although SDUs were usually small units, some of the less structured SDUs seem to have operated in conjunction with larger groups of residents or crowds in 'collective action'.

179. Amnesty applicant Foreman Mngomezulu [AM0187/96; AC/2000/048] described himself as a member of the ANC and a deputy commander in the SDU 'responsible for protecting the community'. He applied for and was granted amnesty for his role in an incident that took place in Mandela Section, Daveyton, Transvaal, on 21 March 1992.

180. Patrick Khumalo and Mr Absolom Mnyakeni, who were suspected of killing the Secretary of the Youth League in the area, were violently assaulted and abducted from their home along with two others who were believed to be harbouring them. The four were taken to a nearby sports ground where they were further assaulted with iron bars and sjamboks in front of a 'large crowd of 'comrades' and the community'. Petrol was then poured over them and they were burnt alive.

MS LOCKHAT: *And whose decision was it to burn the two victims?*
MR MNGOMEZULU: *All the 'comrades' took that decision … It was the street committee that came up with the idea and we all agreed. …*
JUDGE DE JAGER: *Could you tell me, did you – were they still conscious when you poured the petrol on them and burnt them, or were they in a coma or unconscious at that stage, what was their physical state when you started the burning?*
MR MNGOMEZULU: *They were still alive.*
JUDGE DE JAGER: *Still standing upright?*
MR MNGOMEZULU: *Yes, they were still conscious. …*
MS LOCKHAT: Tell me, wasn't it you, you also, I think one of the deceased asked for water and you said that they should give them petrol to drink rather? Is that true?
MR MNGOMEZULU: *No, it was the street committee. (Johannesburg hearing, 1 November 1999.)*

Armed robbery

181. SDUs executed a number of armed robberies, targeting both civilians and security forces. Applicants explained that they needed money to buy weapons.

182. Mr Mlungiselele Ndamane, an SDU member in Katlehong [AM3124/96; AC/1999/0231], applied for and was granted amnesty for the armed robbery of a branch of Volkskas bank in February 1992. Mr Zakhele Jan Simelane [AM3122/96; AC/1999/0209] applied for and was granted amnesty for the robbery of vehicles and a bank to obtain money for arms on SDU orders. Mr Molife Michael Selepe [AM7154/97; AC/2000/139] described how a group of Tokoza SDU members staged an armed robbery on the Klipriver police station in order to acquire weapons. Similarly, four members of a newly formed SDU in Heilbron, Orange Free State, robbed a police station of weapons on 8 July 1992.

183. Mr SM Manyamalala [AM3150/96] explained that he was recruited to an SDU in Soweto in 1992. He was ordered to fetch weapons and, in order to obey this order, hijacked a vehicle on 3 February 1993, killing the civilian driver, Mr WS Froneman, and injuring the passenger, Ms Ruth Jennifer Barker.

Attacks on police and skirmishes

184. A number of skirmishes took place between SDU members and the police, often while police were attempting to make arrests. Mr Mxolisi Duma [AM3145/96; AC/1999/0210] was granted amnesty for a shoot-out with police while he was transporting weapons near Soweto in November 1990.

185. SDU members also launched offensive attacks and ambushes on police while engaged in defensive skirmishes. Mr Mhlabunzima Phakamisa [AM0660/96] and Mr Two-boy Vakele Jack [AM0919/96], members of an SDU in Khayelitsha, Cape Town, concealed themselves in a shack and opened fire on an Internal Stability Unit (ISU) patrol on 22 July 1992. Four members of an SDU in the Transkei abducted two policemen from the Bhongweni police station near Kokstad, Transkei, on 17 October 1993. The two police officers allegedly attempted to escape from the vehicle and the SDU members shot them dead. The SDU members claimed that these abductions were in retaliation for the SADF attack on the home of a PAC member in Umtata on 8 October 1993 in which five sleeping youths, including two twelve-year-old children, were shot dead.[154] The two applicants were granted amnesty [AC/1998/0029].

154 See Volume Two, Chapter Seven, p. 600.

Attacks on vigilantes and criminal groups

186. In the period 1990 to 1994, a number of anti-ANC criminal and vigilante groups engaged in attacks on ANC members and supporters. Mr Sandile Birmingham Garane [AM5474/97; AC/2000/117] and Mr Joel Mhlahleni Sishaba [AM5186/97; AC/1999/232] were granted amnesty for the killings of two 'Toaster Gang' members in 1990 and 1993 respectively.

Attacks on transport routes

187. In the Katorus area, particular transport routes became associated with one or other political grouping. Residents of Katlehong became extremely concerned and upset when the railway line that ran past their homes to the hostel became a site of violence. Shots were fired at residents as the train went past and commuters were thrown to their deaths off the train. At the Johannesburg hearing on 24 November 1998, SDU member and amnesty applicant Jeremia Mbongeni Mabuza [AM7633/97] described the reaction of the residents:

We had a meeting one morning. [The residents] would wake up to dead bodies in the morning, these people whose houses were facing the railroad, and we decided to come up with a strategy to stop this from continuing.

188. The residents' first response was to shoot at the train as it went past. Later they decided to destroy the railway line itself.

We went to the railroad as the community and we took the first line, we also used hammers. We counted three times, and we bent the railroad or the rail itself, but that didn't help us in any way. On taking that resolve, we took a cutting torch from some of the Shangaan-speaking or Tsonga- speaking group and we went straight to the rail line. We used this cutting torch to break down this rail line, or to cut this rail line. We did not remove the one piece that we had cut from the line, we just left it there to appear as if there was nothing wrong with the line. This piece remained, the train came as usual and when the train came to the spot, two coaches were derailed, and as this was happening, the shooting was going on.

Lesser offences

189. Offences that did not fall into the category of gross human rights violations included the illegal possession of arms and ammunition, the collection of money

from residents for the purchasing of weapons, reconnaissance work, incitement, public violence and the obstruction of the police in the performance of their duties.

190. Three amnesty applicants, Mr Simphiwe Godfrey Ndlovu [AM7075/97], Mr Thulani Richard Mbatha [AM7027/97], and Mr Aubrey Matlema Maile [AM7694/97], applied for amnesty for doing reconnaissance work, cleaning weapons and similar work with the Tokoza SDUs while they were between the ages of ten and twelve. The three were granted amnesty for the unlawful possession of AK47s and a number of other firearms and ammunition and for obstructing the police in the performance of their duties [AC/1999/0243].

Features of the conflict

191. Spontaneous violence by crowds continued occured during this period, making political control extremely difficult. Many incidents reported to the Commission took place at the hands of large groups of people engaged in collective action. Crowds had a spontaneity and momentum of their own and were unlikely to conform to the discipline of ANC policy or wait for orders or approval.

MR MSIMANGO: *... we did not plan as such. We would react to what will be happening at the time. We will not sit down and plan the attack but we will just revenge as it happens. (Hearing at Palm Ridge, 23 November 1998.)*
MR MOPEDI: *Why was it necessary to attack the house in Dube Street?*
MR NDLOVU: *The attack on that day was prompted by the fact that we lost five of our members the previous Friday and therefore it was necessary for us to avenge their death so that they could learn from this experience that we too can fight back, we are not happy about this. (Hearing at Johannesburg, 24 November 1998.)*

192. Suspicion and unsupported rumour thrived in this tense atmosphere. Mr Bongani Nkosi [AM7268/97], one of the chief commanders of the SDUs in Tokoza, described an incident in which he executed an unidentified person on the spot:

MR NKOSI: *It was in the morning, I was in my house, I heard a noise outside, I went out. I was wearing nothing on my upper body. I saw people chasing a person. They told me that it was an informer that was there to survey the place, therefore they were chasing him. I went back to my house. Under the table, I took my AK47 ... They brought this person, I gave them the firearm, they*

misfired four times and Sicelo also misfired with four bullets. I took back my firearm, I bridged this firearm. He was at a distance of about 20 meters. I shot only once on the head and he fell. ….
MR SHANE: *Did you know who this person was, the one who died? Did you know his name, did you see him before?*
MR NKOSI: *I just saw this person for the very first time, I did not search for his identity card or something else. We would just do the work, without looking for further details. (Johannesburg hearing, 9 February 1999.)*

193. Many applicants would state that 'it was common knowledge' that so-and-so was an IFP member. Any form of association with the IFP could result in a death sentence. A variety of social and physical markers were used to determine the possible affiliation of a suspect, including clothing, language, physical features, and being seen in a suspect area or suspect taxi.

194. In this heightened atmosphere of revenge and rage even the remains of suspected IFP members were targets of attack. Bodies of 'the enemy' were dug up out of their graves and burnt or dismembered. In several instances, the coffins of deceased persons were seized from hearses and set alight. SDU members described attacking a body in a hearse:

MR MADONDO: *It was myself and Jamani who dragged the coffin out of the hearse. I don't even know where the petrol came from but I saw petrol there and the person was in flames, the dead body was in flames. The only thing that I did was to drag the coffin out of the hearse and it broke.*
MR MOPEDI: *And do you know who was in the coffin?*
MR MADONDO: *No, I did not know. I had Jamani who told me that it was an IFP commander. (Johannesburg hearing, 24 November 1998.)*

195. The polarisation of physical space took extreme forms. Not only in residential areas but on public transport, separation became necessary in order to ensure survival.

196. While the main protagonists were IFP and ANC supporters and members, it was mainly ordinary residents who suffered arson attacks, injuries and even death during the protracted conflict. Taxis, trains, funeral vigils, taverns, the places of ordinary daily life became sites of attack. Residents or visitors who happened to cross into 'enemy' territory were likely to become victims.

197. On the one hand, one of the most significant features of the violence of the 1990s is the total anonymity of the victims from the point of view of the applicants. Civilians were killed simply because they were in the wrong place at the wrong time or because there were suspicions about their allegiance.

198. Furthermore, because clashes between IFP and ANC supporters took the form of skirmishes, with groups opening fire on each other, often at a distance, applicants were frequently unable to state conclusively whether anyone had been injured or killed as a result of their actions, even if they assumed or speculated that deaths and injuries must have occurred. As applicants were usually barely able to recall the year of an incident, let alone the month or day, tracing victims through police and mortuary reports was virtually impossible. Similarly, although the Commission received a number of human rights violation statements relating to these very conflicts, the absence of information about when events took place meant that very few links could be made between victims and amnesty applications.

199. In other cases, victims were well known to perpetrators and life-long neighbours became enemies on the basis of suspect allegiances. In one such case, SDU member Sidney Vincent Nkosi abducted his former friend and neighbour Jabulani from a tavern after his allegiances became suspect. Although Jabulani pleaded for his life, he was taken behind a nearby stadium and shot dead. At the Johannesburg hearing on 2 February 1999, Mr Nkosi, himself a Zulu, told the Commission that:

    MR NKOSI: *He had Zulu friends, and other 'comrades' turned against him because they could see that this person had another agenda that was different from ours. That's when the people started to distance themselves from him. We heard that from other 'comrades' that they could no longer trust him because of his movements. I would like to ask for forgiveness more especially his mother, the one I grew up in front of and his sisters, the whole family. I would like to ask for forgiveness.*

200. The interweaving of local issues with national political issues emerged regularly in the amnesty hearings. Traditional and magical elements were not confined to the witchcraft hearings described in the previous section. Even ANC SDU members drew on traditional and magical elements to protect their members and advance their cause. Several SDU applicants referred to *ntelesi* or other magical dimensions in their testimony.

201. Mr Victor WM Mabaso, who participated in the killing of Mr Stephen Radebe, whom he knew personally, spoke about the role of *ntelesi* at the Johannesburg hearing on 2 February 1999:

MR MABASO: *First of all, he was a member of Inkatha. Secondly, he was an inyanga of Inkatha, and an informer of Inkatha. And he's one person who used to provide them with 'ntelesi' on their attacking sprees or going out to shoot a person. … Something that happened, something that I witnessed, he cut somebody's private parts, a person who was alleged to be an Ikosa (sic) who had alighted from a taxi, and he cut his private parts after he was shot. That is one thing that I witnessed him doing. He also used to give them '**ntelezi**' when they went out to attack Phola Park.*
CHAIRPERSON: *What is **ntelezi**?*
MR MABASO: ***Ntelezi** is a medicine, a kind of medicine that one would use going out to attack, so that the targets should get drunk and not see what's happening, and to protect oneself against bullets in a war situation, and one would easily come back safe*.

202. Inevitably the violence began to eat into the soul of its perpetrators and victims. Many SDU members spoke of the merciless and hard attitude they developed towards their 'enemies'. One SDU member in Katlehong described this attitude while describing the abduction and killing of Mr Beki Khanyile at the Johannesburg hearing on 23 November 1998:

MR MABASO: *Yes he apologised profusely. I was supposed to be sensitive towards his apology, but because we had been harassed and we had suffered a lot, so that we no longer had mercy, we no longer cared, we no longer cared about everything, we had lost heart. And anybody who was operating within the IFP could not have survived, and therefore I issued this order [for his death] after his plea. He cried pleading with us, but then because of the things that he did, remembering the many people who died on Sam Ntuli's memorial service, these were old people who were shot simply because they were wearing Mandela T-shirts.*
CHAIRPERSON: *One last aspect I want to cover with you. It is perhaps a sensitive issue, but I need to know what your attitude would be. When you killed these two deceased, how did you feel yourself?*
MR MABASO: *As I've already explained that the heart, I did not have the heart. I felt nothing. I was not even guilty. Whatever I feel it's now I'm thinking for Beki's family and Stephen because they have lost, I had lost and I know there's*

always a gap when someone dies but at that time I did not have a problem. If it was possible I would kill even ten people because I did not have a heart at that time. I was hurt because of my parents that were killed. I did not have a heart. I was going to do whatever so as to protect myself. (Hearing at Johannesburg, 02 February 1999.)

MR SIBEKO: *Are you by any chance saying the way you were so affected or the way this violence affected you there was no other way in which your community and yourselves could have defended your property without resorting to arms?*

MR MBATHA: *No, there was no alternative because the violence affected everybody, young and old. It is like something that creeps so that when it crawls into a group of people it just destroys everybody.*

POPULAR PROTESTS 1990–1994

203. The Commission received a number of applications from local civilian ANC members or supporters. In the main, these applications cover local level conflicts with perceived enemies and political opponents, as well as incidents of arson and public violence relating to national campaigns and protests.

Clashes with the PAC

204. While clashes with the IFP dominate the picture in the 1990s, there were also several serious outbreaks of conflict between the ANC and PAC – mainly between the youth organisations linked to these bodies, COSAS and the ANCYL on the one hand, and the Pan Africanist Student Organisation (PASO) on the other. This conflict manifested itself in the Eastern Cape, Transkei and PWV townships.

205. In Fort Beaufort in the Eastern Cape, conflict broke out between PASO and COSAS, spilling over into the community. There were attacks on both ANC and PAC members. On 21 February 1993, a large crowd of ANCYL supporters, including Mr Thobani Makrosi [AM0362/96], abducted two women, Ms Nomsa Mpangiso and Ms Nomangwana Mandita. Ms Mandita was later found dead in a street, partially burnt, with a motor vehicle tyre around her neck and a large bloody stone near her head. Medical evidence indicated that she had been set alight while she was alive and had sustained serious head wounds. Ms Mpangiso, who was pregnant, managed to escape. Makrosi was granted amnesty for his role in the abduction of the two women [AC/1997/0022].[155]

155 See also AM3125/96.

Clashes in the homelands

206. Rank and file ANC membership, particularly youth, clashed with the traditional authorities and their political structures in the former homelands, particularly in the Ciskei and Bophuthatswana, which resisted free ANC political activity and threatened to oppose participation in the 1994 democratic elections.

207. Amnesty applications were received in respect of two attacks on suspected African Democratic Movement (ADM) members in the Ciskei. On 26 April 1993, the ANCYL resolved to kill 51-year-old Ms Nohombile Ntombazembi Mphambani, in the belief that she was an ADM member recruiting others to the party in order to attack the ANC. The following day, a group of over 100 youths chased Ms Mphambani and two of her teenage children towards the forest. When they caught Ms Mphambani she pleaded for her life, begging for forgiveness and promising to join the ANC. At its East London hearing on 18 March 1997, the Amnesty Committee heard that her pleas had failed:

    MR MPHAMBANE: *We continued to throw stones at her. She fell on the ground. The others arrived. She was already on the ground. They continued to throw stones at her. Some were beating her on the head with canes. After that when we were sure that she died we left as the 'comrades', we left her body there. We saw her children on the way. They asked if we'd killed their mother. We told them that we'd killed her and we then proceeded to ask which side they belonged to. The daughter then said she is an ANC member. Then she was asked to sing one song of the struggle. She sang.*

208. Seven youth were convicted for the killing. At their hearing the amnesty applicants spoke with remorse about their actions. They were granted amnesty and released from prison.[156]

209. ANC supporters in Bophuthatswana, another homeland ruled by conservative traditional authorities, faced a similarly restrictive political environment post-1990. Two members of the Bafokeng Action Committee and the ANC, Mr Boy Diale [AM0081/96] and Mr Christopher Makgale [AM0080/96], applied for amnesty for the killing of the tribal chairman, Mr Glad Mokgatle, in the Bafokeng district on 29 October 1990.

156 Mzwimhle Elvis Bam [AM0101/96], Sakhumzi Bheqezi [AM0105/96], Andile Namathe Gola [AM0106/96], Dumisani Ernest Mbhebe [AM0102/96], Ndumiso Mdyogolo [AM0103/96], Sikhumbuzo Victor Mphambani [AM0104/96] and Mvuyisi Raymond Ngwendu [AM0100/96].

210. The Amnesty Committee heard testimony on the political and immediate context of the killing. In 1990, the former Bophuthatswana was caught up in struggles to destroy the homeland government of Mr Lucas Mangope and his political representatives. Mangope's appointment of Glad Mokgatle as tribal chairperson was bitterly opposed by the Bafokeng, whose rightful leader had been forced into exile. A group of people, including the two applicants, decided in a tribal meeting to kidnap Mokgatle and wrest from him the keys of the Phokeng Civic Centre from where the tribe's affairs were administered. It was during this attempt that he was killed.

211. Members of the Bafokeng tribe, including the sons of Glad Mokgatle, testified in support of the amnesty application. They argued that amnesty would foster reconciliation and unity in their community. The two were granted amnesty [AC/1996/0001].

Incidents arising from national protest action called by the ANC

212. Several amnesty applications were received in respect of incidents in response to national events or campaigns called by the ANC. For example, the two-day national strike on 3 and 4 August 1992 during the campaign of 'rolling mass action' called by the Tripartite Alliance[157] saw widespread protest.[158] In one incident, two ANC members were granted amnesty for an arson attack on a building society in Ciskei and seven others for an arson attack in King William's Town, Eastern Cape.

Action in the wake of the assassination of Chris Hani

213. The wave of protest and violence that followed the assassination of Chris Hani in April 1993 resulted in large numbers of convictions for public violence, arson and other violence. Amnesty applications were granted for acts of public violence committed by ordinary ANC members at this time.

157 ANC /SACP /COSATU.

158 After the collapse of the negotiations process following the Boipatong massacre, the ANC alliance embarked on a campaign of 'rolling mass action' in an attempt to bring pressure on the National Party to revise its negotiating positions and stop the violence.

KWAZULU AND NATAL AMNESTY APPLICATIONS 1990–1994

Introduction and findings

214. KwaZulu and Natal has been selected as a case study for a number of reasons. First, the violence in KwaZulu was more extreme and widespread than in any other part of the country. Second, the conflict that had begun between the UDF, the unions and Inkatha in the 1980s had, by the 1990s, spread far beyond the urban townships into the rural villages, homesteads and kraals of the region. Third, Inkatha was virtually synonymous with the KwaZulu government and, emerging in the 1990s as the Inkatha Freedom Party (IFP), opposed the positions taken by the ANC throughout the negotiations process. Hence the hostilities continued unabated throughout the early 1990s.

215. The ANC was also an active participant in the conflict, as reflected in the amnesty applications relating to this region. The scale of the violence drew in ANC members at every level: some as active participants in the conflict, some as refugees, others as peacemakers. At a local level, where conflicts erupted in urban townships and rural kraals and villages scattered across the remote hills of the region, there was no possibility of remaining outside the fray. For many, fight or flight became the only options. Self-defence units, made up primarily of young local men, mushroomed in these areas.

Statistics

216. One hundred ANC-linked persons applied for amnesty in respect of seventy-two incidents consisting of 200 separate acts that took place in the KwaZulu and Natal areas in the 1990 to 1994 period. They include fifty civilian ANC members or supporters, twenty MK operatives (including three senior ANC regional leaders) and thirty SDU members. Applications were made primarily by people who were in custody or facing prosecution.

217. The 200 acts included:

Killings	89
Attempted killings	81
Attempted killings[159]	1
Robbery	13
Abductions	1
Assault	1
Arson, public violence	1
Distribution of weapons	4
Possession of weapons	7
Other	2

218. Of these one hundred applications, ninety-three involved hearable matters involving gross human rights violations, while seven were dealt with administratively in chambers. These seven non-hearables involved primarily the illegal possession of arms and ammunition, and were all granted. Of the applications that involved hearings, sixty-eight were granted. Twenty-two were refused. A further three were partially granted and partially refused.

Structures of the ANC and the nature of the conflicts

219. Evidence from applicants suggests that ANC branch structures in KwaZulu/Natal, as elsewhere, played a mixed role regarding the activities of the SDUs. Branches could be and were used to launch attacks in the name of the ANC, but many SDUs appear to have had little or no relationship with their local branch, if indeed there was one. SDUs also emerged in areas where no ANC branches existed.

220. Not one amnesty applicant said that s/he had received authorisation from the ANC regional leadership for these attacks. Several, however, claimed authorisation by their ANC branch or local ANC leader. Regional leadership played a role in the provision of weapons and the training of SDUs.

221. In one of the most direct cases of ANC authorisation at branch level, SDU member Khetha Mpilo Khuzwayo [AM6175/97; AC/2000/004] was granted amnesty for the assassination of Mr Eliakim Makhosi Mthembu and the attempted killing of Mr Amos Sibiya at Mankwanyaneni Reserve, Empangeni, on 3 May 1994. The attack took place between the elections of 27 April and the inauguration of Nelson Mandela as President on 10 May.

159 Unspecified – in other words, the victim was not identified.

222. Mr Khuzwayo and five other SDU members set themselves up beside a road and opened fire on Mthembu's vehicle as he drove by. Mr Sibiya, a passenger, managed to escape. At the Johannesburg hearing on 15 November 1999, Mr Khuzwayo told the Amnesty Committee that he had been given a hit list by his ANC branch chairperson.

MR KHUZWAYO: *After the training, I received a list of people who were supposed to be killed because they were destabilising the ANC campaign which was geared towards the 1994 election. I was informed that by the time the elections come, these people should have been removed.*
MS LOONAT: *Who gave you this list?*
MR KHUZWAYO: *From Shadrack, the chairperson of the ANC at the time.*
MS LOONAT: *Before we proceed with this list, did you always receive instructions only from Shadrack or from other people to commit these attacks on the IFP members?*
MR KHUZWAYO: *Shadrack, as the chairperson of the area, was the one responsible for giving reports to the ANC office and he would also give us feedback on the information he had received from the ANC office.*
MS LOONAT: *How did you get the information from Shadrack? Was it given personally, or did you have rallies, or how was it communicated to you?*
MR KHUZWAYO: *I was not alone, but everyone who had been trained internally received a list of people who should be targeted and killed.*

223. Historical fiefdoms and allegiances in KwaZulu and Natal made it impossible for residents to remain neutral. People's identities were tied to where they lived, to their families, their clans and to local authority figures such as *indunas*[160] and chiefs.

224. This confluence of place and political allegiance could have fatal consequences, as simply being found or seen in the wrong area could result in death. On 28 September 1991, Ms Thembi Victoria Mzquso Mthembu, an ANC supporter, was apparently seen in the HRH compound hostel in Greytown. Because the compound was an IFP bastion, she was assaulted and stabbed to death by ANC members who suspected her of collaboration with the IFP. Three ANC supporters were granted amnesty for the killing [AC/2000/017].

225. The conflict also threw up old rivalries. In some cases, the roots of conflict were found in clashes between extended families. Traditional structures featured prominently

160 Local headmen.

in incidents described by amnesty applicants. While chiefs, *indunas* and other such traditional structures were more common to the IFP, in some cases chiefs were ANC supporters, or different members of a chief's family supported different parties.

226. Mr Celinhlanhla Zenith Mzimela [AM0435/96], the son of an ailing IFP-supporting chief, was an ANC supporter. In 1990, one of his brothers, also an ANC supporter, was killed by local IFP members, including a Mr Gumede, councillor to his father. The dead man was the rightful heir and was killed in order to prevent his succession to the chieftainship, to clear the way for an IFP-supporting brother, Mr Booi Mzimela.

227. In February 1992, Gumede and his people struck again, killing another of the brothers, also an ANC supporter and next in line to the chieftainship.

228. CZ Mzimela then decided to act. He and another brother went to Mr Gumede's house and shot him dead while he was washing. Mzimela was granted amnesty for the killing [AC/1997/0037].

229. This case raises one of the difficult issues that the Amnesty Committee had to deal with in respect of KwaZulu Natal applications in particular – that of personal revenge. In terms of the amnesty criteria, revenge does not qualify as a political objective, and yet it emerged that many incidents occurred in response to previous acts of violence against a perpetrator or his family members. The Amnesty Committee noted, however, that while personal revenge was a feature of the conflicts in the region, the issue had to be seen against the wider backdrop of political conflict and the cycle of violence that gripped villages and townships during this period. Revenge, personal and political, was part of the fabric and momentum of the conflict and could not be separated out from it.

230. In the urban areas, several incidents were connected with crime, migrancy and labour disputes. Some incidents also intersected with other running disputes, such as access to land, or economic conflicts that acquired a political dimension, such as taxi conflicts. In some cases, however, victims disputed the political dimensions of the incidents, arguing that the conflict was simply a faction fight arising from local disputes such as demarcation problems.

231. Many ANC applicants in KwaZulu and Natal acknowledged the gap between the ANC's organisational national policies and the imperatives of the violent situation in which they lived at local level. Thus:

MR MSANI: *It was not the ANC's aim that we should kill people. But it was the situation that forced us to fight IFP. Any ANC member, bottom or up, knew that if you are ANC, you shouldn't attack your political opponent, but because of the situation, we were forced to kill each other, IFP and ANC, because a lot of people were killed, it was the situation that forced us to do that. (Durban hearing, 24 November 1998.)*
MR LUTHULI: *It wasn't my organisation which sent me to kill him, but it was the situation in that area. (Caprivi hearings at Johannesburg and KwaZulu-Natal, 7 April 1998 to 14 September 1998.)*
MR NCOKWANE: *I know that the ANC does not kill, but we killed because we were forced by the situation, where we were being killed without a place where we could voice this out. (Hearing at Durban, 29 April 1999.)*
MR MATJELE: *Since it was twenty days before the elections of 1994, the first elections of this country, the honourable President of the African National Congress, your organisation, President Mandela and other respectable leaders, they were passing information that people should not resort to violence, that was the policy of the ANC, isn't that so sir?*
MR SIMA: *Yes, that is so. But people at grassroots did not actually take it that that should be the case, they were actually perpetrating violence. (Hearing at Pietermaritzburg, 3 February 1999.)*

232. Most ANC perpetrators were themselves victims of the conflict. Several had lost members of their families in the violence. They were often refugees, having been violently evicted from areas, their homes and property destroyed. Some had narrowly escaped death themselves. These applicants repeatedly described the failure of the security forces and the judicial system to take steps against the IFP or other perpetrators. As a consequence of the failure and betrayal by state structures, applicants took up arms in the belief that they were compelled to do so to secure and protect their own lives and property. This 'right to self defence' did not require ANC policy approval.

233. Applicants also interpreted many attacks as defensive, even if they involved offensive means, such as launching an attack on the homestead of an IFP member. They argued that a particular killing or attack was self-defence, in order to halt the source of ongoing attacks on themselves.

234. Several applicants applied for incidents in which they were in fact victims of attacks. The attack on COSATU regional chairperson Muntukayise Bhekuyise Ntuli [AM5201/97] by members of the IFP Esikhawini hit squad on 26 August 1992 is a case in point (see below).

235. Many applicants displayed deep regret and remorse for their involvement in the conflict between the ANC and IFP in the region and explained their actions in terms of the situation that prevailed at the time. They spoke of a yearning for reconciliation.

MR MZIMELA: *Mrs Gumede, I respect you very much. I just want to say how deeply hurt and regretful I am because you have lost your husband and a friend. That was not my aim to just kill your husband. It was the situation that forced me to behave in the manner that I did. … I wish to express my sincere apologies to you. I thank this honourable Commission for having granted me the chance to address Mrs Gumede. (Hearing at Pietermaritzburg, 22 May 2000.)*
MR HLENGWA: *I would like to say to the family and the relatives of Mbeko that I am here today to apologise to them for my actions, and I took the law in my hands, and I'm asking them to please forgive me. It was because of the situation at Umgababa. IFP and ANC were in conflict. Even our minds were not working very well. Therefore I would please like them to forgive me. (Hearing at Pietermaritzburg, 1 February 1999.)*

236. In particular, conflicts that had divided families showed evidence of healing relationships.

ADV MPSHE: *What is the relationship between yourself now and Becker Phoswa's family?*
MR PHOSWA: *I do not know very much, because I am still in prison, but my brothers who are outside and my children, they are saying they have a peaceful relationship. They even visit each other and live together.*
ADV MPSHE: *And I can take it that you are also in a position to, if you are released, if you meet them to go back to them and to get engaged in some kind of reconciliation with them? You prepared to do that?*
MR PHOSWA: *Yes, I will have to continue where they are from now. I also wanted to add Indaba Zimboeza Phoswa came twice to me in prison. We shake, we shook hands and he said, he asked for forgiveness that his son has killed my son and that we were also affected by the political situation and this what created this. This was not supposed to have happened and that he is sorry about it. We shook hands and he also gave me money and food. (Hearing at Pietermaritzburg, 30 July 1997.)*

237. The father of one of the victims responded to Mr Phoswa:

ADV MPSHE: *Now, how did you, how did the death of your son affect you, if it did affect you?*
MR MTHEMBU: *This hurt me a lot, because he was about to be married, but I blame the political situation, because before this political activity in the area, we were living in peace. There was not an IFP or ANC, it was a peaceful situation. Therefore, I blame politics and the organisations which had caused the death of my son.*
ADV MPSHE: *Mr Mthembu, part of the mandate of the Truth Commission is to foster reconciliation particularly between or amongst people who have been torn apart by politics. Do you understand?*
MR MTHEMBU: *That is correct.*
ADV MPSHE: *Now, what is your view about this reconciliation?*
MR MTHEMBU: *I knew that we were not enemies. It was only the politics which infiltrated the area and at the moment, I will say, we have reconciled in the area. People at Patene and Richmond have reconciled and even at Gengeshe and I would like to see peace in this area, because we are not enemies, but the organisations made us to be enemies. Although I lost my son I will still think we should be reconciled.*
ADV MPSHE: *The two applicants, whose evidence you listened to today, they are before this committee, particularly, for amnesty and they are also asking for forgiveness. What is your attitude towards that?*
MR MTHEMBU: *I do forgive them, because I knew we were not enemies. It was politics that caused the animosity in the whole world and even today when we talk to them, they are so nice to us and they also wish for reconciliation.*
MR WILLS: *I have no questions. I would just like to express my great respect for the witness at this stage.*
JUDGE WILSON: *Mr Mthembu, I would like to express the view of the committee, that we sympathise with you in your very tragic loss and we admire this forgiving approach that you have adopted and respect you for the honesty that you have shown in coming to tell us all what your feelings are today. We would like to thank you very much for all you have done here. (Hearing at Pietermaritzburg, 30 July 1997.)*

Types of violations

Group attacks

238. Many applications involved incidents in which groups of ANC supporters clashed with IFP supporters in skirmishes. These attacks took the form of pitched battles and formed part of a cycle of attacks and counter-attacks. Several incidents also involved attacks on individuals by large groups.[161] Such attacks sometimes led to fairly indiscriminate killings, often including the killing of women and children.

239. On 15 March 1992, a group of ANC members launched an attack on Ngcobo's kraal at Nomhele reserve in the Maphumulo district, described by amnesty applicant Mkheyi Khanyile [AM0288/96] as a 'counter-attack'. A 73-year-old woman, a 38-year-old woman and a two-year-old boy were killed in the attack. Amnesty was refused, as the testimony of a young male survivor contradicted the version presented by Khanyile [AC/1997/0045].

Assassinations

240. Most amnesty applications in the KwaZulu and Natal region related to assassinations carried out chiefly by SDU members.

241. Five SDU members in Umkomaas on the Natal south coast targeted and killed a prominent IFP leader, Mr Mkhize, on 7 November 1990, believing that he had led attacks on the ANC in the area. Mr Phelela Bhekizenzo Vitalis Hlongwa [AM3684/96], Mr Fani Simphiwe Mbutho [AM4164/96] and Mr Kwenzakwakhe N Msani [AM3473/96], applied for and were granted amnesty for the attack, for which they had been convicted [AC/1998/0102]. At the Durban hearing on 24 November 1998, Mr Msani described the determination of their group to kill Mr Mkhize:

We have been trying for several times to kill Mkhize, but in vain. We have been shooting at him and actually throwing stones at him, but in vain. It was not that on that day we actually took a decision on that particular day, we have been trying for several times to shoot at him. … We met at a place, at a hill, a sort of a hill place. We held a meeting there and strategised how to attack Mkhize and we knew that he had a gun and he had the official gun and then there and there

161 See for example AM4297/96,AM4314/96,AM0409/96,AM3665/96,AM5023/97,AM3480/96,AM3641/96, and AM3095/96.

we left to attack him … Myself, I shot him, he ran away. I initially explained that Palela Hlongwa and Mabuno actually shot as well, and I actually took the bush knife from Jogolo Cele and then I hit him because he was still moving by then. Then I struck him, using the knife and then I ran away because the police were by then approaching.

242. Suspected informers or ANC members believed to have defected to the IFP were also especially targeted for attack. Mr Thulasizwe Philemon Moses Cele [AM5498/97; AC/1998/0105] was granted amnesty for assaulting and stabbing Mr Zulu to death in Nokweja Location, Ixopo, on 15 July 1993. This was a voluntary application as Mr Cele had never been charged for the offence that he and two other SDU members committed.

Ambushes/attacks on vehicles

243. Some of the most indiscriminate attacks to take place were ambushes on vehicles. In one case, Mr Aaron Zibuse Zulu [AM2186/96] was one of a group of ANC supporters who opened fire on a bakkie[162] in the Table Mountain area near Pietermaritzburg on 2 February 1993. The attackers believed that the vehicle was owned and driven by a local IFP warlord who had attacked ANC supporters. In fact, the bakkie was taking schoolchildren to school. Six children were killed and fifteen survived with serious injuries. Mr Zulu, who has never been charged for this incident, was refused amnesty [AC/2000/162].

244. Three members of an SDU applied for amnesty for an attack on a bus in the Umkomaas area on 27 April 1992. Mr Jabulani Doda Cele [AM3682/96], Mr Jabulani Tunene Ncokwane [AM3694/96] and Mr Isaac Mhlekhona Shange [AM3384/96] had been convicted of the attack. They were aged 18, 23 and 18 respectively and had only very recently joined the ANC.

245. They stopped the bus as it drove along a rural road and ordered women and children to get off. They then allowed passengers who were not from that area to get off as well. They opened fire on the remaining passengers, killing six and injuring eight. Amnesty was granted [AC/2001/088].

MR WILLS: *Did anybody order you to do this attack, or to perform this act?*
MR SHANGE: *We decided as a group, no-one told us. We decided as a group,*

162 A light truck or van.

all of us, we agreed on one thing … The reason we attacked the bus was because we were trying to fight back to the people who forced us to leave our area, or our places. We wanted to stay there as ANC members, freely, and also we wanted to kick out Inkatha members because they were the reason why we were out of our places. We were born there and it was sad and difficult for us to leave our homes. We were forced and we were attacked. That's why we saw it necessary for us to go back. (Hearing at Durban, 26 April 1997.)

Internal clashes

246. Some of the conflicts in KwaZulu/Natal relate to internal disputes within the ANC and its allies. Two ANC members, Mr Thulani Christopher Madlala [AM5993/97] and Mr Happy A Mngomezulu [AM7322/97], were granted amnesty [AC/2000/104] for fatally shooting Mr Mpumelelo Phewa at Wembezi, near Estcourt, on 25 March 1994. The incident took place in the context of violent clashes between ANC members and former ANC members who had joined the South African Communist Party (SACP). Despite the intervention of the ANC, which explained that the ANC and SACP were allies, the fighting continued and more people were killed.

Acting in 'self-defence'

247. Several applicants sought amnesty for incidents in which they themselves were victims of attacks. Regional COSATU chairperson, Mr Muntukayise Bhekuyise Ntuli [AM5201/97], was the victim of an attack by members of the IFP Esikhawini hit squad on 26 August 1992.[163] Union leaders in particular were targeted for attack by IFP members during this period and most had been assigned bodyguards by the ANC, usually former MK members.

248. Mr Ntuli's home was surrounded in the middle of the night and he threw a hand grenade belonging to his bodyguard at the attackers, injuring several of them. Several other homes were attacked by the hit squad that night, and eight people were killed. Mr Ntuli applied for and was granted amnesty for the possession of a hand grenade and the attempted killing of four of his attackers [AC/1998/0061].

163 Members of the IFP's Esikhawini hit squad applied for and were granted amnesty for the attack on Mr Ntuli's home.

Clashes with police

249. Five persons applied for amnesty for incidents involving clashes with police. All were granted. In the main, these clashes took place when applicants were attempting to avoid arrest. For example, MK operative Joel MC Makanya [AM6627/97; AC/2000/058] was granted amnesty for a shoot-out with police in the Umzumbe area while he was transporting weapons from Gamalakhe, Port Shepstone, in July 1991. ANCYL and SDU member Frank B Khanyile [AM6108/97; AC/2000/014] was granted amnesty for an incident in October 1991 when he and others opened fire on a prefabricated police station in Greytown.

Attacks on criminals

250. Eight people applied for amnesty for killing persons whose criminal activities impeded political activities in the area. Mr Bongani Sydney Dunywa [AM7623/97; AC/2000/103] was granted amnesty for his role in implementing 'popular justice'. He participated in the panga[164] killing of Mr Nyani Xolo on 26 October 1990 at Thelawayeka Ward, Paddock, near Port Shepstone. Mr Xolo was believed to be a criminal aiding the IFP and police.

251. In a different type of incident involving 'popular justice', Mr Joe Ngema [AM8078/97; AC/2000/033], who described himself as an SDU commander and a chief marshal in the Umgababa area near Durban, applied for amnesty for two incidents in which alleged criminals were sjambokked[165] and beaten to death in front of residents in June 1993. Mr Ngema alleged that, after incidents of rape and robbery, the perpetrators were found by 'comrades' and brought to a stadium for punishment in the form of lashes. When supporters of the criminals came to intervene, they too were beaten. Two died. The following day, after a second reported rape, the 'comrades' took a man called Etosh to be disciplined. He too was lashed and died of his injuries.

Armed robberies

252. Nineteen persons applied for amnesty in respect of a number of armed robberies. The Amnesty Committee found the majority of these to be criminally rather than politically motivated and consequently refused amnesty. Four ANC

164 A large broad-bladed knife, originally introduced for cutting of cane or bush and often used as a weapon.

165 A sjambok was originally a stout rhinoceros or hippopotamus hide whip. Now often made of other materials, they are used to 'horsewhip' or sjambok victims.

members were refused amnesty [AC/2000/123] for the fatal shooting of Mr Victor Lembede at Ngonyameni Reserve on 21 June 1991 during an armed robbery of his shop.[166] The applicants claimed that the attack was a political assassination as Mr Lembede was allegedly an IFP member. Mr Lembede's son, who was present during the attack, disputed their version and denied that his father was an IFP member. The Lembede family was in fact related to Anton Lembede, a former ANC president. The Amnesty Committee rejected the applicants' version.

Self-defence units and weapons supply

253. The most senior ANC applications received in respect of this region relate to the provision of weapons and training of SDUs by three ANC leadership figures. Mr Jeff Radebe [AM7170/97], Mr Ian Phillips [AM5951/97] and Mr Sipho Sithole [AM5950/97] served on the ANC South Natal Regional Executive Committee in a political capacity and also gave military support to the SDUs involved in the conflict.

254. The method adopted for weapons provision was that a vehicle with weapons loaded into secret compartments was left at a specified site in Durban. Radebe passed the car keys to Sithole who collected the vehicle, offloaded the weapons and secured them. He then distributed them to persons he had identified as trustworthy in different areas, mainly people he had worked with in exile. These persons would then distribute weapons on the ground. At the Durban hearing on 1 December 1998, Sithole told the Amnesty Committee:

I was responsible for setting up structures to ensure that those weapons were infiltrated down into areas, trouble spots where our own people were under attack.

255. Sithole estimated that some 150 AK47s with ammunition and a smaller quantity of grenades were brought in through this arrangement. Around twenty Stechkin and ten Makarov pistols were also brought in, although these were specifically for command personnel's own protection. However, he testified:

The amount of weapons was about 100 to 150 which was very little by the demand that we were getting from the communities. In fact we would run dry most of the time, so we were not in a position to actually effectively organise our own communities in terms of self defence. (Durban hearing, 1 December 1998.)

166 FT Meyiwa [AM4505/96], FM Ndimande [AM6456/97], E Nyawuza [AM3010/96] and NE Nyawuza [AM7807/97].

256. A second regional MK commander also applied for and was granted amnesty for his role in the training of SDUs and the supply of weapons. Mr Ntela Richard Sikhosana [AM6332/97; AC/1999/290] was the Natal Midlands regional commander of MK. He testified that he was involved in the training of SDUs in the Midlands area from November 1992 to April 1994. Mr Sikhosana died in 1998.

257. As in the Transvaal, the evidence from amnesty applications suggests that communities and SDUs also sourced weapons from a variety of other sources, particularly Mozambique. Two members of an SDU in KwaMashu, Mr Thami Peter Mthunzi [AM5259/97] and Mr Timothy Mjabulelwa Tembe [AM5171/97], under the command of MK operative Linda Geoffrey Xaba, were arrested returning from Mozambique on 16 November 1994 in possession of AK47s hidden in their car door. Their passports revealed that they had made many visits to Mozambique during the 1992 to 1993 period.

258. Khetha Mpilo Khuzwayo [AM6175/97; AC/2000/004] was an SDU member in the Empangeni area who received training both locally and in Mozambique in 1992. He was arrested in a stolen vehicle provided by his commander Shadrack in early May 1994. At the time of his arrest he was in possession of two AK47s and ammunition, one Makarov pistol and ammunition, hand grenades and camouflage uniforms. He testified at the Amnesty Committee hearing in Durban on 15 November 1999:

After a while a need arose for us to be able to use bigger firearms, that was the time when we were dispatched to Mozambique, so that we could receive training in bigger firearms as well as in explosives, because our enemies used to attack us using bigger firearms … At that time we were running short of bigger firearms in our area so I had to go to Mozambique to fetch bigger firearms so that our area and other neighbouring areas could receive such weapons for protection … I did not question it when Shadrack gave me a vehicle to take to Mozambique and I would do so as he instructed. On my arrival to Mozambique, I will give that car to Steven Nkenyene and he will return the car with the firearms inside and I would drive the car back into South Africa.

WITCHCRAFT APPLICATIONS 1990–1994

259. While the Amnesty Committee did not initially consider witchcraft to be a political matter, closer study and expert input made it clear that many of these cases were embedded in a political context. As elsewhere in South Africa,

issues of local significance intersected with and were in many ways inextricably locked into national political expression and activity. The motives for the decision to hold a special hearing on witchcraft are argued in the Amnesty section in this volume.[167]

260. In 1979 Venda, the epicentre of witch-hunting cases, became an 'independent' homeland under Chief Patrick Mphephu, later declared President for Life. After his death in April 1988, he was succeeded by Chief Frank Ravele, who ruled until he was ousted in a military coup in April 1990.

261. The period 1988 to 1990 saw an escalation of political unrest and mobilisation in Venda. Much of the protest against the Venda authorities centred around the issue of ritual killings, in which those in power were believed to be implicated. Officials such as cabinet ministers, directors-general and chiefs were alleged to have used ritual murders to achieve their prestige and fortune. Thus ritual killings were a source of both social and political discontent.

262. Professor VN Ralushai, who testified as an expert witness at the Thohoyandou witchcraft amnesty hearings which took place from 8 to 19 May 2000, defined a witch in the context of Northern Transvaal beliefs as 'a person who is believed to be endowed with powers of causing illness or ill luck or death to the person that he wants to destroy'.

263. The February 1990 lifting of the ban on the liberation movements and the release of Mr Nelson Mandela precipitated an extensive mobilisation of youth, who embarked on a number of activities to express their opposition to the old order in Venda. Apartheid legislation had largely transformed traditional leaders into political functionaries who were seen not only as corrupt and self-serving but also as lackeys of the apartheid regime. Accusations of witchcraft were used to destabilise the Ravele government and to focus political protest in an effort to root out traditional superstitious beliefs. Mr Rogers Khathushelo Ramasitsi [AM2723/96] testified as follows at the Thoyohandou hearing on 12 July 1999:

The time [Mandela] was released, I still remember every feeling of the youth here in Venda, particularly in our region, there was a general feeling that we have to be free and that freedom was to come through our contribution … In the urban areas the youth were involved in many things to render the country ungovernable as such. So in the rural areas there came to be a time when things weren't going right, as I can say.

167 Section One, Chapter Three.

264. Part of this wave of political energy was expressed in attacks and attempts to expel suspected witches. Belief in witches, wizards and related supernatural occurrences had long formed part of the fabric of rural Venda life. The association of witches with the political order had politicised the issue. Supporters of the liberation movement in areas where witchcraft was prevalent regarded the chiefs and traditional leaders as the protectors of witchcraft. At the same hearing, Mr David Makana Nemakhavani [AM2725/96] testified that:

Well we actually wanted to evict these people from our village because … those who were ruling were in the old order and as such the central government would then be able to realise that we were not pleased with the way the old order was behaving.

265. Fifty-four individuals submitted applications in respect of twenty-one incidents or attacks linked to witchcraft. All of the incidents took place in the period 1990 to 1994. Of the twenty-one incidents, fourteen took place in Venda, two in the KwaNdebele homeland, one in Gazankulu, three in Lebowa and one in the Eastern Transvaal. Thirteen of the fourteen Venda incidents took place between February and April 1990, shortly after the unbanning of the ANC and other organisations. These applications covered some forty-eight separate acts, including thirty-two killings and three attempted killings or injuries and twenty-three arson attacks on homesteads and kraals. Of the deceased victims, eighteen were female and fourteen were male. Fifteen applicants were refused amnesty in respect of twenty acts – that is, sixteen killings, three cases of arson and one attempted killing. The remaining twenty-eight applications were all granted.

266. The large crowds that took up witch-hunting between February and April 1990 consisted mainly of youth. The majority of the victims were female. In scores of villages in Venda, people accused of engaging in witchcraft were burnt or stoned to death. Others were injured, lost their homes in arson attacks or were forced to flee to distant safe havens. Most of these killings took place in the most remote rural areas of Venda rather than the more urbanised areas of Thohoyandou or Sibasa. The Commission of Inquiry into Witchcraft Violence and Ritual Murders in the Northern Province of the Republic of South Africa[168] reports thirty-six registered cases of 'witch killings' in Venda in 1990 alone. A smaller number of attacks took place in other predominantly rural Northern Transvaal homelands such as Lebowa and Gazankulu.

168 The Commission was appointed in 1995 by the Member of the Northern Province Executive Council for Safety and Security, Advocate Seth Nthai. It submitted an interim report in July 1995 and a final report in January 1996.

267. Several amnesty applicants, residents of remote rural Venda villages, explained that, through their actions, they sought to emulate the progressive protest activities of their urban counterparts and shed the label of rural backwardness. In this way, they aimed to contribute to the national democratic struggle. At the Thoyohandou hearing, Mr Ramitsi said:

During that time, it was the time that everyone said that there was a quest for freedom, so there came to be a time when we had to strategise so as to be in form with those 'comrades' in the urban area. As I still remember, our 'comrades' in the urban areas were involved in rent boycotts, consumer boycotts, strikes and all the likes, whereas here in the rural areas there were no such things, so there came to be a time when we thought that for us to contribute in our struggle, we have to remove such obstacles that were making it difficult for us to be free as such, as everybody was thinking that now Mandela is out, we are going to be free.

In the rural villages it was different from urban areas. In the rural areas we grew up with the belief that there are witches surrounding us. They are people who have the power to practice supernatural powers that we cannot see by our naked eyes … So sometimes you found that they were jealous, they inflict diseases on other people, they are causing death to other people. They were crippling people somehow, so they felt that before we get this freedom we are talking about, we must be free of ills amongst us, that's why we said that those witches have to be eliminated before we get that freedom because it is no use getting freedom with obstacles on our doorsteps.

268. Twelve members of the Mavungha Youth Organisation[169] applied for amnesty for the killing of Mr Edward Mavhunga which took place in the Mavhunga area, Venda, on 6 April 1990. Mr Mavhunga was a member of a high-profile family in the area, related to the headman and linked to government. During the celebrations and political activity that followed the unbanning of the ANC and the release of Mandela, he interfered with youth activities and was believed to have been involved in the stoning and beating of youth gathered at a meeting. Village residents called for him to be expelled from the area but he refused to leave. As a consequence, a crowd of thousands of residents descended on his homestead. He was stoned and burnt to death. Amnesty was granted to the twelve applicants [AC/2000/094].

169 AM2717/96,AM2718/96,AM2719/96,AM2720/96,AM2723/96,AM2724/96,AM2725/96,AM2726/96, AM2727/96,AM4300/96, AM4319/96 AM7348/96.

269. Mr Avhapfani Joseph Lukwa [AM3278/96] and Mr Tshamano Edson Tshibalo [AM3277/96] killed nine people and burnt eleven properties at Folovhodwe and Muswodi Dipeni areas, Venda, on 10 March 1990. The two were part of a large crowd that went from house to house. They even targeted Tshibalo's own father's house. Their applications were refused due to lack of full disclosure [AC/2000/094].

270. Mr Josia Mauludzi [AM3282/96], Mr Norman Ramalata [AM3283/96] and Mr Samuel Matala [AM3284/96] applied for the killing of Ms Munzhedzi Emely Makulana in Mufunzi village on 21 March 1990. Members of an informal youth congress met and discussed the relationship between witchcraft and political repression, and decided that witches should be killed. Armed with petrol and tyres, a large group went to the home of Ms Makulana. She was pulled out of her home and assaulted with a sjambok, and petrol was poured over her. She was then burnt to death. Amnesty was granted [AC/2000/094].

271. Mr Marobini George Leshaba [AM4313/96], Mr Harriot Mathebula [AM4188/96] and Mr Muvhulawa Johannes Makananise [AM4301/97] applied for amnesty for the killing of Mr Johannes Soidaha Silema-Malatsi (also referred to as Malatsi or Malatjie) in the Ha Maila area on 19 March 1990. At a youth meeting held that day, four people, including Mr Malatsi, were identified as people who used witchcraft to assist government officials to retain their power. Money to buy petrol and other materials to kill them was collected at the meeting. At a second meeting, involving the wider community, it was resolved that the four who had been identified should be killed. Mr Malatsi, who was at the meeting, was attacked. A tyre was placed around his neck and lit. Mr Malatsi managed to get the tyre off and ran away burning. He was pelted with stones by the crowd, hit with sticks and stabbed. He was further questioned about his alleged witchcraft activities and identified others who worked with him, allegedly the same people identified earlier by the meeting. Tyres and petrol were fetched and he was ordered to drink the petrol. When he refused, petrol was poured over him, he was set alight and tyres were placed on top of him. Finally he died. Leshaba and Makananise were granted amnesty for this incident, but Mr Mathebula, who denied his role in the events, was refused amnesty [AC/2000/094].

272. The Amnesty Committee did not accept that all witchcraft incidents had a political orientation. Some accusations and attacks were clearly rooted in personal jealousies, feuds, local dynamics or relationships. For example, Mr Magome Freddy Tladi [AM2043/96; AC/2000/112] was refused amnesty for the killing of Ms Matule Bapela. Ms Bapela was doused with petrol and set alight in Marishane Village in the Nebo district, Northern Transvaal, on 20 August 1992.

Mr Golden Holiday Sekgobela [AM1026/96; AC/2000/113] was refused amnesty for hacking Ms Poppy Seerane to death on 15 December 1990 in Leboeng, Lydenburg District, Eastern Transvaal.

273. These 'witchcraft killings' were evidently the initiative of youth and residents responding at a local level to a period of political turmoil and transition. Through their actions they sought to express their opposition to the old homeland order and its social underpinnings. The killings provide a good example of how the banners of the UDF and the ANC were used to mobilise and embrace forms of collective social action against perceived oppression. Although the T-shirts, banners, songs and slogans of political organisations were worn, carried or sung during 'witch-hunts', there were virtually no links to formal ANC structures. Most of the killings were essentially spontaneous. There is, indeed, evidence that the UDF and the ANC intervened during the early 1990 wave of witch-hunts in an effort to halt them.

CONCLUSION

274. Amnesty applications in respect of ANC operatives, members and supporters reflect the fact that the ANC was both a formal liberation organisation with an armed wing, as well a 'social movement' that mobilised ordinary citizens who fell outside its formal structures. The ANC sought to spearhead a 'people's war' and to provide the banner under which widespread and varied forms of protest could be enacted by a range of participants. The ANC thus embraced those who acted in concert with its goals although outside its formal discipline.

275. Amnesty applications run the full gamut from leadership figures, MK operatives and SDU members to ordinary rank and file ANC supporters on the fringe of or even outside the organisation. Clearly, the ANC cannot be held accountable to the same degree for the activities of all these groupings.

276. Formal MK operatives constitute the group with the most direct line of command and control within the ANC. The ANC clearly has the highest level of authority in respect of its own trained military operatives who had the most direct line of command and control within the ANC. Secondly, there are SDU members, who clearly had some level of practical and moral authorisation from the ANC, and indeed the ANC Declaration embraces SDU members. Lastly, there are ordinary civilian applicants who acted in the name of or in support of the ANC. The ANC has the most remote level of responsibility for this group.

277. The findings made by the Commission reflect this range of levels of accountability, and have been confirmed.

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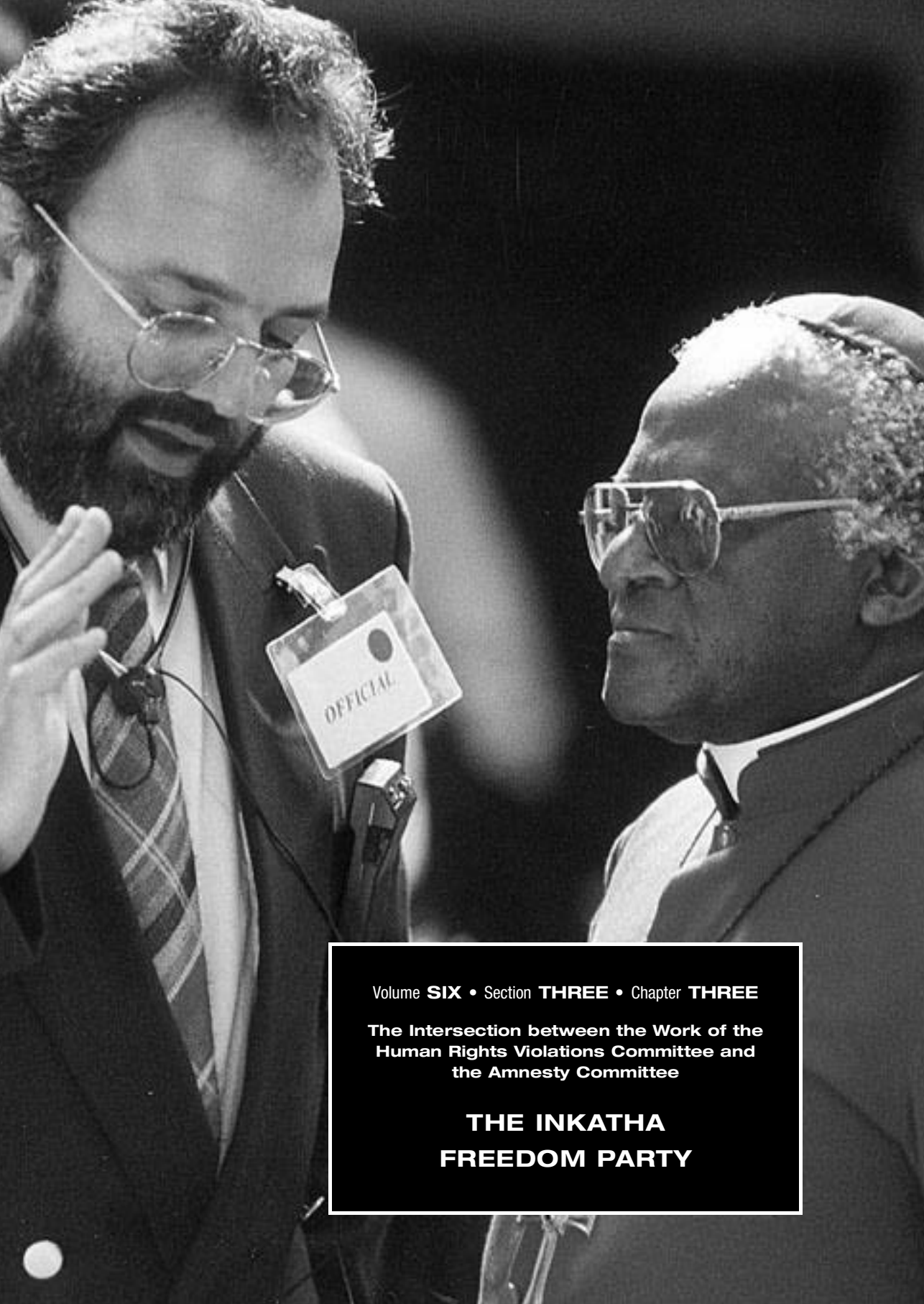

Volume **SIX** • Section **THREE** • Chapter **THREE**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE INKATHA FREEDOM PARTY

The Inkatha Freedom Party

■ INTRODUCTION

1. The Inkatha Freedom Party (IFP) expressed reservations about the Truth and Reconciliation Commission (the Commission) process from the outset. In his submission to the Commission, the President of the IFP Dr Mangosuthu G Buthelezi said that he believed that it would 'neither reveal the truth, nor [would it] bring about the reconciliation we so desperately need in our land'. He went on to say:

   I have decided to come here because we cannot in all conscience remain silent when no effort is made by this Commission to question who has killed 420 of the IFP's leaders and murdered thousands of its supporters. These serial killings are a crime against humanity and demand answers. (IFP Submission, 6 September 1996, p10)

2. Although the IFP appeared before the Commission, the party did not officially cooperate with either the Human Rights Violations Committee or the Amnesty Committee. When he appeared before the Commission, Dr Buthelezi used the opportunity to argue why members and supporters of his party had been drawn into acts of political violence. He told the Commission:

   On no occasion has the Inkatha Freedom Party's leadership ever made any decision anywhere at any time to use violence for political purposes … My own deep convictions that violence is evil and must not be used for political purpose and despite the Inkatha Freedom Party's constant vigil to keep violence out of Inkatha Freedom Party politics, I know that Inkatha Freedom Party members and supporters have been drawn into violence. I say that I am sorry to South Africa for this because, although I have not orchestrated one single act of violence against one single victim of the political violence that has cost us many lives, as the Leader of the Inkatha Freedom Party, I know that the buck stops right in front of me. (IFP Submission, 6 September 1996, p12)

3. The IFP expressed the view that the original source of the violent conflict in the then Natal and Transvaal lay in the adoption of differing strategies to liberating the country. These, the IFP claimed, dated from an historic London meeting in

1979 between the then Inkatha National Cultural Liberation Movement (Inkatha) and the African National Congress (ANC) in exile. The ANC, the IFP noted, chose to embark on a course of armed struggle aimed at destroying all forms of authority – including the homeland government of KwaZulu, the structures of traditional leadership through which local government was administered and the IFP itself. This culminated in the ANC's campaign to render South Africa ungovernable. This, in the IFP's view, was the root cause of the violence.

4. The Commission is of another view entirely. Evidence before its Committees and documents in its possession have shown that the IFP participated in state-sponsored violence and acted as a surrogate for the state against the ANC and its allies. It also sought and received training and arms from the security forces which assisted it in forming death squads. Furthermore, the evidence shows that members of the IFP and KwaZulu Police leadership knew of and participated in the planning of the violence and has no reason or justification in doubting or claiming ignorance of its causes.

5. Several officials of the IFP and the KwaZulu Police were implicated in hearings before the Amnesty Committee. These persons either denied all charges made against them or failed to respond to these allegations, despite the fact that they could potentially lead to their being prosecuted by the Directorate of Public Prosecutions.

6. In 1996, the ANC and the IFP instituted a peace process led by a national ten-a-side committee[170] This was subsequently expanded to include grassroots structures in KwaZulu-Natal. This process has been regarded as the main contributing factor in the decline of political violence in the province. In the interests of consolidating the peace process, the national leadership of the ANC and IFP has had extensive discussions about the granting of a special amnesty to those that did not appear before the Commission in the interests of consolidating the peace process. There has, however, been little public discussion about the nature of the amnesty to be granted or the process envisaged.

GENERAL OVERVIEW OF AMNESTY APPLICATIONS

7. The IFP's policy of non-engagement in the amnesty process adversely affected the numbers of applications received from IFP officials and supporters.

170 Helen Suzman Foundation, Briefing 14, Interview with S'bu Ndebele, www.hsf.org.za/Briefing_14.

8. The incidents for which applications were received took place between 1987 and 1994 when the conflict between Inkatha and the UDF (and later the IFP and the ANC) raged in urban and rural areas of KwaZulu/Natal[171]; Mpumalanga, KwaZulu near Pinetown, and the ANC-aligned communities and IFP-controlled hostels in the Transvaal.

9. Some of the applicants were in the service of the South African Police (SAP), the South African Defence Force (SADF) or the KwaZulu Police (KZP) at the time that they committed the offence/s and alleged that these bodies had colluded in incidents either by acts of commission or omission. Prior to the democratic elections in 1994, applicants applied for amnesty in conjunction with members of right-wing groups such as the Afrikaner Weerstandsbeweging (AWB) who were opposed to the ANC and its alliance partners.

10. All the applicants from the IFP were male. However, a few applicants implicated individual women in their human rights violations.

11. Many IFP applicants had been either convicted of the offences in question and gaoled, or had been implicated in investigations and anticipated prosecution.

12. A total of 109 applications were received from IFP members and supporters in the following categories:

Caprivi trainees

13. The Amnesty Committee received applications from eleven IFP members known informally as the 'Caprivi trainees' (individuals who had received paramilitary training by the SADF in the Caprivi Strip during 1986) or from individuals who later joined the 'Caprivi trainees' at different levels of the structure and were deployed in areas around KwaZulu/Natal. Some former Caprivi trainees, after consultation with one another, approached the Amnesty Committee as a group.

14. Mr Daluxolo Wordsworth Luthuli [AM4075/96], the political commissar and operational commander of the Caprivi unit, testified before the Commission that the Caprivi unit was a covert offensive paramilitary unit within the IFP. He testified that its members were trained by senior commanders of the SADF and

171 From 1972, KwaZulu comprised twenty territorial fragments scattered throughout the province of Natal. During the period of transition in the early 1990s and as the KwaZulu Administration was dismantled, all areas in the province came to be known as KwaZulu/Natal and, following the April 1994 elections, as KwaZulu-Natal.

deployed against the political enemies of the State, namely the United Democratic Front (UDF), the ANC and its allies. The Caprivi trainees were initially paid salaries by the SADF and were later incorporated into the KwaZulu Police, then headed by Dr Buthelezi as Minister of Police. The Amnesty Committee granted all these applicants amnesty, with one exception involving an incident of rape.

The South African Police

15. Two members of the SAP Riot Unit, two members of the SAP and two Special Constables (see below) deployed by the SAP Riot Unit in the Pietermaritzburg and KwaMashu area applied for amnesty for targeted killings. They claimed the killings were at least in line with police policy to support the IFP if not directly authorised by their superior officers in the police. The Riot Unit, the police members and one Special Constable were not categorised as IFP applicants and were later denied amnesty as they were found to have no political motive. However, three of the Special Constables were granted amnesty for their offences.

'Amasinyora' gang

16. One IFP member applied for amnesty for the killing of an ANC member in KwaMashu. He linked the activities of the IFP in this area to the notorious 'AmaSinyora' gang, which had been implicated in a reign of terror during the mid- to late 1980s.

IFP self-protection units

17. Six self-protection unit (SPU) members, who had been trained by the IFP at such informal and formal training facilities as the Mlaba or Amatikhulu camps, applied for amnesty. This number excludes the Caprivi trainees and their operatives who either provided training or attended these camps (together with former members of the SAP's Vlakplaas Unit).

IFP officials

18. The Amnesty Committee received eleven applications from political officials of the IFP. The majority of these were received from IFP Youth Brigade leaders or organisers. Three bodyguards of senior IFP leaders applied for amnesty, claiming they had acted under the instructions of their leaders. A further two applicants were leaders of the *amabutho* (the IFP local military wing).

19. The highest-ranking IFP political official to apply for amnesty was Mr James Mkhazwa Zulu [AM5864/97], regional leader of the lower South Coast. Mr Zulu applied for amnesty in conjunction with four right-wing applicants and another IFP member after all six had been charged with an attack at the Flagstaff police station to obtain weapons.[172] However, Mr Zulu was shot and killed at a taxi rank in Port Shepstone before his amnesty hearing. Several victims testified before the Commission that Zulu had been implicated in a number of assassinations in the lower South Coast area after his family had been killed in political violence. Mr Zulu did not, however, apply for amnesty for any incidents other than the Flagstaff attack.

IFP ordinary members

20. The Committee received seventy applications from ordinary IFP members for human rights violations committed in areas all over KwaZulu/Natal.

ISSUES IMPACTING ON THE AMNESTY PROCESS

21. At the inception of the Commission, the IFP announced that it would not urge its members or IFP victims of gross human rights violations to participate in its processes. In spite of written representations and personal requests by senior members of the Commission, the IFP did not depart from this position until approximately one month before the cut-off date for the submission of victim statements. At this stage, the party called on its members to apply for reparations. Such a shift of position did not, however, occur with respect to the amnesty process.

22. In his submission to the Commission, Dr Buthelezi stated that IFP officials or members who had carried out illegal activities had been acting without instructions and on their own initiative, and had been responding to the violent conflict raging at the time. It is therefore unlikely that potential IFP amnesty applicants, whether or not they were in gaol, had been briefed about the amnesty process by their political leadership. With little hope that the party leadership would assist them, potential applicants faced the risk of having their political bona fides questioned by the Amnesty Committee.

172 See below. See also Chapter Six of this section.

23. Poor literacy amongst some potential applicants also seems likely to have been a factor in the low level of applications. This became clear when, on the eve of the cut-off date, officials of the Department of Correctional Services approached the Commission on behalf of imprisoned IFP members who had requested assistance in making amnesty applications. At the amnesty hearing of Mr Zakhele Amos Zulu [AC/2000/075; AM2099/96], it emerged that his co-accused was also in prison for the same offence[173] but had not applied for amnesty because he was illiterate and had been unable to fill out the necessary form.

24. The extent to which potential applicants were intimidated into not applying for amnesty is difficult to establish. This cannot be discounted, however, given the continuation of political violence during the life of the Commission, particularly in some areas of KwaZulu-Natal. IFP applicants who made allegations of intimidation were found to be in genuine danger and were placed in witness protection programmes.

25. Mr Mbuzeni Nsindane [AM4071/96, AM 3689/96 and AM 4071/96] alleged that a certain Captain Hlengwa had visited prisoners and told them that they should not implicate leaders in the killing of ANC member Mr Thabani Mghobozi at Amahlongwa reserve in Umzinto in 1990. Mr Nsindane told the Amnesty Committee that he feared that disclosing this information would endanger the lives of his family members:

MR WILLS: *So I notice in both your application forms that you make no mention of one, the leadership who knew what you were doing, and second, the other persons, other than your brother, who were involved in the attack. They're not mentioned in your application form, can you explain that?*
MR NSINDANE: *Yes, it is the truth.*
MR WILLS: *But now why didn't you mention these people's names in your application form?*
MR NSINDANE: *I was afraid that they may actually attack my family.*
MR WILLS: *Did any of the parties that saw you from the IFP, influence you in regard to the omission of these names?*
MR NSINDANE: *Yes, it is like that.*
MR WILLS: *Well tell us, who?*
MR NSINDANE: *Mr Captain Hlengwa. He said we shouldn't include people's names. (Pietermaritzburg Hearing, 2 February 1999.)*

173 In an attack on ANC supporters in Ndwedwe in July 1992.

26. Many of the applicants were motivated to apply for amnesty because they were serving long prison sentences. Others had become disillusioned in some way with the part they played in the violent conflict. Mr Daluxolo Luthuli said in a statement attached to his amnesty application:

During the period that I was a hit squad operative I was proud to be a brave soldier fighting for the Zulu nation against communism. I felt my activities were justified and that it was incumbent on me to assist in the fight on the side of the IFP against the ANC. On many occasions, senior IFP officials who respected me for my total commitment to the Zulu cause congratulated me. I had the reputation of being one of the most loyal and effective operatives.

Since my arrest, however, I have had time to contemplate my past in circumstances where I am removed from the extreme political influences to which I was previously subjected. I have come to realise the horror of my past and deeply regret the extensive pain and suffering that I have caused my victims and their relatives …

Whilst I cannot change the past I took a decision during 1994 to assist in whatever way possible to bring an end to the conflict that still rages in KwaZulu-Natal. (D W Luthuli, Statement)

27. Many applicants wished to dispel the notion that they were merely criminals acting in a personal capacity. Mr Gcina Mkhize [AM4599/96], a Caprivi trainee and leader of the Esikhawini hit squad, told the Amnesty Committee:

MR MKHIZE: *I will like to respond to the Chairperson first, before I get to the question. Chairperson, can I please say that the details that I am mentioning here, I do that because in this Commission and in the general public, I appear as a criminal.*

I appear as a person who because of his criminality just wiped out the entire community. Statements made by the IFP, B B Ndlovu that are broadcast on the media implicate me as a criminal.

I would like to make it clear to the Commission and the public that the criminality that they are according me today, started at that time before the training, during the training, and after the training, when I started killing people. That is when the criminality started.

That they taught me.

CHAIRPERSON: *You can proceed. I don't want to hinder you in your evidence,*

I am just saying we don't have to get the very fine detail as to the exact training that you received, but those points that you feel that you wish to stress, be free to do so.

MR MKHIZE: *I would also like to say that coming to this Commission, is not just to seek amnesty. What is more important is to clear my name and explain to the public what happened. It is therefore important that I mention all the details so that everybody will know what happened. (Durban Hearing, August 1997)*

SUMMARY AND ANALYSIS OF AMNESTY APPLICATIONS

Total number received

28. The Amnesty Committee received 109 amnesty applications from persons aligned to the IFP for offences committed between 1983 to 1994 in KwaZulu-Natal and the former Transvaal. In addition, four police officers and three right-wing applicants submitted applications, purporting to be acting on behalf of the IFP. These were not categorised as IFP applicants.

29. The Committee granted amnesty to sixty applicants (57 %) and refused amnesty to forty (38 %). Two applicants were granted amnesty for some incidents but were refused amnesty for others for reasons of motive and proportionality.

30. Most matters were dealt with in a hearing convened by the Amnesty Committee. A total of twelve matters were dealt with in chambers.[174] All applications except one were successful.

31. Three applicants withdrew their applications because they did not meet the legal criteria governing the amnesty process. One application was struck off the roll because the applicant did not attend the proceedings. By far the largest number of applicants had been convicted of their offences before making application to the Amnesty Committee. Some applicants gave testimony about incidents for which they had not been charged. Others were in gaol for offences committed after the Commission's cut-off date in April 1994.

32. The applicants who claimed allegiance to the aims and objectives of the IFP can be divided into the following categories:

174 See this volume, Section One, Chapter Three for more information about chamber matters.

a Caprivi trainees;
b Esikhawini hit squad;
c Self-protection unit members;
d Civilian IFP supporters;
e Political leadership of the IFP;
f KwaZulu Police;
g South African Riot Unit (including Special Constables);
h South African Police;
i The right wing, and
j IFP-linked vigilantes.

33. Many of the IFP applicants applying for amnesty testified that their activities were sponsored by the apartheid government and/ or the homeland government and/ or their political leadership. The Commission was required to investigate these allegations insofar as they shed light on the lines of command, motives and political context in which the IFP applicants were operating. This was particularly necessary in the light of the fact that the leadership of the IFP, unlike other groupings testifying before the Commission, gave no details of human rights violations committed by their members.

Those who did not apply

34. The Amnesty Committee did not receive amnesty applications from any high-ranking members of the national or provincial political leadership of the IFP, nor did it receive applications from senior officials of the KwaZulu Police. Several key members of these groups were implicated by the operational commander of the Caprivi trainees, Mr Daluxolo Luthuli, whose claims were corroborated by ten members of the paramilitary units under his command. The Amnesty Committee relied on these first-hand accounts as well as upon documentary evidence presented to it in order to make certain findings against the above individuals in their personal capacity or as functionaries of the then KwaZulu Government.

35. Similarly, Mr Luthuli and other applicants implicated several regional and local political leaders of the IFP, claiming that they had provided instructions in target selection and logistical support. None of the leadership figures implicated applied for amnesty.

36. The Amnesty Committee was thus presented with evidence from the 'military' operatives of the IFP but received no significant admissions from its political

leadership. The Committee found that the eleven Caprivi trainees had made a full disclosure of facts and were acting in accordance with a political objective, thereby acknowledging that there was sufficient viva voce and documentary evidence to support the veracity of their claims.

37. The Caprivi unit members' legal representative, Advocate A Stewart, explained how the applicants perceived the role of the political leadership of the IFP:

... in addition to which Mr Luthuli and then Mr Mbambo in particular, and some of the other applicants too, discussed really what they saw as the two faces, the private and the public face, to IFP policy. And the public face being one which said, we're a peaceful organisation, we embark only upon peaceful tactics and objectives. But the private face, the one being propagated from the meetings of the cabinet of the KwaZulu homeland through to public meetings, mass meetings, was one of anger and of revenge and of attack, and that was the very real experience of the applicants in the way in which they explained it to the Committee, that public and private face.

And so their understanding is that that was the policy that was being embarked upon and they had it confirmed to them in so many ways. In addition to which it was confirmed to them inasmuch as they were hidden and protected when the arm of the law was able to reach out to them. So in instances where Mr Khumalo was arrested, where Mr Dlamini was arrested, he was whisked out of hospital where he had been lying with his leg up in a sling and he was pulled out of hospital and taken away in a car and then hidden for a long period of time in different places including in Venda and in the Mkuzi camp.

The same with Mr Khumalo when it appeared the police were on his trail, in fact on the one occasion he was arrested and bail was paid, and then he was hidden away and instructed not to go back. And those activities, in hiding and protecting the applicants from the law, in those instances, that was done by senior members in the IFP itself and in the KwaZulu Police, and that gives credence to their claim that this was the policy and this was how they understood the policy to be, that these are the things they should be doing. (Pinetown Hearing, 8 March 1999)

38. A similar situation applied with respect to members of the self-protection units, who were trained in the early 1990s. While the political leadership admitted having trained thousands of people for defensive purposes at various camps in KwaZulu/Natal, not one member of the political or senior military leadership applied for amnesty for any unlawful activities.

39. None of the applicants in the service of the SAP or the KZP at the time of the incidents for which amnesty was sought (including the Caprivi trainees) was supported by applications from their senior officers. There were no applications from senior members of the KZP, despite documentation suggesting that, at the very least, they allocated resources or attempted to cover up the activities of their members. Nor did the Riot Unit members and Special Constables who applied for amnesty receive the support of their commanders.

40. At a local level, although some IFP political leaders assisted applicants in establishing a context for the political violence between the IFP and the ANC in support of their applications, few of those implicated applied for amnesty,

41. Corroborated victim statements before the Commission provide evidence that ordinary IFP members were involved in politically motivated illegal activities. Moreover, the correlation between victims' statements and amnesty applications demonstrates that a very small minority of perpetrators applied for amnesty.

Categories of violations

42. The IFP applicants applied for the following types of violations:
    a targeted killings of ANC supporters;
    b planned attacks on people believed to be UDF or ANC supporters and members of the Congress of South African Trade Unions (COSATU);
    c spontaneous attacks on people believed to be UDF or ANC supporters and COSATU members;
    d revenge attacks on UDF and ANC supporters;
    e attacks on state officials;
    f mistaken identity, and
    g internal IFP attacks.

Attacks by IFP supporters

43. The Amnesty Committee heard that IFP applicants became involved in spontaneous attacks on people they believed to be UDF and/ or ANC supporters. The aim was generally to drive non-IFP supporters out of particular areas, thereby entrenching IFP strongholds. According to Mr Phumlani Derrick Mweli [AM0599/96], the UDF was a threat to the IFP and 'should cease to exist'. Mr Mweli spoke of receiving instructions to further this aim:

MR MWELI: *The instructions would entail killing, to kill and eliminate UDF and in other words UDF should cease to exist.*
MR SAMUEL: *Why did you want UDF to cease to exist?*
MR MWELI: *It's because it was alleged that it was burning people's houses and that they will bring ideas of the communists.*
MR SAMUEL: *So was that your political objective in trying, in carrying out these orders to kill UDF people?*
MR MWELI: *Yes.*
MR SAMUEL: *Now without going into the specific instances that you were charged for, I'd like you to describe and set the background about these skirmishes, the fights that were going on. Without going into individual cases here, tell us ...(intervention)*
CHAIRPERSON: *What, are you talking about skirmishes in which he personally was involved?*
MR SAMUEL: *I want you to speak about those instances where you and the UDF people clashed, in which you were involved, without dealing with specific instances. Just tell us what used to happen when UDF members confronted ANC members, or IFP members. What happened then?*
MR MWELI: *Between IFP and UDF there was enmity, and the two groups were fighting against each other, and each time IFP member would be seen around the area of Penduka we would be killed by the others, and as well as vice versa, each time they would see the UDF members in ...(indistinct) would be killed. So there was that, and the fact that the IFP members, they wanted to eliminate UDF members and they will cease to exist, and ANC people as well, we aimed at killing. Sometimes there will be people killed from IFP's area who will be killed for no apparent reason, for the fact that that person is residing in the area of IFP will be killed for that, without any action whatsoever. (Pietermaritzburg Hearing, 11 February 1999)*

44. Mr Mabhungu Absolom Dladla [AM4019/96] and Mr Nkanyiso Wilfred Ndlovu [AM4058/96] applied for amnesty for an attack on a taxi in the Table Mountain area in which ten people were killed on 5 March 1993.

MR ALBERTS: *Yes, can you explain to us what you hoped to achieve by attacking this kombi?*
MR DLADLA: *Nkanyezini is an ANC stronghold and we people from Mboyi could no longer walk past there. We could no longer go to town to buy. We were imprisoned in our area. Our people would be free to walk after this. (Durban Hearing, 26 March 1998)*

45. The applicants testified before the Amnesty Committee that they had carried out the attack with the intention of killing the occupants of the vehicle whom they believed to be ANC supporters on the grounds that an ANC member called Qeda Zulu had used the vehicle to transport members in the area. The attack had been triggered by an event three days earlier when unknown gunmen had shot and killed six children who were on their way to school. The parents of the children were all Inkatha members. The Committee heard that they and other residents of the Inkatha-controlled area of Mboyi were constantly attacked when they travelled through Nkanyezini, an ANC-controlled area. The applicants testified that, although they had not been instructed by their leaders to shoot and kill the occupants of the minibus, they had taken it upon themselves to do so.

46. The Amnesty Committee accepted the argument that they were 'caught up in the senseless violence in the area between members of the ANC on the one hand and the IFP on the other', and that the offences for which they were convicted and for which they were applying for amnesty were committed in the course of the struggles of the past and were associated with a political objective. Amnesty was granted to Mr Dladla and Mr Ndlovu for the killing of ten people and the attempted killing of six people in their armed ambush of the vehicle [AC/98/0012].

47. Mr Phumlani Derrick Mweli [AM 0599/96], IFP Youth Chairperson, applied for amnesty for killing seven ANC supporters. The killings were preceded by a series of attempted killings and assaults in Imbali, Pietermaritzburg.

48. At the time of the incidents, the Black Local authorities Act 192 of 1982 had come into effect, imposing town councils on a number of townships. In many areas in KwaZulu, the IFP had gained control of these councils, which were perceived to be to be illegitimate by supporters of the UDF. In Imbali, this manifested itself as a battle for territory between Stage 1 (a predominantly UDF area) and Stage 2 (a predominantly IFP area).

49. Phumlani Mweli was between 14 and 15 years of age when he committed offences that were directed indiscriminately at supporters of the UDF. He told the Amnesty Committee that he had received general instructions from IFP leader Mr Abdul Awetha and prominent IFP members Mr Jerome Mncwabe and Mr Gasela to attack members of the UDF who had been identified as 'enemies' because of their residence in an 'IFP area'. Mweli received firearms and ammunition from the IFP leaders. He was also given *muti* (traditional medicine), which

he claimed 'would give us a crave to kill and braveness to kill others but be protected at the same time…' [AC/1999/334]

50. Between 3 and 16 January, Mweli killed seven UDF supporters, including an 11-year-old child, Simphiwe Patrick Majozi, for which offences he was convicted in 1990. He was also responsible for the killing of Mr Stanley Shezi, four attempted killings and two assaults.

51. Mweli killed Mr Vikani Jacobs Sosiba near his home on the instructions of Mr Thu Ngcobo and Mr Gasela. He testified that Sosiba was bringing UDF 'comrades into Stage 2 to attack IFP members' [AC/1999/334]. After an attack on the car of IFP leader Mr Abdul Awetha near a garage in Stage 1, Mweli and Imbali (together with Mr Hoosain Awetha and Mr Bheki Zulu) shot Mr Thokozani Hlela and Mr Linda Moloi near a garage that was regarded as UDF-controlled. Mweli said that he did not know if the deceased had been involved in the attack on the vehicle but that they had killed them in order to send a message that they would defend themselves.

52. On the instructions of Mr Jerome Mncwabe, Mweli then embarked on a random killing spree to scare the UDF into leaving Stage 1. In the process, he killed Mr Sibusiso Mdluli, Mr Simphiwe Majozi and Mr Bhekizulu Gwala.

53. The families of the victims had reservations about whether the applicant had fully disclosed the facts but gestures towards reconciliation were extended between the parties. The Amnesty Committee granted Mweli amnesty on all counts, with the exception of the murder of 11-year-old Simphiwe Majozi. The Committee noted that this murder could not be regarded as an attack directed at a political opponent as there was no evidence connecting Majozi to the UDF.

Caprivi trainees

54. Mr Daluxolo Luthuli [AM4075/96], grandson of Chief Albert Luthuli, was trained in the Caprivi by members of the SADF. He applied for amnesty for twenty-one incidents of murder and attempted murder in KwaZulu/Natal and admitted to giving orders to ten other applicants who were involved in a total of 165 human rights violations. It emerged in his testimony before the Amnesty Committee that he was the political commissar and commander of hit squads that had been trained in the Caprivi in 1986 and at Mlaba camp in 1993.

55. Mr A Stewart, who represented Luthuli and some of the Caprivi trainees, argued before the Committee that structures had already been put into place for the deployment of the trainees once they returned from the Caprivi:

It was clear, in my submission, that on the Caprivi trainees returning to KwaZulu Natal there were structures in place, there was quite a sophisticated idea at least as to how those structures should work. The Caprivi trainees were split up into different groups, as the Committee is well aware, the offensive group, defensive group, contra mobilisation, and so on. And they were each supposed to have their own roles, and they were commanded, below Luthuli, by particular people, and there was the planning committee with the ongoing liaison between the IFP people responsible on the one hand, being chiefly MZ Khumalo and Mr Luthuli, and on the other hand the SADF and the SAP. (Pinetown Hearing, 8 March 1999)

56. Luthuli gave evidence about the first planning meeting he attended on his return from the Caprivi:

I was then taken by M.Z. Khumalo who asked me to go with him to a meeting. We went to 121 Battalion. The people whom I remember present there were Brigadier Van Niekerk, Louis Botha from the Special Branch, J.P. and Jerry. The last two men mentioned were also instructors at Caprivi.

What we discussed was that the trainees were back. In what way were they going to work and their safety was also an issue because they would be working covertly. How were they going to be protected?

This was discussed in detail. We then discussed that they should get contra-mobilisation and then we decided that we should open bases for them all over KwaZulu Natal so that they would be working in collaboration with the defensive group that used to pick up all troublesome individuals in the community. Secondly, the offensive group was supposed to stay in a particular area, because it wasn't supposed to meet with the other groups, because it was only used for attacks.

We found a base for them at Port Durnford where they stayed. We then discussed that since they had no identification, I was then asked with M.Z. Khumalo to talk to Brigadier Mathe, so that identity cards or documents could be made for those trainees. (Hammarsdale Hearing, 11-14 August 1998)

57. Mr Stewart noted that this method of operation worked initially but then began to change.

And at that time it seems that there was an attempt to implement those structures, and ensure that those groupings worked in the way in which it had been planned that they would work.

And the KwaMakutha massacre which took place relatively shortly after the return of the Caprivi trainees, and which was perpetrated in, initially at least, a model way inasmuch as it, there was prior surveillance, there was a reporting back, there was proper planning, there was a proper liaison between the military and military intelligence and SAP security branch on the one hand, and the Caprivi trainees on the other, and then the move in to hit the house. It turned out that it may have been the wrong house, but certainly it turned out that it may not have been planned that so many uninvolved people were murdered. But prior to that it seemed that it was implemented in the fashion that had been intended.

But we also know that, from what Luthuli has told the Committee, that he became, on returning from Caprivi and attending the first planning committee, and seeing the involvement of the SADF through military intelligence, and the SAP through the security branch, he became concerned about the extent to which, as he put it, the Boers were directing things, and the extent to which Inkatha was dependent on the Boers. And he then didn't attend planning committee meetings thereafter, save for one which he was called to, to attend to explain a certain incident.

And so right from then the channels of command started to disintegrate, and although we have statements in the affidavits and on record about how things were intended to happen, and how things were intended, and how orders were intended to be relayed, that as time goes on we see that those structures were operating in the initial planned fashion less and less. There was a level of disintegration, there was a level of informality, whereas at the beginning, for example, reports to MZ Khumalo were done only through Luthuli. It happened fairly soon after the KwaMakutha massacre, for example, that some of the Caprivi trainees were reporting directly to MZ Khumalo themselves. They were going direct to MZ Khumalo themselves to get weapons. (Hearing at Pinetown, 8 March 1990)

58. Many of the Caprivi trainees were then deployed in different units within the SAP or KZP and given appointment certificates.

There was an attempt to offer the Caprivi trainees some sort of cover under the auspices of the KwaZulu Police by the issue of appointment certificates, and even by the stationing of certain of the Caprivi trainees at KZP police stations.

Mr Mkhize, my learned friend Mr Wills' client, being stationed at the police station in Esikhawini, for example. And then, we saw an attempt, and now I use the word integrate, to integrate the Caprivi trainees into the special constable forces of the South African Police, and we have that particularly from Mr Khumalo and Mr Dlamini. Mr Khumalo explains how they were trained at Koeberg, they returned to Pietermaritzburg, they had certain duties there, but in respect of themselves and some of those that were with them, that only lasted a month or two and then they became disgruntled and they left. But all of that is an indication, in my submission, of this lack of formality in the lines of command, and the cross over in areas of responsibility between the formations of the South African Government on the one hand and the formations of the KwaZulu Government and the IFP on the other. (Mr A Stewart, Argument: Hearing at Pinetown, 8 March 1990)

59. The Commission's Final Report contains a summary of the incidents for which the Caprivi trainees applied for amnesty for training and assisting the IFP-aligned Black Cats gang to kill UDF/ANC supporters.[175] Mr Israel Hlongwane applied for amnesty for incidents in Ermelo. He was questioned by his Counsel about the interest the IFP political leadership showed in the activities of the Black Cats.

MR WILLS: *Now, you've indicated in your affidavit, whilst the Black Cats were being trained in Mkuze they were visited by certain person from Ermelo. Can you just tell us about those persons?*
MR HLONGWANE: *Yes, they were visit by Noah Mqobakazi.*
MR WILLS: *And who was he?*
MR HLONGWANE: *Noah Mqobakazi was the chairperson of the IFP and also Mkhonza. Mkhonza was the mayor of Davel.*
MR WILLS: *When you say Noah was the chairperson of the IFP, what area was he the chairperson of the IFP of?*
MR HLONGWANE: *In Ermelo and the surrounding areas. (Hearing at Ermelo, 14 September 1998)*

60. The nexus between the Caprivi trainees and the state and KwaZulu Government continued, despite the fact that many of them were dispersed into other structures. In Luthuli's amnesty hearing the following emerged:

MR STUART: *There was a time when you were sent into hiding by the Planning Committee, do you remember that?*
MR LUTHULI: *Yes, I do.*

175 Volume Two, Chapter Five, p. 464 ff; Volume Three, Chapter Three, p. 220ff.

MR STUART: *Were you called to a meeting of the Planning Committee?*
MR LUTHULI: *Yes, that is true.*
MR STUART: *Where was that meeting?*
MR LUTHULI: *The meeting was in Durban, in one of the hotels although I cannot remember the name of the hotel. M.Z. Khumalo, Louis Botha of the Special Branch, Van Niekerk, JP and Kevin were present. It was discussed that because the trail was not going well, or this charge was not good, I wouldn't go back to report at Webber Police station as per bail arrangements.*
I was to be taken into hiding. In the meantime they would be trying to destroy this charge, to get rid of the charge.
MR STUART: *What did they fear would happen if the charge against you persisted?*
MR LUTHULI: *It would emerge that the IFP possessed AK47's that would lead to the disclosure of the Caprivi training.*
MR STUART: *Whereabouts did you go into hiding?*
MR LUTHULI: *I was taken into hiding in the mountains at a place called Cathkin Peak, towards Estcourt, in the mountains of Lesotho. There was a base that was controlled by the Military Intelligence. At this base I found the following people, the Lesotho Liberation Army that was trained there, but I was going to go under cover as a person from Rhodesia, Ndebele. (Hearing at Durban, August 1997)*

61. Key members of the Caprivi group, such as Daluxolo Luthuli and Zweli Dlamini, did not testify at the so-called 'Malan' trial and told their story publicly for the first time at the Commission's Caprivi hearing. Their Counsel argued on their behalf:

Members of other Amnesty Committees that have sat, have on occasion refused amnesty where clearly those were cases where someone's been convicted of something, they try and dress it up in political clothes in order to try and get out of prison. These in respect of those applicants that I represent, that doesn't apply. And in respect of most of the incidents, or certainly many of the incidents that they've been involved, they have been the only sources of information in the hands of the State, broadly speaking about these incidents. It's not as 'though they faced imminent prosecution. They've come in a genuine effort to tell their whole story. (Hearing at Durban, August 1997)

Vigilantes

62. A key technique of counter-revolutionary war was the mobilisation of sections of the community who were regarded as loyal to the government and could be

expected to resist pro-ANC groups by force. In some cases such elements were armed, as with the provision of arms and training to Inkatha. In others, vigilante forces were created.[176]

63. IFP member Mr Conrad Bheki Magoso [AM4014/96] applied for amnesty for a number of offences related to a conflict between IFP supporters residing in an informal settlement in Richmond Farm near KwaMashu and ANC supporters residing in K-section, KwaMashu in the late 1980s and early 1990s. According to the applicant, members of a known criminal gang of dissident former UDF supporters, the '*AmaSinyora*', became an integral part of the IFP group. The conflict was sparked by arson attacks on the border between the two areas, culminating in the alleged 'necklacing'[177] of an elderly man by ANC supporters. The applicant was granted amnesty for a number of arson attacks and four killings [AC2001/054]. The Amnesty Committee had great difficulty in tracing some of the victims of these attacks due to the applicant's poor memory and the lack of documentary evidence.

Special Constables

64. Similar measures included the deployment of Special Constables. These included some of the 200 'Caprivi trainees' trained by the SADF in support of Inkatha. Several hundred Inkatha supporters were sent for Special Constable training at Koeberg during 1987. One hundred and thirty of these were Caprivi trainees.

65. At the end of 1987, the recruits were summoned back to Ulundi by Mr M Z Khumalo, at that time personal secretary to the Chief Minister. He informed them that, in view of the escalation of violence and the killing of Inkatha members in the Pietermaritzburg area, they would be sent on a six-week SAP Special Constables training course. They would then be deployed to the troubled areas in and around Pietermaritzburg.

66. Special Constables were first recruited in the Upper Vulindlela area near Pietermaritzburg in 1988. They were recruited on the recommendation of the local tribal authorities. The main criterion for recruitment was not education, standing in the community or reputation but simply membership of Inkatha.

176 Major-General FMA Steenkamp, 'Alternatiewe strukture as Faktor in die Rewolusionere Aanslag teen die RSA',(Unpublished, SAP HQ, Pretoria, Feb. 1987).

177 The 'necklace' method of attack was used mainly by UDF supporters in the late 1980s and involved burning a victim to death by placing car tyre filled with petrol around his/her neck. For the most part, victims were those persons regarded as collaborators and police informers.

After a brief training, they were attached to the Riot Unit of the SAP in Pietermaritzburg under the command of Major Deon Terblanche.

67. Mr Mduduzi Remember Ndlovu [AM1632/96; AC1998/0092] was a Special Constable in the KZP based at KwaMashu and a member of the IFP. Together with his late brother, Mr Thabani Ndlovu (chairperson of the Mpumuza branch of the IFP Youth Brigade), Ndlovu had killed Mr Sibusiso Gumede (a reserve constable of the KZP) on 16 April 1991 and removed his HMC sub-machine gun. The weapon was later found at the Ndlovu house after a fire. Ndlovu was sentenced to 20 years' imprisonment for the murder. Whilst the Amnesty Committee noted that there were inconsistencies in Ndlovu's testimony, it was satisfied that the applicant had made full disclosure on all material facts and did not act out of ill will or for personal gain. Ndlovu was granted amnesty.

Esikhawini unit

68. Offensive actions by the Caprivi Trainees continued under the cover of the KZP force in the early 1990s. The Esikhawini hit squad, based near Empangeni, was composed of individual trainees and was controlled by a local committee of IFP leaders and senior KZP officers. The hit squad carried out a large number of attacks on ANC and COSATU individuals, resulting in many deaths. It was allowed to act with impunity and the KZP commander, Brigadier C P Mzimela, ensured that its activities were covered up. The few KZP officers who attempted to investigate its activities were either murdered or intimidated from acting.

69. Key figures in the KwaZulu government at Ulundi, including a cabinet minister, Prince Gideon Zulu, and the Secretary of the KwaZulu Legislative Assembly, Mr M R Mzimela, provided logistical support and direction to the hit squad. This was also a finding made by the Supreme Court in the Mbambo[178] matter for purposes of sentence. The state of affairs in Esikhawini in the early 1990s was similar to that in other areas.

70. The *modus operandi* of the Esikhawini unit emerged in cross-examination of Mr Daluxolo Luthuli at the amnesty hearing of Gcina Mkhize and others:

178 In 1995 the Durban Supreme Court found Romeo Mbambo, Israel Hlongwane and Gcina Mkhize guilty of murdering KZP Sergeant Dlamini on 19 June 1993. See Volume Two, Chapter Seven, pp. 633–5.

MR WILLS: *As I understand this military structure, or military struggle, certain people received training like for example Mr Mkhize was trained in Caprivi and in Koeberg and at Mkuze camp and at various other camps, by various people, the SADF?*

MR LUTHULI: *That is correct.*

MR WILLS: *The SAP at Koeberg?*

MR LUTHULI: *Yes, that is correct.*

MR WILLS: *And by Inkatha people at Mkuze camp?*

MR LUTHULI: *That is correct.*

MR WILLS: *But the policy of the IFP was that these people must be transferred into various townships and they must gather loyal and staunch younger IFP persons and give them similar training?*

MR LUTHULI: *That is correct.*

MR WILLS: *So when both Mr Mbambo and Mr Mkhize give evidence later to the effect that they were involved in setting up of another hit squad and specifically trained other persons and specifically people like Mkhana Lipo, Matenywa, Ben Mlambo, Lucky Mbuyasi, that these activities were done in the full k*nowledge *and they were in fact part of the IFP policies at the time?*

MR LUTHULI: *That is correct.*

MR WILLS: *That wasn't against any policy or orders of the IFP?*

MR LUTHULI: *No.*

MR WILLS: And again, this was well known by the leadership and encouraged by the leadership?

MR LUTHULI: *That is correct.*

MR WILLS: *Now, unfortunately I am not in a position to know how high that leadership went, but to be specific, I know for example or I am told for example that this was encouraged by persons like BB Biyela and Mrs Mbuyasi in eSikhawini?*

MR LUTHULI: *That is correct.*

MR WILLS: *The way certain specific targets were identified, was also varied, but you mentioned something that Mr Mkhize alludes to in his affidavit, and I refer you to page, I refer the Committee to page 231 of the bundle.*

That is to the effect that the IFP leadership on the ground, would determine who the problematical UDF persons were? (Durban Hearing, August 1997)

Amatikhulu and Emandleni trainees

71. According to IFP senator Mr Philip Powell, the IFP started training IFP recruits in Patheni near Richmond at the end of 1992. The project was so successful that, after some months, another training camp was established at Elandskop.[179] Powell said that he helped train sixty volunteers at Patheni and a smaller group at Elandskop. According to media reports, by the time the self-protection unit (SPU) training project got underway at Mlaba Camp near Umfolozi a year later, about 1200 men had been 'informally' trained at both Patheni and Elandskop.[180] Training continued in other areas.

72. According to Mr Cyril Bongani Thusi, an IFP member in Richmond, IFP supporters grouped together to attack ANC supporters with homemade firearms in about 1991. ANC supporters left the area as a result and took up residence in Dambuza. Thusi testified before the Amnesty Committee that, in the same year, armed ANC supporters returned from Pietermaritzburg and retaliated by killing some IFP members. At this stage, some of the IFP youth joined the ANC because they felt that the IFP were inadequately armed with homemade firearms.

73. Thusi testified that he was informed that Nkosi Majozi had sent Chief Buthelezi messages that they were under attack. Majozi received a response that certain people were to be sent for training at Amatikhulu camp and that they should collect G3 rifles at the same time. He testified that six persons went for one week's training with Phillip Powell at Amatikhulu camp and were given five G3 rifles [AM8013/97; AC990217].

74. Mr Thulani Myeza, who was trained at Emandleni camp and applied for amnesty for a number of gross human rights violations in Eshowe, testified that the SPUs were trained in preparation for the 1994 elections. He gave evidence before the Amnesty Committee:

> ADV MOTATA: *I take it, correct me if I am mistaken, that you were trained in handling firearms, how to kill, would I be right to say you're saying so?*
> MR MYEZA: *Yes, we were told that we were trained for 1994 election, to kill.*
> ADV MOTATA: *Could you just tell us more that you were trained for the 1994 elections to do what, to show people how to vote or to kill people not to vote?*
> MR MYEZA: *To kill the ANC leadership.*
> ADV MOTATA: *Did you know which leaders were you supposed to kill from the ANC?*

179 N Claude, KwaZulu-Natal Briefing, Number 4, October 1996 (Helen Suzman Foundation).
180 Ryan Cresswell, Sunday Times, 14 November 1993.

MR MYEZA: *Yes, I know a few of them.*
ADV MOTATA: *Would you be kind enough to just give us the few you know?*
MR MYEZA: *The first one was Bongani Msomi in eSikhawini.*
ADV MOTATA: *Proceed.*
R MYEZA: *The second one was Bheki Ntuli in Mtubatuba.*
ADV MOTATA: *Can you remember only the two?*
MR MYEZA: *Mr Nxumalo, here in Eshowe. Given Mthethwa from Eshowe, Schoolboy from Eshowe, Mr Msweli in Mandini. Those are the only people who were disturbing the election in KwaZulu Natal.*
ADV MOTATA: *Now lastly, you mentioned that when you attacked you were accompanied by the KwaZulu Police ...(indistinct)?*
MR MYEZA: *Yes.*
ADV MOTATA: *And prior to your attack you held a meeting, do you recall that?*
MR MYEZA: *Yes.*
CHAIRPERSON: *Were the KwaZulu Police present in that meeting or if not when did they join you or how did they know that you planned this attack?*
MR MYEZA: *The KwaZulu Police would not be present when the decision is taken, but they would be told to go and raid the ANC members after we had taken a decision. The KwaZulu Police would then be led be Nr Nyawuza where they were supposed to raid.*
ADV MOTATA: *Would we understand you correctly that the police, that is the KwaZulu Police, were your allies when you attacked the ANC members, would we understand you to say that?*
MR MYEZA: *Yes. (Durban hearing, 26 March 1998.)*

75. The trainees were receiving payments from the KwaZulu government in Ulundi until Mr Lombo allegedly absconded with this money.

MR MYEZA: *We were being paid as SPU members. We received it from a certain person in Ulundi who was in charge of finances there. I cannot recall his name.*
CHAIRPERSON: *Was that every month or every week, how often was that?*
MR MYEZA: *After every two months.*
CHAIRPERSON: *I thought I heard you say during your evidence that this money that you were getting from Ulundi stopped when a middleman disappeared or left. Can you clear that up first of all? Who was the middleman and what do you mean by he disappeared or he left, what does that mean?*
MR MYEZA: *I did not know the name of this middleman. However, when all KwaZulu-Natal SPU members were called to Ulundi to get their monies that was Friday we went to camp at Emandleni. The following Saturday, we went to the soccer field in E section in Ulundi, and we were told that this person had run away. We barricaded the Parliament in protest of our salaries and demanded to*

talk to Mr Powell himself. He came and told us that that person had run away. He left Ulundi. I did not know his name. (Durban hearing, 26 March 1998.)

76. Most of the trainees claimed that they had received instructions from the local political leadership of the IFP on a day-to-day basis.

CHAIRPERSON: *And as member of the SPU who did you take orders from?*
MR MYEZA: *We got some orders from Phillip Powell when we were still in training.*
CHAIRPERSON: *Would he come there to where you were and give instructions or were these instructions conveyed to you in some other way?*
MR MYEZA: *At Umfolozi where we received training, we had commanders who were working under him. We had commanders like 'Somatekisi' and others that I cannot recall their surnames.*
CHAIRPERSON: *But that was only during the time that you have for training but you were only for training for a short period?*
MR MYEZA: *Yes, ...[indistinct] six months.*
CHAIRPERSON: *After the training was over that did you get instructions from?*
MR MYEZA: *The person who organised training for us was Mr Nyawuza. (Durban hearing, 26 March 1998.)*

Self-protection units

77. In August 1993, IFP leader, Dr M G Buthelezi called on every Zulu to pay a R5 levy for the establishment of a 'private army' to 'guard against the obliteration of KwaZulu'[181] In fact, the project was sponsored by monies drawn from the KwaZulu Government. At a KwaZulu Legislative Assembly (KLA) meeting on 25 August 1993 a resolution was taken to establish a self-protection unit training project.[182]

78. In September 1993, the training of SPUs began at Mlaba Camp on the edge of the Umfolozi Game Reserve. Senior IFP member Philip Powell later acknowledged that, prior to the opening of Mlaba, training of IFP recruits had been going on for more than a year and about 1200 men had been 'informally' trained. Between 5000 and 8000 IFP supporters were trained at Mlaba camp. Certain Caprivi trainees were deployed to assist in the project. Trainees received instruction in offensive methods and the use of AK 47s. With the assistance of former Vlakplaas commander Eugene de Kock, Powell arranged for the delivery of a number of truckloads of sophisticated weaponry to be delivered to the region.

181 Report of the Civilian Component of the ITU, 27 January 1997.
182 Ibid.

79. On 15 March 1994, the KwaZulu Cabinet adopted a secret plan drawn up by Powell to circumvent legal restraints on the development of military force in KwaZulu. Powell's plan aimed to counter perceived threats that the ANC would make KwaZulu ungovernable. He claimed that, amongst other factors, there were internal problems within the KZP 'due to political allegiances of members to the ANC or the NP'[183]

80. The plan involved the setting up of a 'battalion/ regimental sized paramilitary unit' within the KZP. The proposed unit would be structured in the following manner:
    (a) Five regionally recruited companies of approximately 200 men each. The unit would be drawn from the following elements:
        - 1000 selected graduates of the KZG self-protection unit-training project appointed as Special Constables …
        - 100 KZP members who received counter-insurgency training from the SADF (non-commissioned element). These members would provide the basic leadership element at a section, platoon and company level …
        - A small group of professional advisors drawn from former SADF or SAP officers …
    (b) The unit would be based at Mlaba camp with additional operational bases in the following areas:
        (i) North Coast base (hand-written - Esikhawini)
        (ii) South Coast base (Folweni)
        (iii) Durban base (Folweni)
        (iv) Midlands base (Madadeni)
        (v) Northern Natal (Empangeni)
    (c) Logistical Requirements:
        (i) The unit would require 1000 G3 rifles … These would have to be drafted from KZP strength or purchased urgently …
        (iii) Support weapons would have to be acquired for counter-insurgency operations. These include squad level weapons such as MAG type belt-fed machine guns and 60 mm mortars.
        (iv) Uniforms: … supplemented by 1000 sets of second hand canvas SADF style webbing (ammo pouches and packs), 1000 water bottles …
        (v) Specialised vehicles could be made available from the Dept of Works and Health and modified if necessary to a paramilitary role …[184]

183 Secret Memorandum prepared by Powell and introduced by him to a KwaZulu Cabinet meeting on 15 March 1994 (according to a hand-written note. The memo is dated 15/4/94.) (RPD, AG), Supplied to the TRC by the ITU.
184 Ibid.

81. KZP Commissioner During wrote a letter to Buthelezi dated 18 March 1994 in which he pointed out:

that the deployment of these trainees who have not had, even remotely, sufficient training in law or exposure to police procedures, could lead to extremely serious repercussions for which I, as Commissioner can be held responsible ***both criminally and civilly****.*

82. He expressed his concern about the ruling that he had to waive the standard requirements for qualification as Special Constables and opposition to the proposal to use Caprivi trainees as leadership for the platoons of Special Constables:

Your Excellency is well aware of the controversy surrounding the employment of Caprivi Trainees as members of the KZP and the allegations of hit squad activities …

83. He was opposed to arming the Special Constables with G3s as 'the indiscriminate use of such a lethal arm can be expected from persons who have not been adequately trained …'. With regard to the group of 'professional advisers drawn from former SADF or SAP officers', he advised that he did not know their identities or backgrounds.[185]

84. Buthelezi overruled During and the implementation of the project commenced.[186]

85. The Transitional Executive Council (TEC) led a raid on Mlaba camp on 26 April 1994, forcing its closure and bringing a halt to the plan to place 1000 Mlaba trainees into the KZP.

THE AMNESTY ARENA

Full disclosure

86. Some applicants approached the Amnesty Committee in the erroneous belief that it would offer them a hearing on what they believed to be false charges against them and for which they had been wrongfully imprisoned.

185 Letter from During to Buthelezi dated 18 March 1994, entitled PROPOSED EMPLOYMENT OF 1000 MLABA TRAINEES AS SPECIAL CONSTABLES. (Ref 7/8/9, hand-written F.3/36).(RD, SM), Supplied to the TRC by the ITU.

186 Resolutions of a Special Cabinet meeting held at Ulundi on 18 March 1994 (80/94): Appointment of special constables), supplied to the TRC by the ITU.

87. Mr Baba Langelihle Khomo [AM 4036/97], an ordinary member of the IFP, was convicted and sentenced to 20 years' imprisonment for the murder of eight people and the attempted murder of five people at a traditional function at Ndlovu's kraal in KwaNdeni Reserve in Mpumalanga near Durban on 7 March 1992. The trial court found that the applicant had acted in 'common purpose' in killing Mr Kati Ndlovu and others. The applicant testified that, although he had witnessed the attack, he had not taken part in it. He had admitted his involvement in his application with a view to protesting his innocence before the Commission. His application for amnesty was refused on the grounds that he had not disclosed any involvement in a politically motivated offence.

Furtherance of political objectives

88. Most IFP applicants were granted amnesty after testifying that their motivation for committing offences was linked to the general conflict and in the reasonable belief that a particular act was in furtherance of a political objective.

89. The Amnesty Committee frequently had to face the difficult question of making a finding in attacks that could be regarded as 'random' or 'indiscriminate' and where the applicant/s did not know for certain whether the victims were UDF or ANC supporters. In some such cases, attacks were launched upon people perceived to be UDF and ANC supporters in an effort to drive the UDF or ANC out of an area.

90. Acting for Mr Gcina Mkhize [AM4599/96] and other Caprivi trainees and KZP members, Mr John Wills testified before the Committee:

It's a unique feature of the Natal violence, in my submission, that the conflict relates so directly to territory, and the whole of the conflict was about dominance of particular geographical areas, to the extent, as I say in my heads, that one could more or less rely on the fact of if one lived in a particular area than one would be a member of the political party that was dominant in that area. This aspect of the conflict I submit is important particularly when one looks at what might, had it not been for that characteristic, be considered indiscriminate attacks. (Pinetown hearing, 8 March 1999.)

91. Other applicants testified that the aim of such attacks was to create terror in ANC-dominated areas, thereby making political organisation difficult and dangerous and making people afraid to live in the areas concerned. Moreover, such attacks amounted to a show of strength for Inkatha (the IFP) and a demonstration that the UDF (and later the ANC) was unable to defend its people in a particular area.

92. Some of the applicants had mixed political and personal motives, such as revenge for earlier incidents in which they or their relatives had been attacked.

93. Mr Vusi Thokozani Manqele [AM4037/96; AC1999/0016] killed ANC chairperson Mr E Bhengu in a spontaneous attack in KwaMakhutha during July 1991. The attack took place after Manqele's home had been attacked and his relatives killed by the deceased. The Amnesty Committee accepted that, although there was an element of revenge in the attack, there was sufficient political motivation to justify the granting of amnesty.

94. IFP member Mr Vusi Linda Hlengwa [AM 4687/97] was convicted of the murders of Mr Mahluleli Makhanya and Mr Bheki Zwane and the attempted murder of Mr Simiso Msomi of the UDF after unknown persons in KwaMakhutha attacked his home during April 1990. Mr Zwane was allegedly with the applicant at the time of the attack and was shot and killed by Hlengwa a week later.

95. The Amnesty Committee found that Makhanya's killing and Msomi's injury were motivated by revenge and did not disclose a political objective. The applicant withdrew his request for amnesty for the murder of Zwane after contradicting his application by indicating that the latter was killed accidentally.

96. Mr W Harrington [AM0173/96] and Mr F Erasmus [AM0174/96], both constables in the SAP Riot Unit, and Mr N Madlala [AM3432/96], recruited from the ranks of the IFP and employed as a Special Constable, applied for amnesty for the killing of Mr Mbongeni Jama in Elandskop near Pietermaritzburg on 24 February 1991. The applicants had captured, assaulted and killed Jama after an ANC rally in Noshesi and had been convicted of the offence. Counsel for the applicants argued that they had been indoctrinated to see the ANC as the enemy and that they had found a pocket book on the deceased revealing that he had been involved in attacks on IFP members. The Amnesty Committee concluded that the evidence suggested that the applicants had beaten Jama so severely that they had decided to destroy the evidence of their illegal conduct as they would not have been able to justify this to their superiors. For this reason, the Amnesty committee found that the act did not disclose a political objective.

97. The Amnesty Committee, relying on the testimony of applicants and witnesses and on background information on the area in question, refused amnesty to some applicants where it appeared that political violence was not rife in the area. Mr Nimrod Mbewu Mthembu [AM6683/97] and Mr Mshengu Ngobese

[AM6344/97], card-carrying members of the IFP, applied for amnesty for the killing of Mr Siya Enack Cele and Ms Elizabeth Zondime Khumalo and the attempted killing of Mr Mdikivani Mkhize on 24 August 1991 in the Mapumulo area, an IFP stronghold.

98. The applicants were on their way home from a traditional celebration held to celebrate a man's gratitude to his daughter for good behaviour. On their way home, they passed Mr Cele and Mr Mkhize who apparently insulted them, calling them 'Ukova', a derogatory name for IFP members.

99. The applicants stabbed Mr Cele, but Mr Mkhize managed to escape. They then went to the home of Ms E Khumalo, who they believed to be opposed to the IFP because she had protested against a tax levied on dogs. They shot her with a homemade weapon and then stabbed her.

100. The Amnesty Committee noted that there was no turmoil in the area at the time. They found that the applicants had not acted with a political objective since their acts were not directed at clear political opponents nor were executed in furtherance of the aims and objectives of a political organisation. They also noted that alcohol might have played a significant role in the incidents and denied amnesty to the applicants [AC1998/0009].

101. A factor mentioned in many incidents was the use of traditional medicine or 'muti' while preparing to perpetrate human rights violations. For example, Mr Phumlani Derrick Mweli, told the Committee:

MR MWELI: *The traditional healer will come. We did not know that person. We've never seen him or her before. Sometimes we will get Mr Themba Tjale and the traditional healer would arrive there, every after six months they will go and revive them.*
MR SAMUEL: *Why were you given muti by these people? What was the purpose?*
MR MWELI: *The purpose was to give us that crave to kill and give us that braveness to kill others but be protected at the same time from being shot and killed.*
MR SAMUEL: *So were you told that if you have this muti on you the opposition's bullets won't strike you?*
MR MWELI: *Yes, sometimes that happened. I'm one example, it has happened to me. I was never shot. There were places I could not receive, or bullets would not hit me. (Pietermaritzburg hearing, 11 February 1999.)*

Personal gain

102. The Committee refused amnesty to any applicant who clearly appeared to be motivated by personal gain when committing a human rights violation. Mr Mdu John Msibi [AM0624/96] applied for amnesty for the killing of ANC members Mr Mandla Alfred Mgudulela and Mr Mphiheleli Joseph Malinga in Piet Retief on 9 June 1993, for which he had been convicted and sentenced.

103. Msibi testified: 'The IFP contracted me to shoot the two leaders of the ANC as they were a threat to the IFP'. He told the Amnesty Committee that Mr Ali Msibi, an IFP leader and a Constable Mkhwanazi of the Crime Intelligence unit of the SAP had instructed him to do the killings. However, because he had had admitted in his trial[187] that Mr Msibi had paid him R15 000, the Amnesty Committee found that he had acted for personal gain rather than with a political objective and he was refused amnesty.

Proportionality

104. Mr Phumlani Derrick Mweli [AM0599/96] was refused amnesty for the killing of Simphiwe Patrick Majosi in Imbali on 16 January 1989 (see above). Mweli claimed that he was instructed by Mr Jerome Mncwabe to do something that would 'scare' UDF people in Stage 1 and induce them to flee the area.[188] In the course of an indiscriminate attack, Majosi was killed. The Amnesty Committee found that the killing of a child could not be regarded as an attack directed at a political opponent. Ironically, the applicant at the time of this offence was himself only 14 years old [AC/99/0334].

THE RIGHT WING AND THE IFP

105. According to the statement of Patrick Dlongwane (known as Pat Hlongwane) in about February 1994, he, Mr Thomas Shabalala (IFP, Lindelani) and AWB members General Nick Fourie (who died in the Bophuthatswana coup), Mr Norman Starkey, Captain Schoeman, Brigadier van Vuuren, General Monty Markow and others met at Ocean Green in Point Road, Durban. Here it was agreed that the AWB would train IFP members and the Natal Liberation Army (NLA) was formed.

187 Piet Retief Circuit Court, case number CC18/95.

188 Hearing at Pietermaritzburg, 12 February 1999.

Attack on the Flagstaff police station

106. On 6 March 1994, an IFP official and AWB members attacked the Flagstaff police station with the intention of obtaining arms for IFP self-protection units.[189] In the course of the attack, they killed Constable Barnabas Jaggers and wounded Constable Wele Nyangana and Inspector Mzingizi Mkhondweni. They removed a police van, six police heavy calibre rifles, some rounds of ammunition, a metal trunk and about R140 in cash.

107. The following persons were charged and convicted of murder, attempted murder and robbery: Mr James Mkhazwa Zulu (IFP Regional Chairperson, lower south coast); Mr Harry Marvis Simon Jardine (AWB); Mr Andrew Howell (AWB); Mr Morton Christie (*Veldkornet* in the AWB and IFP member), and Mr Christo Brand (Lieutenant in the *Ystergarde*, AWB). Mr Robin Shoesmith (IFP) and Mr Roy Lane (AWB) turned state witness.

108. According to the amnesty application of Mr James Mkhaswa Zulu [AM5864/97], who died before his amnesty hearing, Mr Robin Shoesmith approached him with the idea of forming self-protection units before the 1994 election. Because they had no firearms with which to train the units, Shoesmith's plan was to attack the Flagstaff police station and steal firearms.

109. According to the evidence led at the trial, Shoesmith approached AWB member Morton Christie and asked whether the AWB would be prepared to assist the IFP. Christie and Jardine of the AWB agreed. Flagstaff police station was selected because Mr Sipho Ngcobo, an IFP member, had told them that there would only be one police officer on duty late on a Saturday night and that he would probably be drunk. They were told that the weapons were kept in a steel trunk in the charge office. Later Howell, Christo Brand [AM6422/97] and Lane of the AWB joined the plot.[190]

110. According to Morton Christie's amnesty application[191], Nick Fourie[192] and Patrick Pedlar were his superior officers in the AWB. Christie testified that the Security Branch in Port Shepstone encouraged the operation and monitored it while it was taking place. He also testified that Patrick Pedlar, the operational leader of the AWB, was an informer and that it was his role to ensure that the operation went ahead.

189 See also Chapter Six of this section.

190 See court records annexed to amnesty application of James Zulu.

191 Christie and others were also arrested for the bombing of the Seychelles Restaurant in Port Shepstone but were released. The restaurant was believed to be frequented by ANC members. Christie claims in his amnesty application that Roy and Rob Lane carried out the bombing (AM6610/97).

192 Fourie died in the Bophuthatswana Coup in 1994.

111. Christie testified that Shoesmith instigated the plan to raid the Flagstaff police station and that he, Harry Jardine, Corrie van der Westhuizen, Shoesmith and Patrick Pedlar discussed it at a meeting. Christo Brand was not at the meeting. About two weeks later, Pedlar told Henry Jardine and Morton Christie that they should assist the IFP with the operation and involve James Zulu of the IFP. In the meantime, Warrant Officer Ferdi Wentzel of the Security Branch had instructed Pedlar to ensure that the operation went ahead.

112. Christie testified that they were followed by a red Cressida on their way to the police station and had the impression that its occupants were trying to count the number of persons in the car. When they arrived, Howell went into the charge office but came out saying he believed that they had been 'set-up' as there were armed policemen on the premises. Inspector Mkhondweni, who was parked outside the police station, arrested the men. It was then that the shoot-out began.

113. Christie testified that, during the trial, the Port Shepstone Security Branch was unable to explain why, having had knowledge of the operation, it did not attempt to stop it and why it took nine months to arrest the known suspects. Pedlar was not charged and his role emerged for the first time at the amnesty hearing. Mr Barry Jardine [AM5864/97] of the AWB had this to say about Patrick Pedlar:

It later transpired, at the Criminal Case at the High Court in Bizana that Patrick Pedlar was a Security Police informant and that he revealed our plans to Inspector Wentzel. Inspector Wentzel informed the Flagstaff Police Station that APLA would attack the Police Station on the evening of the 5th of March 1994.

MR DE KLERK: *Can we just have some clarity here? Patrick Pedlar was your Commander?*
MR JARDINE: *That's correct.*
MR DE KLERK: *According to your information was he the man that said that you had to get the weapons?*
MR JARDINE: *That's correct.*
MR DE KLERK: *And later it became apparent that he was a Police informer because he conveyed to the police that you would fetch the weapons on a specific time?*
MR JARDINE: *That's correct, that APLA would attack the Police Station. As a result of this an ambush was set for us and that is why there were so many armed policemen at the Police Station. Here, I wish to refer to the judgment of Judge Beck, on page 1054, when he put forward his doubts as to why Inspector Wentzel allowed the attack to proceed, and did not try to prevent it. (Hearing at Durban, 24 April 1998.)*

114. The surviving victims objected to amnesty being granted on the grounds that the applicants did not disclose who killed the deceased and wounded the other victims. However, the Amnesty Committee found that Christie shot Mzinigizi Mkhondweni and was satisfied that the other applicants could not testify who shot the other victims as it was dark when the shoot-out occurred. The applicants were granted amnesty.

115. In another incident, Mr Boy Vusumuzi Gwamanda [AM1972/96] applied for amnesty for the conspiracy to murder former Mpumalanga premier, Mr Matthews Phosa whilst he was incarcerated in Barberton prison in 1990. The applicant testified that he was trained by AWB-linked warders at Barberton prison in the use of firearms and hand grenades. Mr Gwamanda was granted amnesty.

MOTIVES AND PERSPECTIVES

116. In summary, the Amnesty Committee heard that most of the acts for which members and supporters of the Inkatha Freedom Party applied for amnesty were motivated by a sense of loyalty to an organisation which had embarked on what it perceived to be an alternative strategy for bringing about an end to apartheid. While senior members of the IFP claimed that there had never been an Inkatha decision to employ violence in this aim, amnesty applicants claimed that their use of violent means to achieve these aims were both authorised and sanctioned by the political leadership of the party.

117. The Commission took cognisance of the views expressed by leaders that the original source of the conflict in the then Natal and Transvaal lay in the opposition to the IFP's adoption of this alternative strategy.

118. In its 1998 Report, the Commission found that the IFP was responsible for gross violations of human rights committed in the former Transvaal, Natal and KwaZulu against persons who were perceived to be leaders, members or supporters of the UDF, ANC or its alliance partners, and persons identified as posing a threat to the organisation or whose loyalty was doubted[193]. It was a further finding of the Commission that such violations formed part of a systematic pattern of abuse which entailed deliberate planning on the part of the organisation[194].

193 Volume Five, p. 233
194 Ibid, p. 234

119. The assertions by the Caprivi trainee amnesty applicants that they were acting as part of a well-resourced and orchestrated strategy coincided with the Commission's finding that in 1986 the SADF conspired with Inkatha to provide the latter with a covert, offensive paramilitary unit (hit squad) to be deployed illegally against persons and organisations perceived to be opposed to or enemies of both the South African government and Inkatha. The SADF provided training, financial and logistical management and behind-the-scenes supervision of the trainees who were trained by the special forces unit of the SADF in the Caprivi strip.[195]

120. The purpose and nature of the training (which has been documented in Volume Two, Chapter Five and Volume Three, Chapter Three) was succinctly summed up by one of the military trainers, Colonel Jan Anton Nieuwoudt [AM3813/96; AC/2001/264], in his amnesty application, as being 'to identify and eliminate ANC, SACP and PAC targets'. Nieuwoudt also explained to the Commission how the trainees were taught the art of '*nie terug spoorbaarheid*' or how to cover up their crimes. It was hardly surprising that the military planners of the Caprivi project requested 'indemnity from prosecution for offences carrying the death penalty'.[196] Indeed the Operation Marion documents are littered with acknowledgements and references to the unlawful nature of the actions involved. The Commission found that probabilities that the Caprivi project amounted to a conspiracy to murder were overwhelming.

121. With regard to the KwaZulu Police, the Commission found that from the period 1986 to 1994, the KZP acted in a biased manner and overwhelmingly in furtherance of the interests of Inkatha, and later the IFP. This was a view that was also expressed by several amnesty applicants. Although there were exceptions to the following general statement, in that some members of the KZP did carry out their duties in an unbiased and lawful manner, the KZP generally was characterised by incompetence, brutality and political bias in favour of the IFP, all of which contributed to the widespread commission of gross human rights abuses[197].

122. With regard to the Esikhawini hit squad led by Gcina Mkhize, who applied for Amnesty along with others, the Commission found that in 1990, certain senior members of the IFP conspired with senior members of the KZP to establish a hit squad in Esikhawini township, to be deployed illegally against people perceived to be opposed to the IFP[198]. Contrary to the claims of the IFP leadership that it

195 See Volume Three, Chapter Three, p. 221ff. and Volume Five, Chapter Six, p. 234.

196 UITERS GEHEIM ST-2/3/310/4/MARION/2/3.

197 Volume 3.

198 Volume 5, p. 235.

was never the policy of the organisation to engage in violence in furtherance of its political objectives, the Amnesty Committee accepted the evidence of amnesty applicants that they took instructions from certain senior members of the organisation, and that these activities resulted in the commission of gross human rights violations.

123. With regard to the self-protection unit members, the Commission found that during the period 1993–1994, the self-protection unit (SPU) project, although officially placed within the ambit of the Peace Accord and containing an element of self-protection, was also intended to furnish the Inkatha Freedom Party with the military capacity to, by force, prevent the central government and the Transitional Executive Council from holding elections that did not accommodate the IFP's desires for self-determination. Evidence from former members of self-protection units placed before the Amnesty Committee reinforced the finding of the Commission that such armed resistance would entail the risk of violence and injury to persons.

124. The Commission gave due attention to the response of the IFP to these and other findings of the Human Rights Violations Committee. However, the Commission is of the view that the evidence which has emerged through the amnesty process has done nothing to cause the Commission to change or moderate these findings in any way. On the contrary, on the completion of the work of the Amnesty Committee, the Commission is satisfied that the core findings made in its 1998 report are justified.

RECONCILIATION

125. During several amnesty hearings, the Amnesty Committee or the applicants' legal representatives facilitated meetings between applicants and the relatives of victims or the victims themselves. This occurred, for example, at the hearings of Mr Daluxolo Luthuli and others where the community of Esikhawini expressed forgiveness. A key precipitating factor for this reconciliation appeared to be the extent to which the applicant was regarded as having made full disclosure and his openness about his motives and lines of command.

126. For example, in Luthuli's amnesty hearing, his legal representative, Advocate A Stewart, said:

The position taken by Mr Luthuli has been one where he accepts moral responsibility for all the activities that the Caprivi trainees were involved in,

even where he didn't know what those activities were, or may not have given orders in relation to them. (Hearing at Pinetown, 8 March 1999.)

127. On the other hand, implicated persons who continued to deny their role in events made reconciliation impossible.

128. At the amnesty hearing of Mr 'Sosha' Mbhele, there were bitter words between the applicant and his former commander, Mr Bheki Mkhize:

MR MKHIZE: *Sosha, what I would like to tell the community is that you were a killer, you were even responsible for killing IFP. I don't know you to have been killing ANC members.*
MR LAX: *Do you want him to answer that? Are you putting that to him as a question, do you want him to respond to your comment? What is your response to that, Mr Mbhele? You see, you mustn't put too much to him, then it's too difficult for him to respond.*
MR MBHELE: *When I came here, I knew exactly what he is going to say, because when you are in such a situation as I am, you are regarded, or you are put to appear as a criminal. I know a lot of other people who are in prison and have been labelled criminals because of what the situation is now. When I was not in prison, when I was working for them, I was regarded as a comrade, but now that I am in prison and I have a sentence of life imprisonment, I am no longer useful to them. You came here and when you ... (indistinct) stood up, I knew what you were going to say, I knew what's your reason for coming in front was. When we are convicted, nobody admits that they know us, nobody admits that they know us, even in the organisation. I know all of this. When a person is in trouble, they're actually regarded as criminals. Even the people you are with now, if they get into trouble, you will deny any knowledge of them, but if you were to go to the IFP office now and inquire about me, they will tell you about me, I am a card carrying member of the IFP. You are a criminal. You have even acquired a shop, because you have forced people to donate money for ammunition allegedly. I have all the information about you. My family is in trouble because of what happened to me, because I am in prison, but you are free, because of you, whatever you have come for here is not true, because you want to appear to be God in front of the community's eyes. (Pietermaritzburg hearing, 18 December 1998.)*

CONCLUSION

129. Despite the relatively few applications from IFP members, the Amnesty Committee found that the evidence they contained was consistent with the trends and patterns revealed in the testimony of victims of human rights violations who appeared before the Commission and in the documentary material made available to the Commission by state officials.

Who I am.

I am the IFP, I am the soldier who I am. I am well trained. I am the son of Goodwill (The King of the Zulus.) Who I am, I am an incredible, you can't find me anywhere, but I am there for protection at iZingolweni. They know me. At Ulundi they saw me. Everywhere they know me, who I am. I am the one who was trained, trained at eMandleni at uMfolozi. (This place where I say I was trained at is not true. It is true that I was trained but not at this mentioned place).

When I am back, I spoke the misunderstood language. They said it is isigagaga, but I simply said ga-ga-ga. The answer was the G3. Who I am, I am the one who is fighting for my land. I am the one who was jailed for the truth. I am the one who was jailed for my friends. I am the one who was jailed for the death of my loving mother. I am the one who was tried to be killed every moment of my life. I am the physician of human life, I am the scientist of human training, I am the biologist of human thoughts. I am the fighter fighting for my eternal life. Who I am. Now you know who I am, for I am here for you my friends. Yes, I am here for my life to surrender. In death, pain I surrender. If I die for my rights, who I am.

My soul will cry no more, for though hearts are free to be stopped, for my eyes are free to be closed, for my feet will walk no more, but if my present is for the struggle of letting my friends in the hands of Buthelezi, who I am. Mothers, fathers, sons, daughters, brothers and sisters, I remember the spirit of Gqozo, who said the blood will heal the broken soul. Who I am. Some call me uklova, for though that is true, I am the son of the free area.

I am the son of liberation. (That is all).

Poem written by Mr Goodman Musawakhe Ngcobo [AM5632/97; AC1999/0339], Nkulu IFP Youth leader, while on death row for the assassination of ten ANC supporters in 1991

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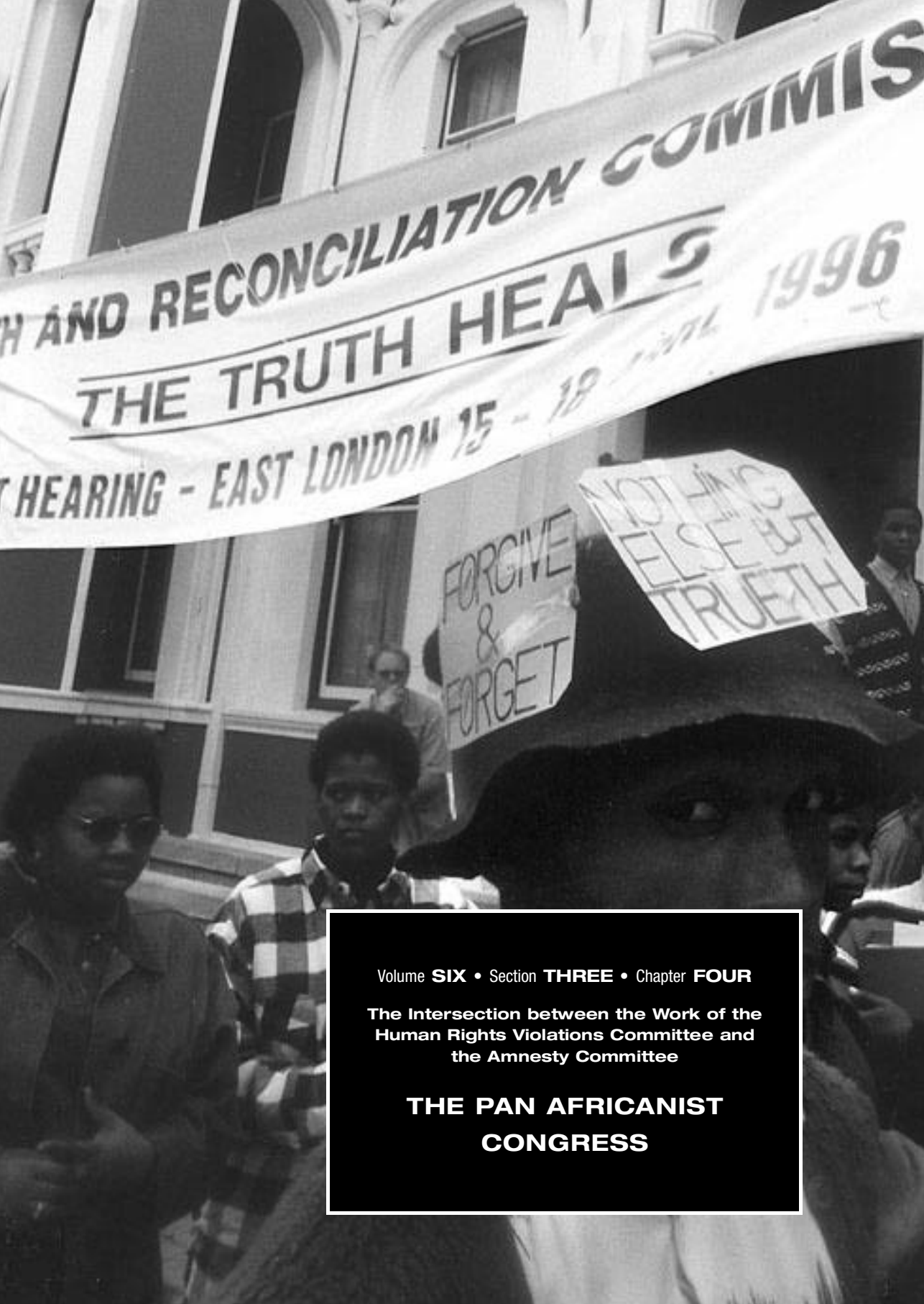

Volume **SIX** • Section **THREE** • Chapter **FOUR**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE PAN AFRICANIST CONGRESS

The Pan Africanist Congress

SUMMARY AND ANALYSIS OF AMNESTY APPLICATIONS

■ OVERVIEW

1. The Amnesty Committee received amnesty applications from 134 supporters and members of the Pan Africanist Congress (PAC) and/or African People's Liberation Army (APLA). Six of the applicants claimed to be members of the Pan Africanist Student Organisation (PASO).

2. PAC/ APLA members applied for amnesty for a range of offences. These included violations arising from attacks on the security forces, attacks on white farmers and civilians and armed robberies and sabotage operations. Individuals generally applied for amnesty for several acts. These included the execution of the operation; the possession of arms, ammunition and/or explosives; casualties and injuries arising out of the operation, and violations committed while retreating from the operation (for example during a shoot-out with the police).

3. In all, 138 individual applicants applied for 204 violations. All the applicants were male. Most were aged between 17 and 35 years of age. The youngest applicant was 14 years old at the time of the violation.

4. The Amnesty Committee granted amnesty for 155 out of 204 acts (76 %) committed in the course of eighty separate incidents. It refused amnesty for forty-nine acts (24 %) committed in the course of thirty-three separate incidents.[199]

5. A total of 109 people were killed and 140 people survived attempted killings, many with severe injuries.

199 As early as 1996, the Amnesty Committee decided to deal with incidents rather than individual acts in order to make it possible to deal with groups of applicants who had been involved in the same incident but who may have committed a number of different acts. Thus, when dealing with applications, the Committee decided to focus on specific incidents, each comprising a number of different acts/offences.

6. The violations for which amnesty was sought occurred in all four of the former provinces.[200] However, the PAC operation was more concentrated in the Western Cape and in areas within striking distance of the Transkei, where its operational platform was based during the early 1990s.

7. The majority of the amnesty applications related to violations committed between February 1990 and April 1994 and were submitted by members of APLA. Amnesty applications for violations committed in the earlier period were for offences that were not strictly defined as gross violations of human rights. These included activities such as furthering the aims and membership of a banned organisation, the possession of arms and ammunition and harbouring guerrillas in order to further the armed struggle. For the most part, these applications were dealt with in chambers[201] and were granted by the Amnesty Committee.

8. This chapter will deal mainly with applications in the following categories:

   a Violations committed by the PAC within its own ranks;
   b Armed robberies;
   c Attacks on security forces;
   d Armed ambushes;
   e Attacks on civilians;
   f Attacks on farms;
   g Sabotage;
   h Procurement and possession of arms, explosives and munitions, and
   i Other matters.

9. It should be noted, however, that these are not discrete categories. In some instances, for example, APLA attacks on security forces were motivated by the intention to strip the victims of their firearms and could therefore also be described as armed robberies. Many attacks on farmers and farms were also intended as armed robberies.

200 Transvaal, Cape, Orange Free State and Natal.

201 See this volume, Section One, Chapter Three for more information about chamber matters.

Statistics: Amnesties granted and refused

Category	Granted	Refused
Violations in PAC camps	60%	40%
Armed robberies	59%	41%
Attacks on security forces	93%	7%
Attacks on civilians	100%	0%
Attacks on farmers	70%	30%
Sabotage	100%	0%
Arms possession	100%	0%

FACTORS ENCOURAGING OR IMPEDING APPLICATIONS

10. Many applicants were serving prison sentences at the time that they made their amnesty applications. However, not all had necessarily been convicted of the offences for which they sought amnesty. In other words, they were sometimes serving sentences for offences other than those for which they sought amnesty.

11. At a meeting with the Truth and Reconciliation Commission (the Commission) in January 1998, representatives of the APLA High Command expressed the organisation's reservations about the amnesty process. The meeting ended, however, with an agreement that APLA cadres currently in prison would be encouraged to apply for amnesty. The Amnesty Committee agreed that the PAC should appoint counsel to represent PAC/APLA applicants. It was also agreed that consultations between Amnesty Committee staff and applicants in prison would take place only in the presence of a PAC representative.

12. The quality of legal advice received by members of the liberation forces was a weakness of the process. Many were not aware of the fact that government had set up a fund (administered by the Department of Justice) through which ANC and PAC applicants had access to the same levels of legal assistance as applicants in the employ of the state. The Commission, on the other hand, was able to provide legal aid only through the Legal Aid Board and at a much lower rate. It is probable that a not insignificant number of such applications either lapsed or failed as a result of this.

ANALYSIS OF AMNESTY INFORMATION

Poqo

13. No applications for amnesty were received from members of Poqo for violations committed during the 1960s.

Violations committed by the PAC within its own ranks

PAC camps in exile

14. The Commission received evidence indicating that many gross violations of human rights occurred in the ranks of the PAC in exile, mainly in Tanzania. Despite this, only one application for amnesty was received. Amnesty was granted to Mr Mawethu Lubabalo Ntlabathi [AM5693/97] for assaults on Messrs Matsokoshe and Tebogo in a PAC camp in Tanzania in 1992 and 1993, with the approval of its military attaché, Mr Bafana Yose.

15. The applicant told the Amnesty Committee that the assaults were a means of disciplining the two APLA cadres for their involvement in stealing APLA property, thereby undermining army discipline and the building of an effective army to attack and overthrow the government of South Africa.

16. The Amnesty Committee accepted that military forces have to maintain strict discipline in order to operate successfully and that offences associated with that objective fell within the definition of acts, omissions or offences associated with a political objective [AC/2000/247].

PAC ranks at home

17. The Amnesty Committee received four applications for the killing of three individuals suspected of collaborating with the security police.

18. PAC/APLA member, Mr Mduduzi Cyril Ngema [AM3681/96], was granted amnesty for the killing of Mr Christopher Nhlanhla Myeza on 1 October 1992. Ngema was instructed by a man called Thompson to kill Myeza, a fellow PAC and APLA member. Myeza had been seen in the company of police officer and had allegedly also been overheard promising a police officer that he would report on a PAC meeting. He was therefore believed to be an informer. He was killed in a sugar cane plantation in Verulam outside Durban.

19. The Amnesty Committee accepted the evidence presented that the PAC, like other liberation movements, viewed individuals who worked as police informers as the enemy and thus as targets for elimination (killing). Mr Ngema was granted amnesty on the grounds that the act was committed with a political objective within a particular context and that he had made a full disclosure of all relevant facts [AC/1998/0116].

20. PAC/APLA member Shakespeare Buthelezi [AM1488/96], was granted amnesty for the robbery and attempted killing of Mr Basie Tladi at Twala Section, Katlehong, on 16 March 1993 [AC/1998/0051]. The incident occurred two weeks after an attack on the police in Katlehong in which a police officer, Mr Freddy Mashamaite, had been killed. Buthelezi was implicated in the attack.

21. When Buthelezi heard that the police and Basie Tladi were looking for him, he decided to kill Tladi, whom he believed to be a police informer. Buthelezi testified that his decision to kill Tladi had been based on the 'fifteen points of attention' that constituted the APLA Code of Conduct. He made two attempts to kill Tladi at his house, both of which failed. In the second attempt, he shot Tladi as the latter left his house. When Tladi returned with the police a short while later, there was a shootout. Buthelezi was injured, arrested and eventually convicted of a number of offences.

22. Here again, the Amnesty Committee accepted that the killing or attempted killing of an informer was an act associated with a political objective, taking into consideration the situation in the country at the time of the commission of the offence. The Committee also accepted that Buthelezi was a member of a publicly-known political organisation and that his actions were undertaken on behalf of that organisation. The Committee also accepted that Buthelezi had acted within the scope of his authority or that he had a reasonable belief that he was acting within the scope of his organisation's express or implied authority. Finally, the Committee accepted that Buthelezi had made full disclosure of events and had not acted out of malice or for personal gain.

Armed robberies committed by APLA

23. The Amnesty Committee received applications from thirty-nine APLA members for fifty-nine armed robberies committed between 1990 and 1994. Most of these were committed in 1993. Amnesty was granted for thirty-five (59 %) of these robberies and refused for the remaining twenty-four (41 %).

24. Amnesty applicants claimed that armed robberies were committed on the instructions of the APLA High Command as part of the work of APLA 'repossession units' in order to raise funds and/or obtain weapons and vehicles to enable APLA to carry out its military strategy. These operatives killed twenty-seven civilians and injured sixteen, some seriously.

25. In some of these attacks, large amounts of money were seized, including, in one instance, cash amounting to R500 000.[202] In some instances, personal goods were taken, including vehicles and firearms.

26. In reaching its decisions, the Amnesty Committee grappled to draw a distinction between acts that were genuinely 'political' and those that were purely 'criminal' in nature. Ultimately, it granted amnesty to those applicants who were able to show that the robbery had a political motive and a proven chain of command, and had not been undertaken on grounds of malice or personal gain.

27. On occasion, the Amnesty Committee heard evidence that APLA frequently conscripted criminals to the repossession units because they were 'fearless' and had the 'practical skills' necessary to carry out successful robberies. Such recruits would be given a basic grounding in the political objectives of APLA.

28. In general, the size of the repossession units varied from three to eight persons, though some robberies were carried out by individuals acting alone. Unit commanders would generally divide their men into groups of three. Each group would be allocated its own commander and each would be given a different function to perform. The 'assault group' would penetrate the target building and execute the action; the 'support group' would ensure the safe withdrawal of the first group and the 'cut-out or security group' would be positioned outside the target to prevent any interference with the operation.

29. Amongst the amnesty applications granted were the following:

Attack on Giovanni Francescato

30. Mr Giovanni Francescato, an elderly white male, was attacked at Fort Beaufort in the Eastern Cape on 6 September 1992 when three armed men burst into his

202 Armed robbery carried out by Patrick Thapelo Maseko [AM 5918/97] at the University of the Transkei (UNITRA),Umtata, on 18 February 1993.

home and assaulted him. Mr Francescato was forced to point out where he kept his firearms, his house was ransacked and he was then shot dead with a pistol.

31. PAC/APLA members Sipho Mabhuti Biko [AM 2916/96], Winile Veveza [AM 2918/96] and Mwamadoda Yengeni [AM 0334/96] applied for amnesty for the robbery. Because they had been acquitted by the court on the murder charge, they did not seek amnesty for the killing.

32. The applicants told the Committee that they were carrying out the orders of their local commander, Mr Tamsanqa Duma. The attack was in line with APLA's policy of attacking white homesteads to secure arms for the defence of PAC members. The arms seized were to be used in other APLA operations. Duma was not in direct communication with all the applicants but dealt only with Biko, who issued orders to Yengeni and Veveza.

33. Biko had identified the target before he applied to Duma for clearance, which he then obtained. He knew of the house because his mother, by then deceased, had previously worked as a domestic for Mr Francescato. He had also reconnoitred the house before the attack. Yengeni and Veveza knew of no plans to attack this particular house but knew generally that, in line with APLA policy, white homes were to be attacked to secure weapons. It was only when they were in front of the gate of Francescato's house that Biko instructed them to break into the house and look for weapons. Biko admitted that it was he who had shot Francescato dead.

34. As the group retreated from the scene, Biko searched his two accomplices to ensure that they had not removed anything else from the house against his instructions. He told the Committee:

    As commander of that operation … I was supposed to search my sub-ordinates to ensure that they did not take anything like money. If the order was to take money and firearms, we are supposed to do exactly per order. We are not supposed to take anything. Therefore it was necessary to do that, to make sure that they didn't take anything from the house. (Hearing at East London, 8 October 1998.)

35. After the attack, Biko handed the arms over to Duma. Duma confirmed to the Amnesty Committee that he received the arms that day and the money the following day. He also confirmed having given the order that Mr Francescato be robbed and killed to prevent him from identifying the applicants and testifying against them in

court. Asked why it was necessary to kill Mr Francescato after he had shown them where the firearms were, Duma replied that it was the policy of APLA to attack and kill whites, who were seen at that time as 'enemies of the African people'.

36. The Amnesty Committee took cognisance of the fact that Biko and Veveza had many previous convictions, mainly for housebreaking, theft of motor vehicles and robbery and, even though they were not seeking amnesty for any of these acts, they were both questioned at length about these. The Committee found their explanations 'most unsatisfactory' and described them as 'a mixture of unmitigated lies and self-exoneration'. However, Duma and Mr Bulelani Xuma, former Deputy Director of Operations and Director of Special Operations in APLA, confirmed the versions relevant to their application in this matter.

37. The Amnesty Committee granted amnesty to Mr Sipho Biko, Mr Winile Veveza and Mr Mwamadoda Yengeni [AC/1999/0251], based on its conclusion that the operation was undertaken for political reasons and that the applicants had made the necessary disclosure.

Attack on a vegetable shop in Randfontein

38. On 16 April 1994, a three-person APLA unit attacked a vegetable shop at Station Street, Randfontein near Johannesburg. The object of the operation was to obtain funds for APLA, and the unit stole an amount of R3 000. While they were robbing the shop, they shot and killed the owner, Mr Joao Manuel Jardim. Fleeing the scene afterwards, the attackers shot and injured a bystander, Mr David Oupa Motshaole, probably in an attempt to avoid identification.

39. Mr Jardim had been the victim of an earlier APLA armed robbery, at Elsburg Mine in Westonaria on 16 November 1990. In this earlier incident, three APLA operatives, led by Mr Thapelo Patrick Maseko [AM 5918/97], entered the store and removed a number of items, an unspecified sum of cash and a vehicle. When some of the people in the shop resisted, the unit opened fire, killing one person and injuring Mr Jardim. Mr Maseko was granted amnesty for this incident [AC/1998/0104].

40. The person who gave the order for the 1994 Randfontein attack and to whom the money was handed after the attack (described above) was the same Mr Maseko who had been involved in the earlier Westonaria attack.

41. Mr Maseko testified that he had given the instruction notwithstanding the fact that the first democratic elections were due to take place within a matter of days. He told the Amnesty Committee that the PAC had not yet suspended the armed struggle. On the contrary, he said, the President of the PAC had stated publicly that the PAC would not 'abandon the bullet until the ballot is secured'. He added that certain right-wing movements were still actively pursuing a policy of violence with the intention of disrupting the elections. He also confirmed that it was policy to raise funds for APLA by 'repossessing' money and other valuables from white people, and that no distinction was made between hard and soft targets in this respect.

42. PAC/APLA members Nkopane Diaho-Monaheng [AM3828/96] and Mangalisekile Bhani [AM5708/97] were granted amnesty for the 1994 robbery and killing in Randfontein on the basis that they had made full disclosure of the relevant facts and had acted within the ambit of PAC and APLA policy at that time [AC/1998/0119; AC/2000/065].

Attack on a PEP Store at Botshabelo

43. On 17 February 1992, a three-person APLA unit robbed a Pep Store in Botshabelo near Bloemfontein. Although one of the attackers was armed, no violence was used in the actual robbery. After the operation, the armed APLA member became involved in a shoot-out with the police in which two police officers and the APLA operative died.

44. The Amnesty Committee agreed that the shoot-out should not affect the application, which related only to the robbery, for which the applicants, Mr Moshiuwa Isaiah Khotle [AM5619/97] and Mr Lerato Abel Khotle [AM3443/96], had been gaoled.

45. A significant feature of this case is the fact that the trial court had accepted the political motivation for the incident presented by the accused. This was one of very few cases that came before the Amnesty Committee where applicants had raised a political argument as part of their defence in the course of an earlier criminal trial. This was regarded as significant by the Amnesty Committee, which noted that:

[T]here appears to be no doubt whatsoever that the act was committed during the course of the political struggle of the past, that the objective was to assist

the political organisation of which they were members, that there was no motive of private gain on their part. The money was to be used by the unit, it was to be held by the unit commander. [AC/1998/0046.]

46. Accordingly, Khotle and Khotle were granted amnesty [AC/1998/0046] for their role in the attack

Attack on the Sentra Hyperserve supermarket at Wesselsbron

47. Five people were killed and four were wounded in an armed attack on the Sentra Hyperserve supermarket in Wesselsbron in the Orange Free State on 3 July 1993. Cash and cheques to the approximate value of R9 000 were stolen. The deceased victims were Messrs Michael Andries Sparkhams, George Christiaan Frederick Kleynhans, Herbert Jacobus van Niekerk and Johannes Arnoldus Lourens, and Ms Maria Fatima de Castro. Three people were severely injured in the attack. They were Mr Joao Avelono de Castro, Ms Susana Catharina Viljoen and Mr Hendrik Viljoen.

48. Six members of the PAC, Mr Mangalisekele Bhani [AM5708/97], Mr Silimela Qukubona Ngesi [AM020/97], Mr Lerato Abel Khotle [AM5619/97], Mr Stanley Michael Tshoane [AM5901/97], Mr Moalusi Morrison [AM5953/97] and Mr George Thabang Mazete [AM6630/97] were granted amnesty [AC/2000/250] for the attack. All the applicants were either APLA members or members of a PAC task force.

49. Mr Bhani, who commanded the attack, told the Amnesty Committee that he had received instructions from the APLA Director of Operations, Mr Letlapha Mphahlele, to go to Welkom where he would be received and deployed by the Orange Free State regional commander Lerato Abel Khotle. Khotle took Bhani to Wesselsbron where he was instructed to 'identify a target' for a robbery for the purposes of raising funds for APLA.

50. The Wesselsbron Supermarket was selected because the owner was thought to be a member of the Afrikaner Weerstandsbeweging (AWB), and members of the AWB and members of the South African Police (SAP) were amongst those who normally did their shopping there. Khotle secured approval for the target from the Director of Operations. At the hearing, Mr Bhani was asked how the shoppers were identified as members of the AWB. He replied:

It's easy, because of their khaki uniform and their big hats like the cowboy hats

and they were armed. Some were armed with two firearms. So it was quite easy to identify them. (Hearing at Bloemfontein, 17 August 1988.)

51. Mr Bhani led the attack into the shop and ordered the customers present to raise their hands. He then told the other two operatives to shoot them. Mrs de Castro, one of the owners, was then ordered to open the tills. She opened the three tills and the money was taken. She was then shot dead. The operatives then opened fire on the other customers. None of the victims had resisted the attack. They all obeyed the instruction to raise their arms in surrender but were executed extrajudicially.

52. The survivors of the attack opposed the applications on the grounds that nei ther the robbery nor the shooting was associated with a political objective.

53. Mr Pedro Ignatius de Castro lost his wife, Ms Maria Fatima de Castro, in the attack. He told the Committee that he believed the attackers had come to rob him. He denied any AWB links and denied that he even supported any political party.

54. Despite various contradictions and inconsistencies in the evidence of the applicants, the Committee accepted that the incident occurred during the period referred to as the 'Year of the Great Storm' and that such conduct was indeed party policy at that time. The applicants were granted amnesty.

Robbery at UNITRA

55. Mr Patrick Thapelo Maseko [AM5918/97] and eight others carried out a robbery at the University of Transkei (UNITRA) in Umtata on 18 February 1993. At the time of the robbery, the university was busy with the registration of students. University staff members were counting money when the operatives entered the auditorium.

56. The assault group opened fire on the people in the hall, killing a security guard, Mr Mason Mlindeli Mankumba, and injuring two police officers, Mr Wilberforce Sandla Mkhizwayo and Mr Elliot Michael Pama.

57. Maseko, who was standing outside the hall to prevent any interference with the operation, told the Amnesty Committee that, although he did not see what

happened, the commanders of the other two groups told him that the police had started the shooting. He testified that APLA had a standing rule that, if a target drew a firearm, operatives were to open fire immediately and not wait to be killed.

58. An amount of R500 000 was seized in the attack. Significantly, this huge amount – by far the largest acquired in Mr Maseko's 'repossession' activities – was not delivered to Botswana. Instead, Mr Maseko alleged that he gave it to a Mr Mandla Lenin. However, he produced no evidence to support this assertion, nor were details given as to how the money was used.

59. Despite the fact that UNITRA was a historically-black institution, Mr Maseko explained that it was targeted as 'an enemy institution because it was oppressing the African people'. He was granted amnesty for the operation [AC/2000/106].

APLA attacks on security forces

60. The Amnesty Committee received a total of twenty-eight amnesty applications from twenty-three individual applicants for attacks on security force members. The attacks resulted in twenty-seven deaths, while thirteen victims survived attempts on their lives.

61. The first APLA attacks on security force members were three actions undertaken by the Alexandra township-based 'Scorpion Gang' between December 1986 and February 1987. PAC/APLA members, Mr Themba Jack Phikwane [AM6032/97] and Mr Mandla Michael Yende [AM5648/97], were granted amnesty for the three attacks: the first on 16 December 1986, in which three SADF members died; the second on 1 January 1987, in which at least six SADF members died, and the third a month later, in which at least five SADF members died. At the hearing, precise figures of the number of SADF deaths in the latter two incidents could not be given. The Amnesty Committee was told that six or seven died in the first attack and five or six in the second. The names of the dead victims were not given.

The 'Lichtenburg Battle'

62. In July 1988, Mr Louis Nkululeko Dlova [AM6596/97] injured a member of the SAP with a hand grenade in what became known as the 'Lichtenburg Battle' in the Western Transvaal.

63. Mr Dlova told the Committee that he and other APLA cadres had entered South Africa from Botswana under the command of the late Mr Sipho Mahlangu with a view to seeking, identifying and attacking 'the enemy'. On their way to Johannesburg in a minibus taxi, they were confronted by the police. Dlova and Mahlangu threw hand grenades at the police. Dlova managed to escape in the ensuing confusion, but his commander and two other comrades died. The Committee was of the view that Dlova had acted with a political objective, and he was granted amnesty [AC/1999/0187].

64. All other applications for attacks on members of the security forces pertain to operations carried out in the early 1990s. They took the form of ambushes of police vehicles in Brakpan [AC/2001/067], Heilbron [AC/1999/002], Crossroads [AC/1998/0103], Khayelitsha [AC/1998/0103], Pimville [AC/1998/0053] and Diepkloof [AC/1998/0050]; assaults on police stations in Batho [AC/1997/0064], Dimbaza [AC/1999/0333], Lady Grey [AC/2001/057] and Yeoville [AC/1998/0050]), and an attack on what was assumed to be a police contingent at the Khayelitsha railway station [AC/1998/0103], which turned out to be a group of private security guards. The Committee granted amnesty to all applicants in each case.

Ambush on a police vehicle at Diepkloof

65. On 28 May 1993, APLA member Phila Martin Dolo [AM3485/96] commanded an APLA unit that attacked a police vehicle in Diepkloof near Johannesburg. One police officer, Constable Jacob Hlomela Mabaso, was killed and Sergeant Edward Nelushi was injured.

66. At the time of his application, Dolo was serving a life sentence on several con victions including murder, attempted murder and possession of arms, ammunitions and explosives relating to the attack.

67. Dolo testified before the Committee that the attack was in retaliation for an act of aggression on the part of the security forces who had 'launched a national swoop on the offices of PAC' and arrested various members, including those in national leadership positions. In his affidavit he noted that: 'this act was seen as being provocative and a declaration of hostilities against the PAC … which action had to be responded to'.

68. Dolo testified that he had received an instruction from the Director of Special Operations, Mr Sipho Bulelani Xuma (code-named 'Polite'), to launch operations

against the SAP in his area. He testified that he had been an APLA regional commander with several units under his command and that he had been deployed in the Gauteng area (then Transvaal) in early 1993.

69. The ambush of a police vehicle was planned with Messrs Peter Muchindu, Godfrey Mathebula, Musa (who later turned out to be an informer) and a fifth person. The group used a home-made bomb laced with nails and other explosives.

70. The Committee found that Dolo's actions were all within the ambit of the policies of APLA and PAC and that they were associated with a political objective. He was accordingly granted amnesty [AC/1998/0050].

Yeoville police station attack

71. Mr Dolo [AM3485/96] was also granted amnesty for an attack he ordered on the Yeoville police station on 30 May 1993, two days after the Diepkloof attack. Dolo gave Muchindu and Mathebula explosives and instructed them to carry out the attack. They travelled to Yeoville with fellow unit member Musa, but were intercepted by the police before they could reach their target. SAP member Ian Alexander was injured in an exchange of fire. Muchindu and Mathebula were arrested, convicted for the possession of explosives and sentenced to ten years' imprisonment each. Dolo said he learnt later that Musa had tipped off the police about the intended attack.

Khayelitsha railway station attack

72. In the early hours of 5 December 1992, four APLA operatives, including Mr Andile Shiceka [AM5939/97] and Mr Walter Falibango Thanda [AM5784/97], attacked the Khayelitsha railway station, killing Mr Jan Mbambo and injuring Messrs Cosmos Bhekumuzi, Jackson Mjakiya, Sandisile Ntshica and Sihlanu Mtamzeli, all black employees of the Springbok Security company.

73. The APLA operatives had believed that police officers would be present at the station and that there would be no civilians on the scene at that hour. When the attack began, security company personnel ran into a small room to take cover. The operatives continued firing at them through the closed door.

74. Shiceka had received orders from an APLA commander codenamed 'Power' (aka Mzala or Mandla) 'to carry out operations to attack members of then racist

South African Police, the South African Defence Force and other white people'. He was told that the purpose was 'to take the war to white areas and to steal by force weapons from the police and members of the Defence Force'.

75. Despite the fact that this was a botched operation in that the victims turned out to be neither whites nor members of the police, Shiceka and Thanda were both granted amnesty [AC/1998/0103] for their roles in the attack. The Amnesty Committee accepted that the attack was politically motivated and consistent with the political objectives of the PAC and APLA.

The story of Andile Shiceka

76. Born in Guguletu in Cape Town in 1969, Andile Shiceka joined the PAC and went into exile in 1989. He underwent military training in Tanzania and Uganda and returned to South Africa as an APLA combatant in 1992. He was then deployed to Cape Town by APLA commander 'Power' and given instructions to launch attacks on members of the security forces and white people congregated in 'white' areas. The Claremont restaurant attack (see below) was one such attack.

77. In addition to the Khayelitsha railway station attack, Shiceka was granted amnesty for attacks on the Claremont Steaks Restaurant in Cape Town and the Crazy Beat Disco in Newcastle in Natal. For this latter action, he had been charged, convicted and sentenced to 25 years' imprisonment in May 1994. With respect to the Khayelitsha railway station shooting, Shiceka had been charged with one count of murder and five counts of attempted murder. However, the matter never came to trial.

Attacks on the Cape Flats

78. Towards the end of 1992, three APLA operatives opened fire on a police vehicle travelling on Zola Budd Road in Khayelitsha near Cape Town, injuring one of its occupants. Mr Gcinikhaya Christopher Makoma [AM0164/96] and Mr Walter Falibango Thanda [AM5784/97] were granted amnesty [AC/1998/0103] for the attack.

79. On 8 September 1992, Mr Walter Thanda and two other operatives opened fire on a police officer (Mr Patrick Tutu) and a Spoornet employee (Mr Peter Dyani) who were on foot in the Crossroads area of Cape Town. Both were killed.

Before the operatives could search their victims for firearms, the lights of an oncoming vehicle shone in their direction, causing them to retreat hastily. Thanda only learnt that the victims had died when he returned to the scene the following day. He told the Amnesty Committee that he had reported the attack to 'Power' the following day and 'Power' had said he would claim it as an APLA operation.

80. On 12 January 1993, Thanda, Shiceka and others opened fire on a police vehicle travelling along NY108 in Guguletu, killing one passenger, a Constable Mkwanazi, and injuring the driver, Sergeant Johannes Meyer. Thanda was arrested and charged, but the case was eventually dropped for lack of evidence.

The story of Walter Falibango Thanda

81. Born at Molteno in the Eastern Cape on 29 November 1960, Thanda became a member of the PAC Youth League and APLA in 1990. He told the hearing on the Crazy Beat Disco attack that he was motivated to join APLA because of the conditions under which African people were living.

Nobody dragged me to join APLA. I saw how our brothers were killed by white people together with the police and the soldiers, defending the apartheid system. So therefore nobody pushed me behind to go and join APLA, I personally joined APLA. (Hearing at Pietermaritzburg, 10 October 1998.)

82. Thanda came to Cape Town on the instruction of his commander, 'Mandla' (aka Power, Mzala or Jones). He was instructed to start an APLA base in Cape Town and launched a task force unit in 1991, the purpose of which was to provide military training to members and involve them in APLA operations thereafter.

83. Thanda applied for amnesty for the three above-mentioned attacks on members of the SAP and for the 1994 attack on the Crazy Beat Disco in Newcastle in Natal (see below). In the latter case, he was convicted and sentenced on 26 May 1994 to 25 years' imprisonment. He was granted amnesty for all incidents [AC/1998/0103 and AC/1998/0016].

84. Thanda is currently serving with the South African National Defence Force (SANDF).

The story of Gcinikhaya Makoma

85. Born in Cape Town on 20 January 1976, Gcinikhaya Christopher Makoma was sixteen years-old at the time of his involvement in the Khayelitsha police vehicle

ambush and the St James' Church attack in 1993 (see below). He was granted amnesty in both cases.

86. In December 1992, Mr Walter Thanda invited Makoma to a meeting with 'Africans who were introduced to him as PAC members'. Without giving details, Thanda informed the meeting that they were going to carry out an operation. He distributed two AK47 rifles and two R4 rifles to members of the unit and ordered them to inspect them to ensure that they were functioning properly. Thanda then instructed those present to follow him, which they did. Makoma told the Amnesty Committee that, 'because he (Thanda) was on the command structures of the PAC and a member of APLA, and I was his underling, it was not open to me to question his command.' (Hearing at Cape Town, July 1997.)

87. In the attack on a police vehicle on Zola Budd Road, Khayelitsha, Makoma was ordered to stand at one end of the road and to give a warning signal to the others when the police van approached.

88. Makoma testified to the Amnesty Committee that the instruction he received and carried out in respect of the St James' Church attack (see below) was to steal a motor vehicle for use in an undisclosed operation. On the way to St James' Church, Makoma was handed an R4 rifle and a hand grenade and ordered to accompany his commander, Mr Sichumiso Lester Nonxuba, into the church and to fire indiscriminately at the congregation. Makoma used his full R4 magazine of about thirty-one rounds of ammunition to shoot at the congregation. He testified that he had been trained not to question orders but to obey them at all times, and that the slogan 'one settler, one bullet' meant that 'any white person in South Africa was regarded as a settler and if we came across any settler during our operation, they had to be killed or injured'.

Attacks on civilians

89. The Amnesty Committee received a total of thirty-two amnesty applications for attacks on civilians. Twenty-four people were killed in these attacks and 122 seriously injured.

90. Most of these attacks took place between 1991 and 1994 and formed part of the PAC's 'Operation Great Storm'. In this campaign, the targets of APLA attacks were, on the one hand, white-owned farms in the Orange Free State, the Eastern Cape and areas bordering the Transkei and, on the other, public

places in urban areas identified as being frequented essentially by white civilians and/or white security force members.

91. Several PAC and APLA applicants were adamant that the attacks in which civilians were often killed were not motivated by racism. They testified that they targeted places believed to be frequented by whites because all whites were perceived to be complicit in the government's policy of apartheid.

92. All the amnesty applicants in these matters testified that they had acted on behalf of APLA. At a media conference during the amnesty hearings in Bloemfontein on 28 August 1997, Mr Letlapa Mphahlele, APLA Director of Operations, said that 'there was no regret and no apology offered' for the lives lost during 'Operation Great Storm' in 1993. He acknowledged his involvement in the planning and execution of the operation. He said that his 'proudest moment was seeing whites dying in the killing fields' and that the Commission's Amnesty Committee was a 'farce and a sham', which sought to 'perpetuate white supremacy'.

93. Amongst the operations directed at 'white' civilian targets were:

The King William's Town Golf Club attack

94. APLA operatives armed with hand grenades and automatic rifles attacked the King William's Town Golf Club on the night of 28 November 1992. At the time, the club was hosting an end-of-year dinner function. Four people – Mr Ian MacDonald and Ms Rhoda MacDonald, Ms Gillian Davies and Mr David Davies – were killed in the attack and seventeen others were injured.[203]

95. Four PAC/APLA members, Mr Thembelani Thandekile Xundu [AM3840/96], Mr Malusi Morrison [AM5953/97], Mr Thobela Mlambisa [AM7596/97] and Mr Lungisa Ntintili [AM6539/97], were all granted amnesty for their roles in the attack. Mr Xundu, who is now serving in the SANDF, testified before the Amnesty Committee that Mr Letlapa Mphahlele had sanctioned the operation. The weapons used in the attack were supplied by the Regional Commander based in Umtata, the late Mr Sichumiso Nonxuba. Morrison was instructed to deliver them to Xundu, which he did. The club was targeted because it was believed that security force personnel would attend a function on the night planned for the attack.

203 Volume Two, Chapter Seven, p. 688; Volume Three, Chapter Two, p. 146, and Volume Five, Chapter Four, p. 136.

96. At about 21h50 on the night of the attack, Xundu and Nonxuba entered the dining hall of the club and threw hand grenades and opened fire with R4 and R5 assault rifles. Two other operatives, who had been posted outside the building, threw petrol bombs and opened fire on the building. Mlambisa, the driver, was armed with a 9mm pistol.

97. The group split up the following day. A few days later, Xundu, Ntintili and another operative disposed of the stolen Jetta used in the attack along the Butterworth to Grahamstown road. The vehicle was pushed off the road and was found, burnt out, some time later.

98. The Amnesty Committee granted amnesty to the four operatives, accepting that the aim of attacks of this nature had been to impress on whites the need to abandon their support for the government of the day, and to make it clear that they would continue to be targets of such attacks unless there was political change in the country. Furthermore, the Committee was satisfied that the applicants had acted under the orders of Commander Mphahlele and that the act was committed in the course of the conflicts of the past.

Attack on the Steaks Restaurant in Claremont

99. An APLA unit opened fire on the Steaks Restaurant in Claremont, Cape Town, on 26 December 1992, injuring five people. Mr Malcolm Visser, the owner of the restaurant, was the only victim to be seriously wounded.

100. Amnesty applicant Mr Andile Shiceka [AM 5939/97] told the Committee that he and four others had stolen a Datsun bakkie and driven to the restaurant that night. After surveying the scene and deciding there would be few obstacles to an attack, he and an operative codenamed 'Scorpion' stood at the door of the restaurant and opened fire for about four to five seconds. They then ran back to the bakkie[204] and drove to the home of one of the operatives in Khayelitsha where they abandoned the vehicle. They heard the attack reported on the radio news the following morning. Shiceka testified that he then telephoned 'Power' to report the operation and said that 'Power' told him that he would claim it as an APLA attack under the code name 'Bambata'.

204 A light open truck.

101. Ms Amanda Warner, one of the victims and a waitress at the restaurant at the time of the attack, opposed the application in an affidavit. She stated that, since the attack, she had suffered severe emotional trauma to the extent that she was no longer able to work as a waitress or even enjoy a meal at a restaurant for fear of being attacked. She also stated that she was unable to live alone for fear of being attacked and that she feared that her attackers would hunt her down and kill her. For all these reasons, she had decided to take up residence in the United Kingdom.

102. At the conclusion of the evidence Advocate Warner, appearing for Amanda Warner, addressed the Amnesty Committee. He conceded that the evidence disclosed that the offences committed by the applicants were associated with a political objective and were committed in the course of the conflicts of the past. He conceded too that the applicants held no personal malice or grudge against the victims of the attack and that they were engaged in the liberation of the African people from white oppression.

103. Mr Andile Shiceka was granted amnesty for the attack [AM5939/97 and AC/1998/0103].

Attack on Yellowwoods Hotel, Fort Beaufort

104. APLA members Nkopani Diaho-Monaheng [AM3828/96], Lungisa Mziwonke Ntintili [AM6539/97] and Vuyisile Brian Madasi [AM6077/97] were granted amnesty [AC/2000/225] for an attack on the Yellowwoods Hotel at Fort Beaufort in the Eastern Cape on 20 March 1993, in which Mr John Jerling was shot and died instantly.[205]

105. Mr Madasi, who acted as commander of the operation, told the Amnesty Committee that he had received instructions from a member of the APLA High Command, the late Mr Sichumiso Nonxuba, to go to Fort Beaufort to carry out an attack at the Yellowwoods Hotel, which had been identified as a place frequented by members of the SADF, particularly on weekend evenings.

106. The following Friday, Madasi, one 'Nceba' (who was to drive the getaway vehicle for the attack and was not part of this amnesty application) and Diaho-Monaheng hijacked a red Langley vehicle from an unknown driver in Mdantsane.

205 Volume Two, Chapter Seven, p. 689.

They drove to Alice where they collected weapons. (Ntintili confirmed to the Committee that he had supplied the other applicants with the arms in terms of orders from APLA.) They then drove to Fort Beaufort but found the hotel closed. They returned to Mxhelo Village where they left the weapons and abandoned the hijacked vehicle near Alice.

107. A week later, on 20 March, they hijacked a Nissan Sentra vehicle belonging to Mr Kenneth Mashalaba. Promising not to damage the vehicle, the applicants released Mr Mashalaba and his passenger, Ms Virginia Khatshwa, between Alice and Fort Beaufort.

108. On their arrival at the hotel, Nceba parked the car and he and Madasi positioned themselves at the front door to prevent anybody from escaping. Diaho-Monaheng positioned himself at the window.

109. The applicants then opened fire on the patrons who were drinking and playing darts in the bar. The shooting lasted for about three minutes, after which the applicants retreated. The following day they left for Transkei where Madasi reported to ' Power' and Letlapa Mphahlele, members of the APLA High Command.

110. As it turned out, the hotel was not frequented by SADF members as the applicants had believed. The patrons were youthful civilians with no ties to the security forces. All except Mr Jerling escaped serious injury. At the hearing, the mother of the deceased, Ms Anna Jerling, testified that her son had no interest in politics and was still a student. He was eighteen and had friends across the racial spectrum. When he was killed, the family received condolences and messages of support from members of the local ANC Youth League.

111. Amnesty was granted as the Amnesty Committee was satisfied that the applicants were acting on the instructions of the PAC and APLA and that their actions were in line with the policies and activities of these organisations.

Attack on St James' Church, Kenilworth

112. Eleven people were killed and fifty-eight wounded when APLA operatives opened fire with automatic rifles and threw hand grenades at worshippers in St James' Church, Kenilworth in Cape Town, at approximately 019h30 on 25 July 1993.[206]

206 Volume Two, Chapter Seven, p. 686, and Volume Three, Chapter Five, p.505.

113. Those killed were Mr Guy Javens [CT00620/SOU], Ms Denise Gordon [CT01124/SOU], Ms Marita Ackerman [CT02922/SOU], Mr Richard O'Kill [CT03029/SOU], Ms Myrtle Smith [CT03029/SOU], Mr Gerhard Harker, Mr Wesley Harker, Mr Oleg Karamjin, Mr Andrey Kayl, Mr Valuev Pavel and Mr Valentin Varaska. The last four were Russian sailors.

114. PAC/APLA members Mr Gcinikhaya Makoma [AM0164/96], Mr Bassie Mzukisi Mkhumbuzi [AM6140/97] and Mr Tobela Mlambisi [AM7596/97] applied for amnesty for the attack [AC/1998/018]. Mr Letlapa Mphahlele, who initially applied for amnesty for the same incident, failed to appear at the hearing. On the second day of the hearing, the Amnesty Committee heard via the press that his failure to appear at the hearing was in protest against the Commission's lack of objectivity. Mr Mphahlele's application was accordingly set aside.

115. At the hearing on 9 July 1997, Mr Mkhumbuzi testified that his unit leader, the late Mr Sichumiso Nonxuba, had selected the target because 'whites were using churches to oppress blacks' and whites 'took our country using churches and bibles. We know and we have read from books that they are the ones who have taken the land from us'. The applicants testified before the Amnesty Committee that killing white people would 'put pressure on the white government to return the land to the African people'.

116. The Amnesty Committee heard testimony that Makoma and Mlambisi stole a vehicle on Nonxuba's orders on 25 July 1993. The applicants testified that they had no prior knowledge of the operation until they actually arrived at the church. Although the target was not disclosed, the unit prepared for the attack during the week before it took place. Mkhumbuzi was instructed to travel to the Transkei to procure weapons and ammunition from members of the APLA High Command. He was given two R4 rifles, 365 rounds of R4 ammunition, three M26 hand grenades and R200. He took these in a bag to a house in Khayelitsha and reported this to Nonxuba. The day before the attack he was ordered to prepare four petrol bombs for use in an operation that was to take place the following day. This he duly did.

117. At 18h00 the attackers convened at a taxi rank and drove to the church. Nonxuba still did not reveal any details about the target but simply told the others that Mkhumbuzi would be 'security', Mlambisa the driver, and that Nonxuba and Makoma would enter the target building. Makoma testified as follows:

When we entered the church, Nonxuba led the way and as we entered we were in a passage which led to the main doors. People were walking up and down the passage. We left off the passage for a few seconds and then Nonxuba said we will enter through the main doors. Nonxuba then told me to throw the hand-grenade and to shoot to kill. Nonxuba led the way and we then burst through the doors of the church. Nonxuba first threw his hand grenade (he was on my left hand side) and then I threw mine. As the hand grenades exploded, we took cover behind the doors, re-entered and, while the people inside were screaming, we started to shoot. We shot indiscriminately and I finished my full R4 magazine, some thirty-one rounds of ammunition. We had also heard a shot outside and a car screeching. We went back into the passage to re-load for our later protection. Inside the church one of the churchgoers had also fired at us… (Cape Town hearing, 9 July 1997.

118. When they came out of the building, Mkhumbuzi was supposed to throw the petrol bombs into the church. He did not do so because

I heard a grenade and gunshots and then saw a red car stopping in front of us, apparently to block us. I got out of the car and threw a petrol bomb at the car and Mlambisa got out and shot at the car causing the car to speed away. Then Nonxuba and Makoma came out of the church, jumped into the car and we immediately sped away. (Cape Town hearing, 9 July 1997.)

119. After the attack, Mlambisi drove the operatives to a house in Ottery where he left Nonxuba and Makoma. He and Mkhumbusi then drove to a nearby scrap-yard, left the car there and returned to the house on foot. Later that night, they saw a CNN television report about what had happened in the church.

120. Makoma was arrested on 5 August 1993. He was charged and convicted on eleven charges of murder and fifty-eight charges of attempted murder and sentenced to 237 years' imprisonment. The trial court found that a palm print on the interior surface of the left rear window of the stolen car linked Makoma to the crime. Bloodstains on the print were of the same blood group as Makoma's. DNA tests showed a very high degree of probability that the blood found in the Datsun was his.

121. Mlambisi returned to the Transkei when he heard of Makoma's arrest. He himself was arrested at Tempe, Bloemfontein, on 25 January 1996. Mkhumbuzi, who had also returned to the Transkei, was arrested in February 1996 while already in custody in connection with a charge of armed robbery.

122. Mr Dawie Ackerman, whose wife was killed in the attack, opposed their amnesty applications. There was also opposition from Mr Lorenzo Smith and Mr Dimitri Makogon, who had lost an arm and both legs in the attack. Both Messrs Ackerman and Smith argued that the applicants had not fully disclosed the nature of the facts of their participation in the attack and, further, that the offences were disproportionate to the political objectives of the PAC.

123. They also contended that, because APLA's Director of Information denied at the time that the attack was an APLA operation, it could not have accorded with the political objectives of the PAC. Furthermore, they pointed out that Mr Barney Desai of the PAC had accused the so-called 'third force' of mischievously connecting the attack with the PAC's military wing in order to derail negotiations which were then underway and in which the PAC was a participant.

124. The Amnesty Committee considered these arguments but concluded that many political parties or liberation movements could have decided to deny involvement in this incident because they might have considered it strategically and politically wise and expedient to do so, and that accordingly the statements distancing the organisation from the attack needed to be viewed within the political context that prevailed at the time.

    In our view what is of cardinal importance is the fact that both the PAC and APLA have acknowledged in their submissions to the TRC in 1996 and 1997 respectively that the St James attack was one of the authorised operations carried out by APLA. [AC/1998/0018.]

125. The victims also disputed the legitimacy of APLA's claim that it had directed the attack against a white congregation in a white suburb of Cape Town. According to Mr Ackerman, the congregation was about '35 to 40 per cent people of colour and the others so-called whites' on the night of the attack. However, counsel for the applicants argued that the operatives had assumed that all the churchgoers would be white because St James was in a white group area, but that they had obviously been wrong in their assumption. Mr Arendse, for the applicants, went on to say:

    We will also submit that the acts were performed in the execution of an APLA High Command order; that having regard to the political context at the time, that the offences were directly proportionate to the political objectives sought to be achieved by APLA and lastly, Mr Chairman, that the offences were not committed

for personal gain and were not done out of personal malice, ill-will or spite against any of the deceased or the victims concerned. (Cape Town hearing, 9 July 1997.)

126. Survivors of the attack gave vivid accounts of the sequence of events in the church that evening. They also described the effects of the attack on them as individuals, on their families and on their subsequent ability to function effectively in their work environments and communities. The Amnesty Committee heard of the extreme psychological and emotional consequences of the attack on individuals and on the congregation. Yet all the victims spoke of their ability, deriving from their strong Christian convictions, to forgive the attackers and to move on with their lives. Mr Dawie Ackerman told the Committee:

I went on record after the event to say that I hold no personal grudge: that I do not hate them and I stand by that. I also held out reconciliation to them, and I believe with all my heart because I've experienced reconciliation with God, through Jesus Christ, that it is available to everybody, including to them. And I held that out to them at the time and I still do so now. … It was a release to me to go there and to be where she was killed. And as the time unfolded, and the Truth Commission started up and I heard the testimonies of my fellow Black South Africans, who had been subjected to the treatment that they had. And parents and mothers, brothers asked, telling where is my son, where is my father, and we know now that some of them were buried in a farm somewhere in the Free State, some were thrown in rivers in the Eastern Cape – because I know the value of going back to the place where it happened, I appeal to the agents of the government, whoever they might be, to come forward and to identify what they had done, where they did it, at least give them also the opportunity to grieve where it happened. (Cape Town hearing, 9 July 1997.)

127. Mr Ackerman requested that the Committee allow him to address the applicants directly at the hearing:

May I ask the applicants to turn around and to face me? This is the first opportunity we've had to look each other in the eye and talk. I want to ask Mr Makoma who actually entered the church – my wife was sitting right at the door when we came in, where you came in, she was wearing a long, blue coat; can you remember if you shot her?
MR MAKOMA: *I do remember that I fired some shots, but I couldn't identify, I don't know whom did I shoot or not, but my gun pointed at the people.*

MR ACKERMAN: *It is important for me to know if it is possible, as much as it is important for your people who suffered, to know who killed. I don't know why it is so important for me, but it just is. If you don't remember, I will accept that. I have heard you through your attorney say and into the microphone, apologise and I have also heard your leadership extend an invitation to my church leadership which is still required, I think, to be considered, that they want to come to our church to offer condolences and they said that they would bring you along, whether or not you receive amnesty in a show of reconciliation. I would like to hear from each one of you, as you look me in the face, that you are sorry for what you have done, that you regret it and that you want to be personally reconciled. You can speak in your own language directly to me; you don't have to worry about the microphone.*

MR MAKOMA: *We are sorry for what we have done. It was the situation in South Africa. Although people died during that struggle, we didn't do that out of our own will. It is the situation that we were living under. We are asking from you, please do forgive us. All that we did, we can see the results today.*

MR MLAMBISA: *I am also asking for an apology. As we were working under orders, we didn't know that this will come to such a place. We wanted to be where we are today. We were working under the orders. As the TRC is alive today, we hope that this will come to an end. I hope that you do forgive me, because I ask for forgiveness. Thank you.*

MR MKHUMBUZI: *I also want to say I do apologise to those people who were in the church at that time, while there was that shooting. We also thought that we would meet with the church members, those who were there. Even if we can also go to the church to show that we want reconciliation with them under the circumstances that we were, I also say please forgive me to everybody who is White and Black, who are in this new South Africa. Thank you.*

MR ACKERMAN: *I want you to know that I forgive you unconditionally. I do that because I am a Christian and I can forgive you for the hurt that you have caused me, but I cannot forgive you the sin that you have done. Only God can forgive you for that … (Cape Town hearing, 9 July 1997.)*

128. The Amnesty Committee accepted that the applicants were APLA members. It found no evidence to suggest that Nonxuba did not command the operation; nor that the applicants had themselves selected St James' Church as a target. It accepted that the applicants had carried out the operation on orders from their commanders. The Committee was satisfied that the applicants had complied with all the requirements of section 20(1) of the Promotion of National

Unity and Reconciliation Act, Act 34 of 1995, (the Act), and amnesty was accordingly granted [AC/1998/0024].

Attack on Riverside Lodge, Ladybrand

129. On 16 September 1993, a unit of four APLA operatives threw hand grenades and Molotov cocktails at the Riverside Lodge, outside Ladybrand in the Orange Free State, near South Africa's border with Lesotho. Nobody was injured in the attack.

130. APLA member Nkopane Diaho-Monaheng [AM3828/96] applied for amnesty for the attack. He testified before the Amnesty Committee that, as a regional commander, he was under orders from the Deputy Director of Operations of APLA to 'drive white people from the land because it did not belong to them'.

131. In line with this policy, Diaho-Monaheng identified two farms in Fouriesburg and the Riverside Lodge outside Ladybrand for attack. The Lodge was also chosen as a target because it was believed that it was frequented by members of the security forces on border duty. The applicant also had information that the AWB was having a meeting there. In the event, the meeting APLA believed was going to take place had either finished or did not take place at all.

132. Satisfied that full disclosure had been made and that the applicant had acted within the dictates of PAC and APLA policy at the time, the Amnesty Committee granted Mr Nkopane Diaho-Monaheng amnesty [AC/2001/0102] for the attack.

Heidelberg Tavern attack

133. Three women were killed and six people injured when two APLA operatives opened fire on patrons in the Heidelberg Tavern in Observatory in Cape Town on 31 December 1993. Another person was killed and one injured when the attackers fired on two people outside a neighbouring restaurant as they were making their escape.[207]

134. The three people killed in the tavern were Ms Rolande Palm [CT00415], Ms Lindy-Anne Fourie [CT02703] and Ms Bernadette Langford [CT00415]. Mr Jose 'Joe' Cerqueira was also shot dead and Mr Benjamin Broude was shot and injured when they ran out of a neighbouring restaurant into the street.

207 Volume Three, Chapter Five, p. 507.

135. APLA members Luyanda Gqomfa [AM0949/96], Zola Mabala [AM5931/97] and Vuyisile Madasi [AM6077/97] applied for amnesty for the attack. They had been found guilty in December 1993 on four counts of murder and five counts of attempted murder and sentenced to terms of imprisonment ranging from 24 to 27 years.

136. The applicants argued that they had acted on instructions from the APLA High Command in executing the killings at the Heidelberg Tavern. Gqomfa testified before the Committee that he had received an order to launch the attack from Mr Sichumiso Nonxuba and Mr Letlapa Mphahlele on the grounds that the tavern was frequented by members of the security forces.

137. At the amnesty hearing, Mr Bulelani Sipho Xuma also claimed to have been amongst those who gave the order. He gave evidence before the Committee as follows:

On behalf of the High Command of APLA, in my capacity as the member or members of High Command of APLA, the Deputy Director of Operation and Head of Special Operations, I have nothing to hide, affirm unashamedly with pride that Brian Vuyisile Madasi who happened to be Unit Commander, Humphrey Luyanda Gqomfa and Zola Mabala, in an order group attended by myself and the late comrade Sumiso Nonxuba, were given clear and loud orders to conduct attacks in Cape Town. Suffice to say that the Heidelberg Tavern was attacked as a result of orders given by me in my capacity as APLA's Head of Special Operations. According to intelligence reports prior to the attack, we learnt that the Heidelberg Tavern was a regular relax-in for South African police members. (Cape Town hearing, 28 October 1997.)

138. Gqomfa testified that Nonxuba brought Madasi and Mabala to his house on 13 November 1993. He said that he was the only person to be told what the targets were and that he notified the other members of the unit only on the morning of the attack.

139. The Amnesty Committee described the attack on the Tavern as particularly brutal.

It appears from the evidence and the other information available to us that the tavern was a place largely used by students and other young people, and that those who made use of its facilities were not only members of the white community, that is the people frequently referred to as 'settlers' by APLA members. Of the three young ladies killed, only one was White; the other was Coloured

and the third was an Indian. It is quite clear that they intended to kill as many people as possible. The evidence was that nails had been glued onto one of the grenades to increase the lethal effect of the explosion. After their arrival at the tavern, shots were fired into the tavern using automatic weapons, and a rifle grenade was fired which did not explode. [AC/1998/026.]

140. In an interview with members of the Amnesty Committee, APLA's Director of Operations Mr Letlapa Mphahlele said he accepted responsibility for the attack on the tavern. The fact that APLA took overall responsibility for operations was confirmed in its submission to the Commission:

It should, therefore, not surprise anyone that targets like the St James Church, King Williams Town Golf Club, Heidelberg Tavern etc. were selected. The leadership of the APLA takes full responsibility for all these operations. The APLA forces who carried out these operations followed the directives from their commanders and those directives were from the highest echelons of the military leadership. We do not therefore regret that such operations took place and there is therefore nothing to apologise for.

141. Gqomfa said he did not carry out the operation for personal gain. The aim of the attack was to take back from whites land that had been taken from the African people through violent means. This would be achieved because the government would sit up and take notice of African people's demands in the light of ongoing attacks on white people. He said he was aware that the PAC was involved in the negotiations process at the time; but was also aware that the PAC had resolved at its December 1993 Congress to intensify the armed struggle through APLA. He said that he did not see any contradiction in the PAC (as a political party) negotiating while its armed wing, APLA, was engaged in furthering the armed struggle. He testified under cross-examination:

As APLA soldiers, we are members of PAC, which is the mother body. The political direction which was taken by the country, did not affect me. As soldiers we had to fight the war. Our political leadership did not say that we must stop fighting it; we could not stop fighting then. As soldiers, if an order had not come that we must stop fighting, we could not have stopped. PAC had not reached that decision at that time, that we must stop fighting. We were following orders accordingly. (Hearing at Cape Town, 27 October 1997.)

142. Gqomfa conceded at the hearing that, during their political and military training, APLA soldiers were never briefed on the codes of guerrilla warfare or international

humanitarian law insofar as they related to the killing of civilians. Indeed, former APLA member Brigadier Fischla told the Committee that:

The fact of the matter is that we did not consider any international humanitarian law. At no stage did we in our camps educate our forces about international humanitarian law. The first time I understood what international humanitarian law is, is when I integrated into the South African National Defence Force and that is when I got the meaning of what international humanitarian law is. And what I discovered also when I integrated into the SANDF is that equally the former SADF did not even know what international humanitarian law was. (Cape Town hearing, 27 October 1997.)

143. Gqomfa testified that it made no difference if a given order involved killing soldiers, police or civilians. He said that APLA drew no distinction between so-called 'soft' and 'hard' targets. Asked if, as a commander, he had any discretion to break off an attack once it was realised that the targets could not advance a political objective, Gqomfa testified that he was expected to comply with any order. He was not expected to change orders or to defy them.

144. Relatives of the deceased and survivors of the attack expressed their opposition to the applications for amnesty for reasons similar to those expressed by the victims of the St James' Church attack. Many chose to address the applicants directly at the hearing.

145. Mr Quentin Cornelius was severely injured in the attack, as a result of which he lost his right kidney and up to 60 per cent of his intestines. Today he is a paraplegic and in constant need of both physiotherapy and psychotherapy. He asked the applicants:

The question is – and I am looking at each one, every single one of you now, directly across this table – I want to know from each one of you and your leaders, to explain to us why this was done, if there was any logical reason for what you have done, to launch a senseless terrorist attack on a pub with young, cheerful, innocent students at a time in South Africa's history when we were already on the road to democracy after you had all accepted and taken part in the accepting of an interim constitution on the 3rd of December? Is there any reason, sensible reason, why you had to still continue with something like that? Could you not think for yourself? (Cape Town hearing, 27 October 1997.)

146. Gqomfa replied that he thought that Cornelius had been indoctrinated in a way that led him to refer to them as 'terrorists'. They were not terrorists but freedom fighters. Gqomfa added:

[I]t is the person who is in a position of oppression that feels the oppression. He refers to this as having been senseless: it is because he did not feel the pain that we were under. If he was in my shoes, he would not speak the way he is speaking now. … We had to continue the war until the political leadership, our political leadership, PAC, gave a command that we must stop fighting. Our political leadership had not given the command that we must stop fighting. I think that should be clear, this is why we acted the way we did. We were not subordinated to the ANC or the National Party; we were subordinated to the PAC. This is how I propose to answer the question. (Cape Town hearing, 27 October 1997.)

147. The mother of one of the deceased victims, Mrs Langford, wanted to know if the applicants could remember how they felt about attacking apparently unarmed young people who appeared to be enjoying themselves:

I'm going to ask you another question Mr Madasi. I need to know, I really need to know how you felt when you saw what you had done to human life. I really, really need to know that because, can you remember their faces maybe? Can you remember how shocked they looked? Can you remember when they fell? Can you remember anything about that, when that happened; because I ask you this for the simple reason because, when you got away, you showed much more feeling for the vehicle – that the vehicle shouldn't be damaged – yet you'd just come away from showing no feeling towards life. I need to know how can one go from one kind of a feeling to another in the same instance, the same happening. I need to know how you can cope with that: how did you feel and how do you feel now? (Cape Town hearing, 28 October 1997.)

148. Madasi said that, while he knew that nobody had the right to take another's life, the conditions under which people were living at the time were such that many members of the oppressed had shed their blood. Oppressed people felt the pain of losing a loved one equally.

149. Mrs Clarissa January, the mother of Mr Michael January, who survived the attack, asked why the applicants appeared to show no remorse whatsoever – which would have given the victims some sort of comfort.

You have only spoken of the orders and the killings that you have done. I understand a great deal of your suffering – we have also suffered; but I think it's about time that you must face us and ask us directly for forgiveness. That's all I want to say to you or ask you – if there is an answer. (Cape Town hearing, 28 October 1997.)

150. Mr Madasi replied:

I greet you Madam. I'm glad for this opportunity to meet you and the people that lost so much from this matter. The fact of what you're saying – that we're not showing remorse or empathy – we are human beings, we are also sons to our fathers given birth to by our mothers. I know that a person survives in this world or makes it because of the support of other people. You perhaps look at me and think that I'm not showing remorse. However, our families know us well – I know that people who ...[indistinct] closely with us in connection with this matter. They would tell you how much remorse we are experiencing. If we did not, we would not be here even at this moment. This would show that we do not care about you, you can feel however you feel. To show and to demonstrate that, as the people we are, we feel remorse, we are here to ask for forgiveness. I know that forgiveness is not a small matter, no matter how small the offence. However, if somebody's asking for forgiveness, forgiveness is forgiveness – you must know that if the person is asking you for forgiveness they mean it. If we did not want to show remorse, we would not be here. I don't know whether we've answered – I've answered the question. (Hearing at Cape Town, 28 October 1997.)

151. Mr Roland Lewis Palm lost his twenty-two year old daughter, Ms Rolande Lucielle Palm, in the attack. He told the applicants that the irony of his daughter's death was that she was not a white person:

I say to the PAC and APLA and to the applicants, you killed the wrong person. Rolande was also joined in the struggle against the injustice for the apartheid system particularly in education. You simply ended her life as if she was a worthless piece of rubbish. You say you did so to liberate Azania. I say you did so for your own selfish and criminal purposes. You prevented Rolande from helping rebuild our broken nation which, if you had simply waited another few months, in fact came to pass when we had free elections.

Your commander Brigadier Nene stated that it was difficult to control the forces on the ground due to lack of proper communication and proper political training. These are simply empty excuses that in fact expose APLA for what it was: an

unguided missile, out of the control of the PAC, at loggerheads with each other and unable to accept the political decisions of their political masters.

If proper planning and surveillance had been done, APLA would have discovered the following: (1) the tavern catered for a multiracial clientele; (2) the predominant patrons were young students from the UCT; (3) the Tavern did not cater exclusively for military personnel, nor could be described by any intelligent person as a military target where arms could be obtained; (4) its resident musician was Josh Sithole, a black man who was loved and respected throughout the country by multiracial audiences countrywide and who was entertaining the patrons at the time of the attack; (5) a better 'military target' which fulfilled their criteria was the Woodstock Police station a short distance away.

APLA, as well as the applicants, cannot be truthful when they state that by murdering patrons at the Heidelberg Tavern was a ***bona fide*** *act associated with a political objective. (Cape Town hearing, 31 October 1997.)*

152. Mr Francisco Cerqueira, brother of the deceased restaurateur, Mr José Cerqueira, appeared before the Committee to register his opposition to the amnesty applications on the grounds that he believed the applicants had falsely implicated his brother when they testified that he had opened fire on the getaway vehicle outside his restaurant.

153. The Amnesty Committee viewed the two incidents as part and parcel of the same attack. There was some doubt as to whether Mr Cequeira had fired shots at the attackers as no traces of powder were subsequently found on his hand. The Committee accepted, however, that the applicants were under the impression that they were being attacked when they shot in his direction.

154. The Committee also heard argument from and evidence led by counsel for Commissioner Dumisa Ntsebeza, head of the Truth and Reconciliation Commission's Investigation Unit. Mr Ntsebeza was implicated in the attack when a Mr Bernard Sibaya claimed that the Commissioner's car had been used by APLA members. Sibaya later confessed that he had been blackmailed by the police into naming Ntsebeza.[208]

155. The Amnesty Committee concluded that the three applicants in this matter had complied with the requirements of the Act and demonstrated that they were

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quite clearly acting on behalf of APLA, which was engaged in political struggle against the state at that time. The Committee found that the applicants had not acted for personal gain or out of personal malice, ill will or spite directed against the deceased and the victims. They had no knowledge of the victims and had merely been sent by their organisation to act on its behalf.

156. Mr Luyanda Gqomfa, Mr Zola Mabala and Mr Vuyisile Madasi were granted amnesty for the Heidelberg Tavern attack [AC/1998/026].

The Crazy Beat Disco attack

157. Ms Gerbrecht van Wyk was shot dead and at least two other people were injured when APLA operatives fired shots through an iron grid at the entrance to the Crazy Beat Disco club in Newcastle, Natal, on 14 February 1994.

158. APLA members Walter Falibango Thanda [AM5784/97] and Andile Shiceka [AM5939/97], and PAC member Bongani Golden Malevu [AM0293/97] applied for amnesty for the attack. All three had been convicted on 26 May 1994 on charges arising from their roles in the attack. Thanda and Shiceka had been sentenced to 25 years and Malevu to ten years; both were serving prison terms at the time of their amnesty hearing.

159. In their evidence to the Amnesty Committee, the applicants testified that they had been sent by their commanders in the Transkei to Newcastle to 'identify areas where whites gather'. They said they targeted the disco because it was frequented by white patrons. They had initially targeted a restaurant in the area. However, when they arrived at the restaurant on the night of the attack, they saw a number of black people in the vicinity and decided to attack the discotheque instead.

160. Thanda was the commander of the small unit that planned and carried out the attack. He testified that he reported to his commander 'Power' from time to time in order to keep him up to date with the developments. Asked why he did not question the order, he responded, 'it was not for one to do so; if one had any question to ask, it would only be after the execution of instructions'.

161. In May or June 1993, Mr Malevu received information from a member of the High Command in Transkei that APLA would be taking its struggle to Natal. He was given arms to transport to the Newcastle area. He also helped transport

the other applicants to a point where a vehicle was forcibly taken from its owner for use in the attack. Like his comrades, Malevu testified that white people were targeted because they were regarded as political oppressors. If they attacked white people, the government would take them seriously; white people were the ones who could persuade the government to change.

162. The Amnesty Committee challenged the applicants on the issue of whether race was a factor in the selection of the target:

ADV PRIOR: *I must put to you the question … that the reason for not attacking the restaurant and attacking the disco instead seemed to be a decision which smacked at racism. You weren't prepared to injure anyone other than white people. Could you comment on that? Was that part of your motivation in attacking the discotheque?*
MR SHICEKA: *Mr Chairman, APLA is not a racist organisation. I think you are aware that whites were oppressing us; that was the race that was oppressing us. We didn't attack white people because we hated white people; we don't hate white people. Even the documents of the PAC clearly state that those who are accepting a democratic goal in Africa should be recognised as Africans. We didn't attack the Crazy Disco because we are racist. Right from the foundation of the organisation we are not a racist organisation. However, the situation in which we had to live created a conflict between a white person and a black person: it's not that we are racist. (Pietermaritzburg hearing, 9–11 February 1998.)*

163. In his defence, Mr Shiceka argued that, although he regretted the attack, he did not regard the operation as a success, as only one person was killed. He said that whites were the only oppressors and that this is why they were targeted. For this reason, he denied that his action smacked of racism.

164. In argument, counsel for the applicants offered three reasons why the Committee should not find that the attack had been a purely racist act:

MR ARENDSE: *Firstly, the applicants, on the uncontested evidence were foot soldiers carrying out orders; that is not disputed. They were not part of the APLA hierarchy or High Command which, it is well established, made the policy decisions and decided on matters of strategy. For the same reason that Brian Mitchell or Coetzee or any other ex-South African Defence Force soldier wasn't part of the inner ...[indistinct] of Botha's cabinet making decisions to pursue cross-border raids, etc.*

Secondly, the struggle for liberation in this country inevitably had to have a racial dimension and the reason for that is quite simple and very glaring; and we don't need evidence for that because the applicants lived through it. Black people in this country lived through it who were born here. They were governed by whites; they were controlled by whites;, they were suppressed by whites, and the overwhelming majority of the white electorate voted in the same government repeatedly by, in fact, increased majorities as we moved towards the April 1994 election.

So that was an inevitable part of the history of this country. Now it's very important that our Parliament, a democratic elected Parliament, recognised this by making the cut-off date the 10th of May 1997. It recognised, the law makers recognised, that we were engaged in a racial struggle up to that point. And the 14th of February falls within that cut-off date.

Then just thirdly, again on a parity of – because this is what this Committee must do, this is what the Commission as a whole must do is to be even-handed and to treat people in the same fashion. The apartheid government targeted overwhelmingly black people. Coetzee was told to get rid of Griffiths Mxenge and he did so very effectively. Griffiths Mxenge was a well-known human rights activist but he was a black civilian. Brian Mitchell committed the Trust Feeds murder where he killed innocent black young men, woman and children; he slaughtered them. Those were civilians and both of them got amnesty. (Hearing at Pietermaritzburg, 9–11 February 1998.)

165. The applicants expressed their remorse at the hearing and their desire to meet the family of the victim and ask for their forgiveness. They said that they wished to explain to the family that the act was carried out on instructions and that, as soldiers, they had no option but to obey them. The victim's mother declined to attend the proceedings, preferring instead to leave the decision in the hands of the Amnesty Committee.

166. The Amnesty Committee deliberated about whether or not this was an APLA operation. It noted that two of the applicants did not live in Natal and that they had not known one another at all until they met for the purpose of carrying out the operation. This gave credence to their story that they were brought together by their military commander 'Power', who was known to all of them. The victims of the attack were also not known to them and they derived no personal benefit from the attack. In considering why strangers should come together and trust each other in order to plan such an operation, the Committee reached the inescapable

conclusion that the operation must have been ordered and co-ordinated by APLA. The Amnesty Committee also noted that, at a meeting in Umtata before the incident (the meeting at which Malevu was given the weapons used), the PAC had passed a resolution not to suspend the armed struggle. Despite this, it accepted that APLA was autonomous in military matters.

167. Mr Walter Falibango Thanda, Mr Bongani Golden Malevu and Mr Andile Shiceka [AM5939/97] were granted amnesty for the attack [AC/1998/0016].

The killing of Amy Biehl

168. In April 1994, PASO members Mongezi Christopher Manqina [AM0669/96], Vusumzi Samuel Ntamo [AM4734/97] and Mzikhona Easy Nofemela [AM5282/97] were convicted of killing American Fulbright scholar Amy Elizabeth Biehl in Guguletu, Cape Town, on 25 August 1993. They were each sentenced to 18 years' imprisonment. Subsequently, in June 1995, Mr Ntobeko Ambrose Peni [AM5188/97] was also convicted of the offence and sentenced to 18 years' imprisonment.[209]

169. The four applied for amnesty. The Amnesty Committee heard that, on the afternoon of her death, Amy Biehl was giving three colleagues a lift in her car with a view to dropping some of them off in Guguletu, when her vehicle came under attack by people running towards it and throwing stones. The stones smashed the windscreen and windows of the car. One of the stones hit Ms Biehl on her head, causing her to bleed profusely. She could not continue driving and climbed out of her car and ran towards a garage across the road. Her attackers did not relent, but pursued her, still throwing stones. Manqina tripped her, causing her to fall. By now she was surrounded by between seven and ten people who stoned and stabbed her. She died as a result of her injuries.

170. The Amnesty Committee heard that the four applicants were amongst those involved in the attack. Peni admitted to having thrown stones at Ms Biehl from about three to four metres away. Manqina stabbed her with a knife and threw stones at her. Nofemela threw stones at her and stabbed her three or four times. Ntamo threw many stones at her head from a distance of only a metre away. They stopped attacking her only when the police arrived at the scene.

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171. The attack on the car driven by Amy Biehl was one of many incidents in the area that afternoon. Bands of *toyi-toying*[210] youths had been throwing stones at delivery vehicles and cars driven by white people. A delivery vehicle had been pushed over and set alight. Only the arrival of the police prevented further damage.

172. The applicants explained their behaviour in the following way. They testified that earlier that day they had attended a meeting at the Langa High School, where a PASO unit had been re-launched. Peni had been elected chairperson at the meeting. Manqina was vice-chairperson of the PASO unit at the Gugulethu Comprehensive School and Nofemela was a PASO organiser at the Joe Slovo High School. The meeting was addressed by Mr Simpiwe Mfengu, the Regional Secretary of PASO; Mr Wanda Madubula, the Regional Chairperson of PASO, and many other speakers. The applicants told the Committee that speakers dealt with various issues: the strike by teachers in the Western Cape who were demanding recognition for the South African Democratic Teachers Union (SADTU); the struggles of APLA for the return of the land to the African people, and the fact that APLA had declared 1993 as the 'Year of the Great Storm'. Reference was also made to the launching of 'Operation Barcelona', aimed at stopping all deliveries into the townships.

173. The speakers urged PASO members to take an active part in the struggle of APLA by assisting APLA operators on the ground to make the country ungovernable. The speeches were militant and punctuated by frequent chanting of the slogan 'one settler, one bullet'.

174. The applicants testified that they were so inspired by the speakers that they left the meeting in a militant mood. They marched through the township toyi-toying and chanting slogans, determined to put into effect what they had been urged to do. This, they testified, is how they became involved in the killing of Amy Biehl.

175. Referring to this incident in its testimony to the Amnesty Committee, the PAC stated:

On the Amy Biehl issue, we wish to state that PASO was not a part of APLA. They are a component part of the PAC not involved in armed struggle. This act occurred in the context of a strike for recognition by South African Democratic Teachers Union (SADTU) in the Western Cape. To support the strike, 'Operation Barcelona' was launched to stop deliveries from towns into the townships.

210 The toyi-toyi is a revolutionary dance.

Although the PAC was not involved, PASO acted in solidarity with their teachers and with COSAS. They wrongly targeted and killed Amy Biehl. We expressed our regret and condolences to Amy Biehl's family in a letter to the United States Ambassador. We restate this position yet again through the TRC. But misguided as the deed was, we support the amnesty applications of all those convicted and sentenced for the offence.

176. The applicants testified that, although they did not act on the orders or instructions of APLA or the PAC that day, they believed they owed loyalty to the same cause. Nofemela and Peni had attended lectures by APLA operators on political matters and had received elementary lessons on the handling of arms and ammunition. As members of PASO, they were active supporters of the PAC and subscribed to its political philosophy and policies. By stoning company delivery vehicles and making it difficult for them to make deliveries in the townships, they were taking part in a political disturbance and contributing towards making their area ungovernable. Thus their activities were aimed at supporting the liberation struggle against the state.

177. The Amnesty Committee carefully considered why it was that Ms Amy Biehl, a private civilian, was killed during this disturbance. It concluded that part of the answer could be found in the fact that her attackers were so aroused and incited that they lost control of themselves and became caught up in a frenzy of violence. While giving his evidence, one of the applicants said that they all subscribed to the slogan 'one settler, one bullet'. This meant that they believed that every white person was an enemy of the black people, and saw Amy Biehl as a representative of the white community. They believed that by killing civilian whites, APLA was sending a serious political message to the government of the day. By intensifying their activities, they believed that they would eventually increase political pressure on the government to such an extent that it would be compelled to hand over political power to the majority of the people of South Africa.

178. Viewing the conduct of the applicants in this light, the Amnesty Committee accepted that the crime committed by Amy Biehl's killers was related to a political objective. The Committee accepted that the applicants had made full disclosure of all the relevant facts as required by section 20(1) of the Act. Amnesty was therefore granted to the four applicants.

179. The Amy Biehl incident provided the Commission with an extraordinary example of reconciliation. Members of the Biehl family who attended the hearing did not oppose the application.

180. The applicants expressed regret for their actions. In his application for amnesty, Peni said:

I feel sorry and very downhearted especially today, realising the contribution Amy Biehl played in the struggle ... I took part in killing someone that we could have used to achieve our own aims. Amy was one of the people who could have, in an international sense, worked for our country so that the world knows what's going on in South Africa, so that the government of the day would get support. I ask Amy's parents, Amy's friends and relatives, I ask them to forgive me. (Hearing at Cape Town, 8 July 1997.)

181. At the conclusion of the evidence, Mr Peter Biehl addressed the Amnesty Committee. A part of his statement follows:

We have the highest respect for your Truth and Reconciliation Commission and process. We recognise that, if this process had not been a pre-negotiated condition, your democratic free elections could not possibly have occurred. Therefore, and believing as Amy did in the absolute importance of those democratic elections occurring, we unabashedly support the process which we recognise to be unprecedented in contemporary human history.

At the same time we say to you, it's your process, not ours. We cannot, therefore, oppose amnesty if it is granted on the merits. In the truest sense it is for the community of South Africa to forgive its own and this has its basis in traditions of ubuntu and other principles of human dignity. Amnesty is not clearly for Linda and Peter Biehl to grant.

You face a challenging and extraordinarily difficult decision. How do you value a committed life? What value do you place on Amy and her legacy in South Africa? How do you exercise responsibility to the community in granting forgiveness, in the granting of amnesty? How are we preparing prisoners, such as these young men before us, to re-enter the community as a benefit to the community, acknowledging that the vast majority of South Africa's prisoners are under 30 years of age – acknowledging as we do that there's massive unemployment in the marginalised community; acknowledging that the recidivism rate is roughly 95 per cent? So how do we, as friends, link arms and do something? There are clear needs for prisoner rehabilitation in our country as well as here. There are clear needs for literacy training and education, and there are clear needs for the development of targeted job skill training. We, as the Amy Biehl Foundation, are willing to do our part as catalysts for social progress. All anyone need do is ask.

Are you, the community of South Africa, prepared to do your part? (Cape Town hearing, 9 July 1997.)

Armed ambushes

182. Other attacks on civilians took the form of armed ambushes on vehicles. These attacks, ascribed to APLA, became the subject of bitter dispute between the Transkei and South African governments, with South Africa accusing Transkei of harbouring APLA members and providing them with weapons and training. The Commission received no statements or amnesty applications in connection with such training or provision of weaponry.

Attack on a Translux bus, Beaufort West

183. APLA member Mr Thembinkosi Henge [AM6137/97] applied for amnesty for an armed attack on a Translux bus at or near the Gamka River Bridge in Beaufort West on 27 August 1993. Eight people were injured in the attack.

184. Mr Henge testified that he received orders from his commander, the late Mr Sichumiso Nonxuba, to attack a Translux bus that passed through Beaufort West on its way to Johannesburg. Two buses apparently travelled that route, and the applicant had to decide which of them to attack. He eventually chose the midnight bus as it entailed a lower probability of detection and offered a better opportunity for retreat.

185. The applicant was ordered to collect firearms and ammunition from the Ngangelizwe location in Umtata. He collected two R4 rifles and five loaded magazines and returned to Beaufort West. After approximately two weeks, he was informed that a certain 'Mandla' (an alias) would be sent from Umtata to assist in the operation. When Mandla arrived, Henge showed him the layout of the area and briefed him about the plan for the attack.

186. The next day, 27 August 1993, Mandla and Henge fired a magazine at the bus. In total, approximately fifty shots were fired. Although they had intended shooting the driver so that the bus would crash off the bridge and into the river below, they missed him altogether, even though they fired at the front of the bus. Eight people were injured in the attack and all the occupants of the bus were traumatised and shocked by the incident.

187. Under cross-examination, the applicant conceded that he had previously been a supporter of the ANC, having become politicised at the age of ten. He said he had decided to join the PAC because he preferred its policies and was not

happy with the progress of national negotiations. He expressed his regret at what had happened.

188. In reaching its decision, the Amnesty Committee noted that the attack took place when most political parties were engaged in negotiations, but that the PAC had not yet abandoned the armed struggle. The applicant was a member of APLA and had received an order to attack the bus. The arms and ammunition used in the attack were supplied by APLA and the orders came from Mr Nonxuba, who was at that time a member of APLA's High Command.

189. The applicant felt obliged to carry out the order, which he believed would speed up the negotiation process and make whites understand that the PAC was serious about its position. His actions were, therefore, found to be associated with a political objective as defined by the Act, and the application was granted [AC/2000/167].

Ambush of a vehicle near Zastron

190. Mr Luyanda Humphrey Gqomfa [AM0949/96] applied for amnesty for the ambush of a vehicle travelling from Zastron to Sterkspruit in the Orange Free State on 18 March 1992.

191. The victims lived in Zastron and travelled daily to Sterkspruit, where they were running a furniture business. Mr Fanie Smith was shot dead in the attack while he lay injured next to the car. Mr Deon Martins was seriously injured in the left hand and his finger was subsequently amputated. Mr Ben Maliehe and Mr Andrew Lategan Franzsen escaped the ambush unhurt and were able to flee from the scene.

192. Though APLA commander Mr Letlapa Mphahlele was listed as a co-applicant, it became clear during the hearing that he had no intention of participating in the proceedings. His counsel Mr Lungelo Mbandazayo made a number of attempts to secure his co-operation and attendance, but to no avail. As a result, his application lapsed.

193. Mr Gqomfa testified that, as a member of APLA, he had received military training in exile and then returned to the country, where he carried out various operations on behalf of the organisation. He received orders in respect of all these operations

from the High Command of APLA, most often from Mr Mphahlele, who was APLA's Director of Operations at the time.

194. At the time of the incident, Gqomfa was being harboured at a house in Sterkspruit, secured for him by Mphahlele. Whilst he was there, Mphahlele and another APLA member, Ben Wakumzi (an alias), took him to a meeting with a group of APLA operatives.

195. Mphahlele ordered them to attack white travellers along the Mayaputhi road near the Sterkspruit bridge. In order to acquire a vehicle, Gqomfa and two other operatives went to Ndofela Village where they robbed Mr Nkopane Johannes Lesia of his Isuzu 2200 Diesel Bakkie.

196. Lesia reported the incident to the police and later received a report that his vehicle had been found. He told the police that, on the afternoon of 18 March 1992, he was on his way from Palmietfontein (where he lived) to Ditapoleng village. As he drove past Ndofela village, he saw three black men standing next to a small bridge. They were all armed and fired shots to force him stop. They told him that they were freedom fighters and needed his car 'for the struggle' and gave him R20 so he could travel to work.

197. After robbing Lesia of his vehicle, Gqomfa and his comrades proceeded to the Mayaputhi road near Sterkspruit bridge. Here they found that Mphahlele was in charge of the operation. When Smith and the other victims approached, Mphahlele opened fire. The others followed suit. The vehicle stopped immediately and Martins, Maliehe and Franzsen alighted and fled the scene. Smith was injured and fell to the ground next to the vehicle, unable to flee. Mphahlele ordered Gqomfa to shoot Smith, which he did.

198. At the hearing, Gqomfa expressed his regrets at the shooting but said that he had had no choice as he was carrying out orders.

199. The Amnesty Committee found that Gqomfa was a member of the PAC and APLA and that he had acted in terms of these organisations' policies and objectives. The Committee accepted that APLA was still engaged in the armed struggle at the time and that it regarded all whites as supporters of the government. The Committee found that Gqomfa had acted under the orders of Mphahlele, that the offences and acts applied for were acts associated with a political objective and that the applicant had made full disclosure of all relevant facts. He was granted amnesty [AM0949/96].

Eikenhof attack

200. Mr Phila Martin Dolo [AM3485/97] applied for amnesty for the killing of Ms Zandra Mitchley, her son Shaun and Claire Silberbauer, as well as the attempted killing of Mr Norman Mitchley and Craig Lamprecht. The victims were shot while driving in their vehicle in the Eikenhof area of Johannesburg on 19 March 1993. Three ANC members were arrested and later convicted of the attack, for which two were sentenced to death and the third was given a long term of imprisonment.

201. However, in 1997, Mr Dolo asserted in his amnesty application that the attack had been an APLA operation, conducted by four APLA operatives known only by their codenames. Mr Dolo had given the orders for the attack, originally aimed at a school bus carrying what he termed 'settler school children'. The four attackers were unable to carry out the attack and instead opened fire on the Mitchley's vehicle. The sentenced ANC members were released from prison in November 1999. Mr Dolo was granted amnesty [AC/2000/147].

Attacks on farms

202. The Committee received a total of twenty-seven applications from PAC and APLA members for attacks on farms, all committed between 1990 and 1993. A total of twelve people were killed and thirteen injured in these attacks. The Amnesty Committee granted all but four of the applications.

Attack on Mr RJ Fourie on the farm 'Stormberg'

203. PAC/APLA members Hendrik Leeuw, Daniel Magoda, Meshack May and Sebolai Petrus Nkgwedi applied for amnesty for the robbery and killing of Mr Roelof Johannes Fourie on the farm 'Stormberg' in the district of Verkeerdevlei, Orange Free State, on 12 February 1992.[211]

204. The Committee heard testimony that, during 1991, the PAC and APLA launched their 'Operation Great Storm', in terms of which APLA operatives were instructed to attack and to instil fear in farmers. The applicants testified that the purpose was to drive the white farming community from their farms in order 'to get the land back'. During November 1991, APLA Commander Jan Shoba (now

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deceased) instructed the applicants to carry out attacks on farmers in the vicinity of Botshabelo, Tweespruit and Verkeerdevlei. He supplied them with a .38 special revolver for this purpose.

205. The farm of Mr RJJ Fourie was identified as a target by Mr Leeuw and Mr Nkgwedi: Mr Nkgwedi had grown up on the farm. The four applicants went onto the farm property and observed Mr Fourie and his companion leaving, apparently on their way to town. They also noticed that Mr Fourie had left the gate open. The applicants closed the gate so that, on his return, Mr Fourie would be obliged to stop and open it. They then positioned themselves in the bushes adjacent to the gate and waited for the couple to return. When Mr Fourie stopped to open the gate as anticipated, one of the applicants shot him in the back of his head. His companion, Mrs May, remained in the car, which the attackers then drove to the farmhouse.

206. The applicants searched the house and stole two firearms, money, watches, a camera and numerous personal belongings. After tying up Mrs May and disconnecting the telephone and radio, they drove off in the deceased's car.

207. The Amnesty Committee received a submission from Mrs Margot Penstone, who stated that the deceased was not involved in party politics and was a progressive farmer who had assisted his farm workers to improve their stock, housed them in brick houses with running hot and cold water, built a school for their children on the farm and provided them with a soccer field. She added that she believed the murder to have been a purely criminal act. In this, she was supported by Mrs May, who stated in an affidavit that the applicants had repeatedly asked her where the money was kept and said that they were only interested in valuable articles. Mrs May and Mrs Penstone did not give evidence before the Committee, so the applicants' counsel did not have the opportunity to cross-examine them on these claims.

208. The applicants testified that they were instructed to take the property and hand it over to their commander, Mr Jan Shoba, who would sell it in order to obtain money for their struggle. They had also intended to hand the vehicle to him. However, they testified that they were arrested two days after the robbery and before they had had the opportunity to hand the property over. The applicants were all convicted and sentenced to terms of between nine and fifteen years' imprisonment.

209. In making its decision, the Amnesty Committee first considered Mr Nkgwedi's involvement in the attack and whether, having grown up on the farm, he might have been motivated by ill-will or personal malice. In reaching a decision on this issue, the Committee concluded that an act that was, or may have been, motivated by a personal grievance could, nonetheless, qualify for amnesty where there was also a strong political motive. Therefore, although there was some evidence of a personal motive in Nkgwedi's case, the fact that the applicant would have killed any white person in furtherance of official APLA policy meant that the political motive for the attack outweighed the personal.

210. The Amnesty Committee further accepted that, in both their submissions and oral evidence to the Commission, the PAC and APLA had stated that 'Operation Great Storm' involved the killing of farmers and the stealing of weapons. It also noted that, while the PAC had stated that it was opposed to armed robbery, it had also referred to 'repossession' and to the existence of 'repossession units'. The Committee felt that it was by no means clear about the distinction between 'robbery' and 'repossession', save that in the case of repossession the proceeds would be handed over to the Commander to be used to further APLA's goals.

    No distinction was drawn between what might have been property for military use and property taken for personal gain. The Committee is therefore faced with the dilemma that the act does not authorise us to grant amnesty in respect of a portion of a sentence. Having found that the murder of Mr Fourie and the robbery of the firearms were offences associated with a political objective, the Committee is obliged to grant amnesty in respect thereof. No provision is made in the Act for dealing with offences which have elements of criminality as well as political motivation in it. [AC/1999/297.]

211. Amnesty was granted to Messrs Hendrik Leeuw, Daniel Magoda, Meshack May and Sebolai Petrus Nkgwedi [AC/1999/0297].

The killing of Mr John Bernard Smith

212. Mr Jacob T Mabitsa [AM5178/97], Mr Petrus T Mohapi [AM1167/97], Mr Thabo Paulus Mtjikelo [AM1249/96], Mr Simon T Olifant [AM5177/97], Mr John Wa-Nthoba [AM2997/96] and Mr John Xhiba [AM1215/96] applied for amnesty for the killing of Mr John Bernard Smith on 25 July 1993 on his farm at Wesselsdal in the district of Vanstadensrus in the Eastern Cape.

213. The applicants also stole a motor vehicle, three firearms, various pieces of equipment and clothing, two bottles of liquor and a sum of cash. Mohapi, Oliphant and Mtjikelo were convicted of murder and robbery and sentenced to an effective 25 years' imprisonment. The other applicants were convicted only on the charge of robbery with aggravating circumstances and were each sentenced to 12 years' imprisonment.

214. The applicants testified that they left Botshabelo for Wesselsdal on the 23 July 1993 with the intention of carrying out the attack. They called this off because of the presence of visitors on the farm. On 25 July, Mjikelo, Mohapi, Oliphant and Xhiba went back to the farm and approached Mrs Smith with a request for petrol, saying that their car had run out of fuel. Mrs Smith called her husband who said he would help them to syphon some petrol from his car. Mr Smith gave Xhiba his storeroom key and asked him to fetch a container and a pipe.

215. The other three applicants accompanied Smith to the garage and, while he was syphoning petrol from the car, Mohapi stabbed him in the back. Mr Smith fell to the ground and Oliphant stabbed him in the chest and other parts of his body, ultimately inflicting approximately nine wounds. The attackers then searched the house, seizing three guns and a small amount of cash. They tied Mrs Smith up and locked her in a wardrobe. They then took possession of the Smiths' Mercedes Benz for use in future operations.

216. Oliphant confirmed the evidence and testified that it was the objective of the PAC to wage the struggle for the return of land to the African people, which was why he was involved in that operation. When it was pointed out to Oliphant that the attack took place while negotiations were underway at Codesa (Convention for a Democratic South Africa) in which the PAC was a participant, Oliphant stated that the PAC had not suspended the armed struggle and that, while the negotiations continued, operations were conducted in order to put pressure on the government to give in to the demands of the liberation movements.

217. The applicants called Mr Lerato Abel Kotle, the regional commander of APLA in Bloemfontein, to give evidence about 'Operation Great Storm'. Khotle explained that 'Operation Storm' was intended as a means of intensifying the armed struggle and was decided upon by APLA's military commission, which included the political leadership of the PAC and the military leadership of APLA. He described the attacks on farmers as one of the phases of the campaign. The PAC believed that the farming community had participated in the dispossession of the African people and that farmers were beneficiaries of the land taken away from the Africans.

218. The Amnesty Committee accepted the contention that the applicants had committed the offences believing they were advancing the struggle being waged by their political organisation with the aim of returning the land to the African people. The offences committed were, therefore, acts associated with a political objective. The possession of the pistol and knives used for carrying out the operation was also associated with a political objective. Amnesty was granted to the applicants [AC/1998/0020].

Various attacks in Ficksburg

219. Mr Phila Martin Dolo [AM3485/96], Mr Lerato Abel Khotle [AM5619/97] and Mr Luvuyo Kenneth Kulman [AM1638/96] applied for amnesty for several attacks on homes in Ficksburg in the Orange Free State on 10 December 1992. The acts were committed with other persons, known only by their code-names: 'Roger', 'Scorpion', 'Jabu', 'Nduna' and 'Kenny'.

220. The Committee heard that Phila Dolo was in charge of the APLA base in Lesotho, that Lerato Khotle was in charge of the APLA base at Sterkspruit, and that the two liaised closely to plan attacks in the area between.

221. Dolo testified that certain houses in Ficksburg on the Lesotho border were regarded as belonging to members of the security forces. These he described as 'in the first line of defence' and 'acting as the garrisons of the then apartheid state'. They therefore qualified as suitable targets for attack. Khotle told the Committee that he attempted to confirm this information:

I … reconnoitred the place and I also interacted with the people who were working there, domestic workers, and I engaged with them in discussions to get information from them as to whether those places were occupied by the members

of the regime. That is how I ended up making a decision that we have to attack this place, because they were occupied by the security personnel. Those were the reasons why I needed his [Dolo's] help and he agreed and he came to my side to give us help. (Hearing at Bloemfontein, August 1998.)

222. The operatives travelled on foot from Lesotho, Dolo carrying a bag of rifle grenades, M26 grenades and Molotovs. At Ficksburg they divided into two units. The first, commanded by Dolo, attacked a house at No. 143 Veld Street, Ficksburg. The second, commanded by Khotle, targeted an old age home but was foiled in the attack. They then conducted random attacks on various homes in Ficksburg.

223. The house of Mrs Cornelia Gertruda Pienaar (then Roos) was severely damaged in the Veld Street attack. Mrs Pienaar was at home with her two daughters, aged five and twelve years, when the attack occurred. She testified that her house was not owned by the police but belonged to her and her husband who had died only a week earlier. Before his death, he had performed light duties in the police mortuary. He had at one time been a member of the South African Police and had become unfit for ordinary police duties as a result of an accident.

224. The attack began after she and the children had gone to bed. The attackers threw a grenade into the children's bedroom and started shooting at the house. Mrs Pienaar and her children managed to escape through the back door and crept through the fence into the neighbour's yard.

225. Dolo told the Committee that the attack had been motivated by a recent statement by the Minister of Defence that there would be no more farm attacks in the area. The applicants had carried out the operation 'to show the enemy what we can do. We can continue with the armed struggle; nothing will stop us.' He said it was 'unfortunate' that they had ended up attacking a house that was not occupied by the police. All whites, however, were regarded as supporters of the government, with whom APLA was still locked in armed struggle because the oppression of blacks had not yet stopped.

Our interest was not on Mr Pienaar or Mrs Pienaar or Van der Merwe, all the White people were oppressing the Black people. If it happened that at the end a house that was attacked did not belong to a policeman or a soldier, still that house falls under our programme because, when we participated in our struggle, we

never heard who was smiling with us or who loved us [and] we all treated white people as participants in oppression. (Bloemfontein hearing, August 1998.)

226. When asked why they had targeted an old age home, Khotle said it was unacceptable for Africans to be killed in the way they were. The purpose of targeting an old age home was to:

make whites feel the pain the same as Africans who felt the pain ... Why I'm saying age was not an issue is that, firstly, the oppressors themselves, when they see me, they saw me as a boy. My father was regarded as a boy; my grandfather was regarded as a boy; my sister was regarded as a girl; my mother was a girl – so they did not differentiate between the various age groups or they didn't see a difference between me and my father or my grandfather. We were all boys so therefore we did not have a problem to respond to that oppression knowing that there was no young persons and old persons, all of them were oppressors. (Bloemfontein hearing, August 1998.)

227. The Committee accepted that the applicants had acted on behalf of APLA and in accordance with what was then the policy of the PAC. It was satisfied that they had made a full disclosure of their respective roles and participation in the attacks. Accordingly, Mr Lerato Abel Khotle, Mr Luvuyo Kulman and Mr Phila Martin Dolo were granted amnesty for the attacks in Ficksburg.

228. They were also granted amnesty for a shoot-out on the Ficksburg bypass in which two people were injured. This incident had occurred as Dolo and his unit were withdrawing from the town. They fired shots at a police vehicle in the vicinity of the Ficksburg bypass, injuring Sergeant Otto Coetzee (who was in the police vehicle) and Ms Mathapelo Lethena who was travelling in a passing taxi.

229. Mr Dolo also gave evidence of his involvement in a further attack in which he and two others threw a hand grenade and opened fire on a farmstead in the Danside area on 19 December 1992. One person, Mrs Leone Pretorius, died in the attack. Once again, the farm was attacked because it was believed that white farmers belonged to the commando structures. APLA cadres wanted to drive them out of the area in order to create a wider operational platform for themselves. Dolo was granted amnesty for this incident [AC/1999/0182].

Sabotage

230. The Committee received just three applications for amnesty for acts and attempted acts of sabotage. Two of these matters were dealt with in chambers. All were granted. No casualties or injuries resulted from these actions.

231. Mr Wandile Merriman Dyanti [AM2486/96] and Mr Shylock Wele Matomela [AM2467/96] applied for amnesty for being in possession of explosive material and for intentionally causing an explosion at the Easigas Plant in Port Elizabeth. Amnesty was granted in chambers [AC/1998/0038 and 0039].

232. PAC/APLA member Silimela Ngesi [AM6020/97] applied for amnesty for an attack on the East London petrol depot on 19 August 1993, and for the attempted killing of a Sergeant Oosthuizen and other members of the SAP in a subsequent shoot-out on the same day.

233. Ngesi told the Amnesty Committee that the acts were committed in execution of the orders of his commander, Mr Bulelani Xuma, who also provided the arms for the operation. He testified that the mission was unsuccessful because the petrol tank did not explode as was intended, and subsequently resulted in the shoot-out with the police.

234. The Amnesty Committee accepted that the applicant was a trained APLA soldier and that his actions were in execution of APLA orders and were therefore associated with a political objective as required by the Act. Mr Ngesi was granted amnesty.

Limpet mine explosion in Durban

235. APLA member Ndoda Mgengo [AM6386/97] and PASO members Xolani Cuba [AM3845/96] and Mfundo Peter Seyisi [AM6386/97] applied for amnesty for a limpet mine explosion on a bus in Durban on 30 November 1993. Mr Vuyani Namba, also an APLA member, died in the explosion and eleven other people were injured.

236. Mgengo testified that he had introduced Mr Namba to the other two applicants after he had received instructions from APLA commander Sichumiso Simphiwe Nonxuba, who was based in Umtata. The instructions were to assist Namba in a mission which entailed the bombing by limpet mine of either the Umbilo or Brighton Beach police stations in Durban.

237. Namba, Cuba and Seyisi were on the bus on their way to Umbilo police station when the limpet mine exploded prematurely, killing Namba and injuring Cuba and Seyisi and other passengers.

238. The Amnesty Committee accepted that all the applicants had acted in pursuit of a political objective, which was in accordance with the policies and strategies of the PAC, APLA and PASO. It had not been the applicants' intention to cause injury to the people on the bus as the limpet mine appeared to have exploded accidentally. The applicants did not act out of ill will, spite or malice or for personal gain. None of the victims who were present at the hearing opposed the applications. The Committee granted amnesty to all three applicants.

Procurement and possession of arms and ammunition

239. The Committee received a total of nine applications for amnesty from PAC and APLA members exclusively for dealing in arms and ammunition. Most were granted in chambers.

240. PAC member Abel Sgubhu Dube [AM6040/97] applied for amnesty for being in unlawful possession of arms and ammunition near the Saambou Bridge on the Limpopo Border on 21 April 1982. He testified that he had obtained the weapons from a Mr Andrew Moeti, the deputy Commander of APLA, then based in Gaborone, Botswana. He was arrested soon after entering the country and was found in possession of an AK-47 and a 9mm Luger pistol. He also applied for amnesty for furthering the aims and objectives of a banned organisation and for harbouring APLA operatives during the armed struggle.

241. Mr Dube satisfied the Committee that the offence was associated with a political objective and he was accordingly granted amnesty [AC/2000/169].

242. Mr Musa Patrick Hadebe [AM6667/97] applied for amnesty for the illegal possession of a machine gun, ammunition and a hand grenade and for one count of murder and one count of attempted murder, offences for which he had been convicted and was serving an effective sentence of 13 years.

243. On 11 November 1997, the Amnesty Committee requested further particulars about the murder cases from both the applicant and the PAC, but received no response. Accordingly, Mr Hadebe was refused amnesty for murder and

attempted murder on the grounds that the essential particulars concerning these acts were not supplied in the application or upon request. He was, however, granted amnesty for the illegal possession of arms, ammunition and an explosive [AC/1999/0059].

Other matters

244. A range of other amnesty requests were placed before the Amnesty Committee by PAC and APLA members.

245. Six PAC members applied for amnesty for furthering the aims of a banned organisation between 1980 and 1990; for the recruitment of youths for military training, and for harbouring trained APLA cadres infiltrated into the country between 1980 and 1993. Satisfied that the offences committed were acts associated with a political objective and complied with the requirements of the Act, the Amnesty Committee granted amnesty to all the applicants.

246. Mr Patrick Mabuya Baleka [AM5929/97] applied for amnesty for the offence of high treason committed in or around September 1984. The particular offence constituted the subject matter of a high-profile political trial held at Delmas in which the applicant was acquitted. The Committee ruled that there could be no doubt that the charge of high treason related to the political conflicts of the past. Mr Patrick Baleka was accordingly granted amnesty [AC/2001/021].

PAC/ANC conflict

247. The Amnesty Committee received applications from four PAC members relating to offences committed in the course of localised conflict between members of the PAC and the ANC.

248. PAC member Sonnyboy Johannes Sibiya [AM3381/96] applied for amnesty for the killing of Mr Vusumuzi Ephraim Dhludhlu at eMzinoni, Bethel in the Transvaal on 17 October 1992. He was convicted and sentenced to 15 years' imprisonment.

249. Sibiya testified that he joined the PAC task force in 1991. He described his duties as the protection of PAC members and their homes. Soon after this, he was sent to the then Transkei for basic training under the auspices of APLA. After a short stay at Folweni near Durban, he was deployed to eMzinoni.

250. Sibiya described a situation of ongoing political conflict between PAC and ANC members in the area. He related a number of incidents in which people were killed, homes burnt and people forced to leave the township. He said that he took steps to try to report the problems caused by this conflict to APLA's Director of Operations, but was unable to contact him. He managed to get in touch with 'Mandla', APLA's regional commander for the Highveld area. He met with him in Embalenhle and, after explaining the situation to him, received orders to identify the ANC ringleaders and attack them in order to prevent further attacks on PAC people.

251. By the night of 15 October 1992, Sibiya had gathered sufficient information and went out in search of the ANC ringleaders. However, it was not until 17 October 1992 that he located Dhludhlu and another person in a shop. Both, he claimed, had been identified as ANC culprits. He testified that he called Dhludhlu over to him and, after trying to negotiate and reason with him, shot him dead.

252. Some years before, Dhludhlu had been a suspect in an attack on Sibiya's uncle's home, which resulted in the death of three members of his family. Sibiya, however, denied any suggestion that he had been motivated by feelings of revenge against Dhludhlu. Further to this, a member of the National Executive Committee (NEC) of the PAC, Mr Jabulani Khumalo, testified that there had been conflict between the PAC and ANC in the area from 1990 until 1992/93. He said that this conflict affected a number of areas, including eMzinoni. He was aware that APLA cadres were deployed in those areas where attempts at negotiation had failed to prevent further conflict. He said he had knowledge of these matters because he had been a PAC leader in the East Rand at the time.

253. The Committee accepted that Sibiya had acted on behalf of and in support of the PAC in the context of the conflict with the ANC and his conduct was held to be an act associated with a political objective. Satisfied that he had made full disclosure of all material facts and did not appear to have acted for personal gain, personal malice, ill-will or spite, The Committee granted Mr Sonnyboy Johannes Sibiya amnesty [AC/1998/0052].

APPLICATIONS REFUSED

254. As noted earlier, the Committee refused amnesty for forty-nine (24 %) of the 204 separate incidents placed before it. Out of forty-nine incidents of armed robbery, amnesty was refused to applicants in twenty-four cases (49 %). Out of twenty-eight incidents of attacks on the security forces, amnesty was refused in just two cases (7 %). Out of twenty-seven farm attacks, amnesty was refused in eight cases (30 %).

255. The reasons for the refusal of amnesty are as follows:

Absence of political motivation

256. Mr Stephen Vusumuzi Dolo [AM0320/96] applied for amnesty for malicious injury to property when he wrecked his cell at the Burgersdorp prison on 12 August 1992 in an apparent effort to force the authorities to allow him to join other awaiting-trial prisoners. He testified that he was suspicious of the motives of the prison authorities and believed they were keeping him separately in order to intimidate him.

257. The Amnesty Committee was not satisfied that the applicant's actions were aimed at furthering the political struggle and objectives of APLA and the PAC; they were more probably inspired by a personal motive of improving the conditions of his incarceration whilst awaiting trial. Accordingly, Mr Dolo was refused amnesty [AM0320/96].

Failure to prove political motive

258. Mr ZW Mgandela [AM7889/97] was refused amnesty [AC2000/072] for robbery, abduction and the unlawful possession of a firearm and ammunition. All these offences were committed on 27 November 1993 at the premises of a shop known as 'Pick Fit and Take' in Port Elizabeth. Mgandela claimed that he joined the PAC in 1978 and became a member of APLA after receiving training in the Transkei in 1992. Mgandela was unable to convince the Committee that he was an APLA cadre and that the robbery was an APLA operation. The applicant had scant knowledge of the then leadership of APLA and the PAC, and did not know who the APLA Director of Operations was.

259. Mr Paballo Ernest Pumulo [AM6634/97] was refused amnesty [AC/2000/132] for the killing of 70-year-old Mr Jacobus Petrus Ward and 39-year-old Mrs Emmarentia

Cornelia Ward on 21 December 1992, and for the attempted killing of 69-year-old Mrs Anna Wilhelmina Ward on the farm Emmaus in the district of Theunissen.

260. Pumulo professed to be a South African citizen, but could not produce any identity documents and later confessed that he was not in possession of any. He also testified to joining the PAC in Virginia in 1990. There was no PAC branch in Virginia and the only PAC members he was able to recall meeting were a certain 'Sebande', who recruited him, Rasta Moloto to whom he was introduced by 'Sebande' and Lebohang Mey and whom he met on one occasion before the incident. He had never attended a PAC meeting, could not give the motto of the PAC and could only vaguely refer to its aims and objectives.

261. Mr Page Hlalele Hlelesi [AM5020/97] was refused amnesty [AC/1998/0100] for the killing of Mrs Maria Janse van Nieuwenhuizen, an 83-year-old pensioner in Brakpan, on 6 May 1994.

262. At the time of his application, Mr Hlalele was serving a 40-year sentence for murder, attempted robbery with aggravating circumstances and the possession of arms. He told the Committee that he was a PAC supporter and that he had been recruited to the organisation by a Mr Moses Mogage in 1993.

263. Hlalele said that, in January 1994, Mogage had instructed him and three others to go to Brakpan to 'seek guns' since the movement needed arms and ammunition. The 'order' was only carried out in May 1994.

264. The Amnesty Committee found that, although the application complied with the formal requirements of the Act, it was not satisfied that the offences listed were associated with a political objective for the following reasons:

    a Hlelesi's affiliation to the PAC was not supported by his own or any other evidence. Throughout his evidence, he referred to himself as a 'new recruit' who had never received any training and who was going to establish 'a lot of things' about the PAC later.
    b The offences were committed after the elections in April 1994. The applicant had not even cast his vote in the elections. He denied having known that the PAC had already suspended the armed struggle in January 1994, the year of the elections.
    c The reason advanced by Hlelesi for committing these offences was 'to achieve freedom'. However, a new political dispensation was taking shape by 4 May 1994, when the offences were committed. His reason was therefore rejected by the Committee as false.

d A considerable period of time had elapsed between the alleged instructions and his carrying them out.

265. The Committee concluded that the acts for which Hlelesi was applying for amnesty were common criminal acts committed for personal gain rather than political reasons.

266. Mr Phakamile Cishe [AM1272/96] and Mr Kwanele Msizi [AM199/96] were both refused amnesty for killing two policemen and an informer in an armed attack in Zwide township, Port Elizabeth, on 18 November 1990. Both applicants were convicted of these and other offences on 20 September 1991. They received the death sentence, later commuted to life imprisonment, for the three killings.

267. The Amnesty Committee found that the discrepancies and contradictions in the applicants' completed application forms impacted directly on their credibility. This, in turn, impacted substantially on the questions of political objective and full disclosure, which are requirements for amnesty in terms of the Act [AC/1998/0115].

Lack of full disclosure

Attack on Sophia and Gabriel Rossouw

268. Although APLA policy authorised robbery as a means of raising money, amnesty was denied to Mr Sithembiso Vanana [AM6540/97] for a robbery in which money was used for the personal benefit of the applicants and not the organisation.

269. Mr Vanana applied for amnesty for the killing of Mrs Jane Sophia Rossouw, aged 72 years, the attempted killing of Mr Casper Gabriel Rossouw, aged 81 years, robbery, housebreaking with the intent to steal, and theft of a motor vehicle. These offences were committed on the farm 'Sarahsdale' in the district of Dordrecht on 1 August 1993.

270. According to the applicant, the operation was planned in order to 'raise funds' to enable him to travel to the Transkei where he would receive basic APLA military training. He spoke to a Mr Nelson Gebe, an APLA cadre, about joining APLA. Gebe informed him that he would have to undergo military training in Transkei and that he (Gebe) knew a person in Butterworth who would be able to make the necessary arrangements.

271. Vanana, Gebe and one other person participated in the attack on the Rossouws. They were unsuccessful in finding either money or arms in the house and instead stole the Rossouws' motor vehicle and drove to the Transkei, where they stayed for at least six weeks. The applicant testified that he was unsuccessful in reaching the contact Gebe had told him would arrange for his training. Nor did they make any attempt to get in touch with any other members of the PAC or APLA in Transkei.

272. They sold the Rossouw's vehicle for R5 000 and used the money for their own benefit. They also robbed a bottle store and hijacked a motor vehicle. Soon after this, they were chased by the police, who shot at them. The applicant was hit and injured. He was arrested and detained in hospital where he received treatment.

273. The applicant escaped from hospital and went to Cape Town. Here, he and some others killed a Mr van Niekerk on a smallholding. The applicant was eventually arrested in the Cape Town area while robbing a shop.

274. The Amnesty Committee noted that there was:

no corroboration that the applicant was ever a member of the PAC. He states that he lost his membership card when being chased by the police in Transkei and there is no evidence before us, other than his assertion, that he is or was a member of the PAC. We are also of the view that the applicant's evidence that Gebe was an APLA cadre is both untruthful and improbable. Gebe has a criminal record which reflects that he has, from June 1973 to March 1988, had twenty-nine previous convictions and that he has on four occasions been declared an habitual criminal … It is also apparent from applicant's own version, untrustworthy as it is, that the proceeds from the sale of the Rossouws' vehicle was used for the perpetrators own benefits and not for the benefit of any political organisation.

We are of the conclusion that the crimes committed by the applicant were committed for personal gain. [AC/2000/072.]

Failure to declare specific acts

275. The APLA High Command [AM7832/97] submitted an application for amnesty without specifying individual names in order to accept collective responsibility for 'any act, omission, offence or delict committed by members of the PAC as a result of which people died, others were injured and property was damaged'.

276. The Amnesty Committee found that an act, omission or offence had to be the subject matter of an application. Where no such act, omission or offence had been disclosed, the applicants did not comply with the requirements of the Act, as this would be tantamount to granting a general amnesty. The application was similar to the one submitted by members of the ANC,[212] based on the declaration of responsibility.

277. Moreover, section 18 of the Act states that 'any person' who applies for amnesty will qualify. The APLA application was not signed by any person acting on behalf of the body cited as the applicant: in other words, no person was named as applicant. The application from the APLA High Command was accordingly refused [AC/2000/0101].

278. Similarly, amnesty was denied to a former APLA member who had become an *askari*. In his application, Mr Sello David Thejane [AM7942/97] failed to supply the names of the many activists he claimed to have assaulted and tortured [AC/2001/038].

COMMAND STRUCTURES

Political and military leadership

1960s: PAC National Working Committee/Task Force/Poqo

279. The PAC explained in its submission that the response of the government to the anti-pass campaign (the Sharpeville massacre) led to the 'formation of rudimentary units comprising mainly task force members. Armed operations were carried out at Bashee, Paarl, Ntlonze and Queenstown between 1960 and 1962'. Poqo was formed in September 1961, following the formation of underground cells and the decision to embark on armed struggle and target police stations, post offices, power installations, fuel depots and various government buildings. In addition, white suburbs were selected as targets. Branches, theoretically consisting of no more than fifteen members, were set up. In larger branches, smaller cells were set up – with their own small committees and 'task force' leaders. The task force was made up of foot soldiers to be in a state of readiness at all times. Foot soldiers also served as the organisation's police who stood guard during meetings.

212 See Chapter Two of this section.

280. While the PAC Disciplinary Code encouraged members to air their views 'and to agree or disagree with all or any member of the movement, including the leader …', there were incidents where action was taken against those who disagreed openly with the leadership. No political education programme was provided for members. Such a programme would have helped members define who the enemy was, rather than inciting the membership to kill whites and their informers in a more general way. Where the enemy was not clearly defined, gross abuses of human rights were inevitable. Some of the violations committed by PAC or Poqo members took place during this period.

1962: Revolutionary Council

281. Mr Potlako Leballo (founding PAC national secretary and acting president in exile) set up the Revolutionary Council in Lesotho, which was to plan and execute the next phase of the PAC struggle to overthrow white domination and establish 'an Africanist socialist democracy' via Poqo cells.

282. In the late 1960s, the PAC established a base in exile, headquartered first in Lusaka, Zambia and later in Dar-es-Salaam in Tanzania. It established missions in eighteen countries and began a programme of military instruction for PAC members: first in the Congo alongside the FNLA[213] and later in Ghana and Algeria.

1968: Formation of APLA/PAC High Command and Military Commission

283. APLA was founded in exile in 1968 and the PAC planned for the infiltration of trained guerrillas into South Africa. After 1975, members of the APLA High Command were despatched to the frontline states to prepare an underground trail.

Late 1980s

284. From 1989, APLA cadres were infiltrated into the country and established as self-reliant, easily-manageable and controllable task force units of no more than three guerrillas. They consisted of a political commissar, whose brief was to make sure that all operations enhanced the PAC's political positions and ideology; a cadre in charge of securing logistics whenever needed, and a commander who was in charge of the military aspects of operations.

213 National Front for the Liberation of Angola

285. The political commissars were the first to be infiltrated to occupy certain positions inside the country, followed by the logistic personnel and then the commanders, who were 'the actual fighters'.

286. APLA based reconnaissance units all over the frontline states. Inside the country, however, the political commissars, whose task was generally to pave the way for the entry of the fighters, also had to do the major reconnaissance work. As part of APLA's all-round training, cadres were equipped to perform any tasks at any given time and situation. It was the commissars who had to answer to the Military Commission in the event of mishaps arising in the course of operations.

287. According to the testimony of Mr Vuma Ntikinca, an APLA operative in the Transkei at the time, this *modus operandi* made the APLA units:

> *more slippery, more mobile and more efficient in an encounter with a big army. These units were independent of each other. They selected their own targets and they did not face any dangers of their operations and movements being known by the enemy as a result of the capture of one cadre or the whole unit, or as a result of enemy infiltration at headquarters. These tiny units also had the advantage of depriving the enemy of the opportunity of using heavy weaponry. It was easier for us acquiring small and light weapons that suited the size of the units, which could not be easily detected. In the latter part of the operations, though, APLA forces had expanded into much bigger units which were now using rocket launchers such as RPG7s and other weaponry. (Interview with the Commission.)*

288. The units were deployed in a manner that ensured that they had no contact with one another. They reported directly to APLA's headquarters in Tanzania after an operation had been carried out. If serious political repercussions arose from any one military operation, it was the political commissars who answered to the Military Commission, explaining any deviation from PAC ideology, strategy and programme.

289. Local commanders in small units were given a fair degree of autonomy in selecting targets, undertaking reconnaissance, procuring arms and establishing tactics for APLA operations. Once a target had been selected, however, a local commander would have to seek authorisation from a regional commander or some superior official. According to the evidence presented in amnesty hearings, this was generally done.

290. The operational planning of an attack was the task of the commander of the unit assigned to it. As will be clear from the operations described earlier in this chapter, a feature common to most was the fact that the foot soldiers were briefed on the details only moments before they were launched. They were deliberately kept in the dark and prevented by APLA's operational code from asking questions about the proposed attack. Nor were they at liberty to question the instructions they received. The Amnesty Committee repeatedly heard applicants say that it was not their place to question the instructions or the legitimacy of operations.

291. Applicant Andile Shiceka told the Committee that APLA soldiers on the ground had no capacity either to determine or influence policy. They were merely expected to obey orders. They did not participate in making or changing policy in respect of target selection, but simply followed instructions. Many applicants told the Committee that they would never have questioned the orders given to them. They had been trained never to question an order or instruction. A disciplined member of the army would simply carry out the order. Defying an order would be tantamount to 'mutiny' within the army ranks.

Early 1990s: APLA repossession units

292. Mr Patrick Thapelo Maseko [AM5918/97] told the Committee that, after receiving PAC training outside the country between 1983 and 1989, he re-entered the country as a member of APLA and was deployed to a repossession unit code-named 'Beauty Salon':

I was deployed inside the country with specific instructions to advance the struggle for the liberation of African people in all fronts. We were told that the PAC and APLA have no funds and therefore the cadres should be self-reliant. We were told that the targets will be chosen by us. This unit therefore was called 'Repossession Unit'. This was the first unit to be sent in the country for this purpose, though we were to conduct other operations. (Statement to the Commission.)

293. Maseko was involved in commanding at least twenty-eight operations. Initially, he reported to a man called Msiki in Botswana via a courier code-named 'General'. Later he reported to Mr Letlapa Mphahlele who had returned to South Africa as part of the APLA High Command after the unbanning of organisations in February 1990. He was expected to hand over to Msiki whatever had been

repossessed by the unit, with the exception of arms and ammunition, which he retained for further use by operatives. If the money obtained was less than R3 000, the unit used it to conduct further operations. According to the evidence before the Amnesty Committee, the 'Beauty Salon' unit was responsible for the theft of over R40 550. In 1991, over R532 000 was stolen.

Transkei operational bases

294. From operational bases secured in the Transkei, APLA conducted a series of attacks on civilian targets in the early 1990s. Operations in the Western Cape had particularly strong links to APLA structures in the Transkei. Weaponry was also sourced from the Transkei security forces. For example, the Amnesty Committee heard that the hand grenades used in the St James' and Heidelberg attacks originated from a batch of grenades supplied to the Transkei Defence Force. Transkei also provided refuge for APLA operatives after operations. In most attacks, APLA personnel from the Transkei were deployed in conjunction with locally-trained operatives, while local PAC structures provided logistical support to such operatives.

MOTIVES AND PERSPECTIVES

PAC/APLA perspectives

295. The PAC believed that its members were fighting a just war of liberation from white domination. Its definition of the enemy included all those identified as 'settlers' rather than 'Africans'. This meant that the distinction between civilian and non-civilian targets was not considered significant.

296. Most of the human rights violations attributed to APLA took place between 1990 and 1994 while negotiations and eventually the run up to elections were in progress.

297. The primary objective of the PAC and its armed wing APLA in the early 1990s was the overthrow of the apartheid regime. To that end, the PAC recruited young men into self-defence or, as the PAC termed them, 'task force' units.

298. APLA's first task was to wage an armed struggle against the security forces. While APLA's strategy in the 1980s had been to target security structures, 'a new strategy arose in the 1990s where civilians within the white community

were attacked'. White persons (male and female) came to be described as 'the underbelly of apartheid'. By attacking white civilians, APLA hoped to bring pressure to bear on the apartheid government and thereby expedite the liberation of the African masses.

299. Due to the logistical difficulties faced by APLA headquarters in Dar-es-Salaam, target selection was left to local commanders. However, evidence presented to the Commission revealed that, while internally-trained cadres were in a position to carry out better reconnaissance and thus avert detection and arrest, they faced the disadvantage of not having received the political education available to cadres in the exile camps. Consequently, strategic errors were made by these locally-trained operatives, for which the APLA leadership accepted full responsibility. However, the Commission was given no details of these errors.

300. The Amnesty Committee heard evidence that the PAC's armed struggle was essentially a guerrilla war directed against 'the then racist minority regime which was undemocratic and oppressive'. In order to conduct the armed struggle, APLA cadres were instructed to 'seek and attack the bastions and minions' of the regime with the ultimate objective of toppling it and returning the land to the majority of the African people. This was the general directive issued to commanders and units on the ground.

301. Applicant Phila Martin Dolo [AM 3485/96] told the Committee that the 'bastions and minions of the … erstwhile regime' were, from the APLA perspective, members of the SADF, members of the SAP, reservists, and farmers, as they belonged to commando structures and occupied farms and white homes described as 'garrisons of apartheid'.

302. The aim of attacking white farmers, Dolo testified, was to drive them away in order 'to widen our territorial operational base which was aimed at eventually consolidating the liberated and repossessed land'.

My general instruction was to seek, identify and attack the enemy who was seen in the context of the above-stated bastions and minions of the regime, and also to train other cadres and command them in whatever operation that is being embarked upon. (East London hearing, 26 April 1999.)

303. Mr Andile Shiceka [AM5939/97] explained that the shift from targeting members of the security forces to targeting whites in general was not a major policy change. A precedent had been created by Poqo's targeting of whites:

[T]he attack on white civilians is not a new thing, when you look back at the history of PAC – the formation of Poqo on the 11th of September 1961. If you remember the attacks at Mbashe, Paarl and Komane, those comrades of those days were members of the PAC which was converted into APLA. They were attacking white civilians during those days; even history confirms that. Therefore I find it difficult for me when one of the panel members says we're shifting as to our targets. Instead of attacking security forces, we were attacking white civilians which I refer to as 'soft targets' … That's the reason why I say I am confused when they say we have shifted in constituting targets because this started long ago. (Pietermaritzburg hearing, 11 February 1998.)

304. Mr Luvuyo Kulman [AM1638/96], who applied for amnesty for various attacks in Ficksburg, quoted Robert Sobukwe to underscore the point:

I want to make it clear that we did not attack whites because they were white; we attacked them because they were oppressors. Sobukwe, the founding President of the PAC, put it this way: 'In every struggle, whether national or class, the masses do not fight an abstraction. They do not hate oppression or capitalism. They concretise these and hate the oppressor, be he, the governor-general or a colonial power, the landlord or the factory owner, or in South Africa, the whites. But they hate these groups because they associate them with their oppression. Remove the association and you remove the hatred.' In South Africa then, once white domination has been overthrown and the white is no longer ' white boss' but is an individual member of society, there will be no reason to hate him and he will not be hated even by the masses. We are not anti-white therefore. We do not hate the European because he is white. We hate him because he is an oppressor. And it is plain dishonesty to say 'I hate the sjambok and not the one who wields it'. (Application to Commission and hearing at East London, 26 April 1999.)

Suspension of the armed struggle

305. After the lifting of the banning orders on the liberation movements on 2 February 1990, the PAC adopted a different strategic position to that of the ANC. While the ANC engaged almost immediately in 'talks about talks' with government representatives, the PAC told the Commission that it adopted a principled approach to negotiations and believed that 'one must negotiate from a position of strength'.

306. Its continuation of armed struggle – reaffirmed by the PAC's national conference as late as December 1993 – was, however, an issue of contention within the organisation. Amnesty applicant Bongani Malevu [AM0293/96], who attended the conference, testified before the Amnesty Committee that the resolution on the armed struggle did not receive unanimous agreement. There was a split between those who felt that the struggle should continue and those who were opposed to armed attacks continuing during the run-up to the elections in April 1994.

307. In his January 1994 New Year's message, and with the election only months away, APLA commander Sabelo Phama declared 1994 as the year of the 'great offensive on all fronts' and said that 'the bullet and the ballot' were to be used effectively in 1994. Mr Phama stated that political power without military and economic power would be meaningless and that APLA should double its efforts both politically and on the military front.

308. When shortly thereafter (on 16 January 1994), the PAC leadership announced a suspension of its armed struggle and a wish to participate in the negotiations for the new dispensation and in the pending general election, rebellion broke out inside the organisation. The PAC's central Transkei secretary, Mr Mfanelo Skwatsha, called the leadership's decision a 'surrender'.

Perspectives of the survivors

309. For the most part, the survivors of the attacks opposed the applications for amnesty on the grounds that the acts themselves were not 'political' in character, but were motivated rather by personal interests and, in some cases, by racial hatred. Some victims appeared before the Amnesty Committee to make their case. Others declined to give testimony and stated that they were happy to leave matters in the hands of the Committee. Several victims and members of victims' families declined to attend the hearings or to be involved in the amnesty process in any way. In a few instances, particularly those that involved high-profile attacks on civilians, survivors and victims chose to use the opportunity offered by hearings to challenge applicants directly and to ask them to account for what appeared to be errors of judgement, particularly in the selection of targets.

310. On the whole, applicants refused to apologise for attacks and lives lost, particularly where the victims had been members of the police or of white political

organisations, white civilians or white farmers. Yet many expressed remorse for the consequences of their actions, and the desire to be reconciled with the surviving victims of attacks or the families of deceased victims.

CONCLUSION

311. The Commission gave due attention to the response of the PAC to the findings of the Human Rights Violations Committee. However, the Commission is of the view that the evidence that has emerged through the amnesty process has done nothing to cause the Commission to change or moderate these findings in any way. On the contrary, on completion of the work of the Amnesty Committee, the Commission is able to confirm these findings, particularly those with regard to the activities of the PAC and APLA during the 1990s.[214]

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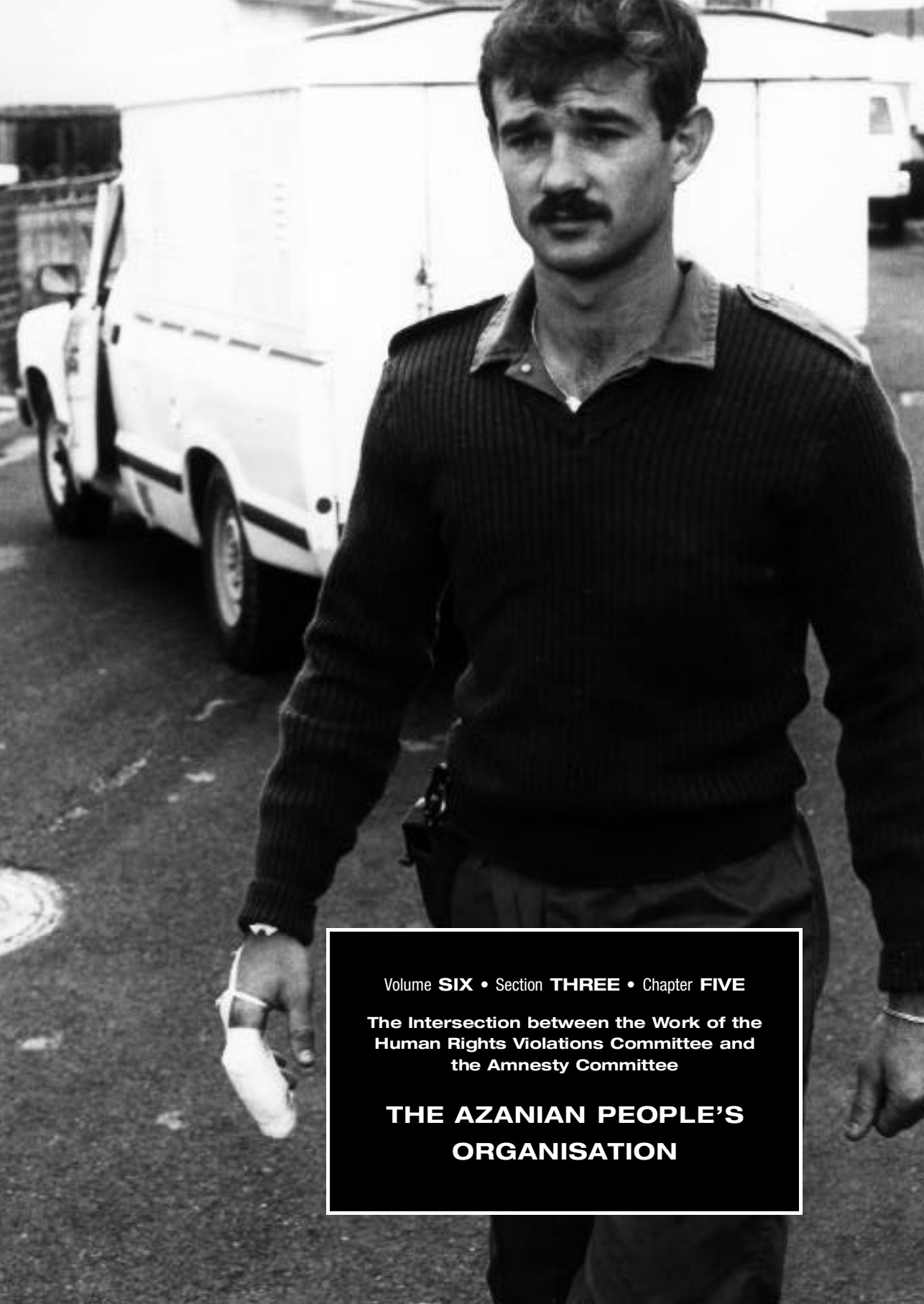
214 See Section 5, 'Findings and Recommendations' in this volume.



Volume **SIX** • Section **THREE** • Chapter **FIVE**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

THE AZANIAN PEOPLE'S ORGANISATION

Azanian People's Organisation

1. The Amnesty Committee received one application from the Azanian People's Organisation (AZAPO).

2. Azapo member Mr Thembinkosi Vivian Mabika [AM7761/97] applied for amnesty for robbery with aggravating circumstances, attempted murder and the unlawful possession of a 9mm Makarov pistol and ammunition; offences for which he was convicted in July 1993 and sentenced to an effective term of eighteen years' imprisonment.

3. The incident which gave rise to the charges took place during the morning of 18 January 1992 at the Acme Dry Cleaners in Kimberley. The applicant and six other persons entered the premises with the intention of committing a robbery. Ms Sonja Spicer, an employee of Acme Dry Cleaners, was shot in the chest and seriously injured during the course of the robbery.

4. The applicant testified that only two of the seven persons involved understood that the intention was to obtain money to purchase firearms for AZAPO. The others participated in the robbery for personal gain.

5. The Committee ruled that it was clear from the evidence that the applicant did not participate in the robbery under instructions or orders from any person in AZAPO. Nor was the robbery committed with the knowledge of any office-holder in AZAPO. The majority of the applicant's co-perpetrators were not members of the AZAPO but had involved themselves purely for personal gain. In the opinion of the Amnesty Committee (Committee), it was deceitful to refer to the robbery as an AZAPO operation.

6. According to the applicant's version, the lion's share of the proceeds of the robbery would have gone to common criminals and would not have been used for the benefit of AZAPO. The Committee found that the reason given by the

applicant for involving his co-perpetrators – namely that he wanted strength in numbers – was unimpressive. The fact that the applicant and one of his co-perpetrators were members of AZAPO was not enough to persuade the Committee that their motive in participating in the robbery was political.

7. Given the probability that all the perpetrators participated for their own personal gain and that the crimes committed by the applicant were not acts associated with a political objective, Mr Mabika was denied amnesty [AC2000/070].

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Volume **SIX** • Section **THREE** • Chapter **SIX**

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

RIGHT-WING GROUPS

Right-Wing Groups

■ INTRODUCTION

8. For the purposes of this chapter, the definition of the 'white right wing' refers to all white groups and individuals who organised themselves to campaign for self-determination and who mobilised against the democratic changes sweeping South Africa in the early 1990s. Most of these groups and individuals emerged from conservative Afrikaner circles in the country.

9. During the early 1990s, the movement away from apartheid by the National Party government was regarded by some as a treasonous capitulation to black political demands, which would result in the country being handed over to 'communists'. In response to this perceived threat, the 'white right wing' began organising itself with a view to creating structures that would ensure the safety of its members and the protection of their property. Neighbourhood watches and surveillance groups (verkenningsgroepe) were formed in various areas. As the political situation progressively deteriorated from the right-wing perspective, radical talk and an inclination towards violence increased exponentially in its ranks. Right-wing groups showed phenomenal growth and came to accommodate a wide range of right-wing views and sentiments. Elements from the military joined in, bringing with them their own professional skills, such as the manufacture of explosives.

10. It was against the background of this volatile situation in right-wing circles that matters came to a head when the National Party government lifted the ban on the liberation movements in February 1990. For the right wing, this must have seemed like the beginning of the end. The next step would be the enfranchisement of the black majority leading to black majority rule in South Africa. This would inevitably lead to the total destruction of their values and way of life.

11. During the period under review, the ranks of conservative Afrikanerdom were characterised by a great diversity of political, cultural and paramilitary formations. Many of these groupings emerged as a result of their disaffection with the ruling National Party, which had, since the 1940s, been seen as the sole custodian of Afrikaner identity. What they shared was a desire to conserve traditional Afrikaner

values by reaching back to the original principles of Afrikaner politics, rather than endorsing the adaptations of policy advanced by the Afrikaner government of the day. Even in their disaffection, however, they continued to be fragmented.

PART ONE: PROFILE OF RIGHT-WING GROUPS

12. At the start of the 1990s, the so-called 'right wing' embodied a large number of groups, some operating underground to avoid detection and infiltration by the security forces. Many of the groups were characterised by splintering and leadership struggles. However, once the negotiating parties had agreed on a formula and date for democratic elections, right-wing forces began uniting to mobilise for their struggle for self-determination.

13. The following is a summary of the main features of the organisations making up the 'right wing' as it evolved from the time of the first right-wing breakaway from the National Party in 1969. Those described represent only a few of the numerous right-wing organisations that were operating at the time of the first democratic election in April 1994. Many amnesty applicants claimed membership of one or more of these organisations simultaneously, with the Afrikaner Volksfront (AVF) providing an umbrella for the smaller groups.

HERSTIGTE NASIONALE PARTY

14. The Herstigte Nasionale Party (HNP),[215] which broke away from the ruling National Party (NP) in 1969, was the first right-wing group to do so. Its reasons, as with all the breakaway parliamentary groups that followed, centred on dissatisfaction with NP reforms at the time. The HNP clung to its belief in the grand apartheid of the Verwoerd years, believing that a white government should dominate the entire territory of South Africa, with clear partition between the races.

BLANKE BEVRYDINGSBEWEGING

15. The Blanke Bevrydingsbeweging (BBB)[216] was founded in 1987 and advocated an extreme version of fascist apartheid based on 'refined Nazism'. Its aim was to 'repatriate' all blacks, Jews and Indians and nationalise the assets of 'non-whites'. The BBB had links with the British National Front (BNF) and similar

215 Re-established National Party.
216 White Liberation Movement.

groups in Australia, New Zealand and America. It is also believed to have had links with the Ku Klux Klan. The BBB was banned under the state of emergency in 1988 and unbanned with other political organisations on 2 February 1990.

AFRIKANER VRYHEIDSTIGTING

16. The Afrikaner Vryheidstigting (Avstig)[217] was established by theologian Carel Boshoff in 1988 for the purpose of campaigning for a white homeland. Avstig was instrumental in establishing the town of Orania in 1991.[218] It was granted observer status at the multi-party negotiations.

AFRIKANER WEERSTANDSBEWEGING

17. The Afrikaner Weerstandsbeweging (AWB)[219] was founded in Heidelberg during 1973 on a more radical and militant manifesto of conservative aims. AWB leader Eugene Terre'Blanche traced the origins of the movement to dissatisfaction with the policy of 'appeasement' of then Prime Minister BJ Vorster. He and six others met to start a cultural/political movement with the aim of protecting the interests of Afrikaners, uniting the *Boerevolk* (Boer people) and establishing a *volkstaat* (nation-state). It was felt that Afrikaners did not share the same destiny as other whites in the country. A *volkstaat* would have a form similar to that of the old Boer republics.

18. The AWB was not willing to further its cause at the ballot box or negotiating table. Mr Terre'Blanche stated on numerous occasions that the borders of such a volkstaat would be drawn in blood.

19. The AWB has been the most prominent of all ultra-right movements. Its prominence owed much to the media profile of Terre'Blanche, although this was seriously eroded following the ill-fated intervention of AWB troopers in Bophuthatwana in March 1994.[220] Up to forty of its members were arrested in election week in April 1994 and charged with a spate of pre-election bombings. Many applied to the Committee for amnesty.

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217 Afrikaner Freedom Foundation.

218 Orania was envisaged as the growth point of a volkstaat that would stretch over a large part of the arid north western Cape Province. Orania has a population of about 350, including Mrs Betsie Verwoerd, widow of the late former premier Hendrik Verwoerd.

219 Afrikaner Resistance Movement.

220 Volume Two, Chapter Seven, p. 614, para 141.

WENKOMMANDO

20. The Wenkommando (WK)[221] was established by the AWB in 1990 to take over from the various paramilitary groups operating under the banner of the AWB. Attached to the WK was the elite *Ystergarde* (Iron Guards), the *Rooivalke* (Red Falcons), the *Witkruisarende* (Black Eagles), the *Penkoppe* (Youth), *Stormvalke* (Storm Falcons), the underwater unit and various 'ethnic' units such as the exclusively Portuguese commandos in Johannesburg. In 1993, an air wing was also introduced and parachute training initiated.

21. The *Ystergarde* unit, with its membership of up to 200 men, was regarded as a more polished fighting unit, as several of its members were former members of the South African Defence Force (SADF) and South African Police (SAP) Special Forces.

22. The *Rooivalke* were the female counterpart of the *Ystergarde* and operated under the command of Mrs Ansie Cruywagen, wife of a *Wenkommando* chief of staff, Mr Alec Cruywagen. The Witkruisarende appeared to be a medical team consisting of female members of the Wenkommando with paramedical training. The *Penkoppe* were regarded as the Wenkommando Youth League and consisted almost exclusively of the children of active AWB members.

23. The *Stormvalke* unit was founded in late 1979 and can be regarded as the first paramilitary wing of the AWB. It never became more than a motorcycle gang wearing AWB insignia. Dormant in the mid-eighties, it was revived again in 1992 under the leadership of a Roodepoort motorcyclist.

24. Three men clad in diving gear made their first appearance at a May 1992 rally as the underwater unit of the *Wenkommando*. They surfaced again in 1993 at a joint rally of the AWB and AVF on 29 May.

25. In 1993, AWB spokesmen numbered Wenkommando membership at between 34 000 and 36 000. In September 1992, an official police assessment put WK membership at 15 000. Analysts have claimed that both figures were inflated. However, it is true that the WK expanded rapidly during the course of 1993. Political violence and concurrent polarisation played into the hands of the AWB, with an estimated 2 000 members joining up in the two weeks following

221 Winning commando.

the killing of Chris Hani. Towards the end of 1993, membership may have totalled 25 000.

26. Although it had a relatively large membership compared to other private armies, a distinction must be made between active members of the Wenkommando and those who had signed up at some stage but did not become active in the movement. Indications, such as attendance figures at rallies in 1992, suggest an active membership of no more than 5 000 countrywide.

KONSERWATIEWE PARTY

27. The Conservative Party (CP) was founded in March 1982 under the leadership of Dr Andries Treurnicht who, until earlier that month, had been Transvaal leader of the National Party and a minister in President PW Botha's cabinet.

28. After serious differences of opinion between Treurnicht and the cabinet on issues such as mixed sport in schools and intimations that Indian and coloured representatives might soon become part of the decision-making process, Treurnicht and fellow cabinet minister Ferdi Hartzenberg resigned their posts.

29. On 9 March they were expelled from the NP and, together with fifteen other right-wing MPs, founded the CP on 20 March 1982.

30. The CP grew rapidly and soon became the white right's most important representative body. With 31 per cent of the vote in the September 1989 all-white general election, the CP became the official opposition in parliament. However, the party was dealt a devastating blow by the 1992 referendum and the reforms instituted by President FW de Klerk on 2 February 1990. Moreover, its members became frustrated with the lack of a clear policy direction in the party. In August, disaffection led to the establishment of the *Afrikaner Volksunie* (AVU)[222] by a breakaway group of five MPs who propagated a smaller homeland for the Afrikaner. The AVU was never able to gather much grassroots support, but the CP subsequently took over its homeland policy.

222 Afrikaner People's Union.

TOEKOMSGESPREK

31. The Toekomsgesprek (TG)[223] was established in the mid-eighties as a counter to the NP's Broederbond[224], using similar structures, procedures for recruitment, initiation rites and so on. Membership of the TG was by invitation only and only after proper screening by all other members. In October 1990, the TG argued in a policy document that the CP would have to settle for a smaller state, taking cognisance of the fact that blacks had become a permanent fixture in 'white' South Africa. Although supposedly a political and cultural movement, evidence in amnesty applications points to its paramilitary activities.

32. Amnesty applicant Mr Daniel Benjamin Snyders [AM0074/96] testified that he had been involved with Toekomsgesprek since the mid-1980s, helping to set up neighbourhood watch groups from the CP, HNP and AWB. In late 1990, the AWB declared a 'white-by-night' rule for blacks in many rural towns, giving their members 'permission' to use violence to forcibly remove blacks who transgressed the 'curfew'. Eugene Terre'Blanche claimed that Adriaan Vlok gave them the go-ahead for this 'crime prevention exercise'.

33. Toekomsgesprek's defence system grew rapidly, as did the other activities with which it was tasked at the *Volksberaad*.[225] These included burning down NP offices, taking charge of the commando system, making bombs with explosives obtained from the mines and joining forces with the SADF and the SAP. The country was divided into regions and commanders were appointed.

BOEREWEERSTANDSBEWEGING

34. The Boereweerstandsbeweging (BWB)[226] was established in 1991 as one of the most radical and potentially most violent groupings. Led by Mr Andrew Ford, a farmer from the Rustenburg area, the BWB was strongly influenced by the ideas of Mr Robert van Tonder's Boerestaat Party[227] Its organisation was based on a cell structure, and the separate cells were not supposed to have knowledge of one another. These cells were associated with numerous bombings, notably the bombing of an Indian business area at Bronkhorstspruit in October 1993 in

223 Discussion of the Future.
224 A secret society composed of Afrikaners holding key jobs in all walks of life.
225 National or people's consultation.
226 Boer Resistance Movement.
227 Boer State Party.

which a police officer was killed when he went to investigate a suspicious-looking parcel (see below). Those implicated in the bombing allegedly belonged to the Cullinan cell of the BWB.

35. Ford also laid claim to the establishment of the Boere Republikeinse Leër (BRL).[228] The BRL was launched in 1991 when a document was circulated in far right-wing circles, calling on right-wingers to join. The BRL claimed responsibility, through anonymous callers, for various acts of sabotage that later turned out to be the work of other organisations or individuals. Doubts have been expressed as to whether the BRL actually existed or whether it was just one of several so-called 'telephone ghosts' of the right.

36. BWB deputy leader, Mr Piet Rudolph, went on to form the more militant Orde Boerevolk (OB), which declared war on the government through the medium of a videotape posted to an Afrikaans newspaper. At the time, Rudolph was on the run from the law following the theft of weapons from the SADF to launch the so-called 'Third War of Freedom'. By 1993, OB members had been organised in underground cells and were preparing for war. They were responsible for a number of violent acts and violations in the early 1990s.

37. At this time, the AWB created local self-protection committees modelled on the neighbourhood watch system in many right-wing towns, including *Blanke Veiligheid* (White Safety) in Welkom; *Brandwag* (Sentinel) in Brits; *Aksie Selfbeskerming* (Action Self-Protection) in Klerksdorp and *Die Flaminke* (Flamingos) in Virginia. Some engaged in vigilante actions such as the enforcement of the 'white-by-night' curfew instituted by the AWB across the country in 1990. On several occasions, these organisations entered into conflict with black residents in the towns and adjacent townships, particularly during consumer boycotts. During such incidents, white vigilantes encountered little or no intervention from law enforcement agencies.

VEKOM AND THE AFRIKANER VOLKSFRONT

38. In the wake of the 1993 killing of Chris Hani, a group of retired SADF generals founded the Volkseenheidskomittee (Vekom)[229], a well co-ordinated movement which established regional committees in the Transvaal and Orange Free State.

228 Boer Republican Army.

229 Nations/People's Unity Committee.

Vekom aimed to create a paramilitary structure to facilitate access to armaments and other resources during the run-up to the 1994 election. Together with up to sixty-five other organisations, the formation of a 'right wing front' was discussed and the Afrikaner Volksfront (AVF) was conceived, drawing in a broad spectrum of right wing groups. These included the CP, the HNP, Afrikaner Volksunie, the Afrikaner Vryheidstigting (Avstig), the Wêreld Apartheid Beweging (WAB)[230], the Boere Vryheidsbeweging[231], the Pretoria Boerekommando Group, Vekom, the Mine Workers' Union, the Church of the Creator, the Oranjewerkers-Vereniging and some business and other church groupings. The AWB was also persuaded to participate. Later the BWB and the BRL also supported the front. The front's rallying call was for a *volkstaat*.

39. While the AWB fell in with the AVF, the latter's formation in May 1993 came as a blow to Eugene Terre'Blanche, who now found himself sidelined. Terre'Blanche had liked to see himself as the strongest force in extra-parliamentary right-wing politics and the AWB as the original and true carrier of the *volkstaat* ideal. Tensions erupted in March 1994 when three AWB members were killed during the Bophuthatswana debacle. Shortly thereafter, AVF leader General Constand Viljoen cited AWB lack of discipline as one of the main reasons for the failure of a right wing, and resigned from the AVF directorate. For their part, the AWB and Terre'Blanche accused Viljoen of being a traitor.

THE FREEDOM ALLIANCE

40. The Freedom Alliance (FA), which grew out of the Concerned South Africans Group (COSAG) in 1993, was a political pressure group comprising the AVF, the Inkatha Freedom Party (IFP), the Ciskei and Bophuthatswana homeland governments and the CP. All its members had at one stage or another pulled out of the multi-party negotiations, giving as their central reason their perception that the NP and ANC were pushing a pre-determined agenda past the other parties.

41. For its part, the FA pushed a strong regional agenda. Some of its members subscribed to confederalism and others to federalism, following the principles of the right to self-determination, the protection and promotion of free enterprise and the limitations of powers of central government. The AVF's General Viljoen spoke on behalf of the alliance at a meeting in Pietersburg during July

230 World Apartheid Movement, aka the World Preservatist Movement.
231 Boer Freedom Movement.

1993, saying that the potential for conflict was so high that a bloodbath was unavoidable if the demands of the alliance were not recognised.

42. However, General Viljoen ultimately supported participation in the democratic elections in 1994.

PART TWO: SUMMARY AND ANALYSIS OF AMNESTY APPLICATIONS

■ OVERVIEW

43. A large number of victim statements implicating right-wing perpetrators were received by the Commission, nearly all relating to violations committed from the late 1980s until the election in April 1994. The number of statements received showed a distinct increase in violations as the election approached, peaking in late 1993 when the political climate for extremism was at its height. Most violations occurred in the former Orange Free State and Transvaal and many were as racist as they were political in character.

44. A total of 107 applications for amnesty were received from members of right-wing organisations. This figure does not include those applicants who were found not to be bona fide members of such organisations, or those who participated in right-wing activities while they were members of the security forces.

45. The overwhelming majority (71 %) of applicants claimed membership of the Afrikaner Weerstandsbeweging (AWB). Ten per cent of applicants claimed membership of the Conservative Party (CP). The remaining 19 per cent of the applicants claimed to belong to a variety of organisations, including the non-specific 'right wing'.

46. Most applications for amnesty from right-wing applicants were heard and settled in the early stages of the Amnesty Committee's work. Of these, 68 per cent were granted amnesty. Roughly half the applications were dealt with in chambers[232] and half in hearings convened by the Amnesty Committee. Sixty per cent of the hearable applications and 67 per cent of the chamber matters were granted amnesty.

232 See this volume, Section One, Chapter Three for more information about chamber matters.

47. The Amnesty Committee heard that, prior to February 1990, violations committed by members of right-wing organisations took the form of isolated attacks with a strong racist character. From February 1990, right-wing violence took on a more organised and orchestrated form. Isolated racist attacks on individuals were replaced by mass demonstrations and orchestrated bombing and sabotage campaigns. Perhaps the two most dramatic of these mass actions were the June 1993 occupation by members of the AWB and other right-wing groups of the World Trade Centre at Kempton Park[233] and the invasion by members of the AWB of Bophuthatswana in support of the homeland administration in 1994[234] In the first incident, Eugene Terre'Blanche led a crowd of up to 3000 right-wingers around a police cordon and smashed an armoured vehicle through the plate glass doors of the Centre, where constitutional negotiations were underway. The right-wingers occupied the chamber for more than two hours singing *Die Stem*[235] Their representatives handed over demands for a *volkstaat*. In the Bophuthatswana incident on 11 March 1994, Eugene Terre'Blanche mobilised a force of 600 AWB members following an appeal by President Mangope to the Volksfront for assistance in suppressing civil action calling for political reforms in the homeland. They entered Mafikeng in Bophuthatswana and proceeded to attack local residents. Over forty-five people were killed, including three AWB members.

48. It should be noted that one of the main reasons for extending the cut-off date for amnesty applications was to accommodate potential applicants who had been involved in these two incidents. Yet amnesty applications were received in respect of neither. The original cut-off date was 30 November 1993.

CATEGORIES OF VIOLATIONS

49. This chapter deals with the violations committed by the right wing prior to the unbanning of political organisations in February 1990 and the violations that followed the unbannings until the first democratic election in April 1994 in the following broad categories: attacks on individuals; possession of arms, explosives and ammunition; sabotage of the transitional process, and sabotage of the electoral process.

233 Volume Two, Chapter Seven, p. 663; Volume Three, Chapter Six, p. 736.

234 Volume Two, Chapter Seven, p. 614, para 141.

235 The former national anthem.

50. The first category deals with right-wing attacks on individuals, on those perceived to have betrayed the nationalist ideal and on black persons insofar as race determined the notion of the 'enemy'. Few human rights violations were committed by right-wing groups during the 1960s and 1970s.

51. The second category deals with applications for amnesty for the possession (including the theft or manufacture) of arms, explosives and ammunition.

52. The third category deals with violations committed between February 1990 and December 1993, which were intended in one way or another to derail the process of negotiations by instilling a climate of terror and fear in the country. Included in this category are indiscriminate attacks on individuals, targeted assassinations, interference with political activities and sabotage attacks on symbolic targets, including schools, businesses, newspapers, court buildings and so on.

53. The fourth category deals with violations committed between 1 January and 27 April 1994 with the specific intention of throwing the preparations for the first democratic elections in April into disarray. These violations include those arising from a comprehensive pre-election bombing campaign of strategic attacks as well as ongoing attacks on individuals.

54. It should be noted that the violations reported to the Commission represented less than half of the actual number of violations for which members of right wing organisations were responsible in the months leading to the April 1994 elections.

LINKS WITH OTHER ORGANISATIONS

Links with the security forces

55. The evidence shows that the right wing enjoyed a doubled-edged relationship with the security forces.

56. On the one hand, both the security forces and right-wing groupings shared a 'common enemy' in the ANC/SACP alliance. Although members of the former SADF and SAP were, from 1984, prohibited by law from being members of the AWB and other right-wing organisations, many members of the police force were sympathetic to the right wing. Police and right-wingers often moved in the same circles, especially in small towns where white communities were small.

Moreover, many members of right-wing organisations had at some time undergone military training in the SADF and continued to receive support in the form of training, information and weapons. The AWB claimed on several occasions that their strength within the army and police ranged from between 40 and 60 per cent.

57. The Commission heard evidence that Military Intelligence structures were involved in the formation of Vekom and later the AVF. There are, of course, other possible explanations for this. It might have been a strategy to defuse militant ultra-right and rogue security force members and bring them into the fold of the negotiations process. Alternatively, the aim could have been to mobilise the right wing in order to create the impression that a military-style coup was on the agenda, thus either strengthening the NP's bargaining position in the negotiations or as a prelude to a military-style coup.

58. The Committee received amnesty applications from security force members who supported the right wing and actively assisted them with training, information and weapons. Boereweerstandsbeweging (BWB) 'general', Mr Horst Klenz [AM 0316/96] testified how the Security Branch in towns like Cullinan provided weapons directly to the groups' deputy leader (one Von Beenz), for use by the BWB's approximately 100 active members.

59. On the other hand, right-wing organisations were themselves infiltrated by the Security Branch. According to intelligence documents before the Commission, the SAP ran a Stratcom project ('Operation Cosmopolitan') in the early 1990s. This aimed, inter alia, to utilise strategic intelligence to persuade the right wing to take part in negotiations and a peaceful settlement and to influence members of the SAP to accept and support the negotiations process.

60. Mr Roelof Venter, a security policeman who applied for amnesty for a vast array of violations, mostly in connection with the liberation movements, also admitted to acting against right-wingers between the early 1980s and 1994. Venter said he 'questioned' a number of right-wingers:

They talked easily without the necessity to use physical force, but we were in no doubt to use the same interrogation techniques against them as those used against the black activists, if necessary. (Pretoria hearing, February 1997.)

61. An unidentified security policeman applied for amnesty for several premeditated violations against right-wingers and right-wing organisations. In the late 1980s,

he was instructed to infiltrate the right wing and sow divisions. He testified that he was involved in *crimen injuria*, defamation, invasion of privacy and other violations against AWB leader Eugene Terre'blanche during 1988/89. This involved smear campaigns and 24-hour tapping of his telephones, leading to the exposure of his alleged affair with a Sunday newspaper journalist.

62. The same Security Branch policeman applied for amnesty for theft and a break-in at the AWB offices in Pretoria in 1989, when a number of documents were taken. He believes the information gained as a result helped the police (and government) to keep the right wing 'under control'.

63. He also admitted to arson, damage to property, intimidation and conspiracy during the early 1990s, and carrying out actions in the name of the Wit Wolwe ('White Wolves') in Pretoria and Verwoerdburg. These actions targeted white activists such as members of the End Conscription Campaign (ECC) and the National Union of South African Students (Nusas) affiliates and involved the creation and distribution of Stratcom-style pamphlets in the name of the Wit Wolwe.

Links with the CCB

64. One of the earliest known right-wing violations seems to have been orchestrated by the Civil Co-operation Bureau (CCB). Applicant Leonard Michael Veenendal [AM3675/96], who was involved with a number of right-wing groups, testified that he was a paid CCB member while at the same time carrying out actions with various right-wingers. Veenendal, together with another CCB member, a German right-winger and other right-wingers – most related to the BWB – were involved in the killing of an UNTAG guard in Namibia in 1989. Veenendal escaped from custody, killing the police officer guarding them. He was refused amnesty [AC1998/002].

Links with the Inkatha Freedom Party

65. Applications and intelligence documents provide evidence that some IFP members and right-wingers collaborated on a wide front, particularly in efforts to procure weapons.

66. With the formation of the Concerned South Africans Group (COSAG) in 1993, the IFP formalised its ties with the Afrikaner Volksfront, an umbrella body comprising a variety of conservative and right-wing groups.

67. Evidence before the Committee confirmed that, even before the formation of COSAG, AWB groups were working closely with the IFP, particularly on the KwaZulu/Natal north coast and to some extent on the West Rand. This association involved mainly the procurement of arms and ammunition, although there were also reports of AWB groups providing training assistance. Joint operations were planned in at least two instances on the KwaZulu/Natal south coast (See the Flagstaff police station attack below).

68. Former IFP member Walter Felgate testified at a section 29 hearing[236] that most right-wing offers for joint operations to procure weapons were declined by the IFP.

69. Amnesty was granted to Mr Gerrit Phillipus Anderson [AM8077/97], an AWB member whose cell in Natal co-operated with the IFP to procure and hide weapons between May 1993 and June 1994 [AC/1998/0005]. Anderson was an adviser on special AWB operations in Natal. He testified before the Amnesty Committee that the AWB procured weapons for the IFP as it was believed that the IFP could help the AWB realise its ideal of a *volkstaat*. He testified that the AWB leadership approved these actions. Anderson stated in his application that the homemade guns were hidden by an IFP member and later handed over to the Security Branch by a third party.

70. IFP supporter Mr Allan Nolte [AM2501/96] applied for amnesty for planning to poison the water supply of Umlazi in Durban with cyanide during 1993/4. The plan was never executed. Nolte testified that he was 'on loan to the AWB' for the planned operation and named other right-wingers who were party to the proposed poisoning operation. Nolte was later convicted of illegal possession of arms and explosives, an offence for which he was refused amnesty because it was committed after the cut-off date [AC/1999/0073][237] He testified that the aim of joint IFP/AWB operations was to isolate KwaZulu-Natal from the rest of the country in order to 'take control of it'.

The Flagstaff police station attack

71. Four AWB members and three IFP members launched an attack on the Flagstaff police station in the Eastern Cape on 6 March 1994, with the intention of stealing

236 In terms of Section 29 of the Act, witnesses and alleged perpetrators could be subpoenaed in order to 'establish the fate or whereabouts of victims' and the identity of those responsible for human rights violations.

237 The initial cut-off date for amnesty applications was 14 December 1996. This was, however, extended to 10 May 1997.

arms for use by IFP self-protection units (SPUs).[238] AWB members Harry Simon Jardine [AM6178/97] and Andrew Howell [AM5961/97], AWB/IFP member Morton Christie [AM6610/97] and IFP members Christo Brand [AM6422/97] and James Mkhazwa Zulu [AM5864/97] applied for amnesty for the incident. Before the start of the hearing, Mr Zulu was killed in a violent altercation and his application could not be proceeded with.

72. The applicants testified before the Committee that AWB Commander Patrick Pedlar and Mr Robin Shoesmith, an IFP SPU member, requested that they attack the Flagstaff station on a Sunday when it was thought that there would be only one SAP officer on duty. However, unbeknown to the applicants, the police were tipped off about the attack, allegedly by Pedlar himself. Reinforcements were sent to the police station and what had been foreseen as an easy robbery turned into a shoot-out. The police officer on duty, Mr Barnabas Jaggers, died in the attack and officers Wele Edmund Nyanguna and Mzingizi Abednego Mkhondweni were injured. The applicants managed to get away with a vehicle, arms and ammunition and a trunk containing R140 in cash.

73. Mr Jardine testified that, at the time, the AWB was preparing for war because the ANC was going to take over the country. In this volatile political climate, the AWB co-operated with the IFP because they shared 'a common enemy' in the ANC/SACP alliance. Working with the IFP would strengthen the might of the AWB in the south coastal areas of KwaZulu/Natal (Durban hearing, April 1998).

74. Mr Howell testified before the Committee that the IFP and the AWB shared the same belief in the self-determination of their people. Working together to combat the ANC's rise to power would strengthen the AWB's aim of achieving a *Boerestaat* (Durban hearing, April 1998).

75. Mr Christie testified that he had been instructed by AWB General Nick Fourie[239] to assist the IFP in any way possible.

MR CHRISTIE: ... I see in the news and what-not, the IFP or Zulus, as such, had marched with other right-wingers in other parts of the country. So, our objective was, obviously, to assist the IFP. You know, they not having the benefit of military training as what we've had and, of course, the ANC having benefit of military training from overseas, the IFP are left with no military training. I was instructed

238 See Chapter Three in this section.

239 Nick Fourie was killed about a week after this event when AWB forces invaded Bophuthatswana.

on that regard that we should assist the IFP in any way possible. (Durban hearing, 24 April 1998.)

76. Although he authorised the attack, Fourie was not involved in planning it. He did, however, warn Christie to proceed with caution and to be wary of local AWB Commander Patrick Pedlar, who was thought to be an informer for the Security Branch.

77. All five applicants were convicted of the robbery, the killing of Mr Barnabas Jaggers and the attempted killing of Mr Wele Edmund Nyanguna and Mr Mzingizi Abednego Mkhondweni. Their sentencing in the matter was delayed pending the outcome of their amnesty applications. The surviving victims, Mr Nyanguna and Mr Mkhondweni, opposed their applications on the grounds that the applicants did not disclose who actually wounded them and killed Mr Jaggers.

78. The Amnesty Committee found that the operation was associated with a political objective committed in the course of the conflicts of the past and that the relevant facts relating to the particular offenses had been disclosed, bearing in mind the circumstances prevailing that night. Amnesty was granted the four applicants [AC/1998/0015].

The Seychelles Restaurant attack

79. In February 1994, the same IFP and AWB members conspired to carry out an attack on the Seychelles Restaurant at Port Shepstone. Mr Morton Christie, Mr Harry Jardine and Mr Andrew Howell applied for amnesty for the arson attack that destroyed the restaurant. They testified before the Amnesty Committee that the restaurant was a known meeting place for ANC supporters.

80. At the hearing on the Flagstaff police station attack, the applicants revealed that they had conspired to bomb the Port Shepstone offices of the NP and the ANC on the same day as the Seychelles Restaurant attack, but had abandoned these plans because of the commotion caused in the town by the bombing of the restaurant. No casualties or injuries were reported after the bombing.

81. Amnesty was granted to the applicants for the attack on the restaurant, for the conspiracy to attack the NP and ANC offices and for preparing and being in possession of explosives, on the basis that the relevant facts had been disclosed

and that the offences were associated with a political objective committed in the course of the conflicts of the past [AC/1999/0183, 0184, 0185].

Links with international right-wing organisations

82. Support from international right-wing organisations mainly took the form of moral support and the supply of propaganda materials.

83. Mr Robert Mahler [AM6397/97], an American citizen, stated in an amnesty application that he had been recruited by the SAP to act as a firearms instructor. Mahler had illegally imported a large cache of weapons to South Africa, using fraudulent names and passports. He claimed allegiance to the CP and said he had contact with other groups like the AVF and AWB. He also said he was the USA fund-raising representative of the AWB. He was refused amnesty on the grounds that he could show no political objective for his offences.

84. After the assassination of Mr Chris Hani, reports appeared in international and local media linking Mr Janusz Walus and Mr Clive Derby-Lewis to international groups. This supported suspicions that there was a wider international conspiracy behind the killing. However, the Commission was unable to find that Walus and Derby-Lewis took orders from international groups (see below).[240]

PRE-1980 ATTACKS ON INDIVIDUALS

85. In the pre-1990 period, the right wing was associated mainly with isolated incidents of racial violence and politically motivated attacks on individuals.

The tarring and feathering of Floors van Jaarsveld

86. The earliest incident for which an amnesty application was received was the tarring and feathering of Professor Floors van Jaarsveld on 28 March 1979. The attack followed his delivery of a 'liberal' speech at the UNISA Senate Hall in Potchefstroom. AWB leader Eugene Terre'Blanche [AM7994/97], applied for amnesty for the incident.

87. When addressing the gathering, Professor van Jaarsveld, a leading historian attached to the University of Pretoria, had proposed a different approach to the

240 See also Section 1, 'Report of the Amnesty Committee', in this volume.

celebration of the Day of the Covenant, a day held sacrosanct by the majority of Afrikaners as it commemorated the battle of Blood River, where a small group of Voortrekkers staved off the attack of a large number of Zulu warriors.

88. Terre'Blanche and his followers, all members of the AWB, decided that Professor van Jaarsveld had abused his influential position in an attempt to further leftist political objectives, and saw this as an attack on the ultimate freedom of the Afrikaner *volk*. They regarded the new direction given by Van Jaarsveld to Afrikaner history as contrary to the then South African Constitution, which recognised God as the highest authority. It was for this reason that the AWB took a decision to 'tar and feather'[241] Professor van Jaarsveld in the lecture hall. They poured tar over him in front of his audience and thereafter strewed feathers all over his clothes and body. In the process, expensive carpets in the university hall were damaged. Mr Terre'Blanche was convicted of *crimen injuria* and malicious damage to property.

89. In his written application, Mr Terre'Blanche fully disclosed the names of his co-perpetrators. He testified at the hearing that it had been the intention of the AWB to send a message to Professor van Jaarsveld that he had broken the vow the Afrikaners had taken at Blood River. The lecture, in his opinion, was part of a clever political move, a typical onslaught on 'my God and my people who thereafter could not ask God for victory'.

    I could think of no other measure to enable us, as a group of young people, to state our case. And in those days the powerful regime of the National Party destroyed us and we had no access to the press and the media, who to a great extent did not support us. The power and the force of the communism and the liberalists and the way it could be seen in the press as a cancer. We did not want to injure, cause injury to Professor van Jaarsveld; we did not want to cause damage to the property of the University; we never wanted to injure anybody from the audience. (Klerksdorp hearing, 10 May 1999.)

90. Terre'Blanche testified that, after the tarring and feathering, history books written by the professor were withdrawn from schools and that the AWB had therefore partially succeeded in its political objective since Professor van Jaarsveld could no longer influence the minds of the youth, the voters of the future.

241 'Tarring and feathering' was by no means an uncommon way of dealing with political enemies and deviants in Afrikaner political extremist circles.

91. The application was not formally opposed by the members of the family of the late Professor van Jaarsveld, who preferred to leave the matter in the hands of the Amnesty Committee. However, one of Professor van Jaarsveld's sons, Mr Albert van Jaarsveld, said that some individual members of the family opposed the application on the grounds that the act was not perpetrated to meet a political objective, but rather to gain publicity for the newly-formed AWB.

92. Mr van Jaarsveld read out a statement at the hearing, explaining the effect that the incident had had on the Van Jaarsveld family. Overnight, Professor van Jaarsveld had been 'transformed into a man who was looked upon with suspicion by his peers'. As a man deeply rooted in the Afrikaner culture, who had lived and worked within the inner circles of Afrikanerdom, he was humiliated and belittled at a public conference in front of an audience of his academic peers. The tarring and feathering incident effectively expelled him 'from that same community which he so dearly served'.

    As regards my father's viewpoint on the Day of the Covenant, Mr Terre'Blanche is still spreading lies. It is clear that Professor van Jaarsveld took issue with legislation which effectively was forced upon South Africans other than Afrikaners, who felt themselves bound by the Covenant to celebrate the Day of the Covenant as a Sabbath, which legislation was enacted by the National Party in 1952.

    At that stage, it was necessary to investigate this legislation seen in the light of the political changes which began to creep into the country. It is clear that he [Mr Terre'Blanche] does not want to or cannot understand the information in that paper. (Klerksdorp hearing, 10 May 1999.)

93. Mr van Jaarsveld confirmed that one of the consequences of the incident was that Afrikaans publishers like Perskor turned their backs on Professor van Jaarsveld and removed 'his popular and well-known history textbooks from the market'. He was ignored by the South African Broadcasting Corporation (SABC) to which he had regularly contributed to radio programmes. He was investigated by the security police and threatened with anonymous telephone calls and hate mail. Shortly after Terre'blanche and others had been found guilty, an attempt was made on the professsor's life and he was shot at with a crossbow. Other members of the family were threatened and a stone-throwing incident took place at the family home.

94. In response to Mr van Jaarsveld's statement, Terre'Blanche told the Committee: *Mr Chairman, all these things did not happen because the professor was tarred and feathered; these things happened because of the incorrect version of the Covenant and the fact that history was twisted, which can be the worst that can happen to a nation if you abuse your power to rewrite history so that you all of a sudden can become acceptable to other nations. If we sit here at the Truth and Reconciliation Commission, it is scaring to think that the Van Jaarsveld's family admit in front of this body seeking reconciliation and truth, that his father treated the truth in this way to the extent that his books were no longer published as textbooks because what he said was not acceptable to students and pupils. (Klerksdorp hearing, 10 May 1999.)*

95. After having considered the documentation placed before it and the testimony of the applicant, the Committee was satisfied that the acts committed by Terre'Blanche and other members of the AWB occurred in the course of the political struggle of the past and in furtherance of the political objectives of that organisation. The Committee was also satisfied that Terre'Blanche had made full disclosure of all the material facts as required by the Act.

96. It was suggested by the evidence leader, in argument, that the incident was the result of a religious dispute and thus fell outside the ambit of the Act. The Committee considered this argument but took the view that it had to accept the applicant's argument that his political conviction was driven by his education and belief in God. It was not possible to divorce the religious stance of the AWB from its politics. Amnesty was accordingly granted to Terre'Blanche in respect of the incident [AC/1999/221].

PRE-1990 ATTACKS ON INDIVIDUALS

97. Towards the end of the 1980s, targeted and indiscriminate attacks on individuals were becoming more and more frequent. With very few exceptions, the targets of these attacks were black persons. Individuals like Wit Wolwe member Barend Strydom, who killed eight people and injured sixteen when he opened fire on people in a busy Pretoria street in 1988, believed that black people were valid targets in their quest for political self-determination. Strydom submitted an application for amnesty for this incident, then later withdrew it.

The Killing of Potoka Franzar Makgalamela

98. On 29 August 1989, a black taxi driver, Mr Potoka Franzar Makgalamela, was fatally stabbed and shot by two right-wingers. Mr Cornelius Johannes Lottering [AM1004/96] applied for amnesty for three offences, namely murder, robbery and escaping from lawful custody. He admitted to killing Mr Makgalamela on 29 August and committing a robbery at the Poolside Liquor Store on 19 September 1989. These offences took place after he had resigned from the AWB and joined an organisation known as the Orde van die Dood ('Order of Death').

99. The evidence portrays the Orde van die Dood as having been an extremist right-wing political organisation, whose aim was the assassination of senior members of government and, at a later stage, members of the ANC. Its ultimate objective was the establishment of a volkstaat. Later the emphasis shifted to targeting members of the left wing who had, according to the applicant, 'become too strong at that point for the right wing'.

100. The Committee heard that individuals in the AWB had joined the shadowy organisation (also known as the 'Aquillos') after it was formed in 1988/9 because of security problems in the AWB. For example, when Lottering received his instructions from Mr Dawie de Beer, administrative head of the Aquillos, he was under the impression that they came from the AWB and the CP. Mr Andries Stephanus Kriel, a witness called by the applicant, confirmed the relationship between the two organisations:

    MR KRIEL: *Yes, that is completely acceptable because at that stage there were various factions within the AWB and we, as Commanders of a right wing organisation which housed activists, supported them. I would like to say that the Aquillos were selected by or according to the criteria of persons who would carry out instructions almost immediately – if I might say that they were people who could be manipulated, that you could give them instructions and no matter what the instructions were, they would have carried them out immediately. And those sort of people were taken up in the Aquillo – among others, Mr Lottering. (Pretoria hearing, March 1998.)*

101. According to Kriel, it was desirable that people who carried out instructions should not be directly traced to the AWB.

    MR KRIEL: … *in other words, if such a person were to be caught as a result of a murder or a robbery then it would not have left tracks which would lead to the AWB. (Pretoria hearing, March 1998.)*

102. Lottering testified before the Amnesty Committee that he had killed Mr Makgalamela because he had received an instruction from the leader of the Orde van die Dood to kill a person to prove that he would be an effective member of the order. The applicant testified that he also wished to satisfy himself that he was capable of carrying out his duties as an assassin.

103. Lottering testified that he received no instruction as to whom he should kill for the purposes of being initiated into the order. He testified that he had selected Makgalamela as his victim because he was a black man, explaining that, according to his religious beliefs, black people were his natural enemies. He had selected Makgalamela because he had seen him ferrying white girls in his taxi. This he found to be objectionable.

    MR LOTTERING: *The decision making about who and what it would be was left up to me personally; and I didn't want to simply just do anything, that is why I chose a Black taxi driver who transported white persons in his taxi. I basically chose him in order to protest against integration so that it would serve a dual purpose – that I would not simply find someone on the street and kill him. (Pretoria hearing, March 1998.)*

104. All that the applicant knew of Makgalamela was that he was a taxi driver. He did not and still does not know the deceased's political affiliation or views or whether or not he was politically active. Lottering was also not given any instructions or guidance by his leaders as to when and how his initiation victim should be killed, nor was he informed of any report-back procedure.

105. The Amnesty Committee found that the fact that the applicant murdered the deceased following an order given to him by the leadership of the political organisation of which he was a member did not, in the circumstances of this matter, justify his being granted amnesty for the killing. Makgalamela was killed to satisfy the internal initiation requirements of the Orde van die Dood. The Committee ruled that there were no grounds for concluding that the murder of the deceased was committed bona fide in furtherance of a political struggle waged by the Orde van die Dood against the state or another political organisation or liberation movement; nor that the killing was directed against the state or a political organisation or liberation movement or any member of the security forces or member of any political organisation or liberation movement. This was particularly so because the deceased must be regarded as having been an innocent private individual whose political affiliation and views were unknown.

106. The Committee found that, although the applicant had killed the deceased in the execution of an order, this was not sufficient to warrant the granting of amnesty. His motive in killing the deceased was to appease his superiors in the order and to displace any doubts they (or indeed the applicant) might have had about his ability to act as an assassin. The killing of the deceased was not only unreasonable, but was totally out of line with and disproportionate to the achievement of the stated political objective of the organisation – that is, the elimination of senior members of government or other political movements. It amounted to nothing more than a tragic loss of life, with no tangible or foreseeable benefit for the applicant's political organisation.

107. The Committee found that the killing did not achieve any desired political objective, and amnesty was accordingly refused [AC/1998/0025].

108. As regards the application for amnesty for the robbery, the applicant testified at the amnesty hearing that it was the policy of the Orde van die Dood to commit robberies to raise funds for the subsistence of members of the organisation and that he had committed the robbery in furtherance of such policy.

109. In his evidence, Mr Andries Kriel confirmed the existence of such a policy.

MR KRIEL: *... I would also like to add, Chairperson, that at that time when people struggled with the collection of finances and funds, they were constantly told that if they did not have money to continue that they should not come to us and ask for money, they should commit robbery. (Pretoria hearing, March 1998.)*

110. After careful consideration, the Committee decided to give the applicant the benefit of the doubt and to find that the robbery was not committed for personal gain. This meant accepting the applicant's explanation of why the evidence he gave before the Committee differed from that placed before the trial court. Amnesty for the robbery was therefore granted [AC/1998/0025].

111. According to Lottering and Kriel, another general order given to members was that they should attempt to escape from prison in order to continue to fight for the cause of the organisation.
MR KRIEL: *Regarding escapes, we told the people prior to the fact that – and we also this to them when we visited them in prison – we told them that if they could escape and if we could help them escape we should do it immediately so that we could continue with the struggle. That was also a general order which was issued. (Pretoria hearing, March 1998.)*

112. Lottering's escape from legal custody did not involve any gross violation of human rights and the applicant continued to serve the Orde van die Dood in the period following his escape until his recapture. The Committee granted amnesty to Lottering in respect of his escape from custody [AC/1998/0025].

POSSESSION OF ARMS, EXPLOSIVES AND AMMUNITION

113. The Committee received thirty-one amnesty applications for the possession of arms, explosives and ammunition. The offences included possession and storage of arms caches, theft of weapons, manufacture of weapons and explosives and distribution for the purposes of furthering the activities of right-wing organisations and the IFP. Twenty-nine of these applications were granted.

114. AWB leader Eugene Terre'Blanche [AM7994/97] was granted amnesty for the illegal possession of arms and ammunition in Ventersburg in about 1982 [AC/1999/221]. Terre'Blanche testified that the weapons, which included a number of AK47s and two pistols, were obtained by his organisation from a Mr Kees Mouse, whom Terre'Blanche later established to have been an SAP agent. The intention was to store the weapons and keep them until such time as members of the AWB needed them to protect themselves. The AWB feared that the then government would hand power to a black government and that the same fate would befall South Africa as had befallen other African countries, where chaos had followed political change.

115. It was eventually decided to bury the weapons on a farm belonging to Mr Terre'Blanche's brother until they were be needed. The weapons were later seized by the police and Terre'Blanche was arrested and convicted.

116. In another incident, AWB member Willie Hurter [AM 3613/96] was granted amnesty for being in possession of four shock grenades, a homemade shotgun and ammunition and an unlicensed Lama pistol at Bloemfontein on the 15 September 1992 [AC/1998/0024].

Robbery at Welkom military base

117. AWB members Roelof Johannes Fouche [AM 3507/96], Guillaume Cornelius Loots [AM 3508/96], Petrus Johannes Pelser [AM 3512/96], Roelof Johannes Jordaan [AM 3861/96], Cornelius Johannes Strydom [AM 3862/96] and Coenraad Josephes Pelser [AM 4719/97] applied for amnesty for the theft of

weapons and equipment from the Group 34 Commando Base at Welkom during the night of 2nd/3rd January 1993.

118. Under the leadership of Mr Jordaan (who holds the rank of General in the AWB), the applicants broke into the military base and made off with a large amount of weaponry, including rifles, handguns, ammunition, flares and smoke grenades as well as other equipment. No one was injured during the incident. The police recovered the stolen weapons and equipment a few days later on a farm in the Hobhouse district.

119. The applicants testified that they had committed the offence as an organised group of AWB members pursuant to a decision that was made by the AWB at regional level. The motivation behind the theft was to arm farmers on the eastern border of the then Orange Free State in order to enable them to protect themselves from attacks by members of the Azanian People's Liberation Army (APLA) who were operating from Lesotho. They testified that this was necessary as the government of the day was unable to maintain law and order in that region. None of the applicants derived any personal gain from the theft of the weapons and equipment.

120. The Committee was satisfied that the applications related to an act associated with a political objective committed in the course of the conflicts of the past and that the applicants had made a full disclosure. All were granted amnesty [AC/1998/0075].

POST-1990 VIOLATIONS

Sabotage of the transitional process

121. The Committee received thirty-five applications from members of right-wing organisations in respect of a range of violations committed with the aim of sabotaging the process of negotiations in the country. The violations, for the most part, consisted of attacks on individuals and included targeted assassinations. Most (71 %) were refused amnesty.

122. The Committee received forty-one applications in respect of attacks on symbolically important targets such as schools, business premises and court buildings. Most of these (95 %) were granted.

123. The lifting of the banning orders on the liberation movements in February 1990 triggered a spate of attacks by right-wingers on black persons around the country. At the end of November 1990, the AWB adopted the so-called 'white-by-night' policy, in terms of which black people were denied the right to remain in the then 'white areas' after 21h00. AWB members set up roadblocks and tried to enforce a 'white-by-night' curfew in the small towns in which they were most organised.

124. Photographers and journalists were thrown out of AWB meetings, some severely injured in beatings and attacks.

125. Schools were targeted for sabotage attacks. Following announcements that the Group Areas Act was to be repealed and schools would be opened to all race groups, a number of schools were destroyed in a series of bomb blasts.

Targeted killings

126. In 1990, two AWB members from Potgietersrus killed a civic member, Mr Max Serame, because of his alleged role in a boycott action in the town. Mr Jan Harm Christiaan Roos [AM0801/96] and Mr A J Vermaak [AM0818/96] claimed they were in a position to make their own decisions, even though direct commanders did not ask them to kill Serame. Amnesty was refused on the grounds that the attack had no political objective.

127. Earlier that year, J W Rautenbach [AM0412/96] murdered Mr Iponse Beyi Dlamini in Lamontville. He was refused amnesty on the grounds that the attack had no political objective.

The killing of Chris Hani

128. SACP and ANC leader Mr Chris Hani was one of the most popular and influential political figures in South Africa. He was gunned down in the driveway of his home in Dawnpark, Boksburg in the former Transvaal on 10 April 1993, the Saturday of the Easter weekend. Polish immigrant Mr Janusz Walus [AM0271/96] was found to have fired the shots that killed Mr Hani and Conservative Party member of the President's Council, Mr Clive Derby-Lewis [AM0271/96], was found to have planned and conspired with Walus to execute the assassination. Both were sentenced to life imprisonment and applied for amnesty.

129. Walus and Derby-Lewis were both thought to have strong ties with members of two international right-wing organisations, namely the World Preservatist Movement (WPB) and the World Apartheid Movement (WAM). Despite suspicion of a larger conspiracy behind Hani's death, the Commission found no evidence that the two convicted killers took orders from either of these international groups, nor from members of the security forces or higher up in the right-wing echelons.

130. Both applicants and numerous other witnesses testified at a hearing that lasted for several weeks. In addition, a substantial volume of documents and exhibits as well as full written arguments were placed before the Amnesty Committee.

131. The application was strenuously opposed by the Hani family and the SACP.

The testimony of Clive Derby-Lewis

132. The Committee found that Mr Clive Derby-Lewis was a seasoned politician steeped in conservative politics who had been popular in Afrikaner right-wing circles at the time of the incident. He was an English-speaking South African with a distinguished military background. He had been one of the founder members of the Conservative Party (CP) which had been launched in February 1982, had represented the party in Parliament during the period May 1987 to September 1989 and had served on the President's Council from September 1989 until the assassination.

133. Right-wing organisations were convinced that the political reforms of the early 1990s would result in the destruction of the Afrikaner's culture, values and way of life. It was in this context that Derby-Lewis and Walus plotted the assassination of Mr Hani. Their hope was that the followers of Mr Hani, many of them young people, would react to his assassination by causing widespread mayhem. This would create an opportunity for the security forces and the right wing to step in to restore order and take over the government of the country.

134. They never obtained the express authority of the CP for the assassination, nor were they acting upon the instructions or orders of the CP. Derby-Lewis had engaged in a discussion with Dr Treurnicht who indicated that it would be justified to kill the anti-Christ in a situation of war. Derby-Lewis contended that his senior position in the CP gave him the necessary authority to take the decision to assassinate Mr Hani on behalf of the CP.

135. In the course of their discussions about the assassination, Derby-Lewis handed Walus a list of names and addresses. The evidence led was that Mrs Derby-Lewis had prepared it for the purpose of exposing the luxurious lifestyles of those on the list for newspaper articles she intended writing. Her intention was to embarrass those concerned because their lifestyles conflicted with the cause for which they stood.

136. Derby-Lewis instructed Walus to number the names on the list in sequence of their enmity towards the CP. In other words, he contended that the list was not numbered for the purpose of eliminations; Mr Hani, the third on the list, was the only person identified for elimination.

137. It was agreed that Walus would shoot Mr Hani and that he would reconnoitre the Hani home and determine the logistics for the execution of the plan. Derby-Lewis would obtain an unlicensed firearm with a silencer to be used in the assassination.

138. During March 1993, Derby-Lewis obtained an unlicensed firearm from an old acquaintance, Mr Faan Venter, and arranged for a silencer to be fitted to the firearm through a friend in Cape Town, Mr Keith Darrel.

139. On 6 April 1993, Walus had breakfast with Derby-Lewis and his wife. After breakfast, Mrs Derby-Lewis left the house. Derby-Lewis handed the murder weapon, a Z88 pistol with a silencer and subsonic ammunition, to Walus.

140. On 7 April 1993, Walus called again at Derby-Lewis' house to enquire about the ammunition Derby-Lewis had said he would obtain for the pistol. Derby-Lewis had not yet managed to obtain the ammunition but instructed Walus to proceed with the assassination, repeating that he would leave the detailed execution of the plan to Walus.

141. Derby-Lewis testified that he was shocked when he heard about the assassination on 10 April 1993. He had not planned to assassinate Mr Hani over the Easter weekend and had indeed decided to postpone the assassination in order to give the matter further careful thought. Besides, he had not yet given Walus the ammunition. He concluded, therefore, that someone other than Walus had been responsible for the assassination. However, he saw from the media reports the next day that it was indeed Walus who had killed Mr Hani. Derby-Lewis was arrested at home on 17 April 1993.

142. At first, Derby-Lewis refused to co-operate with the police. It was only after he was detained in terms of section 29 of the Internal Security Act that, under prolonged interrogation and pressure, he made certain statements. He gave false information, notably about the list of names, in order to protect innocent people including his wife. He was also untruthful when he told the police that he had last seen Walus in December 1992.

143. He also gave false information in the affidavit he made (dated 29 October 1993) in support of the application to reopen his case in the criminal trial. He testified that he did so because he believed that the political struggle was still continuing at that stage and that he had to explore every avenue to secure his release.

The Testimony of Janusz Walus

144. The Committee found that Mr Janusz Walus was a member of both the CP and the AWB at the time of the incident. He was born in Poland and emigrated to South Africa in 1982 to escape the Communist regime in Poland. He chose South Africa because he believed that the Afrikaner would never succumb to Communism.

145. The Committee heard that Walus had a keen interest in South African politics and met Derby-Lewis and his wife in 1985. He participated in many CP activities with Derby-Lewis and formally joined the CP that year. In the same year, Walus met AWB leader Eugene Terre'Blanche and subsequently joined the AWB. He attended various AWB meetings during 1985 and 1986 and learnt of their resistance to NP policies and their fear that the NP would hand the country over to 'Communists'.

146. Walus was granted South African citizenship in 1988 and was able to vote in the 1989 elections. Although the NP gave voters the assurance that the ANC or SACP would not be unbanned before the election, it unbanned them in February 1990. It then became clear to him that negotiations would involve the NP and ANC to the exclusion of opposition parties.

147. After the 1992 referendum, the NP government reneged on its undertaking to consult the electorate before any constitutional amendments were effected. It then became clear to the CP that democratic channels were blocked. Walus feared that Mr Hani would take over the country as he was a popular leader in the SACP and saw himself being subjected to the Communist regime from which he

had escaped in Poland. This made him apprehensive to the extent that 'he vowed to do something to try and stop the handing over of his country to a Communist ruler'. It was at this stage that Walus began holding numerous detailed discussions with Derby-Lewis about solutions to the deteriorating political situation. Walus regarded Derby-Lewis as one of the policy makers of the CP and relied on him to provide direction. In one of these discussions (February 1993) Derby-Lewis handed him the list of names and they decided that Mr Hani should be shot.

148. On 10 April 1993, after reconnoitring the Hani home, Walus saw Mr Hani get into a vehicle. He ascertained that Mr Hani had no bodyguards with him. He followed the vehicle to the local shopping centre. Mr Hani went inside and later returned with a newspaper. Walus decided that this was an ideal opportunity to execute the order and drove to the Hani home where he awaited Mr Hani's return. After Mr Hani had pulled into the driveway, Walus approached and fired two shots at him. After Mr Hani had fallen down, Walus shot him twice behind the ear at close range. Walus left the scene in his vehicle. He was stopped by the police soon after the incident and was found in possession of the Z88 pistol, whereupon he was arrested.

149. During his detention, Walus was at first not prepared to give any statements to the police. After prolonged interrogation and after being given alcohol by the police, he began co-operating. He was also misled into believing that some members of the interrogation team were members of right-wing political organisations who had infiltrated the security police. Walus disputed the contents of certain statements the police alleged he had made while in detention and which form part of the record. He denied having said some of the things ascribed to him in these statements and indicated that the police had amended the statements to suit their own purposes.

The Testimony of Gaye Derby-Lewis

150. Mrs Gaye Derby-Lewis' testimony before the Committee concerning her role prior to the assassination coincided largely with that of her husband. She had not been involved in the plot to kill Mr Hani and was totally unaware of the plans. The list of names found in the possession of Walus was prepared at her instance by a journalist friend, Mr Arthur Kemp. She intended to use it to write a series of newspaper articles exposing the luxurious lifestyles of those identified on the list. This would have embarrassed them because it would expose their 'gravy train' lifestyles, which were at odds with the cause they represented.

151. Mrs Derby-Lewis had also left the list in the Cape Town office of Dr Hartzenberg for his use in his speeches in Parliament. He never made use of it and the list was returned to her. She testified that she was unaware of the fact that her husband had given the list to Walus.

152. She confirmed having had breakfast with her husband and Walus at her home on 6 April 1993, but testified that she had left while her husband and Walus were still having a discussion.

153. She heard the news about Mr Hani's assassination while she and her husband were visiting Mr Faan Venter on 10 April 1993. She was arrested on 21 April 1993 and placed under section 29 detention. She was subsequently charged and acquitted. She gave false testimony at the trial on the question as to whether her husband had told her on 12 April 1993 that he had given the list to Walus.

154. A substantial part of her testimony before the Amnesty Committee was devoted to her detention and treatment at the hands of the police.

155. While in police detention, Mrs Derby-Lewis wrote and signed a number of statements. She personally typed one of the hand-written statements to help the police sergeant who was charged with doing the typing. Despite this, she argued that she had been unduly influenced to make these statements and that they had not been freely and voluntarily made for the following reasons:

    a She was not warned in terms of the Judges' Rules. However, under cross-examination on behalf of the police officers, she conceded that it was possible that she had been warned.

b She was denied access to a legal representative and was at times falsely told that her attorney was on his way.
c She was threatened with section 29 detention.
d She was badly treated by Captain Deetlefs who was insulting towards her and threatened her with long-term imprisonment. She had a personal fear of Deetlefs and complained that he was intoxicated.
e Sleep deprivation contributed towards her writing false statements.
f Mr de Waal made her change her statement and write various untruths. He would come to her after she had written a statement and inform her that Colonel Van Niekerk was not happy with what she had written. She would then amend her statement accordingly.

156. Under cross-examination on behalf of the police officers, Derby-Lewis conceded that those parts of the video recording of her questioning which were put to her showed that her conversation with Deetlefs was quite civilised. They also showed her fully participating in the discussion. She then indicated that Deetlefs had threatened her during those parts of the conversation that were not on the tape. She praised the police and said she would like to join the police force, but said this was meant as a joke.

157. She also confirmed that Deetlefs' attitude did not, at any stage, lead to her telling an untruth and agreed that he did not compel her to tell any untruths. She said that she 'stuck to her guns' and spoke the truth.

158. When referred to a portion of the video recording where she says she had slept for twelve hours, she conceded that sleep deprivation did not play a role when she signed some of her statements on 24 April 1993.

159. Under cross-examination, she conceded that De Waal was reasonably civil towards her. On most occasions when he questioned her, there was a female police officer present. He helped her to obtain some personal items and to attend to other personal matters. On one occasion, she told De Waal that she did not wish to do a 'pointing out', which he accepted.

160. Mrs Derby-Lewis saw her personal doctor in April 1993, some days after Deetlefs had concluded his interrogation. Although only the District Surgeon was present, she failed to tell her doctor about her maltreatment or that she had been compelled to make false statements. When she was asked under cross-

examination to explain the meaning of, 'I am sure it is going to be used in court', words she uses on the video, she declined to do so. She testified that she really did not know what these words meant because she had used them while she was being held under section 29 detention.

The Decision of the Amnesty Committee

161. In arriving at a decision, the Committee had to isolate several issues for consideration.

    a Were the applicants acting bona fide on behalf of or in support of the CP in furtherance of a political struggle by the CP against the ANC/SACP alliance, as required by section 20 (2)(a) of the Act?
    b Were the applicants acting bona fide as employees or members of the CP in the course and scope of their duties and within the scope of their express or implied authority in furtherance of a political struggle with the ANC/SACP alliance, as required by section 20(2)(d) of the Act?
    c Did the applicants have reasonable grounds for believing that they were acting in the course and scope of their duties and within the scope of their express or implied authority as required by section 20(2)(f) of the Act?
    d Did the applicants make a full disclosure of all relevant facts as required by section 20(1)(c) of the Act with specific reference to:
    e the purpose for which the list of names was compiled;
    f the purpose for which names were prioritised on the list;
    g the purpose for which the Z88 pistol was obtained and fitted with a silencer;
    h whether Walus was acting upon orders from Derby-Lewis in assassinating Mr Hani;
    i the role played by Mrs Derby-Lewis in the killing and whether she had advance knowledge of the assassination?

162. The Amnesty Committee devoted time to two further issues: the weight to be attached to statements that Derby-Lewis and Walus made while in detention and the question of a wider conspiracy to kill Mr Hani. Although the Committee was not persuaded that the applicants' versions detracted from the weight of these statements, it made an assessment of the applicants' evidence without having regard to these statements. Furthermore, although there were compelling arguments in favour of the conclusion that there was a wider conspiracy to kill Mr Hani, the Committee found that the evidence did not conclusively establish this fact.

163. The Committee found that it was common cause that the applicants were not acting on the express authority or orders of the CP, which party they purported to represent in assassinating Mr Hani. The CP had never adopted, propagated or espoused a policy of violence or the assassination of political opponents.

164. Various newspaper reports immediately after the assassination evidence the CP leadership's disapproval of the incident and their rejection of murder as a political tool. The arrest of Mrs Derby-Lewis came as a shock to them. They had denied earlier that Walus was a listed CP member. In fact, during a television interview on 20 April 1993, the acting leader of the CP, Dr Ferdi Hartzenberg, unequivocally distanced the CP from violence and reiterated the commitment of the CP to non-violent, democratic means of pursuing its aims. He expressly denied that the statements made by CP leaders amounted to tacit approval of violence, or that the CP had ever planned violence on an offensive basis. Rather, the CP was looking at means to defend its followers from the violence that was taking place.

165. In testifying before the Committee, Dr Hartzenberg also denied that the objective which the applicants pursued, namely to cause chaos and revolution in the country, formed part of CP policy. He testified further that it was not CP policy to eliminate opposition political leaders. The CP had never been aware of the planning of the assassination and only became aware of it after the event. It never approved, ratified or condoned the assassination. In an apparent concession of this fact, the applicants submitted in their written argument that it was not a legal requirement that the CP should have been aware of or expressly approved the assassination. It was merely required that the CP should have benefited from the assassination.

166. The applicants also relied on the dictionary definition of the Afrikaans term 'ten behoewe van' which is the equivalent of the term 'on behalf of' used in section 20(2)(a). According to the definition, the term means '*tot voordeel van*' (to the benefit of). The applicants failed to specify what benefit allegedly accrued to the CP following to the assassination. On the contrary, the evidence before the Committee did not show that any benefit had accrued to the CP.

167. Those who objected to the applications submitted in their written argument that the words 'on behalf of' in the context of section 20(2)(a) were used in the narrow sense as referring to someone who is mandated or authorised to act by an

organisation. Any other interpretation, and particularly the wider meaning suggested by the applicants, would lead to absurd results. They illustrated such absurdity by referring to the example of bank robbers claiming to be acting on behalf of a liberation movement because their actions were crippling the economy and thus benefiting the struggle of the liberation movement.

168. Taking into account the submissions of the objectors, the Committee noted that subsection 20(2)(a) of the Act did not cover perpetrators who acted contrary to the stated policies of the organisation which they purported to represent. The Committee was therefore not satisfied that the applicants had acted on behalf of or in support of the CP in assassinating Mr Hani.

169. The Committee accepted that the applicants clearly and subjectively believed that they were acting against a political opponent. The objective facts supported this belief, in particular the fact that Mr Hani was regarded as such by the CP and the right wing. However, this factor, while relevant, was insufficient on its own to render the application successful.

170. The Committee found that it was clear that the applicants had not been acting within the course and scope of their duties or on express authority from the CP. The clear evidence of Dr Hartzenberg negated any claim that the public utterances of the CP leadership constituted implied authority for the assassination. The Committee found that it would have been futile for the applicants to rely on such a claim, given the fact that they were both active CP members, acquainted with the party structures and constitution as well as the policy of non-violence. Mr Derby-Lewis, in particular, was part of the CP leadership and national decision-making structure and could not reasonably rely on the utterances of his colleagues to support his claim that they had implied authority from the CP for the assassination. His discussions with Dr Treurnicht about killing the 'anti-Christ' could hardly amount to authority or an instruction to commit the assassination. To his knowledge, Dr Treurnicht had no power in terms of the CP constitution to bind the CP without the necessary mandate, especially in so radical an undertaking as the assassination of a high-profile political opponent.

171. The Committee found the inference that the public speeches and statements relied upon by the applicants amounted to a call for armed struggle or violence to be unfounded. These were no more than predictions or warnings that the CP might adopt a course of violence in the future.

172. Nor did the random explosions and acts of violence referred to by the applicants support their argument. None of these acts were committed by or on behalf of the CP. Indeed, Mr Koos Botha was repudiated by the CP during October 1992 for causing an explosion at the Hillview School. The basis of this repudiation was that the speeches of Dr Treurnicht could not be interpreted as a call for violence.

173. The Committee was satisfied that the applicants were not acting within the scope of any implied authority from the CP in assassinating Mr Hani. The applications accordingly failed to comply with the requirements of section 20(2)(d).

174. The Committee was not satisfied that the applicants had any reasonable grounds for believing that they were acting within the course and scope of their duties. The applications accordingly failed to comply with the requirement of section 20(2)(f).

175. In determining whether the applicants had made full disclosure, the Committee gave consideration to the purpose of the list of names. The applicants testified that Mrs Derby-Lewis had prepared the list of names for innocuous reasons and that Derby-Lewis had decided to use it for a totally different purpose. The Committee found that the reason Mrs Derby-Lewis gave for requiring the addresses of the persons on the list was unconvincing. Her explanation that she needed addresses in order to arrange interviews makes little sense in view of her concession that there was no likelihood of Mr Hani giving her an interview in his home.

176. The Committee found that the names constituted a hit list compiled for the purpose of planning assassinations. The evidence of the applicants that the list was to assist them to communicate confidentially was wholly unconvincing and the Committee found their version to be untrue in this regard.

177. On the question of the murder weapon, Mr Derby-Lewis told the Committee that he had acquired the Z88 pistol in order to protect his family. The silencer was fitted so that he could practice at home without disturbing his neighbours. The silencer would also give him a strategic advantage during an attack upon his home. Derby-Lewis thus contended that the original reason for obtaining the firearm was unrelated to the subsequent assassination of Mr Hani. It was purely fortuitous that he was in possession of an unlicensed firearm fitted with a silencer at a time when Walus was looking for an appropriate murder weapon to execute the assassination.

178. The Committee had no hesitation in rejecting Derby-Lewis' evidence in this regard. His explanation for fitting a silencer to the unlicensed firearm was inherently improbable and his explanation of the reason for obtaining the firearm was clearly false. It was particularly significant that he obtained a weapon that was perfectly suited for the purposes of the assassination fairly soon before the incident and at about the time when the applicants agreed that Mr Hani should be shot. The Z88 pistol was clearly obtained for the express purpose of assassinating Mr Hani.

179. The Committee gave its attention to whether Walus had acted on the instruction of Derby-Lewis in executing the attack. Walus initially stated in his application that he had acted alone in planning and executing the assassination. Subsequently, his application was amended to indicate that he had acted on the instructions of Derby-Lewis, but that they had jointly planned the assassination.

180. The Committee found that it was clear from the record that Walus was not acting as a mere functionary. He had a clear understanding of the political situation and was active in right-wing politics. He was clearly activated by his personal desire to stop the 'Communists' from taking over the country. He participated fully in political discussions and in hatching the plot to assassinate Mr Hani. He was under no duress or coercion and executed the plan as he deemed fit. Indeed, Derby-Lewis indicated that he was taken by surprise by the timing of the assassination.

181. In any event, Walus' own testimony is contradictory on the issue of orders. It is also contradicted by the testimony of Derby-Lewis, whose evidence was that the applicants were acting as co-conspirators who had jointly taken the decision to assassinate Mr Hani.

182. As an active CP member, Walus would have been aware that the CP has constitutionally established decision-making structures and that Derby-Lewis had no power to order him to commit murder, particularly in the light of the CP's policy of non-violence. There was no suggestion that he was ever previously ordered by the CP to commit any unlawful acts, let alone murder. Moreover, he failed to raise the alleged order to assassinate Mr Hani with any person in authority or with any governing structure in the CP.

183. In the circumstances, the Committee was satisfied that Walus was a co-conspirator and that he was not merely acting on orders from Derby-Lewis.

Accordingly, the Committee rejected the argument raised on behalf of Walus in this respect. The Committee judged that this was an afterthought and was resorted to in an attempt to enhance Walus' chances of receiving amnesty by curing deficiencies in the original application, and to bring the application within the ambit of the provisions of the Act, particularly section 20(3)(e).

184. In summary, the Committee found that the applicants had failed to make a full disclosure in respect of any of the relevant and material issues and was not satisfied that they had complied with the requirements of the Act, in particular the provisions of section 20(2)(a) thereof. Amnesty was refused [AC/1999/0172].

Legal challenge

185. A full bench of the High Court sat to review an application from the applicants challenging the decision of the Amnesty Committee. The Court considered all the evidence that had been presented before the Committee, as well as the arguments by all the parties, and analysed the various provisions of section 20 of the Act in detail.

186. In summary, the Court's main findings were that the Amnesty Committee had correctly rejected the applicants' contention that they had acted on behalf of the CP, subjectively believing that their conduct would advance the cause of their party. Further, the Court endorsed the finding of the Committee that the applicants had not acted in the course and scope of their duties as members of the CP, as is required by section 20(2)(d) of the Act, as assassination was never one of Derby-Lewis' duties as a senior member of the CP. It followed that Derby-Lewis could not have shared a non-existent duty with Walus; nor could he have delegated part of it to Walus. It followed that assassination never formed part of Walus' duties either.

187. The Court found that Walus was in a different position as a rank and file member and was entitled to assume that Derby-Lewis had authority to speak on behalf of the CP. In his original application, Walus stated that, 'he had acted alone in the planning and commission of the deed'. Under cross-examination, he said that this was not true. Walus later amended his amnesty application to incorporate Derby-Lewis as his accomplice, which he then insisted was the truth. Walus' version was that he believed that his assignment was an order from Derby-Lewis, given as a result of his senior position in the CP. This claim, the Court found, lacked objective credibility.

188. The Court found that the Amnesty Committee was correct in rejecting the applicants' evidence in respect of obtaining of the pistol and the silencer and the purpose of the list of names as improbable, contradictory and lacking in candour.

189. The Full Bench dismissed the application with costs.

Attacks on individuals

The Putco bus attack – Duffs Road, Durban

190. Members of the Orde Boerevolk Mr David Petrus Botha [AM 0057/96], Mr Adriaan Smuts [AM 0056/96] and Mr Eugene Marais [AM 0054/96] applied for amnesty for an attack on a bus full of black commuters in Duffs Road, Durban on 9 October 1990, in which seven people were killed. The three applicants were all convicted on seven counts of murder and twenty-seven counts of attempted murder and were sentenced to death on 13 September 1991. This sentence was subsequently commuted to thirty years' imprisonment.

191. Botha told the Committee that the attack was in retaliation for an incident which had taken place earlier in the day, in which PAC and APLA supporters wearing PAC T-shirts had randomly attacked white people on Durban's beachfront, killing one elderly person and injuring several others.

    MR BOTHA: *I was under the impression that the campaign of terror by the PAC against Whites had now commenced, and since we had already declared war against the National Party, and as a result of this attack, I as cell leader felt that we should launch a counter-attack to prove to the government of the day, and to show to it that the road it was following was full of danger and that incidents of this kind would increase in frequency.*

    Our purpose was also to show to the PAC and its communist allies that attacks of this kind would not be tolerated, and that we would take counter-measures in a very forceful way.

    And I also felt that the counter-attack should take place in Durban where the attack from the PAC had taken place in the morning and I felt that the attack by the PAC and the counter-attack should be seen in context, and I think we succeeded in this, because in the ***Sunday Tribune*** *of the 14th of October 1990 – in which interviews had been conducted with passengers in a bus from where the attack*

was launched – it said that they believed that the attack had been launched by Boers as a result of the PAC attack that morning on White people at the beach front. (Durban review hearing, December 2000.)

192. Botha and the two other members of his cell, Smuts and Marais, travelled down from Richards Bay to Durban, arriving after 20h00 on the night of the 9 October. Upon arrival, they drove around the bus terminus area and, observing that the streets were very quiet, decided to attack a minibus taxi that passed them. The minibus was full of passengers. They followed the vehicle as it travelled from the centre of Durban to KwaMashu but, when it turned off into a densely populated area, the applicants decided to abort the planned attack.

193. They returned to the highway and stopped at a garage for something to drink. They then observed a Putco bus full of people driving in the direction of KwaMashu. Botha decided that they would attack the bus and accordingly gave the instruction. He was driving the car as they set out to follow the bus in the direction of the Duffs Road off-ramp.

    MR BOTHA: *We overtook the bus and I told my colleagues to fire in the direction of the bus. We used automatic attack rifles to fire at the bus as we passed the bus – as we overtook it. Immediately after the attack we returned to Richards Bay. (Durban review hearing, December 2000.)*

194. On the following day, Botha contacted the SABC and, on behalf of the Orde Boerevolk, claimed responsibility for the attack on the bus. He testified before the Amnesty Committee:

    I don't know whether the person I spoke to took me seriously, but he was fooling around and asked me to furnish my name and address. I then put down the phone and then contacted the news office of the ***Natal Mercury****. I spoke to somebody in the news office there. I told them that I was a member of the Orde Boerevolk and that we accepted responsibility for the previous night's attack, and I also furnished the reasons why we launched the attack. There was no report in any of the papers the next day regarding this incident and I realised that there was a state of emergency at the time in Natal and I suspected that either the security police of the government or both had probably suppressed news of this kind.*

    I once again contacted the ***Natal Mercury*** *offices, spoke to the same reporter and told him that I was aware of the fact that news of this kind would normally*

be suppressed by the government and I threatened that, unless the news was published and unless they mentioned that the attack had been launched by the ***Orde Boerevolk*** *and mentioned our reasons for doing so, unless this was published, I would launch a similar attack. (Durban review hearing, December 2000.)*

195. The Committee accepted that the Orde Boerevolk was a recognised political organisation involved in a political struggle with the previous government and other political organisations. It also found that their acts were associated with a political objective.

196. In reaching a decision, the Committee distinguished between the roles played by Botha on the one hand and Smuts and Marais on the other, on the grounds that Smuts and Marais were Botha's subordinates and were under orders to carry out the attack as members of the *Orde*. Botha had not received any order or instructions to carry out the attack; nor did his actions carry the approval of any of his superiors or of the organisation.

197. Botha was refused and Smuts and Marais were granted amnesty for the incident. Botha was, however, granted amnesty for the unlawful possession of firearms and ammunition [AC/1997/0053].

198. David Petrus Botha submitted an application for the review of the Committee's refusal to grant him amnesty. The presiding judge, Mr Justice Smit, found that the Amnesty Committee had:
    a failed to consider properly whether Botha's conduct had not in fact complied with the requirements of the Act as to 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 supporter';
    b lost sight of the fact that the provisions of section 20(3)(e) were merely criteria to be applied to determine whether an act was committed with a political objective and not requirements necessary for the granting or refusal of amnesty.

199. The Court set aside the refusal of amnesty and referred the matter back to the Committee to hear further evidence.

200. The applicant appeared before the Committee again in December 2000 and adduced the evidence of the leader of the Orde Boerevolk, Mr Pieter Rudolph. Rudolph said that he would not have authorised the attack if he had been asked to do so and that, in any event, he would have had no way of communicating with his supporters as he had been in detention at the time.

201. The Committee subsequently refused amnesty to Botha on the same basis as before, namely that he had had no authority from his political organisation to launch an attack on innocent and unarmed civilians.

The killing of George Mkomane

202. AWB member, Mr Hendrik Johannes Slippers [AM 1002/96] applied for amnesty for the abduction and killing of Mr George Mkomane in Belfast in the Eastern Transvaal on 13 February 1991. For these offences, Mr Slippers was sentenced to two years and twelve years.

203. Mr Slippers testified before the Amnesty Committee that, at an AWB meeting held in November 1990, his Commander AWB Commandant Volshenk had instructed members to implement a policy of 'white-by-night'. This amounted to the re-implementation of the curfew laws of the apartheid era, which prohibited blacks from being in so-called 'white areas' without a permit after 21h00. Blacks present in white townships after 21h00 should be told to leave and, if they refused, should be removed by force if necessary. The Committee received affidavits from Brigadier Kloppers and John Wayne Rautenbach confirming the policy and the instructions to carry it out.

204. Mr Slippers testified that the instruction he received:

… fitted in with my political objectives, namely the protection of whites, the interests of whites and I believed that the action would serve to intimidate people of other colours or other races in the country and also put a stop to blacks taking over in this country. I believed that these kind of actions would put a stop to the political changes in the country, it would either stop it or slow them down. (Nelspruit hearing, 7 May 1997.)

205. He testified that, on the night in question, he and four other AWB members in Belfast were driving around trying to enforce the 'white-by-night' policy in the town. Although they had been drinking before they went on patrol, he testified

that he had not been drunk and knew at all times what he was doing and that the intake of alcohol did not influence his judgment.

206. They saw the deceased, George Nkomane, walking in the street, confronted him and loaded him onto the bakkie against his will. Their intention was to drive out of town and to 'off-load' him on the way to the black township. On the way, the deceased protested, saying that he intended to return to the 'white' township of Belfast. The applicant and one of the other members then assaulted Nkomane then deposited him outside the township. At this stage, Mr Nkomane began running back towards the white area.

207. The group pursued him, caught him and the applicant assaulted him by fisting him until he fell down. The applicant's co-accused then kicked him and jumped on him. The applicant testified that they had had no intention of assaulting Mr Nkomane but that things went wrong, an argument ensued and, as a result of the deceased's protest against the abduction, the brutal assault followed. He realised afterwards that he should have foreseen that the assault could have resulted in the death of Mr Nkomane.

208. The Court that tried the case had found that there was no direct intent to kill, but that the applicant was guilty on the basis of dolus eventualis. The Court found further that the offence was politically coloured. However, the applicant testified, he pleaded guilty at his trial and handed in a statement in which he did not reveal the full facts about the AWB's involvement as it seemed politically inappropriate to do so at the time.

209. Slippers expressed his remorse to the Committee:

If I was ever to have planned to kill anybody, I would rather have shot the person or stabbed the person and gone and hid that person's body in a safe place. My actions were in accordance with the instruction issued by the AWB and the entire incident took a different course to that planned.

After this incident, I and my ex-wife suffered various attacks in retaliation to this action which were launched by the Black community against us. After court sittings, mini buses would turn up at our house and the house; our vehicle and our caravan would be stoned and damaged, and the grass on my property and other things were also set alight.

On the 26th of March 1991, a month and thirteen days after the incident, I lost my wife in a car accident. The collision was caused by a black man who drove

into the passenger side of my vehicle. At that stage, I also experienced the misery and the loss which was experienced by the families of the deceased in the loss of a loved one. In spite of the fact that I am serving a ten-year prison term for my action, I regarded the loss of my wife as a far greater punishment and also saw it as part of my punishment for my action against the deceased. I suddenly realised what it was to be a single parent with two children. I now realise the senselessness of my action and the unnecessity of the attack. I am also very remorseful about the death of the deceased and the grief which it caused his family and his community. I now realise how important harmonious racial relationships are in our country and I will do everything in my power to ensure harmony amongst the races. (Nelspruit hearing, 7 May 1997.)

210. Mr Slippers was granted amnesty for the abduction of Mr George Mkomane but was refused amnesty for the killing. In the view of the Amnesty Committee, the killing of the deceased constituted an act grossly out of proportion with the stated objective of the AWB, which was to keep blacks out of the town after 21h00. The killing of the deceased was not, therefore, seen as an act associated with a political objective.

211. Moreover, the Committee found that the contention that the deceased was killed because he provoked an argument, that he strongly protested against being driven out of town and that he actually tried to run back into town when he was so close to a black township is so highly improbable that it can safely be rejected as false.

212. In reaching its decision, the Committee said:

How could the deceased dare argue and protest against three belligerent trouble seekers? How could he dare do so in the destitution of a cemetery when he had not done so in the relative safety of a town, albeit a not-so-friendly one? How could he dare provoke an argument when he had already been assaulted before being off-loaded at the cemetery? Why should the deceased be so obstinate in the face of such hostility and elect to run back into town when he could have run into a nearby black township? How could he hope to outrun a bakkie back to exactly the same situation which had invoked the wrath of his attackers? In any event, even if what the applicant has said were true, it would not change the fact that their conduct was grossly out of proportion to the objective sought to be achieved.

It is noteworthy that the applicant did not attempt to say that the killing was in accordance with the policy of the AWB. On his own version, the killing was not part of the plan and, if his version is correct, then the deceased became obstinate and pertinaciously attempted to go back into town, it means they killed him simply because he would not listen. At that level, there would be nothing political about the murder.

Furthermore the applicant's motivation that the ultimate objective of the AWB was to intimidate black people and discourage them in their quest for political take over becomes senseless when one considers that, had the applicant had his way, the killing as well as the reasons therefor would have remained unknown. While a surviving victim of abduction would be able to warn other black people to stay out of the town, a dead one would obviously not be able to do so. This is a further indication that no political objective was being pursued at the time of the actual killing [AC/1997/0069]

213. A dissenting decision on the matter was handed down by Amnesty Committee member Chris de Jager. In the light of the Committee finding that the abduction was an act associated with a political objective committed within the course of the conflicts of the past, Advocate de Jager found that:

[T]he question then arises whether the murder which flowed from the abduction, would also fall within the same ambit. It was argued on behalf of the applicant that the two offences were interrelated and cannot be totally separated from each other. The assault was carried out in order to make the abduction from the white area effective and to prevent the deceased from carrying out his intention to negate the white-by-night policy of the AWB. The applicant averred that it was carried out to intimidate blacks into slowing down the process of change or stopping it completely. He also stated that his action (to remove blacks from the white townships) was to prove that the whites were taking a stand against change and also to show the government that they were not satisfied with what was taking place in the country at the time. When the person was picked up, it never occurred to him that the person could be seriously or fatally injured, but the whole operation went wrong when the deceased told them that he would return to the white area and an argument followed resulting in assaults and the deceased running back towards the town. It was submitted on behalf of the applicant that the assault could not be separated from the abduction, and that the assault itself and its consequences were therefore associated with the original political objective.

The Committee previously had occasion to hear how an abduction with no intent to kill, ultimately got out of hand and lead to the intentional killing of the victim. The Committee then found that the ultimate killing, although carried out because of a fear for arrest, was interlinked and should not be separated from the political motivated abduction.

In the present application, things … got out of hand after the victim refused to leave the white township and started to run back towards it. Contrary to the previous applications, they didn't intend to kill him, but they should have foreseen that that could be the result of the assault that followed. Seeing, however, that the one offence flowed out of the other and the one being interlinked with the other, the one cannot be seen as totally separated from the politically motivated abduction.

I am of the opinion that amnesty should be granted as applied for. [AC/1997/0069.]

Killing of an unknown black person

214. AWB supporter Mr Vernon Vosloo [AM1003/96] was refused amnesty for stabbing an unknown black victim to death in Johannesburg on 10 May 1992. The deceased was identified neither at the hearing nor during the course of Mr Vosloo's murder trial – which resulted in his conviction and sentencing to fifteen years' imprisonment.

215. Mr Vosloo told the Committee that he had grown up in the south of Johannesburg where the majority of people were 'conservative'. He had regarded black people in general as 'the opposition party'. Mr Vosloo said he was not a registered member of any political organisation, although he had strong sympathies with the AWB.

216. He said that:

As long as Black people did not come into conflict with me, and as long as their ways and goals were not enforced on me, I did not have any problems with that, but I did not want any interference with myself from them. …[F]rom time to time, we were in conflict… There was enmity in the sense that I didn't want them to be in control of my life. (Johannesburg hearing, 7 April 1997.)

217. At around 22h00 on the night of 10 May 1992, Vosloo was standing next to the road in a residential area and in front of a shopping complex in South Hills,

Johannesburg, having a few drinks with friends. They saw a black person walking on the other side of the road and Vosloo took a knife from the boot of his car and followed the man for about thirty or forty metres before grabbing him from behind and stabbing him in the chest and all over the body. He said he did not know the victim at all and that the victim had done nothing to provoke the attack.

MR VOSLOO: *He didn't do to anything to me; he walked past. He walked past and I saw him as the person who could possibly govern me some day. (Johannesburg hearing, 7 April 1997.)*

218. Vosloo testified that he attacked and killed the man because he was afraid that, in the then political climate, he would not have a say in anything at the end of the day. The Afrikaner felt threatened and could not allow blacks to take over the country without resisting in some way.

219. He testified further that, although he had believed at the time that he had done the right thing, he was sorry today about what he had done: 'I took the life of an innocent person and it is something which no rational person will do.' He said that if he had been sober on that occasion, he wouldn't have done this as, 'any rational person would certainly have found other ways of resisting'. The liquor had given him 'the false courage to act in accordance with that which I felt so strongly' (Johannesburg hearing, 7 April 1997).

220. Vosloo testified that he had been aware of the negotiations taking place at Kempton Park at the time and was afraid of a black take-over from the National Party-led government. He was aware that the AWB had threatened to take up arms to protect itself against the rule of others. However, he had not considered enrolling with a commando:

MR VOSLOO: *I am a solitary person; I see things very individualistically. I understand things in my own view and I act in those terms. If things continued in that direction and if I was forced to join such a action group, I might have, but I would still have preferred to act on my own and do things in my own way. (Johannesburg hearing, 7 April 1997.)*

221. Killing an unknown black person was, in his view, a contribution to the Afrikaner resistance movement. He never attended meetings of the AWB or any other similar organisation but kept up-to-date with their policies and activities by watching television and associating with people who were more directly

involved. He testified that during 1992 he had become uncertain about the political situation in the country and feared that he would not have a voice in the changing South Africa. He had a growing feeling that something should be done about the situation, which he saw as advancing rapidly towards black majority rule.

222. The Committee found that the act committed by Vosloo amounted to no more than a purely criminal deed and he was denied amnesty [AC/1997/0026].

The Rodora roadblock killings

223. Four people, including two children aged nine and thirteen, were killed by an AWB gang which set up a roadblock at the 'Rodora crossing' outside Ventersdorp on 12 December 1993. Nine members of the AWB applied for amnesty for the incident: Phillipus Cornelius Kloppers [AM4627/97], Deon Martin [AM4621/97], Andre Francois Visser [AM4571/97], Marius Etienne Visser [AM7003/97], Petrus Matthews [AM4624/97], Carel Hendrik Meiring [AM7002/97], Gerhardus Johannes Diedrichs [AM6662/97], Frederick Jacobus Badenhorst [AM7004/97] and Marthinus Lodewikes van der Schyff [AM5435/97].

224. After mounting a roadblock, the applicants searched several cars for weapons they wanted to confiscate for their 'war'. The occupants of two cars were assaulted and later shot. An ear of one of the victims was cut off to show their commander, AWB General Japie Oelofse, allegedly at his request. Oelofse did not appear in person and did not formally oppose the applications but, through his Counsel, disassociated himself from all the killings, attempted killings and the severed ear.

225. The applicants (with the exception of Diederichs who was convicted of culpable homicide) were convicted of the four murders and six attempted murders and sentenced in the Supreme Court. Some of the applicants were also convicted on charges of assault and/or theft, arising from the theft of a leather jacket, radio cassettes and equipment taken from the victims' cars. With the exception Van der Schyff, who did not apply for amnesty for theft, all the applicants applied for amnesty in respect of all the offences of which they were convicted.

226. Two AWB members, Mr Myburgh and Brigadier Kriel, testified on behalf of the applicants. Neither had first-hand knowledge of the incident or the orders allegedly given by Oelofse.

227. All but one of the applicants testified that they were engaged in an official AWB operation on the orders of the General Staff of the AWB and General Japie Oelofse, as conveyed to them by Kloppers at the roadhouse where they had gathered prior to the incident.[242] They testified that Kloppers had told them that they were to go out and 'work' that night, as the countrywide revolution was to start that particular evening.

228. Kloppers told them that Oelofse wanted them to identify targets, exercise hard options and that he wanted to see 'lyke' (dead bodies). They proceeded to various places where alcohol was consumed and eventually went to Martin's place. Only on the way and in response to a suggestion to go to the township, did Kloppers communicate to them that Oelofse had ordered the setting up of a roadblock.

229. According to the applicants, the victims were ordered out of their cars and told to sit on an embankment on the side of the road. They were then questioned by Martin as to their political affiliations and asked particularly whether they were members of the ANC, which the AWB regarded as its enemy. The applicants testified that they did not notice that there were children in the group.

230. The applicants testified that, while members of the group were being questioned by Martin, Kloppers would 'lightly tap' them on the head in order to encourage them to co-operate. Some members of the group allegedly admitted that they were supporters of the ANC and, according to Martin's testimony, after a small group of the applicants had assembled (including Martins, Matthews, Kloppers, Marius Visser and Badenhorst), they decided to shoot the victims.

231. Three of the applicants, namely Andre Visser, Diederichs and Meiring, did not participate in the decision to shoot or the shooting itself. Van der Schyff testified that he participated in the shooting but did not form part of the group taking the decision. Martin fired the command shot and most of the others followed suit. Andre Visser, Matthews, Diederichs and Meiring then jumped into a car and fled the scene of the shooting.

232. Kloppers called out that they should all assemble at the City Hall and ordered Martin to cut off the ear of one of the victims so it could be taken to General

242 Save for Van der Schyff, whose evidence differed in some material respects from that of the others.

Oelofse. Various items were taken. The empty shells were removed from the scene, the vehicles of the victims were set alight and the rest of the applicants left the scene thereafter.

233. Van der Schyff testified that no mention had been made of the planned shooting at any time prior to the setting up of the road block and that his first knowledge of the shooting came after the first shots had been fired at the scene. He further testified that no mention had been made of the revolution or of the fact that Oelofse wanted to see dead bodies. Their purpose was to search for weapons. He was not part of the group that had decided on the shooting. He did, however, fire shots in the direction of the group because he had received a message that Kloppers had ordered the shooting of the victims.

234. The applicants conceded that they had consumed alcoholic liquor in varying quantities prior to and on the way to the spot where the roadblock was set up. They also testified that, on their way to the scene of the incident, they harassed two black people and assaulted an unknown black man, during which incident some of the applicants engaged in some frivolous fun amongst themselves.

235. The applications were opposed by surviving victims and relatives of the deceased.

236. The Committee found that, in broad outline, the evidence given by the victims confirmed the applicants' version as to the course of the events at the scene of the shootings. There were, however, some material differences in respect of questioning of the victims. According to the surviving victims, Martins and Kloppers had questioned the victims in a far more aggressive manner than they had led the Committee to believe and none of the victims had admitted that they were members or supporters of the ANC.

237. In considering the evidence, the Committee accepted that the setting up of the roadblock was in line with general AWB policy and that the prime objective of the exercise had been to obtain weapons in this manner. The Committee did not, however, accept that it was AWB policy to kill people at roadblocks. The applicants had all the necessary equipment to carry out the designated operation, which was carried out with some precision until the shooting took place.

238. The Committee found that Martin had taken the initiative in 'questioning' the victims, in calling together the group when the decision was taken to shoot and in firing the commanding shot. He knew that the group was exceeding the

bounds of its mandate and that it was he and Kloppers who had made the decision to shoot. There had been no reason to shoot the victims. The victims had had no firearms or other weapons; they did not admit to being members of the ANC; nor did they offer any substantial resistance to the treatment that was meted out to them. Martin's application for amnesty was accordingly refused [AC/1999/0045].

239. The Committee also refused the applications of those other members of the group who were in a position to question the reasons for the decision to shoot [AC/1999/0045].

240. Andre Visser, Van der Schyff, Dietrichs and Meiring – who were not in the group and who did not receive direct orders – could not be said to have known or to have been in a position to establish the reasons for the decision. They nevertheless associated themselves with the eents by accompanying others in circumstances where it might become necessary to shoot. With the exception of Van der Schyff, these applications also failed [AC/1999/0045].

241. The Committee was of the opinion that Van der Schyff, the fifth applicant, made full disclosure of the relevant facts. He had acted on the instruction of Kloppers, conveyed to him by a member of the group. Although his evidence was found to be unsatisfactory in all respects, it was not such as to bar him from being granted amnesty. He was accordingly granted amnesty for assault, possession of firearms and ammunition and for the four murders and six attempted murders committed at the Rodora Crossing near Ventersdorp on 12 December 1993 [AC/1999/0045].

Interference in political activities

Ventersdorp incident

242. On 9 August 1991, an open confrontation between members of the AWB and State President FW de Klerk occurred at Ventersdorp in the Transvaal when the NP planned a political meeting in a town the CP regarded as a CP constituency. According to the AWB, advertisements for the meeting limited attendance to NP supporters only. The AWB insisted that its supporters be permitted to attend as they wished to discuss certain burning issues with the President. The AWB mobilised some 2 000 of its supporters who gathered in the town. A confrontation with the police ensued and three AWB members were killed and fifty-eight people

injured. Almost the entire AWB leadership was arrested on charges of public violence. AWB leaders, Mr Eugene Terrre'Blanche [AM7994/97] and Mr Petrus Johannes 'Piet Skiet' Rudolph [AM6329/97] applied for amnesty for the incident.

243. Both applicants testified that they had been key figures although they had had no personal involvement in the various incidents that which took place during the violent confrontation with the police. Both averred that the State President and members of the security forces charged with the keeping of law and order at the time of the incident were the proximate causes of the ensuing violence, and they applied to the Committee to subpoena Mr de Klerk as a witness.

    RUDOLPH: *What I told, or wanted to tell Mr de Klerk that evening was exactly what I have just told you, and that is that we did not go there to fight for or against apartheid and to demonstrate against apartheid, but simply for our freedom. Mr de Klerk chose to destroy us. He employed his forces there and thought well to set the police on us in an unbridled manner. (Klerksdorp hearing, 10 May 1999.)*

244. The application was refused on the grounds that the Amnesty Committee did not regard Mr de Klerk as a necessary or essential witness to enable the Committee to arrive at a decision.

245. The Committee also did not deem it necessary to make a finding as to the proximate cause of the public violence. All the Committee needed to consider was whether the applicants complied with the formal requirements of the Act, whether the acts were committed with a political objective as required by the Act and whether the applicants had made a full disclosure of all relevant facts with regard to their participation.

246. Mr Rudolph testified that he, together with Mr Terre'Blanche, had been at the forefront of the procession of armed AWB members as they marched to the meeting in Ventersdorp. He testified he was arrested before the major part of the confrontation with the police took place. During this fracas, a number of people were killed and injured. Rudolph himself sustained minor injuries.

247. Rudolph testified that he was fully aware of the high political tension that prevailed and that he had forseen that conflict would arise from the actions that they regarded as the exercise of their democratic right. The demonstrators were intent on conveying their political sentiments to the leaders of the government of the time.

248. Mr Terre'Blanche likewise testified that he appreciated and knew of the high political tension and foresaw the possibility of conflict. He and his followers regarded the government at the time as a weak one – as a government without principle to whom they could not trust the governance of the country. He and his organisation were in favour of a *volkstaat* for the Afrikaner and were prepared to fight for it, even outside the law.

249. The Committee considered the evidence of the two applicants and all the relevant documentation and was satisfied that the acts were committed with a political objective in the course of the political struggle of the time and that the applicants had made a full and proper disclosure of their role in the incident. Amnesty was accordingly granted to Mr Rudolph and Mr Terre'Blanche for the offence of public violence in Ventersdorp on 9 August 1991 [AC/1999/0221].

Bombing of strategic targets

250. After a period of relative calm on the right-wing front between 1991 and 1993, acts of sabotage and bombings resumed in late 1993, this time with the explicit aim of derailing the election process.

251. The AWB, BWB and AVF all engaged in bombing campaigns in the pre-election period. The AWB targeted cities while the AVF focused on rural areas. From amnesty applications, it appears that AWB members had a 'conventional war' in mind with a view to overthrowing the former NP government and converting South Africa to a *Boere Republiek*. The express aim was to create secession in certain regions and finally to take over the government with 'military violence'. This would happen in three phases:
    a A propaganda campaign inside and outside the country to prepare the ground for a revolution – to create unrest and dissatisfaction with the government and gain support for the revolution.
    b A subversion of the authority of the government, the creation of weapons and food caches and reconnaissance of the terrain.
    c Action by guerrilla fighters; simultaneously sabotage, terror, uprising, strikes, assassinations would be committed to propel the government into as much social and political chaos as possible.

252. Bombing sprees were simply campaigns of terror. The Committee heard that the primary objective of these campaigns was the establishment of a *volkstaat*. The strategy adopted was to bomb state property as well as residential areas,

offices and facilities used by ANC supporters in order to force the then government to acknowledge the struggle for a volkstaat and to impress upon the ANC the seriousness of the right wing's intentions in obtaining a *volkstaat*, thereby strengthening the hands of the Volksfront leaders at the Codesa negotiations.

253. Many of these acts did not lead to loss of life, although some deaths and injuries were recorded.

254. Following the announcement that the Group Areas Act was to be repealed, as well as an earlier announcement on the removal of racial barriers in schools, a number of schools were destroyed in a series of bomb blasts. For example, a formerly white school in Pretoria where ANC exiles' children were to be accommodated was the target of two bomb attacks. Various radical right wing groups simultaneously claimed responsibility.

Attacks in the Lowveld

255. CP members, Mr Jan Petrus Kruger [AM2734/96], Mr Daniel Benjamin Snyders [AM0073/96] and Marthinus Christoffel Ras [AM2735/96] applied for amnesty for a series of sabotage attacks in Lowveld during 1991 and 1992, including:

256. An explosion at the Sabie Magistrate's Court on 20 December 1991 in which Kruger and Ras argued that they had acted on the instructions of a member of Toekomsgesprek leadership, Mr Douw Steyn, conveyed to them by Snyders. The explosives used were manufactured by Snyders. The buildings were damaged but no deaths or injuries resulted from the explosion. The applicants were facing a charge of sabotage pursuant to this incident at the time of their amnesty hearing.

257. An explosion at the Lowveld High School in Nelspruit on 1 January 1992 in which Kruger and Ras again argued that they had acted on the instructions of Douw Steyn as conveyed by Snyders. The building was damaged. The applicants were facing a charge of sabotage for the incident at the time of their amnesty hearing.

258. An explosion at the Nelspruit Agricultural Colleged during the period 14 to 15 March 1992, causing damage to the property. The attack was launched on the instructions of Douw Steyn. Snyders manufactured the explosives and gave them to another member of Toekomsgesprek who executed the actual attack. Snyders was facing criminal charges as well as a civil claim for the incident.

259. An explosion at the Lowveld High School on 16 March 1992, after a gardener at the school discovered and handled an explosive device found in the grounds of the premises. The gardener, Mr Chashasa Andries Sithole, was killed in the explosion and another person, Mrs Sophie Mashaba, was injured. Snyders had planted explosive devices at the school during the period 14 to 15 March 1992, with the intention that they detonate simultaneously with explosives placed at Nelspruit Agricultural College. All reasonable steps were taken to avoid any loss of life or injuries in the operation. The explosives were primed to detonate at 03h00 when no one would be present on the school premises. Unbeknownst to Snyders and due to some defect in the detonator, the devices did not explode simultaneously. Snyders and his colleagues were shocked at the death and injury that resulted. He expressed remorse at the consequences of the explosion. Snyders said he had acted on the instructions of Douw Steyn in placing the explosives at the school. He was facing various criminal charges including murder and attempted murder as well as a civil claim for the incident.

260. Subsequent to the arrest of applicants, the police discovered various arms caches on farms in the vicinity of Nelspruit and Sabie. One of the farms belonged to Kruger. Various charges were brought against the applicants as a result. The arms and explosives in question had been stockpiled on the instructions of the leadership of Toekomsgesprek in accordance with its policy of preparing for armed resistance against the political reforms introduced by the NP government at the time.

261. None of the implicated parties, including Douw Steyn, appeared at the hearing. Only one of the interested parties submitted an affidavit which, to some extent, provided the political context for the incidents and supported the subjective political beliefs of the applicants.

262. The Amnesty Committee was satisfied that the applicants made a full disclosure of all facts relevant to the applications. The Committee accepted that the applicants had acted on the orders of one of their superiors within Toekomsgesprek and that the attacks fell within the policy of that organisation at the time. Although membership and the activities of Toekomsgesprek were secret, the Committee was satisfied that, even if not widely known, it was a publicly known political organisation, independent of the CP, whose policies did not include the kind of offensive, violent actions undertaken by the applicants.

263. Insofar as the death of Mr Sithole and the injuries of Mrs Mashaba were concerned, the Committee took into account that all reasonable steps had been

taken to avoid this kind of consequence. In the context of what was patently a political act, the unfortunate death and injury were aberrations which could not reasonably have been avoided. The Committee accepted that the attack was aimed solely at state property, which was seen as representing the applicants' political foes.

264. Amnesty was granted to Daniel Snyders, Jan Kruger and Marthinus Ras in respect of the respective offences set out in the charge sheet [AC/2000/121].

Attacks on schools

265. Amnesty was granted to BWB members Mr Cornelius Gabriel Volschenk [AM2759/96], Mr Rowland Keith Robinson [AM 2758/96] and CP member Mr Gerhard Pieter Daniel Roux [AM 0094/96] for the bombing of the Melkrivier School near Nylstroom in the Transvaal and the Perdekop School near Volksrust in Natal, and for the possession of unlicensed firearms and ammunition and the manufacture and supply of explosives [AC/1996/0009; AC/1996/0013; AC/1996/0014]. BWB member Mr Carel Willem Andries van der Merwe [AM3718/96] was also granted amnesty for offences committed in the district of Nystroom on or around 2 January 1992 and for the bombing of Melkrivier School [AC/1998/0001].

266. Conservative Party members Mr Jacobus Johannes Christoffel Botha [AM1703/96] and Mr Carl Mathinus Kriel [AM6699/97] and AWB members Mr Petrus Jacobus Judeel [AM5240/97] and Mr Andries Stefanus Kriel [AM2893/96] were granted amnesty for various acts of 'terrorism' relating to the bombing of the Hillview School, Cosatu House and the Verwoerdburg and Krugersdorp Post Offices during 1991/92, and for the theft of explosives at the Rustenburg Platinum Mine in the Transvaal during 1991 [AC/1996/0012; AC/1998/0017].

267. AWB Commander Mr Pieter Stephanus Albertus Nel [AM2733/96] was granted amnesty for the theft of explosives and being in unlawful possession of explosives, including a homemade bomb, on 28 December 1991. Together with two AWB colleagues, he stole explosives and detonators from a coalmine and used these to manufacture a homemade bomb [AC/1998/0094].

268. On 16 January 1992, the applicant and a colleague place the bomb on the premises of the Calvary Church School at Nelspruit. The bomb was defused before it exploded and caused no damage.

269. The applicant was charged with and convicted of the offences in the Regional Court in Middelburg. On 4 April 1995 he was sentenced to twelve months imprisonment, conditionally suspended for five years for the theft of the explosive material and to five years' imprisonment, also conditionally suspended for five years, for the possession of explosive material and the homemade bomb.

270. The applicant testified that his motive for committing the offences was to enable him to make direct attacks against racially mixed schools and churches with the view to derailing the government's democratisation process.

271. The Amnesty Committee was satisfied that the offences were committed by the applicant in the course of the conflicts of the past and with a political objective, and that the applicant had made full disclosure. Amnesty was granted in chambers.

Explosion in Bronkhorstspruit

272. Two BWB members from Cullinan, Mr Leo Hendrik Froneman [AM0395/96] and Mr Pieter Johannes Harmse [AM3275/96], also a commander in the BRL, were jointly convicted for an exposion at an Indian business complex in Bronkhorstspruit on 17 September 1993. One police officer, Mr Abraham Labuschagne, died in the explosion and six people were injured. Froneman was convicted of culpable homicide for which he was sentenced to seven years' imprisonment. Harmse was convicted of murder, attempted murder, the unlawful possession of explosives and malicious damage to property and was sentenced to an effective eighteen years.

273. The bomb was homemade and one of a series made by the BWB cell. The BWB planned a coup d'état and a part of their plan entailed interrupting the country's power supply. During the amnesty hearing, the applicants handed in a video of a BWB meeting held in 1993, in which it was said that the party would declare war against the government which, 'wanted to hand the country over to the ANC/SACP alliance'. At other meetings, members were instructed to collect explosives and create chaos in their own areas.

274. Harmse told the Committee that, in September 1993, he received a telephone call from the BRL informing him that the war had started. He had been warned at meetings to expect such a message. He instructed Froneman to choose a target that would involve Muslims, which is why the Indian Shopping Centre at

Bronkhorstspruit was selected. They set about preparing the bomb and at 03h00 the following morning they set off to plant it.

275. The trial judge and the regional magistrate who convicted the two applicants regarded the incident as political. Under cross-examination, Froneman explained that he had selected the target because he believed that the majority of Indians were Muslims and ANC supporters. By attacking this target, they would show the government and others that the BWB was intent on taking their country back by force if necessary. In doing what he did, he was carrying out orders given to him through Harmse.

276. The Amnesty Committee was satisfied that the applicants did what they did in the belief that they were acting on instructions given to them by the BWB, a publicly known organisation, and that the act was done in furtherance of the policies of that organisation. They were granted amnesty [AC/1998/0039].

Pre-election bombing campaigns

September 1993–February 1994

277. AWB member Mr Nicolaas Willem de Jongh [AM3375/96] was granted amnesty for two bomb attacks in the Eastern Cape during August 1993.

278. De Jongh, who held the rank of Commandant in the AWB, assisted two other members of that organisation to bomb two premises. The first bombing took place during the night of 13 August 1993 at the premises of Mr Wiseman Zitembile Sana in Queenstown; the second occurred on the night of 14 August 1993 at the premises of Mr Johnson Dumile Sateni in Hofmeyr in the Eastern Cape. The bombings caused damage to both properties but did not result in any bodily injury. The Committee found that both bombings were executed in support of the AWB with a political objective associated with the conflicts of the past. Amnesty was granted [AC/1998/0029].

279. An AWB colonel, MrJan Cornelius Labuschagne [AM3671/96], claimed responsibility for a series of explosions he carried out with other members: Mr Daniel Wilhelm van der Watt [AM3674/96], Mr Andries Stefanus Kriel [AM2893/96] and Mr Johannes Jacobus Botes [AM3672/96] between September 1993 and February 1994. They placed more than twenty explosive devices on railway tracks, power stations and in black townships to disrupt the

infrastructure and gain publicity for the right wing's anti-election cause. A number of people were injured.

280. In October 1993, Andries Stefanus Kriel, a brigadier in the AWB and deputy leader of the Volksfront in the Northern Free State, instructed AWB Colonel Jan Cornelius Labuschagne to form a cell of operatives in order to participate in a terror campaign to be conducted by the Volksfront.

281. Labuschagne formed a cell consisting of himself, Johannes Jacobus Roos Botes and Daniel Wilhelm van der Watt, both members of the AWB and the Volksfront. They underwent a short period of training in the manufacture, handling and use of explosives in the Bothaville area.

282. The bombing campaign commenced on 9 November 1993 and lasted until 7 February 1994. During that period they placed twenty-one bombs at different targets, including Welkom, Wesselbron, Potchefstroom, Orkney, Viljoenskroon, Hoopstad, Bothaville, Stilfontein, Kroonstad, Leeudoringstad and Vierfontein. Nineteen of these exploded. The other two (at Welkom and at Leeudoringstad) did not detonate. All the bombs were homemade. Eleven of the targets were railway lines, three were power installations, four were black residential areas, two were business premises and one was a farm school.

283. Nobody was killed in the bombings. However, a number of people were injured, including Mrs M Bayo, Mr Seipata Mokadatlo (both at Wesselsbron), Mr Stephen Semelo, Mr Andries Semelo, Mrs Ramorakane and Ms Margaret Malinga (all at Viljoenskroon). The bombings caused damage to both private and state property.

284. Labuschagne told the Committee it was not their intention to kill or injure people, although they realised that people might be killed or injured by their actions. He said they took steps to minimise the prospect of this by setting the bombs to explode late at night.

285. All the applicants were facing charges relating to their training, all the bombings as well at the illegal possession of firearms and explosives. Their trial had been postponed pending the outcome of their applications.

286. Labuschagne accepted equal responsibility with the other applicants for all the incidents on the basis that he was their leader and had given them the instruc-

tions to carry out the bombing campaign. All the applicants ceased being members of the AWB during the course of the bombing campaign, but continued with the campaign as members of the Volksfront.

287. The Committee was satisfied that the applicants acted at all relevant times in furtherance of the policies of the Volksfront and that the offences committed by them were acts associated with a political objective committed during the course of the conflicts of the past. There was nothing to suggest that the applicants committed the offences for personal gain or out personal malice, ill-will or spite directed against their victims. Satisfied that the applicants had made full disclosure of all relevant facts and that their applications complied with the requirements of the Act, they were all granted amnesty in respect of the incidents for which they each made application [AC/1999/0001].

21 April 1994

288. On 21 April 1994, the office of the Independent Electoral Commission (IEC) in Hoopstad was bombed, causing considerable damage. Freedom Front (FF) and BKA member Mr Eduard Pieter Roux [AM 5661/97] was granted amnesty for the attack. Roux was also convicted of sabotaging power installations. There was no loss of life [AC/1998/0097].

23 April 1994

289. The Devon Radar complex, an Airforce base in the Secunda area in the Transvaal, was attacked and robbed on the night of the 23 April 1994. A police guard, Sergeant Steven Frederich Terblanche, was shot dead and robbed of his firearm. BWB member Mr Okkert Anthonie de Meillon [AM4570/97] and AWB members Mr Edmund William Holder [AM5610/97] and Mr Willem Johannes van Zyl [AM5611/97] applied for amnesty for the attack.

290. Okkert de Meillon was convicted of murder and robbery with aggravating circumstances and sentenced to an effective fifteen years' imprisonment. On 5 November 1996, Edmund Holder and Willem van Zyl were jointly tried in a separate trial and convicted on similar charges. Van Zyl was also convicted of the unlawful possession of a firearm and ammunition. They were sentenced to effective imprisonment of ten and eight years respectively.

291. All the applicants, as well as Constable Andre Renier Swart who was in the company of the deceased victim at the time, testified at the hearing.

292. The Amnesty Committee heard from the applicants that right-wing organisations took various steps to prepare for an attack on whites on the 27th April 1994, the day of the election. Members of right-wing organisations were ordered to obtain appropriate firearms to ward off the attack. Because the 'enemy' would be armed with automatic weapons, they believed that the anticipated attack could only be effectively warded off if the right wing was armed with automatic weapons.

293. On the day of the incident, the applicants armed themselves and drove to an army building in Pretoria city centre. The building was guarded by armed guards. This plan was foiled as they were totally outnumbered by the guards. According to Holder and Van Zyl, De Meillon had suggested they attack the guards for the purpose of making propaganda. This they refused to do. They testified that by then it had become clear to them that De Meillon was a fanatic.

294. Driving home in the direction of Secunda, De Meillon remembered an Airforce base at Devon where he had done a part of his military service in 1992. They decided to go there. Holder and Van Zyl testified that they intended to reconnoitre the base in preparation for an arms robbery.

295. Led by De Meillon, the applicants entered the guardhouse at the Devon base without first ascertaining who was inside. It became apparent that the guardhouse was occupied by members of the police. De Meillon ordered the police to hand over their weapons. However, although both police officers were armed with their service pistols, there were no automatic weapons in the guardhouse.

296. In the course of disarming the deceased victim, a scuffle ensued between him and De Meillon. Shots were fired and De Meillon was wounded and Sergeant Terblanche killed. De Meillon took the deceased victim's service pistol and ran to the vehicle followed by Holder. They drove to Secunda where De Meillon obtained medical assistance and was later arrested in hospital. Van Zyl kept possession of the deceased's pistol for a few days, whereafter he took it apart and threw it into a dam. Holder and Van Zyl were also subsequently arrested.

297. The Committee found that the attack on the deceased fell outside the orders or authority given to the applicants to obtain automatic weapons for the purposes

of their respective political organisations. De Meillon had taken the initiative in the mission and ordered the others to assist.

298. De Meillon testified that, to his mind, the mission was unsuccessful. Had he known that the base was occupied by the SAP, he would not have embarked upon the operation at Devon. The Committee found that Holder and Van Zyl's testimony as to the purpose of their visit to the base was true. It would have been reckless to decide to attack the base for automatic weapons without reconnoitring the target first. They would have had no idea whether they would find the weapons they were looking for or what kind of resistance they would meet. They obviously went to the base to see what the situation was there, as testified to by Holder and Van Zyl.

299. The Committee found that the attack on the guardhouse was clearly a result of impulsive, overhasty and haphazard actions on the part of De Meillon.

300. The Committee noted that another important factor was the fact that the pistol of the deceased was subsequently disposed of without being used for any of the purposes of the political organisations in question. This was further indication of the fact that attacking and robbing the deceased of his pistol fell outside any mandate or order given. The applicants testified that the order had been to obtain automatic weapons.

301. The Committee found that the killing of the deceased in all of the circumstances of the case was disproportionate to any conceivable objective pursued by the applicants. The Committee was not satisfied that the incident constituted an act associated with a political objective in terms of the requirements of the Act and the applications were refused [AC/1999/0014].

24 and 25 April 1994

302. A number of people were killed on 24 and 25 April 1994 when eleven members of an AWB cell went on a bombing spree. The targets were mainly taxi ranks serving black commuters. The eleven were part of a group of twenty-six found guilty on ninety-six counts of pre-election bombings, murder and damage to property. Altogether twenty people died and forty-six were injured.

303. Nine applicants claimed responsibility for a number of different actions during this period.

304. Mr Etienne Jacobus le Roux [AM6467/97] and Mr Johan Wilhelm du Plessis [AM6480/907] were granted amnesty for violations arising from an explosion in Bree Street, Johannesburg on 24 April 1994. The explosion killed seven people: Mr Jostine Makho Buthelezi, Mr Makomene Alfred Matsepane, Mr Goodman Dumisani Ludidi, Ms Gloria Thoko Fani, Ms Susan Ann Keane, Mr Peter Lester Malcolm Ryland and an unidentified man. At least thirteen other people were injured in the attack. The applicants were also granted amnesty for malicious injury to property and the unlawful possession of explosive devices and material [AC/1999/0342].

305. Le Roux and Du Plessis were granted amnesty for violations arising from an explosion at Jan Smuts Airport, Johannesburg on election day, 27 April 1994, in which at least ten people were injured. They were also granted amnesty for malicious injury to property and the unlawful possession of explosive devices and material [AC/1999/0342].

306. Mr Etienne le Roux, Mr Jan Bastiaan de Wet [AM6466/97], Mr Johannes Abraham Vlok [AM7888/97] and MrJohan du Plessis were granted amnesty for violations arising from a bomb explosion on the corner of Odendaal and Victoria Streets in Germiston, Transvaal on 25 April 1994. Ten people were killed by the bomb: Mr Phillip Nelaphi Nkosi, Mr Mbulawa Jonathan Skosana, Mr Lucas Shemane Bokaba, Ms Gloria Khoza, Mr Fickson Mlala, Mr Mbereyeni Marcus Siminza, Mr Paul Etere Ontory, Mr Thulani Buthelezi and Ms Thoko Rose Sithole. At least seven other people were injured in the explosion. The applicants were also granted amnesty for malicious injury to property and the unlawful possession of explosive devices and material [AC/1999/0342].

307. Mr Johan du Plessis, Mr Abraham Christoffel ‘Abie’ Fourie [AM6478/97], Mr Johannes Andries ‘JJ’ Venter [AM6577/97], Mr Jacobus Petrus Nel [AM6469/97], Mr Petrus Paulus Steyn [AM6479/97] and Mr Gerhardus Daniel ‘Gert’ Fourie [AM6468/97] were granted amnesty for violations resulting from:

308. An explosion on 25 April 1994 on the corner of Blood Street and 7th Avenue in Pretoria. The explosion killed three people: Ms Joyce Baloyi, Mr Samuel Masemola and unidentified man. At least four other people were injured;

309. An explosion at Westonaria on 25 April 1994. The explosion killed five people: Mr James Ncube, Mr Alfred Dayele, Mr Peter Mogoshe, Mr Phillip Plaatjies and Mr Alex Maziba

310. An explosion on 25 April 1994 at a taxi rank on the corner of Third and Park Streets in Randfontein, Transvaal. The explosion injured at least six people;

311. The unlawful possession of explosive devices and materials at the Springfontein Farm in Rustenburg between 22 and 27 April 1994.

312. Mr Jan de Wet, Mr Johannes Vlok and Mr Johan du Plessis were granted amnesty for the unlawful possession of explosive devices and materials at the Koesterfontein Farm in Krugersdorp between 22 and 27 April 1994.

313. Mr Etienne le Roux, Mr Jan de Wet and Mr Johan du Plessis were granted amnesty for the theft of a motor vehicle at Randfontein on 25 April 1994.

27 April 1994

314. On election day, the 27th April 1994, two AWB members travelling in a vehicle on the R28 road between Westonaria and Randfontein on the West Rand, opened fire at a minibus taxi killing the taxi's driver, Mr Viyani Papiyana, and injuring a passenger, Mr Godfrey Papiyana.

315. AWB members, Mr James Wheeler [AM 2084/96] and Mr Cornelius Rudolph Pyper [AM5179/97] were serving fifteen-year jail sentences for the attack when they were granted amnesty. The Amnesty Committee accepted that the applicants believed themselves to be under orders from the AWB and were under the impression that other members would be committing acts of violence in order to cause chaos and disrupt the elections.

316. The applicants testified before the Amnesty Committee that they had consumed alcohol and discussed politics and ways to disrupt the election. They decided on a course of action, allegedly based on the orders of a fellow AWB member, Mr de Bruyn, whom they believed to have some authority in the organisation.

317. Both applicants testified that their sole motivation in committing the crime was political and that their immediate aim was to cause chaos which would lead to the disruption of the elections. They believed that many other supporters of the AWB would be participating in the uprising and that the cumulative effect their of actions would have a significant impact on the political events of the day. They both denied that the consumption of alcohol was the driving force of their actions.

318. The surviving victim and those members of the victims' family who opposed the application said they believed the applicants had committed the offences in their personal capacities out of ill-will, malice or spite while under the influence of intoxicating liquor. There was also insufficient evidence to find that the applicants were members or supporters of the AWB; that they acted on behalf of or under orders from the AWB or within their duties as members of that organisation. It was suggested that this was a spontaneous and poorly planned attack on a taxi that was not in the vicinity of a polling station.

319. The Committee was satisfied that the applicants could at least have been seen as supporters of the AWB and believed themselves to be members.

320. The Committee accepted the uncontradicted evidence that the AWB propagated the use of violence to resist the ANC winning the election and that it called upon its members to prepare themselves for a state of war. The applicants had believed that the revolution had begun before consuming liquor on the day in question. Drunkenness could not therefore have been the root cause of their actions, though the consumption of liquor could have provided them with false courage and was the reason for the sloppy planning and preparation of the attack. Both the applicants stated that they knew what they were doing. The fact that the first applicant drove the vehicle without mishap and that the second applicant accurately aimed the shot he fired indicates that they were not so drunk as to eliminate their belief that they were acting in support of the AWB. The fact that the AWB never admitted its involvement in the applicants' crimes did not obviate the applicants' subjective belief that they were acting in support of AWB when they committed the act.

321. The Amnesty Committee accepted that the applicants were under the impression that other members of the AWB would, that day, commit acts of violence in order to cause chaos and so disrupt the elections. They gained this impression after having heard the report of the bombings on the East Rand and after their discussion with Du Bruyn. They only learnt after the event that, save for the bombings on the East Rand, they had acted in isolation. They testified that they decided to shoot a black man as they were of the opinion that the vast majority of black people were supporters of the ANC. Their intention was to commit an act of terror which, together with other such acts committed by other members of the AWB, would instil fear and result in chaos and anarchy and so disrupt the elections.

322. In this context, despite the tragic consequences and futility of their actions, the Committee concluded that the violation was not disproportionate to the political objective they were pursuing. The attack was found to be associated with a political objective committed in the course of the conflict of the past and amnesty was granted to the applicants [AC/1998/0032].

PART TWO: MOTIVES AND PERSPECTIVES

323. Threatened by the prospect of a non-racial, democratic South Africa, many sectors of the conservative Afrikaner community mobilised to challenge the impending changes and to protect a way of life and a sense of identity perceived to be under threat. One of the central objectives that emerged as a focus of the mobilisation of the right-wing groups was the creation of a *volkstaat*. In some senses the initiatiave represented a hearkening back to the idea of the *Boere* republics, confiscated by the British and finally lost in the turn of the century Ango-Boer War. If the African liberation struggle in South Africa was a 'just war', so too was the struggle of Afrikaners to restore the Boer republics.

324. The Afrikaner Volksfront (AVF) and the Conservative Party took the lead in the struggle to achieve a *volkstaat*, defined as any land that could be set aside for Afrikaners to pursue their quest for self-determination. Some right-wing organisations, (such as the AWB, the Orde Boerevolk and the Boerestaat Party) were more interested in restoring the actual boundaries of the former Boer republics. While different groups differed on how to acquire this nation-state, all feared being 'swamped' in the new South Africa and, for a time, were prepared to unite against the 'common enemy'. Most applications from members of the AWB refer to the common enemy as being the then NP government which appeared to be blocking their objective of self-determination.

325. Evidence before the Commission indicates that the strongest mobilisation for a nation-state, and the most aggressive acts in promoting this goal, occurred in the former Western Transvaal and on the West Rand. Fewer violations occurred in the territories now known as the Western and Northern Cape. AWB applicants told the Amnesty Committee that their aim was turn the Transvaal, the Orange Free State and Northern Natal into a Christian and Afrikaner Boer states.

326. The concept of 'freedom' related to the question of whether Afrikaner communities could be in control of their own destiny and to general constitutional protection. During the process of negotiations, therefore, the idea of 'freedom'

became a recurring theme in the militant rhetoric of the right-wing leaders and a central motivating factor in the planning and execution of operations that resulted in gross violations of human rights.

327. At the time of the formation of the Afrikaner Volksfront (AVF), some Afrikaner groups felt that 'an elite' deal was being fashioned at the Kempton Park negotiations between the ANC and the NP in conjunction with big business. The deal threatened to marginalise Afrikaner demands for the preservation of Afrikaner culture and the recognition of their Christian-national aspirations.

328. At this time, when there seemed to be little hope in obtaining a volkstaat, there was talk of a 'liberation war' using violence as a means to achieve an end. However, no loss of life was intended. AWB leader, Eugene Terre'Blanche testified before the Commission that no orders for killing were given. In his submission to the Commission, General Constand Viljoen said that the AVF had no option but to organise resistance to secure the future of Afrikaners:

I submit that it was quite reasonable that the ethnic Afrikaners felt threatened to the point that they felt the proverbial back against the wall. … And we prepared for conflict – not anarchy, not a total war but a well-planned campaign of resistance and mass action' against the NP government and also against the ANC. (Viljoen: submission)

329. General Viljoen unequivocally linked Afrikaner resistance with the transitional process in the country.

It was further aimed as an anti-revolutionary power to counter the anarchy, intimidation and intolerance of the revolutionary powerw, because in our opinion the government of the day had neither the will or the guts to do so. … Our action programme was necessary as the NP in the multi-party conference watered down the Afrikanervolk's right to self-determination, and our own bilateral process of negotiations with the ANC on Afrikaner self-determination did not achieve the desired results until shortly before the election. The degree of revolutionary climate called for an action stronger than the political debate; but it had to take place in support of the talks. (Viljoen, AVF: submission)

330. In summary, the Amnesty Committee heard that most of the acts for which members of right-wing organisations applied for amnesty were motivated by the following principles:

a the creation of a Christian *Boerestaat* on Boer territory for the Afrikaner Boerevolk;
b the promotion of an Afrikaner Boere consciousness of their white lineage and the importance of race purity and the maintenance of Afrikaner Boer culture;
c the struggle against the enemies of liberalism, humanism, Communism and Marxism;
d the protection of Afrikaans;
e the maintenance of a Christian National Education;
f the return of the volk to the Covenant and the God of the Covenant;
g self-realisation within a Boerestaat;
h self-determination for a republic previously internally acknowledged as an independent state;
i the protection of the land against imperialism;

331. The CP maintained a strictly anti-Communist stance and upheld the need they identified to fight the threat of the African liberation movements, which they believed to be influenced by the SACP. According the CP member, Mr Clive Derby-Lewis, who applied for amnesty for the killing of SACP leader, Mr Chris Hani (see above):

*The fact that the ANC/SACP wanted to control **all** of South Africa, was, we believe, the underlying problem of South Africa's continual conflict. Most people want to be ruled by their own. This is an immutable international fact. Thus conservative Whites were faced not only with an alien government if the ANC/SACP came to power, but a communist alien government.*

332. Applications for amnesty from conservative Afrikaners and right-wingers frequently made reference to a romantic image of the Boer nation, derived from the history of seventeenth century freeburgers, Trekkers and ultimately the Anglo-Boer War. A common theme in this history was the desire of conservative Afrikaner groupings to be in control of their own destiny and the wish to achieve self-determination through the creation of a volkstaat or *Boerestaat*.

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